

BEFORE THE BOARD OF PARDONS & PAROLE
STATE OF MONTANA DEPARTMENT OF CORRECTIONS

IN THE MATTER OF:

BARRY ALAN BEACH

TRANSCRIPT OF EXECUTIVE CLEMENCY HEARING

VOLUME I

Heard at Montana State Prison

500 Conley Lake Road

Deer Lodge, Montana

June 13, 2007

8:30 a.m.



NORDHAGEN COURT REPORTING

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1 BARRY BEACH EXECUTIVE CLEMENCY HEARING VOLUME I

2 DEER LODGE, MONTANA

3 ---

4 BE IT REMEMBERED THAT this matter came on for

5 hearing on June 13, 2007, Chairwoman Teresa McCann

6 O'Connor, presiding:

7

8 The following proceedings were had:

9

10 MR. THOMAS: Good morning, everybody. This is

11 the time and place set for the executive clemency hearing

12 for Barry Beach.

13 Members of the Board conducting the hearing

14 today: Vance Curtiss, Chairman of the Board; Teresa

15 McCann O'Connor, member of the Board and presiding officer

16 today; and Margaret Bowman.

17 CHAIRWOMAN O'CONNOR: Good morning, all. We

18 apologize for the half-hour late that we're getting

19 started. We'll try not to do that in the future.

20 I will ask each of the counsel at the counsel

21 table - goodness, you're way over there - to introduce

22 yourselves in just a moment.

23 First of all, I would like to note that notice

24 of this hearing has been published in the county, of

25 committal, for two consecutive weeks. The statute

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1 E X H I B I T S

2 NO. DESCRIPTION

3 1 01/26/83 Moncrief letter to Kidd

4 2 12/05/06 J.D. letter to Annie

5 3 Kirn restraining order documents

6 4 03/07/80 Statement of: Roberta Clincher

7 5 02/28/84 Mahlum Supplementary Report

8 6 09/10/02 Barry Beach Interview

9 7 Palm Print Exhibit

10 8 Fingerprint Exhibit

11 A "Kim Nees Case is First for Crimestoppers"

12 article

13 B Color photograph

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1 requires that that be done by the Parole Board, and that

2 has been done.

3 Secondly, I will note that this is a

4 bifurcated hearing, so the first portion of the hearing

5 will be beginning today; and for continuing days, we will

6 hear the witnesses who have been noticed and who will be

7 testifying on the subject of whether clemency should be

8 granted; that is, basically, as to the issue of guilt or

9 innocence and new evidence going to the issue of guilt or

10 innocence.

11 In the second part of the hearing, which will

12 be scheduled for the 1st of August, we will hear character

13 witnesses and those witnesses whose testimony will go to

14 the issue of commutation and whether parole should be

15 recommended.

16 In the interim between the two portions of the

17 hearing, we anticipate that we'll take this first portion

18 under advisement and that a written decision will likely

19 issue between the two portions of the hearing on the issue

20 of whether clemency will be recommended to the governor.

21 I think that those are the preliminary

22 matters.

23 I would ask counsel to introduce yourselves,

24 please.

25 MS. PLUBELL: I am Tammy Plubell, Assistant

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1 Attorney General in the Montana Attorney General's Office.
 2 CHAIRWOMAN O'CONNOR: Hello.
 3 MR. WELLENSTEIN: And Mike Wellenstein,
 4 Assistant Attorney General in the Montana Attorney
 5 General's Office.
 6 CHAIRWOMAN O'CONNOR: Hello.
 7 MR. CAMIEL: Good morning. I'm Peter Camiel.
 8 I'm Barry Beach's attorney.
 9 At the table with me is James McCloskey, the
 10 director of Centurion Ministries.
 11 And seated to his right is Barry Beach.
 12 CHAIRWOMAN O'CONNOR: Thank you. Mr. Camiel,
 13 you have requested clemency, and we'd ask you to proceed.
 14 MR. CAMIEL: As a preliminary matter, I wanted
 15 to ask permission of the Board to add a witness to our
 16 list, somebody who is here, Robert Atkinson. He is the
 17 brother of Sissy Atkinson. He was the acting police chief
 18 of the city of Poplar at the time that the murder of Kim
 19 Nees occurred. He has been interviewed by the attorney
 20 general's office.
 21 CHAIRWOMAN O'CONNOR: We've read the file
 22 here --
 23 MR. CAMIEL: Okay.
 24 CHAIRWOMAN O'CONNOR: -- and so we know who he
 25 is. My question is: Has he been cleared through the

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1 prison stuff?
 2 MR. CAMIEL: He's here. He's inside, and he's
 3 here.
 4 CHAIRWOMAN O'CONNOR: He's inside, okay. We
 5 will try to be flexible on hearing the witnesses that you
 6 bring, and so, yes, we'll hear him.
 7 MR. CAMIEL: Thank you. We're ready to
 8 proceed.
 9 CHAIRWOMAN O'CONNOR: Okay, proceed.
 10 MR. CAMIEL: And our first witness will be
 11 Dr. Richard Leo.
 12 CHAIRWOMAN O'CONNOR: Was that Richard Leo who
 13 just left?
 14 MR. CAMIEL: No.
 15 CHAIRWOMAN O'CONNOR: Where's Richard Leo?
 16 MR. CAMIEL: We have a witness room off to the
 17 side where all of our witnesses --
 18 CHAIRWOMAN O'CONNOR: So he's going to get
 19 him? Got it. Okay, thank you.
 20 MR. CAMIEL: And he's going to be running back
 21 and forth to retrieve our witnesses.
 22 MR. CURTISS: As Chairman of the Board, I have
 23 a couple comments to make before we actually get started
 24 here.
 25 First of all, I wanted to thank the prison

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1 staff for working real hard setting this room up. They've
 2 really been working for a couple of days here.
 3 And our Executive Board, Mr. Thomas and his
 4 group, have done an outstanding job.
 5 So with that said, I wanted to recognize these
 6 people, and then we'll get started. We're running quite
 7 late right now, so we will go right ahead with the rest of
 8 it here.
 9 CHAIRWOMAN O'CONNOR: Okay.
 10 MR. CAMIEL: Thanks to the Board and his
 11 group, and to our Executive Board and Mr. Thomas and his
 12 group. Thank you.
 13 CHAIRWOMAN O'CONNOR: We'll swear witnesses.
 14 RICHARD ANGELO LEO, WITNESS, SWORN
 15 CHAIRWOMAN O'CONNOR: You may proceed.
 16 DIRECT EXAMINATION
 17 BY MR. CAMIEL:
 18 **Q. Sir, could you state your name and spell your**
 19 **last name for the record?**
 20 A. My name is Richard Angelo Leo. My last name
 21 is spelled L-E-O.
 22 **Q. And what is your profession, Dr. Leo?**
 23 A. I'm currently a professor of law at the
 24 University of San Francisco.
 25 CHAIRWOMAN O'CONNOR: Excuse me, where is the

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1 court reporter?
 2 Oh, thank you. I just wanted to be sure you
 3 weren't left out.
 4 Proceed. I'm sorry.
 5 MR. CAMIEL: Thank you.
 6 **Q. (By Mr. Camiel) Dr. Leo, could you briefly**
 7 **summarize your educational background and your**
 8 **professional background?**
 9 A. I have a bachelor's degree in sociology from
 10 the University of California, Berkeley, which I received
 11 in 1985; I have a master's degree in sociology from the
 12 University of Chicago, which I received in 1989; and I
 13 have both a J.D., a law degree, and a Ph.D. which I
 14 received from UC Berkeley, in 1994.
 15 After I received the Ph.D., I was a professor for
 16 three years at the University of Colorado, Boulder, in the
 17 sociology department and the law school. In 1997, I left
 18 for UC, Irvine where I was a professor in the psychology
 19 department and the criminology department until 2006. And
 20 for the last year, I've been a professor of law at the
 21 University of San Francisco.
 22 **Q. Dr. Leo, do you have a particular focus that**
 23 **you've focused your professional career on?**
 24 A. Yeah. I've done a great deal of research in
 25 my career. Broadly, I'm trained as a criminologist and a

3 (Pages 9 to 12)

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1 social psychologist. I study the legal system. But my
2 focus on my research in the last 15 years has been almost
3 exclusively on how police interrogate criminal suspects,
4 the psychology and techniques of interrogation,
5 psychological and legal coercion, and how and why innocent
6 people sometimes make false confessions and/or get
7 wrongfully convicted.

8 **Q. And have you written on these subjects?**

9 A. I've written extensively on these subjects.
10 I've written many articles and academic and peer-reviewed
11 journals, I've written books on these topics, I've written
12 chapters and shorter pieces, yes.

13 **Q. And have you also conducted research in the**
14 **area of false confessions?**

15 A. Yes.

16 **Q. And are there other people who also have done**
17 **research in this area?**

18 A. There are many other people who've done
19 research in this area. This is an area that goes back to
20 shortly after the turn of the 20th century, but the modern
21 era really begins in the mid 1980s. There's hundreds
22 of --

23 CHAIRWOMAN O'CONNOR: I don't think we need to
24 hear the entire history of this area. We'll hear your
25 testimony. We will acknowledge that you would likely be

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1 qualified as an expert in a courtroom, and you don't even
2 need that qualification to testify before us. So why
3 don't you just proceed?

4 MR. CAMIEL: Thank you.

5 **Q. (By Mr. Camiel) Dr. Leo, have you conducted**
6 **training for law enforcement?**

7 A. Yes, I've put on training courses for law
8 enforcement on how to avoid eliciting a coerced statement
9 or false statements.

10 **Q. Let me ask you about the phenomenon of false**
11 **confessions. I take it from your initial testimony that**
12 **this area has been extensively studied.**

13 A. Yes.

14 **Q. Okay. And is there empirical research in the**
15 **area?**

16 A. Yes.

17 **Q. Let's start with this: Does the research show**
18 **why people give false confessions?**

19 A. Yes.

20 **Q. And what does the research show?**

21 A. The research shows that people give false
22 confessions in response to coercive interrogation
23 techniques that cause them to feel hopeless, intimidated,
24 broken-down, overwhelmed, sometimes even to have false
25 memories of things that they didn't do.

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1 **Q. When an expert such as yourself goes about**
2 **examining a confession to try to determine the reliability**
3 **of the confession, is there a methodology that's followed?**

4 A. Yes.

5 **Q. And is that methodology something that's**
6 **generally accepted in the social science community?**

7 A. Yes.

8 **Q. What is that methodology that's used to**
9 **analyze confessions?**

10 A. To analyze the reliability of confessions, you
11 want to look at the suspect's post-admission account or
12 narrative, the words or account the suspect says after
13 saying the words, "I did it." What you see are different
14 patterns in true and false confessions.

15 In false confessions, that post-admission account is
16 usually full of guesses or replete with errors. It's an
17 account that usually doesn't fit the crime scene facts or
18 the physical evidence. People who falsely confess
19 typically don't know nonpublic facts that are not likely
20 guessed by chance, they can't lead police to new or
21 missing evidence, they usually can't explain crime scene
22 facts or anomalies. Their narrative is usually full of
23 guesses and, therefore, errors.

24 So what you see -- a pattern you see in
25 false-confession cases is there's a lack of fit between

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1 the suspect's narrative in their, quote/unquote,
2 confession, and the crime scene facts. There's no
3 physical evidence, usually, that corroborates. On the
4 contrary, in the hundreds of false-confession cases that
5 have been studied and written about, usually the physical
6 evidence doesn't match -- the physical evidence left at
7 the crime scene by the perpetrator doesn't match the
8 confessor.

9 In some cases, there isn't a lot of physical
10 evidence; in some cases, there is a lot of physical
11 evidence. Sometimes the person who's confessing falsely
12 doesn't know what an alleged victim is alleging, and
13 there's a mismatch, as well, between the accusations and
14 the confession.

15 **Q. Now, when you talk about "fit", is that**
16 **something you describe as a "fit test"?**

17 A. Yes. So we're looking at the fit between the
18 suspect's narrative and, in the crime scene facts, looking
19 at their knowledge or lack of knowledge of nonpublic facts
20 not likely guessed by chance and whether the physical or
21 other evidence corroborates or fails to corroborate the
22 confession narrative.

23 **Q. Does the law enforcement -- do they use the**
24 **same kind of test in evaluating the reliability of the**
25 **confession?**

4 (Pages 13 to 16)

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Page 19

1 A. Yes. So when people call up and confess to a
2 crime, say in a high-profile case, law enforcement is
3 always looking for that person to provide information that
4 only a true perpetrator would know, nonpublic facts not
5 likely guessed by chance, to lead them to new or missing
6 evidence. This is always the standard that law
7 enforcement uses. This is the standard they talk about in
8 their training, the "fit test".

9 That's why we have holdback evidence sometimes in
10 cases where there's confessions, so that if someone comes
11 forward -- in cases where there's high-profile cases, if
12 someone comes forward and confesses, you can see whether
13 or not they can provide that holdback evidence, whether
14 they can provide something that's nonpublic that's not
15 likely guessed by chance that would be corroborative of
16 their guilty knowledge and, thus, their guilt.

17 **Q. Now, the studies that you've talked about, is**
18 **there any empirical data in terms of the frequency of**
19 **false confessions?**

20 A. We can't say how frequently false confessions
21 occur because no organization keeps track of cases from
22 which we can do a random sample. But in recent years,
23 there's been dozens, if not hundreds, of documented cases,
24 so it seems to be a regularly occurring phenomena: Some
25 very high-profile cases, like the Central Park jogger case

1 somebody to feel like they have no choice but to cooperate
2 with their interrogators or that there's some benefit that
3 they will get if they confess; or feeling like it's the
4 only way they can put an end to a very stressful
5 interrogation.

6 **Q. Now, in terms of evaluating a confession such**
7 **as Mr. Beach's for reliability, where do you start?**

8 A. You start with the post-admission account. If
9 you want to look at the reliability of any confession
10 statement, you always want to look at the narrative the
11 suspect gives and whether or not there's physical and
12 other corroborating evidence, or no physical or other
13 corroborating evidence.

14 And you want to look at what the suspect knows or
15 doesn't know; what they reveal in their narrative; whether
16 they have ignorance of the true crime facts; they're
17 nonpublic, not likely guessed by chance; or whether they
18 possess that kind of probative nonpublic,
19 not-likely-guessed-by-chance knowledge.

20 So you look at the narrative and you look at their
21 knowledge and the corroborating or lack of corroborating
22 evidence.

23 **Q. Now, in this case, I take it you reviewed**
24 **materials that were provided to you regarding Mr. Beach's**
25 **case.**

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1 in New York; many cases of multiple false confessions.
2 But we don't know if it's 1 in 10, 1 in 100, 1 in 1,000, 1
3 in 10,000. Nobody can make a scientific estimate of the
4 precise frequency.

5 **Q. In DNA exoneration cases, have there been any**
6 **studies determining the frequency of false confessions?**

7 A. Yeah, within that universe of DNA exonerations
8 of innocent prisoners, there's now over 200 DNA
9 exonerations; and consistently, 20 to 25 percent of those
10 exonerations involve false confessions. As
11 counterintuitive as that is, it's one of the leading
12 causes of wrongful conviction.

13 **Q. Now, have you also taken a look at the types**
14 **of interrogation techniques that create a higher risk of**
15 **false confessions?**

16 A. Yes.

17 **Q. What kind of interrogation techniques lead to**
18 **this higher risk?**

19 A. Well, we live in an era which will issue
20 psychological interrogation techniques. And there's a
21 great deal of research about this, but just very
22 concisely, techniques that promise leniency; that
23 communicate some sort of threat, implicitly or explicitly;
24 lengthy interrogation; overbearing interrogation;
25 high-pressure interrogation; interrogation that causes

1 A. Yes.

2 **Q. And did that include not only the confession**
3 **itself but the reports of the Louisiana detectives?**

4 A. Yes.

5 **Q. And did it also include recorded phone calls**
6 **between the Louisiana detectives and the Roosevelt County**
7 **sheriff?**

8 A. Yes.

9 **Q. And did it also include listening to the tape**
10 **-- or the partially taped confession of Mr. Beach?**

11 A. Yes.

12 **Q. Okay. As well as a tape of Mr. Beach talking**
13 **with the Roosevelt County sheriff?**

14 A. Yes.

15 **Q. Now, starting with looking at the Beach**
16 **confession itself, did you know whether there were any**
17 **interrogation techniques that were used by the Louisiana**
18 **detectives which would create a higher risk of a false**
19 **confession?**

20 A. Well, the interrogation was not recorded and
21 it's disputed. So there's a skeletal account in the
22 police records which doesn't purport to describe the whole
23 interrogation; and then there's Mr. Beach's account, which
24 was very brief in his suppression testimony. I
25 interviewed Mr. Beach, and he had a much fuller account.

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1 But there's no objective electronic recording of what
2 occurred in his interrogation.
3 So in order to answer that question, one has to say,
4 "Okay, well, what's in the police account? Assuming this
5 is true, what risks were -- did any techniques create?
6 And then what's in Mr. Beach's account? Assuming this is
7 true, what risks did any of the interrogation techniques
8 create?"

9 **Q. What's the problem when the police don't
10 record the entire interrogation?**

11 A. You have no record of what occurred, and it's
12 impossible to reconstruct that record adequately. Human
13 memory simply can't recall everything that occurred. And,
14 of course, when you have an adversarial context, you have
15 selective memory and potentially biased memory. And the
16 problem is that you get swearing contests. One party says
17 certain coercive interrogation techniques were used; the
18 other party says, "No, we didn't use any interrogation
19 techniques." One party says, "They told me" or "fed me
20 this information"; the other party says, "No, they
21 volunteered this information."

22 So you get swearing contests about what elicited the
23 confession, what techniques were used; and you get a
24 swearing contest about whether the person possessed the
25 kind of knowledge that allegedly only a guilty person

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1 would know or whether that knowledge was fed to them. The
2 problem with electronic recording -- without electronic
3 recording is you don't know -- you have to make inferences
4 based on the record about which account is more likely;
5 you have no objective record from which to know what
6 occurred.

7 **Q. Now, when you -- although there's no recording
8 of the interrogation of Mr. Beach, until he gives the
9 confession itself, did you know of any interrogation
10 techniques that were -- that apparently were used based on
11 the police reports themselves?**

12 A. Well, the police reports describe using the
13 psychological stress evaluator, which is a form of
14 polygraph interrogation. That's an interrogation
15 technique to tell somebody they failed one of these
16 supposed lie detector examinations and then use that
17 evidence against them to elicit -- alleged evidence
18 against them to elicit a statement.

19 The police describe some accusation in their
20 reports. They describe a visualization technique -- or
21 they describe, I should say, Mr. Beach having visions,
22 which would appear to me to be the product of a
23 visualization technique.

24 **Q. What's the visualization technique? What is
25 that?**

Page 23

1 A. Well, to get somebody to imagine that they
2 committed a crime or to describe how hypothetically they
3 would have committed a crime. And then if the person
4 says, "Well, I might have done this, I could have done
5 that," closing our eyes and, you know, "I would do it this
6 way," that that vision, quote/unquote, is then taken as
7 the confession.

8 This creates a number of risks, one of which is that
9 - especially when not recorded - that some people are
10 highly suggestible and might actually come to think they
11 did something that they didn't do. And it also creates
12 the risk that sometimes in some cases somebody thinks
13 they're helping the police by imagining how the true
14 perpetrator would have done the crime, and the police are
15 just taking this as a confession because the whole purpose
16 is to get the person to confess.

17 **Q. Now, you mentioned that when you reviewed the
18 Louisiana report, there was some indication that they used
19 this visualization technique; is that right?**

20 A. Correct. They talk about visions, Mr. Beach's
21 visions, yes.

22 **Q. Okay. And when you interviewed Mr. Beach, did
23 he also describe for you the fact that they asked him to
24 visualize how the crime had been committed?**

25 A. Yes. He said they asked him to imagine how

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1 the perpetrator would commit the crime, and he ran through
2 this exercise of saying how that would happen. So there
3 seems to be some overlap there between what they describe
4 in their police report and what he describes in his
5 interview with me.

6 **Q. Now, let's go back to your fit test as it's
7 applied to analyzing Mr. Beach's confession. First of
8 all --**

9 MS. PLUBELL: Excuse me. Just for the record,
10 we would object to this kind of testimony because it's not
11 the kind of testimony - even though Mr. Leo has been
12 qualified as an expert in many courts - that he's
13 generally allowed to testify to.

14 CHAIRWOMAN O'CONNOR: We understand that.
15 We're going to move on.

16 MS. PLUBELL: Okay.

17 **Q. (By Mr. Camiel) Dr. Leo, when you analyzed
18 Mr. Beach's confession, one of the things you described as
19 this test that you use, this fit test, is whether or not
20 there's any physical evidence that corroborates the
21 confession, that places the suspect - in this case,
22 Mr. Beach - at the crime scene. What was your
23 understanding with regard to whether or not there was any
24 physical evidence?**

25 A. There's no physical evidence at all in this

6 (Pages 21 to 24)

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1 case linking Mr. Beach to the crime, but there's a great
2 deal of physical evidence left at the crime scene. In
3 terms of the fit test, the best kind of case is a murder
4 case because there usually is physical evidence, but
5 there's none here that links Mr. Beach to the crime.
6 There's no physical evidence that supports or corroborates
7 that confession.

8 **Q. So we have a -- in this case, we have an**
9 **uncorroborated confession?**

10 A. Correct.

11 **Q. Okay. Did you note, as you went through**
12 **Mr. Beach's confession and compared that with the**
13 **information you had about the crime and the crime scene,**
14 **errors that Mr. Beach made with regard to how the crime**
15 **occurred?**

16 A. Yes. He makes numerous errors, so many errors
17 that I can't keep track of them all. He describes things
18 that don't fit the crime scene facts. I don't know if you
19 want me to go through --

20 **Q. Well, let's go -- I do want you to go through**
21 **some of those. And let's start -- why don't you just**
22 **choose one, and I'll ask you about that.**

23 A. Okay. Well, Mr. Beach, I mean there's errors
24 in his narrative and then there's physical evidence that
25 doesn't match, things that he said occurred, for example,

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1 that's contradicted by the autopsy report. So there's
2 both of those.

3 One error, for example, is that he indicates that
4 the car was parked by the train bridge near the riverbank,
5 yet the decedent's vehicle was parked 256 away from the
6 riverbank. So that would be a glaring error that you
7 wouldn't expect somebody to make in their narrative. Once
8 they're moved from denial to admission, they make a
9 confession, usually you don't get these kinds of errors.
10 That's a glaring error; 256 feet away.

11 But maybe you -- a mean a more pure example of a
12 kind of error of physical evidence not fitting the crime
13 facts would be that Mr. Beach describes at some point
14 choking the victim. There's medical evidence that the
15 victim was not choked.

16 Mr. Beach describes being scratched, I think, by the
17 victim. There's no evidence underneath the victim's
18 fingernails that anybody was scratched.

19 There's a series of errors and physical things that
20 don't match up.

21 **Q. Well, let me ask you now: Mr. Beach at one**
22 **point in the confession describes the victim, Kimberly**
23 **Nees, exiting the driver's door of the truck. What's your**
24 **understanding about whether that's an error based on the**
25 **physical facts?**

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1 A. Well, my understanding would be that that's
2 highly unlikely because there's a very bloody attack
3 inside the car, and it's hard to imagine that she would
4 have been able to exit the driver's side of the car after
5 that very bloody and gruesome attack. And so his account,
6 like accounts you see in false-confession cases that
7 appear to be guesses or speculations, just doesn't add up,
8 it doesn't fit. It's hard to imagine -- it's impossible
9 to imagine she could have done that given the viciousness
10 of brutality of that bloody attack inside the car.

11 And there's no physical evidence. So if he attacks
12 her and she gets outside of the car on the driver's side
13 and he runs out the passenger's door and pins her against
14 the car, there's no blood on the car there, there's no
15 blood trail. So, again, there's no physical evidence that
16 supports that description.

17 **Q. How about Mr. Beach's description of the**
18 **clothing of the victim?**

19 A. Again, that's another error. He describes, I
20 believe, a brown sports jacket and a plaid polyester
21 blouse, that the victim was wearing that. And, clearly,
22 the victim was not wearing that. She was wearing, I
23 believe, a blue pullover shirt with red trim. So that's
24 just a gross error.

25 **Q. Now, with regard to the clothing, I want to**

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1 **focus you -- is there any indication with regard to**
2 **Mr. Beach's description of Kim Nees's clothing that**
3 **suggests contamination by the interrogating detectives?**

4 A. Well, first, let me just say that the concept
5 of contamination here, what that refers to is, is the
6 feeding of knowledge by somebody: Law enforcement, law
7 enforcement during an interrogation, or by other third
8 parties outside of an interrogation.

9 So it appears to me that that false fact, what he
10 falsely describes and her clothing -- or erroneously
11 describes, comes from Sergeant Via, who mistakenly -- who
12 was mistaken when he learns what the victim was wearing
13 from Dean Mahlum. So this appears to be Via thinking that
14 the victim was wearing a brown sports jacket and a plaid
15 polyester blouse and then -- we don't know; there's no
16 objective record -- but it appears to be him trying to get
17 Mr. Beach to admit to that and Mr. Beach admitting to
18 that.

19 **Q. And that comes from -- I want you to tell me**
20 **whether I'm right. When you reviewed the phone call**
21 **between Sergeant Via and Sheriff Mahlum, did Sergeant Via**
22 **indicate in that phone call that he thought she had been**
23 **wearing a brown sports jacket?**

24 A. Yes.

25 **Q. Okay. And then that false understanding ended**

7 (Pages 25 to 28)

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1 **up in Mr. Beach's confession?**

2 A. Correct. And this is very significant because
3 you sometimes see that in false confessions, the feeding
4 of false facts which are repeated back. That suggests
5 both the power of influence, the power of police to get
6 people to incorporate false accounts and make false
7 statements; and that the suspect lacks the actual
8 knowledge. There's no reason why somebody who really
9 committed the crime would misdescribe the clothing
10 somebody was wearing. They shouldn't get that wrong.
11 They might not remember all of the details, but they
12 shouldn't get it wrong.

13 **Q. How about, now, Mr. Beach's description of**
14 **disposing of the, disposing of the evidence and also**
15 **moving Kimberly Nees's body? Is there anything about that**
16 **that suggests the lack of knowledge about the crime scene?**

17 **You've already indicated that Mr. Beach had the**
18 **location of the truck wrong.**

19 A. Right.

20 **Q. He thought it was near the train bridge; is**
21 **that right?**

22 A. Right.

23 **Q. And it was actually 256 feet away?**

24 A. Correct.

25 **Q. Now, Mr. Beach described four trips back and**

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1 **forth to dispose of evidence; is that right?**

2 A. Three or four trips back and forth. And that
3 would seem to be a lot of walking for this, a lot more
4 walking than it appears Mr. Beach knows when he's
5 describing what occurred in this narrative.

6 **Q. Another fact that Mr. Beach described in his**
7 **narrative was the use of a garbage bag.**

8 A. Right.

9 **Q. What was your understanding about whether**
10 **there was any evidence at all that corroborated that?**

11 A. That there's no, there's no garbage found,
12 there's no remnants of a garbage bag. You would imagine
13 if you dragged a body on a garbage bag 256 feet that you
14 would have shredded that garbage bag and that there would
15 have been remnants somewhere.

16 **Q. Mr. Beach described being able to wipe off his**
17 **own fingerprints from the vehicle. What is the**
18 **significance of that?**

19 A. Well, there's -- my understanding is that
20 there's fingerprints found on the vehicle and there's no
21 wipe marks found. So there doesn't appear to be, again,
22 any corroborating evidence that any fingerprints were on
23 the vehicle. His description, again, is not consistent
24 with the physical facts or evidence.

25 **Q. Mr. Beach described in one part of the**

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1 **confession seeing Kimberly Nees parked at the Exxon**
2 **station talking to a man named Steve Shagunn. What's your**
3 **understanding about whether that turned out to be a true**
4 **fact or not?**

5 A. My understanding is that Mr. Shagunn denied
6 that, so that was not -- that would not be an accurate
7 fact.

8 **Q. Now, do you have an understanding of whether**
9 **or not, in terms of contamination, there was also a lot of**
10 **public knowledge of the facts of this particular homicide?**

11 A. Yes. My understanding is this was a
12 high-profile case, there was a lot of local publicity
13 about it, that Poplar is a small town and people talk.
14 There were even pictures of the crime scene or murder
15 weapons in hardware store windows. And so there's a lot
16 of public knowledge out there. And when I talk about
17 "contamination", if somebody knows crime scene facts
18 through the media or through community gossip, then that
19 means when they incorporate them into their narrative,
20 they're not probative of guilt, they're not nonpublic
21 facts not likely guessed by chance. So that would be
22 another source of contamination.

23 **Q. Give me an example, if you can, of some kind**
24 **of a nonpublic fact in a case like this that you would**
25 **expect, you would expect a suspect to be able to provide**

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1 **if it's a true confession.**

2 **In other words, should they be able to provide --**
3 **let's say we have a shooting, okay --**

4 A. Right.

5 **Q. -- and the suspect says, "You're going to find**
6 **the murder weapon buried under the oak tree," and the**
7 **police go and they find it, is that one of those kinds of**
8 **facts that you're talking about?**

9 A. Yeah, where the murder weapons are hidden,
10 that would be a good nonpublic fact. I mean in this case,
11 it takes me a moment because it seems like so much was in
12 the public realm already. I mean, typically, like the
13 body found floating in the river with the shirt up might,
14 in a different case where that hadn't already gotten out,
15 be a good nonpublic fact.

16 **Q. Now, there are some things that it appears**
17 **Mr. Beach got right in the confession. For example, that**
18 **Kim Nees had a purse. Is that significant?**

19 A. It's not significant in my analysis because,
20 because he was asked about it directly. It seemed that
21 the -- that Sergeant Via was leading him to say -- "What
22 about the purse? Did she have a purse?"

23 It's also -- I mean most women carry purses. It's
24 not a kind of unique fact, even if it were nonpublic, that
25 somebody couldn't guess by chance. You would want

8 (Pages 29 to 32)

1 something more specific, more unique.

2 But it doesn't matter here because the record
3 clearly indicates that Sergeant Via was pressing him for
4 this purse and essentially led him to say, "Yes, she had a
5 purse," in his taped questioning of him.

6 **Q. Some other facts that Mr. Beach appears to**
7 **have gotten correct: That Kim Nees was first attacked**
8 **inside the truck. What's your understanding of whether or**
9 **not that was public fact?**

10 A. That it was out there, it was public
11 knowledge, that anybody who was paying attention to the
12 news at that time would have known that she was attacked
13 inside the truck. And so, again, this is not, this is not
14 a nonpublic fact not likely guessed by chance that reveals
15 inside knowledge by somebody who was there at the crime.

16 **Q. What about the fact that the attack continued**
17 **outside the truck? What's your understanding in terms of**
18 **whether or not that was public knowledge?**

19 A. My understanding is, again, that was public
20 knowledge. He gets all the details wrong -- or I should
21 say it appears that he gets the details wrong because
22 there isn't supporting physical evidence. But the fact of
23 how she was attacked outside the truck -- but the fact
24 that she was publicly known, so, again, that's not -- that
25 doesn't indicate any incite or guilty or nonpublic

1 knowledge.

2 **Q. How about the fact that the keys to the**
3 **vehicle were missing? Do you have -- what's your**
4 **understanding in terms of whether or not that was**
5 **something that was held back or whether that was public**
6 **knowledge?**

7 A. My understanding was that may have been public
8 knowledge and also that it was, it was knowledge of family
9 members of Kim Nees and may have been -- Mr. Beach may
10 have learned that either through public knowledge or he
11 may have learned it through the family since the police
12 had to ask the father for the keys to move the truck since
13 the keys were never found.

14 **Q. Was there any particular fact when you**
15 **analyzed Mr. Beach's confession that suggested to you that**
16 **this is something that is unique knowledge that wasn't out**
17 **there in the public realm that Mr. Beach described?**

18 A. Not that I can think of, no.

19 **Q. Is there a concern about the fact that the**
20 **original tape recording of the confession was erased in**
21 **terms of trying to analyze the confession?**

22 A. Well, ideally, you would want a tape recording
23 of the entire interrogation that produced the confession.
24 We just have fragments from the confession. Fortunately,
25 we've got a transcript. But there's always a concern when

1 there's erasure of evidence.

2 **Q. For example, and I know you've testified you**
3 **listened to part of this rerecording of the confession**
4 **that was played over the phone to Sheriff Mahlum in**
5 **Roosevelt County?**

6 A. Correct.

7 **Q. Without the original tape, can we tell whether**
8 **or not when the confession was taken for Mr. Beach they**
9 **were turning on and off the tape?**

10 A. No.

11 **Q. In your experience, is it standard procedure**
12 **for detectives after they take a confession from somebody**
13 **to erase the tape?**

14 A. No.

15 **Q. In addition to the interrogation of Mr. Beach**
16 **regarding the murder of Kim Nees, the reports also show**
17 **that there was interrogation of him regarding some**
18 **Louisiana murders.**

19 A. Correct.

20 **Q. And, in fact, wasn't Mr. Beach asked to take**
21 **one of these stress tests with regard to one of the**
22 **particular Louisiana murders?**

23 A. I believe that's described in the reports,
24 yes.

25 **Q. Sergeant Via's reports?**

1 A. Yes.

2 **Q. And, in fact, didn't Sergeant Via indicate**
3 **that it was his opinion that Mr. Beach had failed the**
4 **stress test as to one of these Louisiana murders involving**
5 **Kathy Whorton?**

6 A. Yes.

7 **Q. What's your understanding of whether or not**
8 **subsequently these same detectives extracted a confession**
9 **from someone else with regard to this Kathy Whorton**
10 **murder?**

11 A. My understanding is that they extracted
12 confessions from Mr. Toole, Ottis Toole; and Henry Lee
13 Lucas. These were clearly false confessions.

14 **Q. And they're clearly false because?**

15 A. Well, I think there's DNA evidence proving who
16 actually committed that crime, so the true perpetrator has
17 been identified. But Henry Lee Lucas and Ottis Toole were
18 serial false confessors. They confessed to dozens of --
19 they duped law enforcement in many cases, including this
20 one.

21 **Q. So just to be clear, they attempted to extract**
22 **a confession with Mr. Beach with regard to this Kathy**
23 **Whorton; is that correct?**

24 A. Correct.

25 **Q. Subsequently, these same detectives, Sergeant**

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1 **Via and I think it's Alfred Calhoun, extracted confessions**
 2 **from Mr. Toole and Mr. Lucas, and those turned out to be**
 3 **false confessions?**

4 A. Correct.

5 **Q. Okay. Is there a concern when the detectives**
 6 **who interrogated Mr. Beach, then, have a history of**
 7 **extracting false confessions?**

8 A. Well, there's a big concern. I mean it shows
 9 a number of things: They're relying on the (psychological
 10 stress exam) which is a bogus lie-detection technique, it
 11 has no scientific validity; they're describing body
 12 language that supposedly confirms the kill: And they're
 13 wrong, they're wrong. In the case of these Louisiana
 14 murders, they're clearly wrong.

15 This is pattern-and-practice evidence of using --
 16 making mistakes in judgments about innocent people,
 17 presuming they're guilty when they're not; and extracting
 18 confessions that are false, not recognizing those
 19 confessions are false. This raises a lot of concerns,
 20 yeah.

21 **Q. Now, going back to the interrogation of**
 22 **Mr. Beach, are there indications in the reports and in the**
 23 **transcripts that the detectives themselves who**
 24 **interrogated Mr. Beach were tired?**

25 A. Yeah, I believe they wrote that they were

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1 tired. I think Via wrote they were tired, they were
 2 hungry, he lost his voice.

3 **Q. Who lost his voice?**

4 A. I believe it was Sergeant Via who wrote that.

5 **Q. Does that provide any indication about the**
 6 **nature of the interrogation that took place?**

7 A. Well, they describe a seven-hour
 8 interrogation, approximately, on January 7, 1983. And it
 9 suggests that there was a lot of talking. And perhaps it
 10 was a very accusatorial interrogation; we don't fully
 11 know, again, because there's no objective record. But
 12 usually interrogators -- most interrogations don't go that
 13 long, No. 1; and, No. 2, usually, interrogators don't lose
 14 their voice. And if an interrogation goes from the noon
 15 hour until dinner, there's often a break for food, which
 16 it doesn't appear there was here.

17 **Q. At one point does Sergeant Via describe the**
 18 **interrogation of Barry Beach in terms of having broken him**
 19 **down?**

20 A. I believe those words are in his reports,
 21 yeah.

22 **Q. You also listened to the tape of Barry Beach,**
 23 **and you mentioned that. Is there any significant about**
 24 **his voice and what you heard when you listened to the**
 25 **tape?**

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1 A. Well, I mean it sounds like somebody who's
 2 passive, who's broken-down, who's monotone. But I mean
 3 that was just my impression listening to the tape.

4 **Q. In terms of your analysis of Barry Beach's**
 5 **confession, did you rely exclusively on the version of**
 6 **events you received from Barry Beach?**

7 A. Not exclusively, no. I tried to review the
 8 other significant materials in the file provided to me,
 9 many of which are police reports. I also reviewed
 10 suppression hearing testimony, trial testimony. So I
 11 wanted to get law enforcement's perspective on this. No,
 12 I didn't rely exclusively on my interview with Mr. Beach.

13 One can, looking at the reliability, just look at
 14 his confession statement and how he describes this
 15 occurring and compare that. Again, in the physical
 16 evidence, you see so many errors, one does not even need
 17 his account to do that analysis.

18 **Q. Now, Mr. Beach described, in his account that**
 19 **he gave you, difficulty recalling what occurred during**
 20 **parts of the interrogation.**

21 A. Right.

22 **Q. Was that significant to you?**

23 A. Well, I guess, what do you mean by
 24 "significant"? Do you mean with the confession part is
 25 where he --

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1 **Q. Yes.**

2 A. Well, there's two questions here. One
 3 question is, "Why would somebody falsely confess?" And
 4 the other question is, "How do we know it's a false
 5 confession?" And they're analytically independent
 6 questions.

7 His lack of memory about actually giving the
 8 confession is surprising and may be significant in trying
 9 to understand, "Well, why did he give this confession? He
 10 can't provide an account."

11 But it's not significant with respect to the second
 12 question, "Is this a true or false statement? And how do
 13 we know whether or not it's a true or false confession or
 14 statement?"

15 **Q. And that how-do-we-know question, in terms of**
 16 **the reliability, that's just based on just comparing the**
 17 **confession to the crime facts or the crime scene facts?**

18 A. Right. So, again, looking at whether the
 19 person possesses nonpublic knowledge not likely guessed by
 20 chance, whether their confession fits or doesn't fit,
 21 whether there's corroboration or no corroboration, that's
 22 how you evaluate that second question.

23 Everyone wants to know, "Why would somebody falsely
 24 confess?" And that's an important question, but
 25 regardless if you have a good interrogation, a bad

10 (Pages 37 to 40)

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1 interrogation, they can produce true confessions, they can
2 produce false confessions. You can't infer whether a
3 confession is true or false, reliable or unreliable by the
4 techniques that are used or described by another party.
5 You've got to look at the fit of the person whose
6 narrative -- again, the presence or absence of nonpublic
7 knowledge not likely guessed by chance, and the
8 corroborating or lack of corroborating evidence.

9 **Q. Dr. Leo, I want to ask you some questions**
10 **about allegations that you would go into this kind of an**
11 **analysis with a bias in favor of Mr. Beach.**

12 **First of all, I take it you've been retained or**
13 **asked to examine hundreds of confessions.**

14 A. Yeah, I've been retained in hundreds of cases
15 to evaluate the interrogation process or the confessions
16 that were produced; yeah.

17 **Q. And in what percentage of those do you**
18 **actually end up testifying in some kind of a court or**
19 **hearing proceeding?**

20 A. I usually testify in about 15 to 20 percent of
21 the cases that I'm retained on. It usually comes out to
22 one in five or slightly less than one in five.

23 **Q. Why is that, that the percentage is so low?**

24 A. Well, there's two reasons. One is that I
25 often give attorneys - primarily defense attorneys, but

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1 not exclusively - opinions that are not helpful to them,
2 and so they don't call me as a testifying witness. They
3 could actually be harmful opinions, presumably.

4 And sometimes cases, of course, solve -- resolve,
5 rather, before going to trial. So those would be the 80
6 to 85 percent of the cases that I'm consulted on I don't
7 become a testifying expert witness.

8 **Q. When you went into this case, did you work**
9 **from a presumption that what Mr. Beach was telling you**
10 **about what occurred was true?**

11 A. No. You have to collect the information and
12 sort it out. And, no, so I didn't begin with that
13 presumption at all.

14 **Q. Or did you work from a presumption that the**
15 **interrogation techniques or the reports prepared by the**
16 **Louisiana detectives were false?**

17 A. No.

18 **Q. What's your understanding of why Detective**
19 **Via, the Louisiana detective, ultimately explained**
20 **excluding Barry Beach from the Louisiana murders? Why did**
21 **he ultimately say he's no longer a suspect?**

22 A. Well, we talked earlier about this fit
23 standard and that it's not only a standard that experts in
24 the area of interrogation confession use to evaluate the
25 reliability of statements made during interrogation, but

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1 it's also a standard that law enforcement uses. And it's
2 striking: I think he describes in his report that Barry
3 Beach doesn't appear to have the knowledge that somebody
4 would have if they committed those three Louisiana
5 murders, and his account -- his alleged account doesn't
6 fit the evidence.

7 So they exclude him for the very same reasons that
8 somebody would look at this and say, "His account doesn't
9 fit in the Montana case."

10 **Q. Okay. I want to read you an excerpt from**
11 **Sergeant Via's testimony given at Barry Beach's trial and**
12 **ask you if what Sergeant Via is describing is actually an**
13 **application of this fit test that you've described.**

14 **He is asked -- or, excuse me, he answers --**

15 MS. PLUBELL: Excuse me, Mr. Camiel. Could
16 you tell me which page of the transcript you're on?

17 MR. CAMIEL: I'm sorry, sure. It's page 768.

18 MS. PLUBELL: Thank you.

19 MR. CAMIEL: I apologize.

20 **Q. (By Mr. Camiel) Let me read the question and**
21 **then the answer (quoted as read):**

22 **"QUESTION: Sergeant Via, after you had**
23 **gathered all of the information that you had from the**
24 **defendant and from his lawyer, and taking into**
25 **consideration the interviews of the 11th and 20th, did you**

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1 **pursue any further investigation with relationship to the**
2 **defendant on the Louisiana homicides?**

3 **"ANSWER: No, sir.**

4 **"QUESTION: And why not?**

5 **"ANSWER: Well, after these interviews and**
6 **then checking out the facts, it appeared to be inaccurate**
7 **as to the crime itself, as to how the crime had been**
8 **committed, the evidence at the crime scene. After**
9 **interviewing of some witnesses, it was completely**
10 **erroneous."**

11 **Now, what is it that Sergeant Via appears to be**
12 **describing?**

13 A. That Mr. Beach's account doesn't fit the crime
14 facts, that there's a lack of fit, an absence of
15 corroborating knowledge or evidence; and therefore, the
16 statements are dismissed.

17 **Q. And then turning to the Montana homicide of**
18 **Kimberly Nees, if we apply that same test that Sergeant**
19 **Via applied to the Louisiana homicides, how does the**
20 **application of the test fit with the crime facts in the**
21 **Montana case?**

22 MS. PLUBELL: I'm going to object. This has
23 been asked and answered several times.

24 CHAIRWOMAN O'CONNOR: I really think,
25 Mr. Camiel, that we've allowed extraordinarily wide

11 (Pages 41 to 44)

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1 latitude here.

2 MR. CAMIEL: I understand.

3 CHAIRWOMAN O'CONNOR: We want to hear your
4 story, and we want to make a record of every last stone
5 that you think hasn't been turned thus far, but I think
6 we're passed extraordinary wide latitude here.

7 **Q. (By Mr. Camiel) Dr. Leo, in terms of the**
8 **studies - and this is just to conclude - what is the**
9 **effect of even an uncorroborated confession on a jury?**
10 **What do studies show us?**

11 A. The studies show that most of the time people
12 who go to trial with a confession that's later proven
13 false by DNA, or whatever means, get convicted, that
14 usually three out of four or four out of five times
15 somebody with uncorroborated confession goes to trial, and
16 the jury convicts.

17 So this is about the potency of confession evidence.
18 Even when wrong in the details, even when not supported by
19 any physical evidence, even when in many of these cases
20 the person who made the confession testifies it's false,
21 describes a coercive interrogation, they still get
22 convicted. Most people believe that confessions are true
23 most of the time, and most jurors convict people that go
24 to trial with confession evidence, whether it later turns
25 out to be true or false.

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1 **Q. I take it that's because it's difficult in**
2 **terms of public perception to convey that people do**
3 **falsely confess?**

4 A. Correct. Most people don't know about the
5 phenomenon, why it occurs, they're skeptical, they can't
6 imagine themselves ever falsely confessing. It's
7 completely counterintuitive. Most people are dismissive,
8 outright dismissive of the notion. And if they hear a
9 confession and it has details, they assume the details
10 mean the confession is true. And that's completely wrong.

11 **Q. Does the fact that a confession such as**
12 **Mr. Beach's contain lots of details make it more likely**
13 **true?**

14 A. No, it's not that it contains details; it's
15 what these details tell us, whether they corroborate an
16 account or don't corroborate; guilty knowledge, lack of
17 guilty knowledge; match the crime facts, don't match the
18 crime facts; lead to new evidence, don't lead to new
19 evidence, etc.

20 MR. CAMIEL: That's all I have. Thank you.

21 MS. PLUBELL: Thank you.

22 CROSS-EXAMINATION

23 BY MS. PLUBELL:

24 **Q. Dr. Leo, my name is Tammy Plubell. It's nice**
25 **to meet you this morning.**

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1 A. It's nice to meet you.

2 **Q. Now, I read a transcript of a presentation you**
3 **gave, I think, in June of 2001 to the National Association**
4 **of Criminal Defense Lawyers. Do you remember that?**

5 A. Specifically, no, because I've given dozens of
6 presentations. But I have talked on behalf of -- for that
7 group.

8 MS. PLUBELL: With the Board's permission, may
9 I provide him with a copy of the transcript?

10 CHAIRWOMAN O'CONNOR: (Nodding head
11 affirmatively.)

12 **Q. (By Ms. Plubell) And I noticed in that**
13 **transcript you remark that prosecutors, which I guess I'm**
14 **one of, generally respond to your testimony or other**
15 **experts' like you by beating on their breasts and making**
16 **fun of you. Do you remember making that statement?**

17 A. I may have made the statement. I don't
18 remember it.

19 **Q. It's on page 18.**

20 A. Okay.

21 **Q. Well, rather than doing that today, I want to**
22 **establish some things. Because I've read a lot of your**
23 **articles and I know you've written a lot of articles, and**
24 **I want to establish some matters that we can agree upon.**
25 **There are only four ways to prove with certainty**

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1 **that a confession is false, right?**

2 A. With certainty, with absolute certainty, yes.

3 **Q. Yes. And that's when a suspect confesses to a**
4 **crime that didn't happen?**

5 A. Correct.

6 **Q. Or when evidence objectively demonstrates that**
7 **the suspect could not have committed the crime, say**
8 **they're imprisoned in another state?**

9 A. Physically impossible, yeah.

10 **Q. Or the true perpetrator is identified and**
11 **comes forward, and there is actually compelling evidence**
12 **supporting that person's guilt, correct?**

13 A. And law enforcement accepts that, yes.

14 **Q. And the suspect is exonerated by scientific**
15 **evidence?**

16 A. Correct.

17 **Q. And those are the four ways, right?**

18 A. And we call those "proven false confessions".
19 The four ways, yes.

20 **Q. I understand that, but I'd like to ask the**
21 **questions, if you don't mind.**

22 **In this case, Barry Beach didn't confess to a crime**
23 **that didn't happen, right, because we know that Kimberly**
24 **Nees was brutally murdered?**

25 A. Correct.

12 (Pages 45 to 48)

1 Q. And there's no evidence that objectively
2 demonstrates that Barry Beach was somewhere else, right?

3 A. I think -- not that it was physically
4 impossible for him to have committed the crime, if that's
5 the question.

6 Q. Well, to the best of my knowledge, Dr. Leo, he
7 doesn't have an alibi.

8 A. Right. The second category is physical
9 impossibility, and you're asking, "Is it physically
10 impossible for him to have committed the crime?"

11 Q. Well, even if we go -- okay. And no one else
12 has come forward to law enforcement with compelling
13 evidence to support that they committed the crime,
14 correct?

15 A. That's my understanding, yes.

16 Q. And Barry Beach has not been exonerated by
17 scientific evidence has he?

18 A. Like DNA, no.

19 Q. And I think we can agree that according to the
20 research, you and -- I think it was "Erwin Drizin", I
21 don't want to mispronounce his name --

22 A. Steve Drizin, yes.

23 Q. -- Steve Drizin presented in your article that
24 was entitled "The Problem with False Confessions in the
25 Post-DNA World," I believe you studied 125 --

1 know, making judgments that aren't warranted by the
2 evidence, making presumptions and then trying to gather
3 evidence consistent with those presumptions. But there
4 was no rush to arrest.

5 Q. Well, Barry Beach wasn't arrested in 1979, was
6 he?

7 A. No, I understand that.

8 Q. I think that based on my reading of your
9 works, we can also agree that there are certain
10 populations that are more vulnerable to confess than
11 others.

12 A. Correct.

13 Q. Such as children under the age of 18?

14 A. Correct.

15 Q. Persons who are mentally retarded?

16 A. Correct.

17 Q. Persons who are mentally ill?

18 A. Correct.

19 Q. And, in fact, in your study of those 125 false
20 confessions, proven false confessions, 7 of those were
21 children who were around the ages of 7 or 8, correct?

22 A. I believe that's right. I don't remember the
23 exact number.

24 Q. And 40 of them were under the age of 18?

25 A. That occurred --

1 A. Of these --

2 Q. -- confessions were proven false, correct?

3 A. I'm sorry. Yes.

4 Q. And in 81 of those cases, there was no
5 conviction, right?

6 A. I believe that's right, two-thirds.

7 Q. So at least sometimes our criminal justice
8 system works at one level or the other in ferreting these
9 matters out, correct?

10 A. Correct. Sometimes they don't go to trial.

11 Q. Could we also agree in those cases highlighted
12 in that article that I just referred to that there was a
13 bit of a rush to arrest, in those cases that you studied?
14 They're pretty high profile cases, and there was, I guess,
15 some public pressure to make arrests, wasn't there?

16 A. In many of those cases, there was a rush to
17 judgment. And they were mostly high-profile cases.

18 Q. Can we agree that a rush to arrest can
19 sometimes lead to a false confession?

20 A. It sets in motion events, the rush to
21 judgment, that does, yes.

22 Q. And there certainly was no rush to arrest in
23 Barry Beach's case, was there?

24 A. Well, there's a difference between a rush to
25 arrest and rush to judgment. A rush to judgment is, you

1 Q. They were juveniles.

2 A. Yes.

3 Q. Twenty of the one-twenty-five were mentally
4 retarded?

5 A. I don't remember the specific number, but I
6 assume that's true.

7 Q. Okay. And 12 were mentally ill?

8 A. That sounds correct.

9 Q. And 38, which accounts for the remaining
10 number, which gives us the total of 125, were multiple
11 confessors to the same crime, right?

12 A. There were -- yeah, there were -- there may
13 have been 38 multiple confessors of the same crime. I
14 don't know --

15 Q. Okay.

16 A. -- how the math works out of the 125.

17 Q. And in 1983 when Barry Beach confessed, he was
18 over the age of 18, wasn't he?

19 A. Right.

20 Q. And he wasn't mentally retarded?

21 A. That's my understanding.

22 Q. And he was not suffering from serious mental
23 illness?

24 A. Correct.

25 Q. And there was not a group of multiple

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1 **confessors in this case, was there?**
 2 A. Right.
 3 **Q. Now, in some courts -- I know that you're**
 4 **called upon a lot to give testimony, and in some courts,**
 5 **you're not allowed to testify at all, are you?**
 6 A. On a few occasions, that's happened, yes.
 7 **Q. In fact, it just happened yesterday in**
 8 **Montana, didn't it?**
 9 A. In Federal Court, yes.
 10 **Q. You were in Federal Court on a criminal case,**
 11 **weren't you?**
 12 A. Yes.
 13 **Q. And you were there to attack a confession?**
 14 A. I wouldn't say "to attack a confession".
 15 That's not really -- I don't think that's a fair
 16 characterization of why I was called.
 17 **Q. I'm sorry, I will rephrase it. You were there**
 18 **to discuss a confession and talk about interrogation**
 19 **techniques.**
 20 A. I was there to give general testimony about
 21 coercive interrogation and false confessions.
 22 **Q. Okay. And the Federal District Court in**
 23 **Montana determined that it would not allow you to testify?**
 24 A. Yes. There was a relevance issue.
 25 **Q. But, generally, Dr. Leo, is it fair to say**

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1 **that when you have committed to testify, you're usually**
 2 **not allowed to give the actual opinion about whether a**
 3 **confession is false?**
 4 A. Correct, yeah.
 5 **Q. You're not allowed to give that opinion, are**
 6 **you?**
 7 A. No, I'm not allowed to give testimony --
 8 **Q. The opinion that you are allowed to give here**
 9 **today.**
 10 A. Well, I never said this confession was false.
 11 **Q. Okay.**
 12 A. What I said was there's no evidence to support
 13 it and it doesn't match the facts.
 14 **Q. Oh, I'm sorry. From reading your report, I**
 15 **thought that you did say it was false.**
 16 A. In the report. The report is more explicit,
 17 yes.
 18 **Q. Okay. So is it false, in your opinion, or**
 19 **not?**
 20 A. In my opinion, it's almost certainly false.
 21 **Q. Okay.**
 22 A. I would say it's highly probably false.
 23 **Q. All right. You can't say that it's certainly**
 24 **false because it doesn't meet any of those things that we**
 25 **just talked about, right?**

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1 A. It's not in one of those four categories --
 2 **Q. Right.**
 3 A. -- where you can absolutely prove it's false.
 4 **Q. So a lot of times when you testify, your role**
 5 **is to be more of an educator on certain interrogation**
 6 **techniques and the roles those techniques might have on a**
 7 **person being interrogated, right?**
 8 A. Correct.
 9 **Q. And I know that you're a researcher, and I'm**
 10 **assuming that you strive to be a mutual and objective and**
 11 **an unbiased researcher --**
 12 A. Correct.
 13 **Q. -- because that's important to your work.**
 14 **And we've already establish that you've testified**
 15 **frequently on interrogation and false-confession types of**
 16 **issues, correct?**
 17 A. I testify about once a month, and I've been
 18 doing this for 10 years. So if you think that's frequent,
 19 then -- I don't know, when someone says "it's frequent" --
 20 **Q. It's more frequent than a lot of people in**
 21 **this room would like to do it, but --**
 22 A. Well, it's not pleasant.
 23 **Q. In fact, I've read some prior transcripts of**
 24 **testimony that you've given where you estimate - and I**
 25 **know it fluctuates - but up two-thirds of your income**

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1 **comes from consulting?**
 2 A. Or outside professional opinions, yes.
 3 **Q. And what do they -- "outside", does that**
 4 **include seminars and such things, training?**
 5 A. Well, I'm never paid for any seminars, but I
 6 give notes. I mean like book royalties, for example --
 7 **Q. All right.**
 8 A. -- or talks at universities, which sometimes I
 9 am paid for.
 10 **Q. So when you're a consultant, do you consider**
 11 **yourself to be an objective and unbiased consultant as**
 12 **well?**
 13 A. Well, I strive to be. Obviously, it's for
 14 others to make that decision.
 15 **Q. And when you consult, you generally are**
 16 **consulting with criminal defense attorneys; isn't that --**
 17 A. Generally, but not always.
 18 **Q. And, in fact, when you gave your presentation**
 19 **that I gave your transcript of in 2001 to the National**
 20 **Association of Criminal Defense Lawyers, you were**
 21 **basically giving them admonition to get confessions**
 22 **suppressed, right?**
 23 A. Well, that's your characterization. I don't
 24 think of it that way. I think there's a lot of weak
 25 confession evidence. And I was talking about how to

14 (Pages 53 to 56)

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1 attack confessions or challenge confessions or what sorts
2 of sign posts of confessions they should look for.

3 **Q. Because I think we can agree that confessions**
4 **tend to be pretty damning evidence of guilt, right?**

5 A. Right.

6 **Q. I think you kind of alluded to that in your**
7 **direct examination.**

8 **Now, you don't have any bias against prosecutors,**
9 **right?**

10 A. I try not to have any bias against
11 prosecutors. I may have made sarcastic comments in this
12 talk. But I've worked for prosecutors since then.

13 **Q. And you don't have any bias against judges,**
14 **right?**

15 A. I try not to have any bias against judges.

16 **Q. Even though in that talk, you referred to them**
17 **as "prosecutors in black robes".**

18 A. I've encountered some very biased judges, yes.

19 **Q. Well, I believe that you described that that**
20 **has happened frequently.**

21 A. Yes, it has.

22 **Q. And you don't have any bias against law**
23 **enforcement officers, right?**

24 A. I try not to have any bias against law
25 enforcement.

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1 **Q. Even though in that same transcript, you**
2 **accuse cops as a group (quoted as read): "And I**
3 **understand that there are incidents of doing all that they**
4 **can to evade Miranda."**

5 A. Well, they do. Empirically, they try to
6 circumvent Miranda. They try to do it illegally.

7 **Q. They didn't in this case, though, did they?**

8 A. Not to my knowledge, no.

9 **Q. Do you know how many Miranda waivers Barry**
10 **Beach signed?**

11 A. There's a number of Miranda waivers signed.
12 Seven -- I don't know the exact number.

13 **Q. I think probably 10 - 11.**

14 A. Okay.

15 **Q. And you accuse cops as a whole of - and pardon**
16 **my language - doing a very shitty job of corroborating**
17 **confessions, right?**

18 A. I don't know if that was the exact words I
19 used.

20 **Q. Would you like to refer to the transcript?**

21 A. It may be in the transcript.

22 **Q. Okay. It's on page 10?**

23 A. This is not a, this is not a verified
24 transcript.

25 **Q. Oh, I have a copy of the tape with your voice**

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1 **on it. Would you rather listen to that?**

2 A. No, no, no. But they often do a bad job
3 corroborating confessions.

4 **Q. And you would -- accused interrogators of**
5 **having absolutely no interest in getting the truth, right?**

6 A. I don't --

7 **Q. That's not what interrogation is about,**
8 **according to you.**

9 A. Well, interrogation is about incrimination;
10 it's not about getting the truth, necessarily. The
11 interrogator --

12 **Q. Well, if --**

13 A. If you'd let me finish the answer.

14 **Q. Okay.**

15 A. Interrogators are trained that when you
16 interrogate somebody, you do that only when you come to
17 the conclusion that they're guilty. So the goal of
18 interrogation is to get a confession. Now, if the
19 presumption of guilt is right, then the confession should
20 be truthful. But it's not always right. So when there's
21 a tension between incrimination and getting the truth,
22 incrimination prevails.

23 To give you an example of that, police say in their
24 training, "If you can't get a confession, the next best
25 thing is a pack of lies." Well, if they're out to get the

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1 truth, why is the next best thing a pack of lies? Because
2 incrimination is what interrogation is about.

3 **Q. But we can't say that of all law enforcement**
4 **officers, can we?**

5 **Certain law enforcements may have different**
6 **philosophies than those you expressed.**

7 A. This is in their training and this is in the
8 studies.

9 **Q. Is everyone trained the same way, Professor**
10 **Leo, all across the United States?**

11 A. There is standard training across the United
12 States.

13 **Q. Okay.**

14 A. There is, there is --

15 **Q. Well, we'll ask the officers in this case how**
16 **they were trained.**

17 MR. CAMIEL: I'm sorry, I'm concerned about
18 cutting off the answers.

19 MS. PLUBELL: Oh, I'm sorry. I will --

20 CHAIRWOMAN O'CONNOR: I think he's being
21 afforded a pretty good opportunity.

22 **Q. (By Ms. Plubell) And you do believe -- you**
23 **have accused law enforcement officers of being completely**
24 **ignorant to the notion that a person can falsely confess,**
25 **right?**

15 (Pages 57 to 60)

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1 A. Many of them are. Many of them have said
2 publicly that they don't believe that people make false
3 confessions because of their techniques.

4 Now, starting in about 2001, police training manuals
5 - 2002, 2003 - started to have chapters on false
6 confessions, and so this is training. This is changing
7 now.

8 **Q. And that is true with a lot of things in the
9 area of criminal justice, isn't it? Processes evolve,
10 don't they?**

11 A. Yes.

12 **Q. But in your same transcript there, you also
13 claim that cops believe, in their fairytale existence and
14 in their fairytale seminars, that false confessions just
15 don't happen. Does that ring a bell to you?**

16 A. Well, it doesn't ring a bell, no. But it is
17 true that in 2001, many police just didn't believe that
18 false confessions occurred.

19 **Q. Well, would you like to read that? It's on
20 page 13.**

21 A. No.

22 **Q. Okay.**

23 A. But I mean I'm saying that the essence of what
24 I said, absent the sarcasm, is true as of 2001 --

25 **Q. All right.**

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1 A. No.

2 **Q. And had Centurion Ministries already agreed to
3 accept Barry Beach's case at that point?**

4 A. I assume they had. I don't know, but I assume
5 they had.

6 **Q. And are you aware that Centurion Ministries
7 has indicated that they only agree to accept cases where
8 they are 100 percent certain of someone's innocence?**

9 A. I would assume that to be the case, yes.

10 **Q. Correct?**

11 A. Yes.

12 **Q. Okay. And would you agree with me that Barry
13 Beach's confession was powerful evidence that resulted in
14 his conviction?**

15 A. It was taken to be powerful evidence, yes.

16 **Q. Yes. And so as such, that was a huge obstacle
17 for Centurion Ministries to overcome, wasn't it?**

18 A. False confessions are always a huge obstacle
19 to overcome in a wrongful conviction case, yes.

20 **Q. Well, that's assuming there's a false
21 confession and a wrongful conviction, right?**

22 A. Correct, yes.

23 **Q. And that's especially true in this case since
24 every Court in the land has found this confession to be
25 valid, right? That's an even bigger obstacle, isn't it?**

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1 A. -- that many police then believed and still
2 believe now that false confessions don't occur in response
3 to their techniques.

4 **Q. Now, I assume, then, that you brought your
5 first objectivity to Barry Beach's case. Correct?**

6 A. Again, I've done my best. It's for others to
7 decide.

8 **Q. When did Centurion Ministries first contact
9 you, Dr. Leo?**

10 A. I don't remember specifically. I would
11 estimate 2001, maybe 2002. That would be my best
12 recollection.

13 **Q. Do you have that somewhere? Would you have a
14 record of that somewhere?**

15 A. I probably would have a record of it
16 somewhere, but I don't have it with me today.

17 **Q. Okay. What information did they provide you
18 when they contacted you?**

19 A. I don't remember specifically. I mean I
20 remember that I eventually got a lot of materials. I
21 don't know, you know, when they first contacted me or
22 whether it was after they first contacted me. I described
23 in my report dated December 20, 2002, materials that I had
24 reviewed at that point.

25 **Q. But you don't recall your first conversation?**

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1 **If you could just answer my question.**

2 A. Well, that's true in many, many confession
3 cases.

4 **Q. Have you done work with Centurion Ministries
5 before?**

6 A. Yes.

7 **Q. Do you know how many times?**

8 A. I can think of one other case that I worked on
9 with Centurion Ministries.

10 **Q. What was that case? Do you recall?**

11 A. It was in Louisiana. It was a post-conviction
12 case. And I don't remember exactly the names of the
13 defendants. I think one of their last names was
14 Alexander, and I forget the other person's last name.

15 **Q. Okay. And, now, do you have a fee agreement,
16 or is this volunteer work?**

17 A. I have a fee agreement, yes.

18 **Q. And what is that fee agreement?**

19 A. That I would charge \$100 an hour, which is a
20 significantly reduced rate for my time in this case, plus
21 reimbursement of expenses.

22 **Q. And you indicated in your report, and the
23 Board has everything that you reviewed before you rendered
24 your opinion, correct?**

25 A. I'm sorry?

16 (Pages 61 to 64)

1 **Q. Everything you reviewed before you wrote your**
 2 **report --**
 3 A. Correct.
 4 **Q. -- is documented in that report?**
 5 A. Unless I made a mistake in this report, yes --
 6 **Q. Okay.**
 7 A. -- or inadvertently left something out.
 8 **Q. And one of those things you referred to is the**
 9 **timeline that Barry Beach prepared for you. And I believe**
 10 **he did that back in July of 2002.**
 11 A. Okay, yes.
 12 **Q. Do you have that with you today?**
 13 A. I might.
 14 **Q. Because I've never seen it.**
 15 A. I would have to look for it, but I might have
 16 it with me.
 17 **Q. Now, when you were giving your training to the**
 18 **National Association of Criminal Defense Lawyers, you**
 19 **explained that if you're dealing with a confession case,**
 20 **the first thing that you need to do is have their client**
 21 **prepare a timeline, correct?**
 22 A. That's what I usually say, yes.
 23 **Q. Yes. And because that's the beginning?**
 24 A. This would be an unrecorded interrogation.
 25 **Q. And you also said that time is of the essence**

1 **that interview, according to the training that you gave,**
 2 **is that you're trying to draw out how the person who was**
 3 **interrogated - in this case, Mr. Beach - was thinking or**
 4 **feeling in response to certain techniques?**
 5 A. That's part of the reason, yeah. But the idea
 6 is to, as best possible, reconstruct the record.
 7 **Q. So the reconstruction is important?**
 8 A. Where there's no record, yeah; no objective
 9 record recorded, yes.
 10 **Q. You were very detailed and thorough in your**
 11 **interview of Mr. Beach, weren't you?**
 12 A. Yes.
 13 **Q. So that transcript is a great resource for**
 14 **this Board to consider, isn't it?**
 15 A. I would hope so. The Board has to determine
 16 how helpful it is, ultimately.
 17 **Q. Now, you also reviewed Barry Beach's testimony**
 18 **at the suppression hearing, didn't you?**
 19 A. Correct.
 20 **Q. And do you have a copy of that with you?**
 21 A. I do, not at the table, but somewhere in my
 22 bag.
 23 **Q. Okay. I don't know if we'll need it, but if**
 24 **we need one, I have one for you.**
 25 **Now, his testimony at that suppression hearing was**

1 **in getting that done, right?**
 2 A. Correct.
 3 **Q. You have to get it done right away because, I**
 4 **believe your words were, "memory decays"?**
 5 A. That's correct, yes.
 6 **Q. How many years after Barry Beach's confession**
 7 **was it that he prepared his timeline?**
 8 A. Well, it would have been approximately 20
 9 years.
 10 **Q. And would you agree that that is not ideal?**
 11 A. I would agree that's not ideal, yes.
 12 **Q. And after you looked at that timeline, you sat**
 13 **down with Barry Beach and you interviewed him on September**
 14 **10, 2002, correct?**
 15 A. Right.
 16 **Q. Do you have a transcript of that with you?**
 17 A. I do have the transcript, yes.
 18 **Q. And you tape-recorded it?**
 19 A. Correct.
 20 **Q. And it was pretty lengthy?**
 21 A. Correct.
 22 **Q. And have you reviewed that prior to testifying**
 23 **today?**
 24 A. Yes.
 25 **Q. Okay. Now, at least part of the reason you do**

1 **pretty short, wasn't it?**
 2 A. It was very limited, yes.
 3 **Q. He was represented by private counsel, wasn't**
 4 **he?**
 5 A. Yes.
 6 **Q. And in confession cases, would you agree that**
 7 **suppression hearings are very important?**
 8 A. Well, yes, they're a very important tactic, if
 9 that's what you're asking.
 10 **Q. Because if you can get the confession**
 11 **suppressed, you want to get it suppressed, don't you?**
 12 **Because we've already established that it can be damning**
 13 **evidence of guilt.**
 14 A. This is what defense attorneys do, if that's
 15 what you're asking.
 16 **Q. Right.**
 17 A. Yes.
 18 **Q. And I guess for the record, I know that you**
 19 **have been -- you have a law degree. But are you licensed**
 20 **to practice law?**
 21 A. No, I'm not a practicing lawyer. I am a
 22 professor of law --
 23 **Q. Okay.**
 24 A. -- but I don't practice law.
 25 **Q. Okay. So it's very important to get the facts**

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1 out at the suppression hearing, right?

2 A. For a competent attorney, yeah, if there is --
3 yeah, a competent attorney should try to get the facts
4 out, or at the preliminary hearing prior to the
5 suppression hearing.

6 Q. Okay. Can we agree that the information that
7 Mr. Beach provided you in 2002 - I think it's a 99-page
8 transcript - is much different than the information he
9 provided at his suppression hearing?

10 A. I wouldn't say it's much different; I would
11 say it's much more extensive because he's very little --
12 he provided very little information at that suppression
13 hearing.

14 Q. That's right, he provided very little at this
15 suppression hearing.

16 A. He was asked very little, yes.

17 Q. And in your report, you indicate that
18 Mr. Beach testified to what he remembered occurring, in
19 part, at the suppression hearing, right?

20 A. Yes.

21 Q. And is it fair to assume, then, that at the
22 same suppression hearing, the officers from Louisiana who
23 came to testify were responding to the part of Mr. Beach's
24 story he was willing to share at this suppression hearing?

25 A. I'm not sure I understand your question. I'm

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1 at the suppression hearing.

2 Q. Well, didn't you respond to what Barry Beach
3 claimed?

4 CHAIRWOMAN O'CONNOR: Really, Ms. Plubell --
5 MS. PLUBELL: Okay.

6 CHAIRWOMAN O'CONNOR: -- I don't see that it
7 matters --

8 MS. PLUBELL: Okay.

9 CHAIRWOMAN O'CONNOR: -- at all since we're
10 going to have the officers in.

11 MS. PLUBELL: Okay.

12 CHAIRWOMAN O'CONNOR: I think arguing about --
13 first of all, this is an expert. He's hired by counsel to
14 testify with counsel. We get it.

15 MS. PLUBELL: Okay.

16 CHAIRWOMAN O'CONNOR: And I don't think we
17 need a half-hour on it, which we've now had.

18 MS. PLUBELL: Okay.

19 CHAIRWOMAN O'CONNOR: And I don't think we
20 need a half an hour on what the officers could have said.

21 MS. PLUBELL: Okay.

22 CHAIRWOMAN O'CONNOR: So let's proceed.

23 Q. (By Ms. Plubell) Now, I noticed in that
24 presentation that you indicated that when you are
25 consulting -- when you are asked to consult as an expert

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1 sure they answered whatever questions they were asked.

2 Q. Well, you've indicated, Dr. Leo, that he
3 didn't share anything at the suppression hearing --

4 A. He was asked very little, so it was very --

5 Q. Well, we don't know what the strategies were
6 there.

7 MR. CAMIEL: I would object. I don't think
8 Dr. Leo finished his answer before the next question
9 started.

10 CHAIRWOMAN O'CONNOR: I'm not going to allow
11 you to argue with the prosecutor. You've been allowed
12 maximum latitude. I expect to allow the prosecutors
13 maximum latitude as well.

14 Q. (By Ms. Plubell) I understand that you're
15 saying that maybe it's his attorney's fault, okay, because
16 he didn't ask the right questions. But can we just agree
17 that he didn't share the story he shared with you at that
18 suppression hearing? Correct?

19 A. He wasn't asked the same questions.

20 Q. Okay, I understand that. But so how could the
21 officers be expected to respond to the things at the
22 suppression hearing other than what he shared at the
23 suppression hearing?

24 A. I can't give you an answer to that question.

25 The officers just responded to questions they were asked

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1 on a confession case, that you always ask the
2 interrogators to do the same thing that you asked of the
3 person who confessed, correct?

4 A. In pretrial cases, yeah, cases that have not
5 resulted in conviction. Usually, I ask the defense
6 counsel to ask the prosecution if I can interview the
7 interrogators about their version of what occurred.

8 Q. And you indicated in that transcript at page 4
9 that that's because it's important to give the impression
10 of impartiality, right?

11 A. I don't know if those were the exact words
12 that I used. Did you want me to --

13 Q. I don't care, if you're not quarrelling with
14 it. And you urged that criminal defense attorneys should
15 always insist that their expert at least make the request
16 to interrogate the interrogators, right, even though the
17 cops might say "no"?

18 A. In an unrecorded interrogation case, yeah,
19 when you have an expert interviewing their -- your client.

20 Q. Because you said in the -- in your words, the
21 last thing you want to do is be on the stand without at
22 least having made the request to interview the
23 interrogators, right?

24 A. Okay, where is --

25 Q. Oh, that's on page 13.

18 (Pages 69 to 72)

1 A. Yes.

2 **Q. When did you make that request of Jay Via?**

3 A. I didn't. This is a post-conviction case.

4 **Q. Oh, so it doesn't matter in this case?**

5 A. It's not as important if there's a good

6 record. In the preconviction cases, there's -- there

7 isn't usually testimony early on, full testimony of what

8 the detective -- detectives' description of the

9 interrogation. Here there is testimony by the detectives,

10 Sergeant Via; there's suppression testimony, which is very

11 extensive; there's trial testimony.

12 **Q. So to this day, you haven't talked to those**

13 **officers?**

14 A. I haven't talked to them. I don't remember

15 making any request to be allowed to talk to them. It's

16 possible that I did, but I don't remember.

17 **Q. Well, they don't remember you did. Do you**

18 **know anything --**

19 A. I wouldn't have made it directly to them,

20 but --

21 **Q. Do you know anything about those officers?**

22 A. I know what I've read. I'm not sure I'm

23 understanding your question. I know what I've read from

24 the reports and their testimony.

25 **Q. So without having talked to the officers and**

1 **you that you could verify were untrue?**

2 A. Okay, so -- but, "To what end?" is really how

3 that goes.

4 **Q. Well, exactly. But what if there were things**

5 **-- for example, I believe in his transcript, he describes**

6 **in detail being hooked up to a polygraph, right --**

7 A. Okay.

8 **Q. -- and being strapped in and everything?**

9 **And what if you learned that the Ouachita Sheriff's**

10 **Department did not own a polygraph and did not use a**

11 **polygraph back in 1983?**

12 A. I think that's trivial because they described

13 in their reports the psychological stress evaluation,

14 which is a different kind of lie detection.

15 **Q. But you don't get hooked up when you do that,**

16 **do you?**

17 A. Right. But this is a trivial error. It has

18 no significance to me.

19 **Q. Well, can you have a number of trivial errors**

20 **that add up to you that make you start questioning, "Hmm,**

21 **maybe I should do some more investigation"?**

22 A. I don't know how to answer your question. You

23 would have to say what the trivial errors are. There's

24 always going to be errors in recall. I don't think that

25 that error has any significance in terms of the opinions

1 **basing your decision just on what you had, even though if**

2 **it were pretrial, you would have talked to the officers,**

3 **is it --**

4 A. I would have made the request. Usually, they

5 deny the request.

6 **Q. Right, I understand. So you accepted Barry**

7 **Beach's versions of events, didn't you?**

8 A. No. I said in my earlier testimony that I

9 didn't accept his version of events. There's two

10 accounts. You can only analyze what each account is.

11 **Q. But my point is, is that the version he gave**

12 **you was much more detailed than anything he had ever**

13 **shared before?**

14 A. To my knowledge, yes.

15 **Q. Did you believe everything he told you during**

16 **your interview with him?**

17 A. It's not my role to believe or disbelieve what

18 he tells me, so --

19 **Q. Well, you're talking about truth and falsity,**

20 **aren't you?**

21 A. Yes. But the reason I interviewed Mr. Beach

22 was to try to get his account of what occurred, to try to

23 reconstruct the record. I didn't assume that what he was

24 telling me was necessarily true or not true.

25 **Q. Well, what if there were things that he told**

1 that I've been asked to render.

2 **Q. Well, what about the fact that Mr. Beach**

3 **claims that he was picked up at seven-thirty in the**

4 **morning and all the documents from the sheriff's office**

5 **demonstrate that's not correct?**

6 A. Okay.

7 **Q. That doesn't bother you?**

8 A. Bother me to what end? It doesn't change any

9 of the reliability analysis in this case.

10 **Q. Well, does it change Mr. Beach's reliability?**

11 A. There's going to be errors in recall, but this

12 is insignificant with respect to the issue of whether this

13 statement was reliable or not.

14 **Q. Why does it matter to you to interview him if**

15 **everything he tells you can be a lie?**

16 A. First of all, I don't know that everything he

17 told me was a lie. Again, there's two questions:

18 One question: "Why would somebody falsely confess?"

19 which is, really, the reason why I interviewed him, to try

20 to understand what his account was if he falsely

21 confessed.

22 And there's the second question, which is the more

23 important one here: "Is this a reliable statement?"

24 And the errors that you're describing don't speak to

25 the second question.

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1 **Q. Well, there's a long list of them, but we**
2 **won't go through them all with you here.**

3 A. There is a long list of errors, yes.

4 **Q. Yes. I'm talking about Mr. Beach's**
5 **transcript.**

6 **How about this -- this is a bigger one, because he**
7 **accused Richard Medaries of drugging his milkshake,**
8 **correct?**

9 A. Yes, he describes an account of possibly being
10 drugged as his best explanation of why he might have
11 confessed.

12 **Q. And so I assume it wouldn't bother you that**
13 **Richard Medaries was nowhere near the interrogation on the**
14 **day he confessed. That wouldn't bother you, either, then?**

15 A. Well, when you say "bother me", what exactly
16 do you mean specifically? What does bothering me -- how
17 is bothering me relative to the opinions I've given?

18 **Q. Would it raise a red flag in your mind?**

19 A. A red flag about what?

20 **Q. Have you ever been duped?**

21 A. Well, in life, of course. But the account of
22 being drugged is an explanation for giving the confession.
23 I've stated in my report: Is a highly unlikely account.

24 But, again, there's two separate issues: "Why would
25 somebody falsely confess?" and, "How do we know it's a

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1 that connected Barry Beach to the crime. Are you familiar
2 with that?

3 A. Yes.

4 **Q. And that was a matter, then, that the jury**
5 **resolved, correct?**

6 A. Of course, the jury made its decision, yes.

7 **Q. Now, you make a big -- you indicate that**
8 **there's a big concern about why that tape -- or that the**
9 **tape was erased of his confession, right?**

10 A. Well, I was asked some questions about it,
11 yes.

12 **Q. Yeah. But that was of concern to you, wasn't**
13 **it, or did I misunderstand what you said?**

14 A. That the tape was erased?

15 **Q. Yeah.**

16 A. Well, it's of general concern. Police don't
17 generally erase their tapes. But the bigger concern was
18 that there was no recording, more broadly, more generally,
19 because of that process --

20 **Q. Well, are you aware that the first part of the**
21 **interview of Barry Beach when they did the psychological**
22 **stress evaluation was recorded?**

23 A. I haven't been provided any records of that
24 recording.

25 **Q. And you didn't contact the officers, right?**

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1 false confession?"

2 **Q. Right.**

3 A. And that doesn't go to the second and most
4 important issue. And why I'm telling you this --

5 **Q. But you're talking about the fit test.**

6 A. Correct.

7 **Q. And in your opinion, there's absolutely**
8 **nothing that corroborates his confession, correct?**

9 A. In my opinion, there is no, there is no --

10 **Q. Did you read Mr. Racicot's --**

11 A. -- corroborating evidence.

12 **Q. Sorry. Did you read Mr. Racicot's closing**
13 **argument?**

14 A. I might have read his closing argument. I
15 don't recall it specifically right now.

16 **Q. Because in that closing argument, he talked**
17 **about things that corroborated Barry Beach's confession.**

18 A. In my opinion, there's nothing corroborating
19 Barry Beach's confession regardless of what was argued at
20 trial.

21 **Q. And the jury -- but, obviously, that was an**
22 **issue brought before the jury, correct?**

23 A. Well, it was argued. If that's what he argued
24 before the jury, yes.

25 **Q. And Timer Moses argued that there was nothing**

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1 A. I would never contact the officers. It would
2 be -- I would be contacting counsel.

3 **Q. Through counsel?**

4 A. Yeah.

5 **Q. And there are many law enforcement agencies**
6 **even to this day who do not record everything, correct?**

7 A. Correct.

8 **Q. And many of them are reputable law enforcement**
9 **agencies.**

10 A. Yes.

11 **Q. And, in fact, recording everything is the**
12 **exception and not the rule, isn't it?**

13 A. Yeah, but that's changing.

14 **Q. Now, you also brought up the notion that Jay**
15 **Via elicited another confession from Lucas and Toole to**
16 **the Louisiana homicides, correct?**

17 A. Yes.

18 **Q. And are you aware that they were never**
19 **arrested for those homicides?**

20 A. I didn't know whether they were or not.

21 **Q. No, they never were.**

22 A. And clearly, it's a false confession.

23 **Q. And they weren't arrested --**

24 A. That's a good thing.

25 **Q. -- for that false confession. And that's a**

20 (Pages 77 to 80)

1 very good thing, isn't it?
 2 A. Yes.
 3 **Q. But what you indicated is that they had a**
 4 **history of extracting false confessions, these Louisiana**
 5 **officers.**
 6 A. Clearly, they do, yes.
 7 CHAIRWOMAN O'CONNOR: Clearly they do because
 8 of Lucas and Toole --
 9 THE WITNESS: Yeah, they --
 10 CHAIRWOMAN O'CONNOR: -- or clearly they do
 11 beyond the --
 12 THE WITNESS: Oh, no, no, no.
 13 CHAIRWOMAN O'CONNOR: Lucas and Toole are a
 14 pretty unusual case.
 15 THE WITNESS: Well, yeah, but they have
 16 elicited a false confession from others.
 17 CHAIRWOMAN O'CONNOR: From Lucas and Toole.
 18 THE WITNESS: That's correct.
 19 CHAIRWOMAN O'CONNOR: I see. Proceed.
 20 **Q. (By Ms. Plubell) And they elicited a false**
 21 **confession, recognizing it to be so, apparently, because**
 22 **they didn't make any arrests.**
 23 A. I assume at some point they recognized it,
 24 yes.
 25 **Q. So all of those other things you talk about -**

1 **precision the location of Kim Nees's body in relation to**
 2 **the crime scene.**
 3 A. You mean that the body was floating in the
 4 water? Is that what you're describing?
 5 **Q. No, not that the body was floating in the**
 6 **water. I'm talking about where she actually died. In his**
 7 **confession, he describes the body being at -- near the**
 8 **passenger side of the truck.**
 9 A. Okay.
 10 **Q. And are you aware that there were -- that was**
 11 **the bloodiest spot of the crime scene?**
 12 A. Yeah, that there was a pool of blood some feet
 13 away from the rear passenger tire; yes.
 14 **Q. And are you aware that the pathologist**
 15 **determined that Kim Nees died before she was thrown in the**
 16 **river?**
 17 A. Yes.
 18 **Q. And you're aware that in his confession, Barry**
 19 **Beach indicated that at that spot, he felt for a**
 20 **heartbeat, a pulse, and it was very weak, and then it**
 21 **stopped, and then he knew she was dead?**
 22 A. At some spot, I'm aware that he described
 23 that, yes.
 24 **Q. So is that corroboration?**
 25 A. No. I thought that was public knowledge, more

1 **that Mr. Beach wasn't fed, and there wasn't a break, and**
 2 **all of those things - which, of course, are disputed by**
 3 **the records and the officers, none of that really has a**
 4 **bearing on anything, correct, because we have to go back**
 5 **to the fit test?**
 6 A. You've got to be more analytically precise.
 7 It doesn't have a bearing on the fit test, if that's what
 8 you're asking.
 9 **Q. It has a bearing on voluntariness?**
 10 A. That's right, which is different from the fit
 11 test.
 12 **Q. All right. So some of those credibility**
 13 **issues we talked about, like if Beach's version is**
 14 **inaccurate, could have affected your opinion about whether**
 15 **his confession was voluntary?**
 16 A. Correct.
 17 **Q. Now, are you aware that all of the issues that**
 18 **you have been bringing up about corroboration and the fit**
 19 **test and the officers' voices being hoarse at the end of**
 20 **the confession, all of those things have been raised in**
 21 **Federal Court? Are you aware of that?**
 22 A. I'm aware that a lot of issues have been
 23 raised, yes.
 24 **Q. And is it -- so I'm assuming it's not at all**
 25 **compelling to you that Barry Beach describes with**

1 or less.
 2 **Q. How did you determine what was public**
 3 **knowledge and what wasn't public knowledge?**
 4 A. Well, I reviewed materials that I was provided
 5 and I had conversations with defense counsel.
 6 **Q. Okay. So what specifically in the materials**
 7 **indicated what was public knowledge? Can you find that?**
 8 A. You know, I must have -- my knowledge of
 9 public knowledge must have come from defense counsel.
 10 **Q. Okay. And you take issue with the fact that**
 11 **Barry describes - this is one of the things that doesn't**
 12 **match your fit test - the area as the "train bridge"?**
 13 A. (Nodding head affirmatively.)
 14 **Q. And are you aware that that's how the area is**
 15 **described in law enforcement reports?**
 16 A. As the train bridge?
 17 **Q. Yes. Have you ever been to Poplar?**
 18 A. No.
 19 **Q. Have you been to the crime scene?**
 20 A. No.
 21 **Q. And have you seen a photograph of the area of**
 22 **the crime scene --**
 23 A. Yeah.
 24 **Q. -- where the train bridge is visible?**
 25 A. I don't -- I think I've seen photographs that

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1 have the train bridge in it, yeah.

2 **Q. Yeah, right there at the crime scene, and you**
3 **can see the train bridge.**

4 **I'm not done here, Dr. Leo. So generally, you would**
5 **agree that you don't testify about your fit test, right?**

6 A. I might testify in preconviction proceedings
7 about the fit test, generally how it works, but I don't, I
8 don't apply that test to the case facts --

9 **Q. Because that's a job --**

10 A. -- in preconviction cases.

11 **Q. That's a job for a jury, isn't it?**

12 A. In cases that are at trial, yeah.

13 **Q. And the jury made the decision, correct?**

14 A. It made the guilt or innocence decision, yes.

15 CHAIRWOMAN O'CONNOR: Any further questions?

16 MS. PLUBELL: No further questions.

17 CHAIRWOMAN O'CONNOR: I'd like to take a
18 break.

19 Are we finished with this witness?

20 MR. CAMIEL: I have a few more questions, if I
21 could.

22 CHAIRWOMAN O'CONNOR: We're going to take a
23 break for 10 minutes and then come back. So we'll
24 reconvene at 5-after-10.

25 (A brief recess was taken.)

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1 **outside near the truck on the ground.**

2 A. (Nodding head affirmatively.)

3 **Q. Does the news article that you have in front**
4 **of you give any details about those facts?**

5 A. Yes.

6 **Q. What does the news article say about the**
7 **crime?**

8 A. Well, the article --

9 CHAIRWOMAN O'CONNOR: Excuse me, Counsel. We
10 don't need the expert to read us the newspaper article.

11 MR. CAMIEL: Okay.

12 CHAIRWOMAN O'CONNOR: We can read the
13 newspaper article. We've allowed it in, so it's in. So
14 we can see that.

15 **Q. (By Mr. Camiel) So it's your understanding**
16 **that the fact that she was attacked inside the truck**
17 **initially and later outside the truck on the ground near**
18 **the truck was actually in the newspaper?**

19 A. Yes.

20 **Q. One of the other questions you were asked**
21 **about had to do with the Louisiana murders where Mr. Lucas**
22 **and Mr. Toole confessed to those, to those murders,**
23 **including the murder of Kathy Whorton; is that right?**

24 A. Yes.

25 **Q. And Counsel informed you in a question that**

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1 CHAIRWOMAN O'CONNOR: We'll reconvene. Quiet,
2 please.

3 Mr. Camiel, you may proceed.

4 MR. CAMIEL: Thank you.

5 REDIRECT EXAMINATION

6 BY MR. CAMIEL:

7 **Q. Dr. Leo, on cross-examination, one of the set**
8 **of questions that you were asked had to do with your**
9 **understanding of what was public knowledge, what was out**
10 **there in the public realm about the particular details**
11 **about the Kim Nees homicide.**

12 **Among the things that you reviewed, did you review**
13 **news articles from -- prior to Barry Beach's arrest that**
14 **described the details of the crime?**

15 A. Yes.

16 **Q. And do you have one of those news articles in**
17 **front of you?**

18 A. Yes.

19 MR. CAMIEL: I have a copy for each of the
20 board members and for counsel. If I can approach counsel.

21 CHAIRWOMAN O'CONNOR: Yes, you may.

22 **Q. (By Mr. Camiel) One of the questions you were**
23 **asked, Dr. Leo, was how it's possible that Barry Beach**
24 **would have known that Kim Nees was initially attacked**
25 **inside the pickup truck and later the attack continued**

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1 **Mr. Lucas and Mr. Toole were never arrested?**

2 A. Yes.

3 **Q. Is it your understanding that they were, in**
4 **fact, charged with the Kathy Whorton murder?**

5 A. Now it is, yes.

6 **Q. Yeah. And, in fact, did I show you the**
7 **charging documents where Henry Lucas and Ottis Toole were**
8 **charged with the first degree murder, aggravated rape, and**
9 **aggravated kidnapping of Kathy Whorton?**

10 CHAIRWOMAN O'CONNOR: Counsel, this is silly.

11 I mean to have a witness say, "Yeah, you just told me
12 that," I mean we don't need to hear testimony on that.

13 MR. CAMIEL: Counsel suggested in her
14 questioning --

15 CHAIRWOMAN O'CONNOR: Yes, she did. And so
16 you want to tell us, "Yeah, they were charged"? Is that
17 your point? And you have documents that show that?

18 MR. CAMIEL: I do. And I'd be happy to
19 provide --

20 CHAIRWOMAN O'CONNOR: Okay. You can make
21 copies and we can make that part of this, but we're not
22 going to go through a charade with this witness as if he
23 knows anything about it. He clearly doesn't.

24 MR. CAMIEL: Okay.

25 **Q. (By Mr. Camiel) Is it also your understanding**

22 (Pages 85 to 88)

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1 that the Louisiana detectives indicated that Lucas, when
2 he provided his confession, told us things that nobody
3 would have known unless they were there when it happened?

4 A. Yes.

5 Q. And is that from your review of the Louisiana
6 news article?

7 A. Yes.

8 Q. Now, you were asked by Counsel about four ways
9 with certainty that you can tell a confession is false.

10 A. Correct.

11 Q. And one of them was that there's no crime at
12 all, somebody's confessing to something that didn't even
13 happen.

14 A. Right.

15 Q. The other was the physical impossibility.

16 A. Yes.

17 Q. And then the third was that the true
18 perpetrator gave a reliable confession.

19 A. Or was apprehended, yes.

20 Q. And the fourth was an exoneration by DNA
21 evidence?

22 A. Or other scientific evidence, yes.

23 Q. Okay. Have there also been false confessions
24 that have been determined where they don't fit into one of
25 those categories?

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1 A. In the research, yes. They're called
2 highly-probable-not-proven false confessions.

3 Q. Now, I take it that not every case lends
4 itself to DNA testing.

5 A. Correct.

6 Q. Okay. Now, you were also asked about the fact
7 that Barry Beach doesn't fit into one of those vulnerable
8 categories.

9 A. Correct.

10 Q. Does one of them have to fit into one of those
11 vulnerable categories of being mentally retarded or a very
12 young age in order to give a false confession?

13 A. No. In fact, most false confessions are from
14 people who are not in those vulnerable categories. Those
15 vulnerable categories are just disproportionately
16 represented in the population of false confessors relative
17 to their percentage in the normal population.

18 Q. Now, Barry Beach wasn't under 18, but do you
19 have an understanding of how old he was at the time he
20 gave the false confession?

21 A. Twenty, twenty-one, nineteen, that age range.

22 Q. You were asked about the fact that the jury
23 considered Barry Beach's confession and convicted him
24 after considering the arguments of counsel. In the 200
25 DNA exonerations, how many of those people did the jury

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1 convict based on their confessions?

2 A. They were all convicted.

3 Q. And all of those people were exonerated based
4 on DNA evidence?

5 A. Correct.

6 Q. You were asked about Barry Beach's suppression
7 hearing testimony. You said he was asked very little.

8 A. That's my opinion, yes.

9 Q. Meaning he was asked by his attorney very
10 little?

11 A. Correct.

12 Q. In the suppression hearing testimony, did he
13 say anything about any coercion going on?

14 A. He described being threatened by Calhoun about
15 getting the electric chair and frying if he didn't confess
16 to this crime.

17 Q. Okay. You were asked about the timeline that
18 you had Barry Beach prepare. Who is it that should have
19 first had him prepare that timeline?

20 A. You mean the police should have prepared the
21 timeline? Is that what you're asking?

22 Q. You had Barry prepare a timeline, right?

23 A. Right.

24 Q. Okay. In your training when you train
25 counsel, who is it that should have, who is it that should

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1 have asked him to prepare the timeline?

2 A. Oh, of course the defense counsel, yeah.

3 MS. PLUBELL: Your Honor, I'm going to --
4 excuse me.

5 CHAIRWOMAN O'CONNOR: Go on. "Your Honor" is
6 acceptable.

7 MS. PLUBELL: I'm going to object to that.

8 CHAIRWOMAN O'CONNOR: Object to what?

9 MS. PLUBELL: To him questioning about what
10 Timer Moses should have done. I don't think he's an
11 expert on trial strategies.

12 CHAIRWOMAN O'CONNOR: Well, I don't think he's
13 being asked to be an expert on a trial strategy.

14 Your point is that the original interrogator
15 should have asked for the timeline, right?

16 THE WITNESS: Well, that there should have
17 been a more complete record. So it should have preexisted
18 my involvement in the case.

19 CHAIRWOMAN O'CONNOR: I think we've heard all
20 this.

21 Q. (By Mr. Camiel) In cross-examination,
22 Dr. Leo, as near as I can tell, you weren't asked even one
23 question about the reliability of Barry Beach's
24 confession.

25 After undergoing cross-examination, has your opinion

23 (Pages 89 to 92)

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1 **changed about the reliability of Barry Beach's confession?**
 2 A. No.
 3 **Q. You were asked questions about the fact that**
 4 **Mr. Beach may have been incorrect about the timing of when**
 5 **he was interrogated, whether it started in the morning or**
 6 **it started around noon. Okay?**
 7 A. Correct.
 8 **Q. Does that kind of mistake by Mr. Beach affect**
 9 **your analysis of the reliability of what he said when he**
 10 **gave the confession statement?**
 11 A. No.
 12 **Q. Why not?**
 13 A. The same principles that one goes through in a
 14 reliability analysis was articulated in the report, which
 15 I've tried to articulate generally here. That's not
 16 relevant to that. That doesn't go to the guilty knowledge
 17 or lack of guilty knowledge, the corroboration or lack of
 18 corroboration. It's an error about -- if it's an error
 19 about whether the interrogation started in the morning or
 20 the afternoon, it's a nonsignificant error with respect to
 21 the analysis of reliability.
 22 **Q. So what you're looking at is what he said**
 23 **about the crime in the confession and how that matches**
 24 **with the facts rather than what he said about when it**
 25 **started or when it didn't?**

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1 let's address Ms. O'Connor as "Madame Chairman", please.
 2 And that will maybe avoid some confusion.
 3 Is that okay, Madame Chairman?
 4 CHAIRWOMAN O'CONNOR: I have no idea what you
 5 call me, but I answer to "hey, you," pretty much.
 6 MR. CURTISS: Thank you.
 7 CHAIRWOMAN O'CONNOR: So "Your Ultimateness",
 8 whatever.
 9 But we would appreciate you going into that.
 10 MR. CAMIEL: I'd be happy to go into that.
 11 **Q. (By Mr. Camiel) Dr. Leo, when you interviewed**
 12 **Barry Beach, he described that at some point during the**
 13 **interrogation, he was brought a meal where he said,**
 14 **"Included in the meal was a milkshake," and he was**
 15 **concerned because the lid was off.**
 16 A. Correct.
 17 **Q. In describing that, what did it appear that he**
 18 **was attempting to account for?**
 19 A. He was attempting to account for his lack of
 20 recollection of actually confessing.
 21 **Q. So he was searching for an explanation as to**
 22 **why he couldn't remember?**
 23 A. That's what it appeared to me, yes.
 24 **Q. Did you see anything in any of the reports**
 25 **that you reviewed that suggested that he really was**

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1 A. Correct.
 2 **Q. Is it significant to you that Mr. Beach**
 3 **described all these trips back and forth from the vehicle**
 4 **to the river?**
 5 **Did he appear to understand how far away from the**
 6 **river the truck was?**
 7 A. No. And if there were three or four trips,
 8 257 yards, that's a lot of walking. It seems to be one of
 9 those descriptions in the confession that sort of
 10 stretches credibility. It seems he doesn't know the
 11 distance, and that may be why he's describing these walks.
 12 MR. CAMIEL: That's all I have.
 13 CHAIRWOMAN O'CONNOR: The board members
 14 discussed during the break we're interested in having you
 15 inquire as to the strawberry milkshake, the alleged
 16 drugged strawberry milkshake that we heard about at this
 17 time.
 18 MR. CAMIEL: I'd be happy to.
 19 CHAIRWOMAN O'CONNOR: We want to have a full
 20 record. We don't want one more argument raised later that
 21 you say you didn't raise now, so we want to hear it now.
 22 MR. CURTISS: Madame Chairman, may I comment,
 23 please?
 24 CHAIRWOMAN O'CONNOR: Yes.
 25 MR. CURTISS: For any lack of confusion here,

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1 **drugged in some way?**
 2 A. Not in the reports, no.
 3 **Q. And that would be highly unusual or unheard of**
 4 **in your experience?**
 5 A. Yes.
 6 **Q. Did you accept that as a fact that he was**
 7 **drugged in your analysis?**
 8 A. No.
 9 **Q. Did you rely on that in any way in conducting**
 10 **your reliability analysis of his confession?**
 11 A. No.
 12 **Q. You indicated in your report you thought it**
 13 **was highly improbable.**
 14 A. Yes.
 15 MR. CAMIEL: I don't have any other questions
 16 in that area unless Madame Chairman can think of something
 17 I forgot.
 18 CHAIRWOMAN O'CONNOR: That's fine.
 19 Do you have anything you want to ask the
 20 witness?
 21 MS. PLUBELL: I have one question.
 22 CHAIRWOMAN O'CONNOR: One question? We're
 23 going to hold you to that.
 24
 25 ///

RECROSS-EXAMINATION

BY MS. PLUBELL:

Q. It's a series, but it goes to the whole issue of: You indicated that it would be important to your conclusion about the truth or falseness of a confession if the matter went to corroboration, is that correct, one of the corroborating circumstances?

A. Yeah, if there's corroboration of that that influences one's decision about the reliability -- I'm not sure I understood your question.

Q. Okay. We're talking about a false confession now; not the reliability, but talking about the truth or falseness of a confession.

And if a person you are interviewing gave you information about a corroborating fact and gave conflicting information to someone else, would that then possibly affect your opinion?

A. As you asked the question, it's too broad. I don't really understand it.

Q. All right. Is the issue of the keys one of the corroborating circumstances or possible corroborating circumstances in this case?

A. If he could lead you to the keys, where the keys were, that would be corroborating --

Q. What did Barry Beach in his confession say he

did with the keys?

A. I believe he said he threw them into the river.

Q. What did he tell you about the keys?

A. I don't recall specifically.

Q. Do you recall him telling you that he had actually had hotspots on the polygraph because he had actually seen people with the keys?

A. I recall him telling me about hotspots.

Q. I believe the names he gave you in the interview were Joanne Jackson and Caleb Gorneau.

A. Okay.

Q. And I'm assuming that you're aware that Paul Kidd had Mr. Beach polygraphed by an independent polygraphist, and that was Hoyt Moncrief. And he prepared a report, a letter to Mr. Kidd about that. Have you ever seen that letter?

A. If I have, I don't recall it.

Q. So then would it be important to you if Barry Beach gave a different version about the keys in this letter?

A. No, it wouldn't be important to corroborating the reliability of the confession because he doesn't know where the keys are. If he could lead law enforcement to the keys, if law enforcement found the keys, where he said

they were, then that would be important. But it's --

Q. Would you agree that you're not always going to find what has been thrown in a river?

A. I would agree that that's true. But if it's a shallow river and it's been dragged extensively, some rivers are easier to find things than others.

Q. But you don't know about the Poplar River, do you?

A. Only what I've been told.

Q. Right. This article, this wasn't included in your report as things that you reviewed, was it?

A. Correct. I reviewed it yesterday.

Q. And that was provided to you by Centurion Ministries?

A. By defense counsel.

Q. By defense counsel, yes. So it didn't affect your opinion about what was or wasn't public information in your report?

A. No, no.

MS. PLUBELL: All right, nothing further.

CHAIRWOMAN O'CONNOR: Thank you. I understand that Mr. Curtiss has a question.

MR. CURTISS: Yes, Madame Chairman.

Dr. Leo, sir, did you -- anywheres along the line, did you contact -- I realize you're being paid by

Centurion Ministries and not the State, so to speak. At any time, did you contact the law enforcement in Louisiana?

And, you know, it seems to me now, and just in my opinion, that you would want to coordinate - and I'm talking honesty, integrity, this type of thing - that you would want to coordinate what Mr. Beach had to say versus what the law enforcement -- and make some arrangement as to what's true and what isn't.

Did you ever contact them at any time?

THE WITNESS: No, I didn't contact law enforcement. If I had made a contact, I would have asked defense counsel to contact law enforcement. Unlike most of the cases in which I work - and I was talking about in that presentation - this is a post-conviction case. There's an extensive record of law enforcement's description in their pretrial and trial testimony. But I understand your concern behind the question.

So I had read lots of pretrial and trial testimony in which they explicitly describe what they remember occurring during that interrogation.

MR. CURTISS: And, Dr. Leo, my concern is just simply that -- and I won't belabor this any further. My concern would be, you know, somewheres along the line there, that the integrity and honestly has got to come

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1 forth somewheres along the line between two people or two
2 oppositions here. And I don't see how you can come up
3 with that just talking to someone who allegedly has done
4 the crime that he has done.

5 I just was wondering why you haven't contacted
6 the law enforcement in Louisiana.

7 THE WITNESS: Because there was, there was an
8 extensive record that I had been provided of --

9 MR. CURTISS: You were satisfied with that,
10 sir?

11 THE WITNESS: -- why they had testified.
12 Yeah, and I am.

13 MR. CURTISS: Okay, thank you.

14 CHAIRWOMAN O'CONNOR: This witness can be
15 excused?

16 MR. CAMIEL: Yes, thank you.

17 CHAIRWOMAN O'CONNOR: You are excused.

18 MR. CAMIEL: Thank you. The next witness will
19 be Paul Kidd.

20 PAUL HENRY KIDD, WITNESS, SWORN

21 CHAIRWOMAN O'CONNOR: You may proceed,
22 Mr. Camiel.

23 DIRECT EXAMINATION

24 BY MR. CAMIEL:

25 **Q. Mr. Kidd, could you state your full name for**

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1 **Q. In terms of the kind of law practice you had,**
2 **could you tell the Board generally the nature of your law**
3 **practice?**

4 A. Basically, I started off as a civil rights
5 attorney. I did that for about 15 years, and then I
6 gradually worked into criminal defense work.

7 **Q. Now, as a criminal defense attorney at some**
8 **point, did you get retained to represent Barry Beach?**

9 A. Yes.

10 **Q. How did that come about?**

11 A. Well, one Saturday morning, Tim -- I guess it
12 was Tim Beach came to see me and to retain me.

13 **Q. And Tim Beach you understood to be Barry's**
14 **uncle?**

15 A. Barry's uncle.

16 **Q. So he came to you on a Saturday. Do you**
17 **remember the date?**

18 A. No, I don't.

19 **Q. Okay. And what was the nature of the**
20 **representation?**

21 A. The contributing to the delinquency of a
22 minor.

23 **Q. And your understanding is that's what Barry**
24 **had been arrested and charged with?**

25 A. Yes.

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1 **us and spell your last name?**

2 A. Paul Henry Kidd, K-I-D-D.

3 **Q. Mr. Kidd, where do you reside?**

4 A. In Monroe.

5 **Q. Louisiana?**

6 A. Louisiana.

7 **Q. And you've had a career as an attorney; is**
8 **that right?**

9 A. That's correct.

10 **Q. When did you first begin practicing law?**

11 A. '66.

12 **Q. And, again, in Louisiana?**

13 A. In Louisiana.

14 **Q. Where did you get your law degree?**

15 A. Loyola University.

16 **Q. Mr. Kidd, have you recently had some health**
17 **problems?**

18 A. Yes.

19 **Q. What kind of health problems?**

20 A. Stroke.

21 **Q. How long ago?**

22 A. Two years.

23 **Q. Are you comfortable and able to hear my**
24 **questions, and --**

25 A. Yes.

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1 **Q. And did you go in and meet with Barry?**

2 A. Yes.

3 **Q. Where did you meet with him?**

4 A. In the jail.

5 **Q. This is the first meeting you had with him.**

6 **Does January 8th of 1983 sound like approximately the**
7 **correct date?**

8 A. That's correct.

9 **Q. Which jail did you meet with him?**

10 A. In the courthouse jail, the fourth floor.

11 **Q. This is in Monroe?**

12 A. In Monroe.

13 **Q. Okay. When you went in to meet with Barry**
14 **that first day, what do you recall him telling you about**
15 **what had occurred the previous day?**

16 A. Well, I remembered his telling me the police
17 officers told him to have a vision. And then after they
18 told him to have a vision, they said, "Drop the vision and
19 act like you're the perpetrator."

20 **Q. Let me back you up a little bit. Did Barry**
21 **explain to you that he had been interrogated about some**
22 **homicides?**

23 A. Yes.

24 **Q. Did he tell you which homicides he was**
25 **interrogated about?**

1 A. Yes.

2 **Q. Where were the homicides that he remembered**
3 **being interrogated about?**

4 A. About the -- there are three in Monroe
5 unsolved.

6 **Q. And you were aware of those homicides, were**
7 **you?**

8 A. I was aware.

9 **Q. Did he also talk to you about having been**
10 **interrogated about a homicide in Montana?**

11 A. Yes.

12 **Q. Okay. And did you have him describe what**
13 **happened during the police interrogation? In other words,**
14 **did you ask him to tell you what -- how the police went**
15 **about questioning him?**

16 A. Yes.

17 **Q. Okay. And is that where he came up with the**
18 **-- he started telling you about being asked to have a**
19 **vision?**

20 A. Yes, yes.

21 **Q. Did he explain a vision of what? What did**
22 **they want him to have a vision --**

23 A. A vision of how the ladies were killed in
24 Louisiana and how they were killed in -- or how she was
25 killed in Montana.

1 **Q. When you met with Barry that first time on**
2 **January 8th, did he indicate to you whether or not he was,**
3 **in fact, guilty of the Louisiana homicides?**

4 A. Yes.

5 **Q. What did he say?**

6 A. He said he did not do it.

7 **Q. Okay. How about the Montana homicide? What**
8 **did he --**

9 A. He said that -- that, "yes", that he had been
10 involved. And that's a question that we used in the
11 Montana thing. And he said he had seen the -- the whole
12 town had seen it in the Poplar newspaper.

13 **Q. So he said he knew about it?**

14 A. Yes, he knew about it.

15 **Q. Did he say he killed Kim Nees?**

16 A. No, he never did say that.

17 **Q. Okay. But he said he knew about the details**
18 **of the crime?**

19 A. Yes.

20 **Q. Okay. Now, how long did you spend with Barry**
21 **that first --**

22 A. I don't remember.

23 **Q. Did you talk to the police before you talked**
24 **to Barry?**

25 A. No, I never did.

1 **Q. Okay. Having interviewed Barry on that**
2 **January 8th, what was the next course of action you took**
3 **in terms of representing him?**

4 A. Well, I don't remember. But I gathered from
5 reading Sergeant Via's testimony -- is that I worked out
6 and hired Hoyt Moncrief to do a polygraph of him on the
7 11th.

8 **Q. Okay. Now, Hoyt Moncrief was a polygraph**
9 **examiner?**

10 A. Yes, sir.

11 **Q. He's somebody with the police department or**
12 **somebody that you retained?**

13 A. He's with the -- that I retained, but he was
14 formerly with the sheriff's department.

15 **Q. And so that's something that took place on the**
16 **11th?**

17 A. Yes.

18 **Q. And where did that take place?**

19 A. That took place in the -- as I recall, it took
20 place in the third floor of the courthouse.

21 **Q. And were you present when the polygraph**
22 **examination was conducted with Barry Beach?**

23 A. Yes.

24 **Q. What was it that you were asking Mr. Moncrief**
25 **to examine Barry about?**

1 A. The three homicides in Louisiana and the
2 homicide in Montana.

3 **Q. Were the Louisiana detectives present when**
4 **Barry was given the polygraph?**

5 A. Well, you know, the fact is that I remember it
6 being one way and then the police remember it being
7 another way.

8 **Q. How do you remember it?**

9 A. How do I remember it was that they were not
10 present --

11 **Q. Okay.**

12 A. -- when we -- and nor was I.

13 **Q. Mr. Moncrief didn't want anybody in the room**
14 **when you --**

15 A. That's right.

16 **Q. And at the end of the polygraph examination,**
17 **did you talk with Mr. Moncrief?**

18 A. Yes.

19 **Q. Now, is Mr. Moncrief still alive?**

20 A. No.

21 **Q. How long ago did he pass?**

22 A. Five years.

23 **Q. What did he tell you about his opinion**
24 **regarding the polygraph exam of Mr. Beach?**

25 A. That he didn't have anything to do with the

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1 Louisiana murders.
 2 **Q. Okay.**
 3 A. And that he had a couple of hotspots relative
 4 to the Montana case, that he couldn't exonerate him on the
 5 Montana case.
 6 **Q. But he didn't have the opinion that he**
 7 **committed the Montana murder?**
 8 A. No, no.
 9 **Q. Okay. And so what did you do with that**
 10 **information? Did you tell the Louisiana detectives that**
 11 **he had passed this polygraph as to the Louisiana murders?**
 12 A. Yes, I did.
 13 **Q. And do you remember their reaction?**
 14 A. No, I don't.
 15 **Q. Now, did -- were you present, then -- after**
 16 **the January 11th polygraph exam that you had Mr. Moncrief**
 17 **conduct with Barry, did the Louisiana detectives**
 18 **interrogate Barry in your presence?**
 19 A. Never, never in my presence.
 20 **Q. Would you have allowed that?**
 21 A. No, I would not have.
 22 **Q. Why not?**
 23 A. Because it's against the ethics rule and it's
 24 against the -- my obligation under the State Bar
 25 Association of Louisiana.

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1 **Q. Now, you learned at some point that the**
 2 **Louisiana detectives came up to Montana and testified;**
 3 **isn't that right?**
 4 A. Yes.
 5 **Q. And you learned that they testified that Barry**
 6 **Beach had reaffirmed his confession to the --**
 7 A. Yes.
 8 **Q. -- Kim Nees murder in your presence?**
 9 A. Yes.
 10 **Q. Was that true? Did Barry Beach ever confess**
 11 **regarding --**
 12 A. No.
 13 **Q. Let me finish my question. Did Barry Beach**
 14 **ever confess to the Kim Nees murder in your presence?**
 15 A. No.
 16 **Q. Either in private or in front of the Louisiana**
 17 **detectives?**
 18 A. Neither.
 19 **Q. When you learned that these detectives had**
 20 **testified -- first of all, how did you learn that, that**
 21 **they've testified up here?**
 22 A. Andrew, Andrew McCarvel sent me a copy of the
 23 Supreme Court decision that had been handed down in the
 24 Barry Beach case.
 25 **Q. Now, when Barry was eventually extradited to**

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1 **Montana to stand trial, did you ever come up here to**
 2 **assist in his representation?**
 3 A. No.
 4 **Q. He retained a Montana attorney?**
 5 A. Yes.
 6 **Q. Did that Montana attorney ever ask you about**
 7 **whether Barry confessed in your presence with the**
 8 **detectives there?**
 9 A. Never, to my knowledge.
 10 **Q. So he never called you and said, "Hey, this is**
 11 **what these guys are saying. Did it happen?"**
 12 A. No.
 13 **Q. So you found out that they've given this**
 14 **testimony that Barry Beach confessed in your presence with**
 15 **the detectives there. In response to learning that, what**
 16 **did you do?**
 17 A. I issued an affidavit in '83.
 18 **Q. Okay. And where did you send that affidavit?**
 19 A. Oh, no, it was in '85 or '83. I sent it to
 20 the Supreme Court of Montana.
 21 **Q. Okay. And why did you do that? Why did you**
 22 **issue an affidavit?**
 23 A. Because I wanted them to know that I had not
 24 done that.
 25 **Q. How did you feel about the detectives'**

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1 **testimony that you had --**
 2 A. I was angry.
 3 **Q. What were you angry about?**
 4 A. Angry about them telling me -- or telling the
 5 Court that I had done this dastardly thing.
 6 **Q. And to you, allowing a client to be**
 7 **interrogated by the detectives would have been against**
 8 **your ethics?**
 9 A. Yes.
 10 **Q. Okay. Did you ever go to Sergeant Via's**
 11 **commander or supervisor to talk about Sergeant Via's**
 12 **testimony after you learned about it?**
 13 A. I don't recall. I do recall going, at
 14 sometime, talking to Mr. Jewel.
 15 **Q. How about a Joe Cummings? Did you ever talk**
 16 **to him?**
 17 A. Yes.
 18 **Q. Who is Joe Cummings, by the way?**
 19 A. Joe Cummings was the head of the task force in
 20 Louisiana.
 21 **Q. That was the task force that was investigating**
 22 **these --**
 23 A. Three murder cases.
 24 **Q. Okay. And why did you go to Mr. Cummings?**
 25 A. I don't remember why.

28 (Pages 109 to 112)

1 **Q. Okay. Did you have a discussion with him**
2 **about Jay Via's testimony here in the state of Montana?**

3 A. Yes. He said that, you know, that Jay Via --

4 MS. PLUBELL: Madam Chairperson, I'm going to
5 object to this. Joe Cummings is deceased, and this is not
6 appropriate. What Joe Cummings supposedly said is
7 hearsay, and there's no way for us to test it. We have
8 brought everyone we can to verify things for this Board,
9 and it's not fair to rely on what this dead man supposedly
10 said.

11 CHAIRWOMAN O'CONNOR: That is a problem. It
12 is a valid problem. It is a problem with much of the
13 evidence that's going to be forthcoming, I believe.

14 And how do you address that, Mr. Camiel?

15 MR. CAMIEL: We would have asked Mr. Cummings
16 to appear, but we can't. And so the only way we can get
17 this in front of the Board is through the person who --

18 CHAIRWOMAN O'CONNOR: Through hearsay, which
19 you've been cautioned against, of course, by this Board
20 previously.

21 MR. CAMIEL: And this Board told me that
22 before we could put on any hearsay, we needed to bring the
23 declarant in.

24 CHAIRWOMAN O'CONNOR: That's right.

25 MR. CAMIEL: And we've attempted to do that

1 **whether he would do anything with regard to that perjury?**

2 A. I asked him would he execute an affidavit.

3 **Q. What did he say?**

4 A. "No."

5 **Q. Did he say why he wouldn't?**

6 A. He said, "I've got to be a law enforcement
7 agent."

8 **Q. So he wouldn't, he wouldn't execute an**
9 **affidavit against a fellow law enforcement officer?**

10 A. That's what I understood.

11 **Q. When you learned what you did from**
12 **Mr. Cummings, did you send a letter to a Richard**
13 **Carstensen in Montana telling him what you learned?**

14 A. Did I do what?

15 **Q. After you interviewed or had this phone**
16 **conversation with Mr. Cummings, did you contact one of**
17 **Barry Beach's attorneys with regard to that?**

18 A. You know, I don't remember that I did. I
19 could have, but I don't remember it.

20 **Q. Okay.**

21 MR. CAMIEL: This is going to be my last
22 question to you, Mr. Kidd.

23 **Q. (By Mr. Camiel) To be very clear, now, you've**
24 **had private meetings with Mr. Beach as well as where**
25 **detectives were present; is that right?**

1 with every witness, but with Mr. Cummings, we have no way
2 to do that. I would ask --

3 CHAIRWOMAN O'CONNOR: But that doesn't make it
4 admissible in a courtroom, of course.

5 MR. CAMIEL: I understand. I would ask the
6 Board to allow it, but, obviously, the weight that you
7 give it would recognize that it is hearsay.

8 CHAIRWOMAN O'CONNOR: Then I think we'll do
9 that. But you are cautioned. And I think it is
10 inappropriate, but I think since we're trying to allow
11 extraordinarily wide latitude, we'll allow this
12 extraordinarily wide latitude here. But I have a problem
13 hearing what the dead folks said myself. So let's hear
14 you.

15 **Q. (By Mr. Camiel) Mr. Kidd, you indicated that**
16 **you talked to Mr. Cummings about Jay Via's testimony.**
17 **What did he tell you about Jay Via's testimony?**

18 A. He told me that Jay Via perjured himself, and
19 they -- that the other officers there were angry with him
20 but he was the most angry with him.

21 CHAIRWOMAN O'CONNOR: In this particular case,
22 is what you're saying?

23 THE WITNESS: In this particular case.

24 CHAIRWOMAN O'CONNOR: Okay.

25 **Q. (By Mr. Camiel) Now, did you ask Mr. Cummings**

1 A. Yes.

2 **Q. Okay. In your private meetings with**
3 **Mr. Beach, did he ever confess to you that he --**

4 A. Never did.

5 **Q. Louisiana or Montana?**

6 A. Louisiana or Montana.

7 **Q. Okay. And just to be clear, at no time,**
8 **whether it's January 11th or anything subsequent to that,**
9 **did he ever, in your presence, give a confession to the**
10 **Louisiana detectives?**

11 A. No.

12 MR. CAMIEL: Thank you. That's all I have.

13 CHAIRWOMAN O'CONNOR: Proceed.

14 MS. PLUBELL: Thank you.

CROSS-EXAMINATION

16 BY MS. PLUBELL:

17 **Q. Mr. Kidd, my name is Tammy Plubell. It's very**
18 **nice to meet you.**

19 A. And it's nice meeting you.

20 **Q. Back in 1983 when Barry Beach's family**
21 **retained you to represent him, he had already confessed to**
22 **the Kim Nees homicide, right?**

23 A. Yes.

24 **Q. And did you originally believe that you may**
25 **very well be representing him up in the Montana case?**

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- 1 A. Yes.
- 2 **Q. Okay. And even though you did not represent**
 3 **him, you had contact with his first attorney, Francis**
 4 **McCarvel, right?**
- 5 A. Yes.
- 6 **Q. And, in fact, he traveled to Louisiana, didn't**
 7 **he?**
- 8 A. Yes.
- 9 **Q. And you also had contact either with Timer**
 10 **Moses or an investigator from that law firm, didn't you?**
- 11 A. I did.
- 12 **Q. Okay. And you believed that Timer Moses**
 13 **should have called you as a witness at the trial, didn't**
 14 **you?**
- 15 A. I believed he should have.
- 16 **Q. He should have, and because, I think, in your**
 17 **letters, you communicated that maybe you could have**
 18 **offered insights into the interrogation tactics of certain**
 19 **detectives like Jay Via and Alfred Calhoun?**
- 20 A. I could.
- 21 **Q. Right. And, thus, your testimony, then, would**
 22 **have supported a theory that Barry Beach's confession was**
 23 **coerced, right?**
- 24 A. "Coerced"?
- 25 **Q. It was involuntary?**

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- 1 A. It was involuntary.
- 2 **Q. Right. And that was your theory all along,**
 3 **that Barry Beach's confession was involuntary, right?**
- 4 A. That's correct.
- 5 **Q. Have you read Barry Beach's -- a transcript of**
 6 **Barry Beach's statement that he gave to his expert,**
 7 **Richard Leo?**
- 8 A. No, I have not.
- 9 **Q. Okay. Did you and Barry Beach discuss his**
 10 **confession?**
- 11 A. Oh, when -- at the time?
- 12 **Q. Yes.**
- 13 A. Yes.
- 14 **Q. Did you discuss it -- would that be normal**
 15 **practice for you --**
- 16 A. Oh, yes.
- 17 **Q. -- if you have someone who has confessed?**
- 18 A. Yes. I discussed it with him on the 8th and
 19 also on the 11th.
- 20 **Q. And are you aware of the fact that in Barry**
 21 **Beach's interview with Richard Leo, he indicates that you**
 22 **refused to discuss the confession with him?**
- 23 A. No, I was not.
- 24 **Q. That's not your recollection now, is it?**
- 25 A. That's not my recollection.

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- 1 **Q. And is that how you would have practiced law**
 2 **in a potential case?**
- 3 A. No, I do not practice that way.
- 4 **Q. Now, are you aware -- Mr. Kidd, I know this**
 5 **was a long time ago, but are you aware that Joe Cummings**
 6 **testified -- well, I'm trying to see here. This is --**
- 7 A. I'm aware that he testified at trial. And he
 8 said --
- 9 **Q. At the suppression hearing?**
- 10 A. Yes.
- 11 **Q. So is what you're saying, then, Joe Cummings**
 12 **perjured himself, too?**
- 13 A. Yes. That's why he didn't -- that's why he
 14 wouldn't sign the affidavit.
- 15 **Q. So it wasn't only -- it's not only Jay Via**
 16 **you're accusing of perjury; it's also Joe Cummings, who**
 17 **has since died?**
- 18 A. That's correct.
- 19 **Q. And you would -- then you would also say that**
 20 **Alfred Calhoun perjured himself?**
- 21 A. No, I would not.
- 22 **Q. You wouldn't say that about Alfred Calhoun?**
- 23 A. I would not say that about Alfred because I
 24 don't think he did.
- 25 **Q. And have you reviewed his testimony?**

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- 1 A. Yes.
- 2 **Q. Okay. And do you know Richard Medaries?**
- 3 A. Yes.
- 4 **Q. And how do you get along with him?**
- 5 A. Well, I thought so properly --
- 6 **Q. Okay.**
- 7 A. -- until I read his deposition, and then I
 8 understood that it was not proper.
- 9 **Q. Okay. It was never your theory, though, that**
 10 **Barry gave a false confession, was it? It was your theory**
 11 **that his confession was involuntary?**
- 12 A. Involuntary, yes.
- 13 **Q. And, in fact, you talked about the -- having**
 14 **Hoyt Moncrief do a polygraph of Barry Beach, right?**
- 15 A. Yes.
- 16 **Q. And when you indicated that he used to work**
 17 **for the sheriff's office, that was as a polygraphist,**
 18 **right?**
- 19 A. No, no, no.
- 20 **Q. No?**
- 21 A. He worked as a deputy sheriff formerly, and
 22 then he got into the polygraphing bit after he left the
 23 office and worked for --
- 24 **Q. And did you -- I'm sorry. I didn't mean to**
 25 **interrupt you.**

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1 **Did you respect --**
 2 A. -- and worked as a consultant --
 3 **Q. Okay.**
 4 A. -- for hire.
 5 **Q. Did you respect and trust his work?**
 6 A. I did.
 7 **Q. And, in fact, at that particular time, the**
 8 **Ouachita Sheriff's Department didn't have polygraph**
 9 **equipment, did they?**
 10 A. Well, they did.
 11 **Q. They didn't have -- they had polygraph**
 12 **equipment back in 1983?**
 13 A. I understood that they did.
 14 **Q. Is it possible you could be mistaken about**
 15 **that?**
 16 A. I could be mistaken.
 17 **Q. Because it's been a long time ago.**
 18 A. It's been a long time ago.
 19 MS. PLUBELL: All right. With the Board's
 20 permission, I would like to approach the witness to show
 21 him a letter from Hoyt Moncrief.
 22 CHAIRWOMAN O'CONNOR: Okay.
 23 **Q. (By Ms. Plubell) I know this is a long time,**
 24 **but does that look like a letter from Hoyt?**
 25 A. Just a minute -- (retrieving reading glasses.)

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1 **Q. Okay.**
 2 A. (Perusing document) -- yes.
 3 **Q. Okay. So, Mr. Kidd --**
 4 A. I didn't have it, though. Can I explain?
 5 **Q. Oh, sure.**
 6 A. I had the file, and I thought I gave it to
 7 Jehovah's Witness. But as it turned out, the Jehovah's
 8 Witnesses, they were dressed in black, and one of them was
 9 Brad, his full brother; and one -- the other was David.
 10 **Q. Okay.**
 11 A. And they, they weren't who they presumed to
 12 be.
 13 **Q. Okay. But is it true that in this letter,**
 14 **Hoyt Moncrief describes doing a pre-polygraph interview**
 15 **with Barry Beach?**
 16 A. Yes.
 17 **Q. And that Barry Beach had a lot of details**
 18 **about the homicide?**
 19 A. Yes.
 20 **Q. And Barry Beach's explanation for having those**
 21 **details was because that he had dreamt about it?**
 22 A. Yes. He had a vision. ?
 23 **Q. And is it also true that he had, he had**
 24 **several hotspots in the polygraph? Correct?**
 25 A. Yes.

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1 **Q. And one of those particular areas was about**
 2 **the keys, what happened to the keys to the victim's**
 3 **vehicle?**
 4 A. I don't remember that.
 5 **Q. Okay. But in the letter, it describes what he**
 6 **told Mr. Moncrief --**
 7 A. Yes.
 8 **Q. -- about the keys?**
 9 A. Yes.
 10 **Q. And what he told him was that he had just**
 11 **surmised that the keys had been --**
 12 A. Yes.
 13 **Q. -- found in the river?**
 14 **He didn't mention anything about seeing other**
 15 **people --**
 16 A. No, he did not.
 17 **Q. -- like Joanne Jackson or Caleb Gorneau with**
 18 **the keys, did he?**
 19 A. No.
 20 **Q. And at the very last paragraph, he told**
 21 **Mr. Moncrief that he didn't know why he couldn't tell the**
 22 **truth about what he'd done, but he just couldn't do it.**
 23 A. That's what he said.
 24 MS. PLUBELL: I have no further questions.
 25 MR. CAMIEL: Just a couple, if I could.

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1 CHAIRWOMAN O'CONNOR: Hm-hmm.
 2 REDIRECT EXAMINATION
 3 BY MR. CAMIEL:
 4 **Q. Mr. Kidd, you had prior experience with**
 5 **Detectives Via and Calhoun in other cases?**
 6 A. Yes.
 7 **Q. So you were familiar with their interrogation**
 8 **techniques?**
 9 A. I was.
 10 **Q. And did their interrogation techniques, in**
 11 **your experience -- first of all, how many other cases have**
 12 **you had with them?**
 13 A. With whom?
 14 **Q. Via and Calhoun.**
 15 A. Via is -- I had 15, and 5 with Calhoun.
 16 **Q. And was it your experience that they were**
 17 **aggressive interrogators?**
 18 A. They were what?
 19 **Q. Aggressive interrogators.**
 20 A. "Expressive"?
 21 **Q. "Aggressive".**
 22 A. Oh, "aggressive", yeah.
 23 **Q. Now, if Mr. Calhoun testified that Barry Beach**
 24 **had actually confessed in your presence, that wouldn't be**
 25 **true, would it?**

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1 A. No.
 2 **Q. So if Calhoun said that, would that be**
 3 **perjury? If he testified --**
 4 A. Yeah, it would be perjury.
 5 **Q. Okay.**
 6 MR. CAMEL: I have no other questions. Thank
 7 you.
 8 CHAIRWOMAN O'CONNOR: This letter is a hearsay
 9 letter. Are we going to have Moncrief testifying?
 10 MS. PLUBELL: No, Mr. Moncrief is dead. But
 11 it is a letter that Mr. Kidd has identified. And since --
 12 CHAIRWOMAN O'CONNOR: And I don't like it; but
 13 in the same sense, I didn't like yours. I think we better
 14 have it submitted.
 15 MS. PLUBELL: All right.
 16 CHAIRWOMAN O'CONNOR: Since it's been referred
 17 to, I think we better have it as part of the record.
 18 Are you finished with your examination?
 19 MS. PLUBELL: Yes.
 20 CHAIRWOMAN O'CONNOR: I understand that
 21 Mr. Curtiss has a question.
 22 MR. CURTISS: Thank you, Madame Chairman.
 23 Mr. Kidd, sir --
 24 THE WITNESS: Yes, sir.
 25 MR. CURTISS: -- thank you for your testimony.

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1 We appreciate it. I have a couple of questions here. And
 2 I can only go by what I've read.
 3 THE WITNESS: I understand.
 4 MR. CURTISS: And we are well-prepared and
 5 have done a lot of work on this. So perhaps you can
 6 answer it; and if not, someone can answer it here. I
 7 assume someone has the answer -- "presume", not "assume".
 8 Okay. Mr. Kidd, I have here on page 24 of
 9 State's Response in Opposition for Barry Alan Beach's
 10 Application for Clemency, I have down the following here
 11 (quoted as read):
 12 "On January 20 of '83 after talking to Beach
 13 for several hours, Kidd told the Louisiana officers that
 14 Beach had confessed to three Louisiana" --
 15 THE WITNESS: That's not true.
 16 MR. CURTISS: Well, I was just reading here.
 17 And there must be some clarification somewheres. And I'm
 18 not saying you did or didn't. All I can go -- is with
 19 what I read.
 20 Okay. And that -- apparently, that he had
 21 confessed of the Louisiana homicides. Okay?
 22 And then in reviewing this (quoted as read):
 23 "The officers found that Beach did not confess
 24 to the three Louisiana homicides during interrogation,
 25 that it was Beach's attorney who told the officers that

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1 Beach had admitted to committing these three homicides.
 2 So in determining that, the information Kidd provided them
 3 was completely erroneous after interview of witnesses
 4 compared to the facts provided by Mr. Kidd to the evidence
 5 at the crime."
 6 In other words, they're saying that you came
 7 in and you told them that Mr. Kidd -- or, excuse me, sir,
 8 Mr. Beach had testified to the three homicides, that he --
 9 THE WITNESS: That's untrue, because there was
 10 no hearing on the 20th.
 11 MR. CURTISS: And asked you why this -- and
 12 you then said that you had not -- or that you -- Mr. Beach
 13 had not confessed to you and that the ploy was to have
 14 Mr. Beach confess to the Louisiana homicides in order to
 15 have a mental competence defense in Montana.
 16 THE WITNESS: Now, I can't understand that. I
 17 don't know -- understand that ploy. And I've tried to,
 18 and I don't understand it.
 19 MR. CURTISS: And I'm just reading.
 20 Certainly, this would come into being as far as
 21 credibility and integrity to we, the Board. You can
 22 understand that?
 23 THE WITNESS: Yes, yes, yes.
 24 MR. CURTISS: Okay. And is this other, this
 25 other here -- (quoted as read): "Commander Alfred Calhoun

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1 and Attorney Paul Kidd were present and witnesses these
 2 statements."
 3 And the statement was (quoted as read): "At
 4 that time, this particular statement was made at least two
 5 -- was at least two other times during the interview with
 6 Barry Beach."
 7 And this was that he knew about the -- or he
 8 had testified --
 9 THE WITNESS: That's true -- that's untrue.
 10 MR. CURTISS: Okay. He had testified, with
 11 your presence there, that he and Mr. Beach had stated that
 12 he had killed a young lady in Poplar, Montana.
 13 THE WITNESS: That's untrue.
 14 MR. CURTISS: Okay. All I'm going on is what
 15 I read.
 16 THE WITNESS: Okay.
 17 MR. CURTISS: And so I don't know: Where do
 18 we stand on this at -- in your mind?
 19 THE WITNESS: Well, there was no meeting on
 20 the 20th because I had no polygraph -- well, Barry had no
 21 polygraph hearing on the 20th. That's untrue. So
 22 whatever it said about the 20th is not true.
 23 MR. CURTISS: Okay, this was on, let's see,
 24 approximately 20 -- okay, this is when -- this is on
 25 January 11, 1983.

32 (Pages 125 to 128)

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1 THE WITNESS: Yeah. On January the 11th,
2 1983, I'm sure he did not say that.
3 MR. CURTISS: Okay. And this -- he was then a
4 witness to the statement. The interview of Barry Beach
5 continued until approximately 21:30 hours.
6 Okay, I just wanted to bring it up.
7 THE WITNESS: Thank you, sir.
8 MR. CURTISS: We can only, we can only judge
9 on what we read.
10 Okay, that's all I have. Thank you, Madame
11 Chairman.
12 CHAIRWOMAN O'CONNOR: I would just like,
13 before we excuse you, to clarify the chronology here. You
14 were hired after the confession of Barry Beach --
15 THE WITNESS: Yeah.
16 CHAIRWOMAN O'CONNOR: -- to the law
17 enforcement officers in Louisiana, correct?
18 THE WITNESS: Yes.
19 CHAIRWOMAN O'CONNOR: So you come, he's
20 already confessed, you then have a long --
21 THE WITNESS: Discussion with --
22 CHAIRWOMAN O'CONNOR: -- meeting with him,
23 right.
24 Do you come out of that meeting telling
25 Louisiana law enforcement officers that he has confessed

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1 to you to these other three homicides?
2 THE WITNESS: I never do that. I never do
3 that.
4 CHAIRWOMAN O'CONNOR: Well, whether you ever
5 do it, did you hear?
6 THE WITNESS: No, I did not hear.
7 CHAIRWOMAN O'CONNOR: Okay. So all of this,
8 from your perspective, this is all --
9 THE WITNESS: It's just -- this is all
10 poppycock.
11 CHAIRWOMAN O'CONNOR: Well, it's not only
12 poppycock --
13 THE WITNESS: Perjury, yeah.
14 CHAIRWOMAN O'CONNOR: -- it's lies, according
15 to you.
16 Okay. So then that whole thing that flows
17 from that, you say none of that happened.
18 THE WITNESS: That's true.
19 CHAIRWOMAN O'CONNOR: But you do say there
20 were hotspots on the polygraph that you retained, he
21 couldn't exonerate him -- your guy couldn't exonerate him
22 from that with his polygraph, but no statements were made
23 -- no confessions were made in front of you --
24 THE WITNESS: Absolutely not.
25 CHAIRWOMAN O'CONNOR: -- to the three in

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1 Louisiana or to the --
2 THE WITNESS: (Shaking head negatively.)
3 CHAIRWOMAN O'CONNOR: So do you have any
4 knowledge, then, as to how the allegations that these
5 three homicides in Louisiana were committed by Barry Beach
6 came forth?
7 They weren't there when you arrived and they
8 were there after you arrived, correct?
9 THE WITNESS: Well, I understand that. And I
10 understand, also, that Mr. Wilson has confessed of the --
11 the federal people have arrested Mr. Wilson under the
12 pretext of DNA. And he --
13 CHAIRWOMAN O'CONNOR: Who's Mr. Wilson? What
14 are you talking about?
15 THE WITNESS: Well, he's the man who's been
16 arrested for the murder of Kathy Whorton.
17 CHAIRWOMAN O'CONNOR: In Louisiana.
18 THE WITNESS: In Louisiana.
19 CHAIRWOMAN O'CONNOR: Okay, okay.
20 THE WITNESS: And I don't understand that --
21 from that standpoint, it's just none of it could be true
22 because --
23 CHAIRWOMAN O'CONNOR: Oh, no, I understand
24 that. I understand that these were confessions, they were
25 false confessions. That isn't my question.

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1 My question is: You arrived, and there had
2 been a confession to the Beach murder in Montana. There
3 was at that time no confession to the three murders in
4 Louisiana, correct?
5 THE WITNESS: Never, never.
6 CHAIRWOMAN O'CONNOR: Well, there wasn't when
7 you arrived?
8 THE WITNESS: There wasn't when I arrived.
9 CHAIRWOMAN O'CONNOR: And you're also saying
10 there also wasn't --
11 THE WITNESS: There wasn't any after I
12 arrived.
13 CHAIRWOMAN O'CONNOR: Okay. And so do you
14 know, then, from what vapors this allegation that Barry
15 Beach murdered these three Louisiana woman arose?
16 THE WITNESS: No, I do not.
17 CHAIRWOMAN O'CONNOR: You have no knowledge?
18 THE WITNESS: No, I do not.
19 CHAIRWOMAN O'CONNOR: And you remember this
20 clearly?
21 THE WITNESS: I remember it clearly.
22 CHAIRWOMAN O'CONNOR: Okay, I get it. You
23 have no more questions?
24 MR. CAMIEL: No more questions.
25 Do you have any more question?

33 (Pages 129 to 132)

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1 MS. PLUBELL: No.
 2 CHAIRWOMAN O'CONNOR: Okay, this witness can
 3 be excused.
 4 Call your next witness, please.
 5 MR. CAMIEL: Madame Chairman.
 6 CHAIRWOMAN O'CONNOR: Yes.
 7 MR. CAMIEL: The next witness will be Sissy
 8 Atkinson.
 9 CHAIRWOMAN O'CONNOR: Okay.
 10 MR. CAMIEL: And she's separately kept from
 11 all the other witnesses, so it may take a minute.
 12 CHAIRWOMAN O'CONNOR: But they're getting her?
 13 MR. CAMIEL: Yes.
 14 CHAIRWOMAN O'CONNOR: I anticipate that we
 15 will cease for the lunch hour at approximately 11:30. I'm
 16 hoping we can get her testimony in. But we're doing that
 17 so that the people here have time to set up whatever they
 18 have to set up about this Vision Net thing for the witness
 19 immediately after the break.
 20 DOTTIE SUE ATKINSON, WITNESS, SWORN
 21 CHAIRWOMAN O'CONNOR: You may proceed.
 22 MR. CAMIEL: Thank you.
 23 DIRECT EXAMINATION
 24 BY MR. CAMIEL:
 25 Q. Ma'am, could you state your full name for the

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1 record and spell your last name?
 2 A. Dottie Sue Atkinson, A-T-K-I-N-S-O-N.
 3 Q. How old are you, ma'am?
 4 A. Fifty-one.
 5 Q. And where do you live?
 6 A. Poplar, Montana.
 7 Q. And you lived in Poplar, Montana, in 1979; is
 8 that right?
 9 A. Yes, that's correct.
 10 Q. Is that where you were born?
 11 A. Yes.
 12 Q. And you went to high school at Poplar High
 13 School?
 14 A. Yeah.
 15 Q. And I take it you were acquainted with Kim
 16 Nees.
 17 A. I knew who she was.
 18 Q. Were you friends with her?
 19 A. Yeah.
 20 Q. You considered her a friend?
 21 A. Yeah.
 22 Q. Now, you have a daughter, is that right, named
 23 "Belle"?
 24 A. Yes.
 25 Q. And the father of that daughter is Alex

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1 Trottier?
 2 A. Trottier.
 3 Q. Yes.
 4 A. Yes.
 5 Q. When was Belle born?
 6 A. December 4, 1978, in Orange, California.
 7 Q. Now, you were also friends with a woman named
 8 Maude Kirn?
 9 A. Yes.
 10 Q. Or was her name Clark back in '79?
 11 A. Maude Grayhawk is how I've always known her.
 12 Q. And with a woman named Jordis Ferguson?
 13 A. Yes.
 14 Q. Joanne Jackson?
 15 A. Yes.
 16 Q. Roberta Jackson?
 17 A. Yes.
 18 Q. Rhea Red Dog?
 19 A. "Rhea" Red Dog?
 20 Q. Yes.
 21 A. Yes.
 22 Q. Kara Red Dog?
 23 A. Yes.
 24 Q. And all of those women that I've described you
 25 would hang out with back in the late '70s; is that right?

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1 A. Maybe just Rhea. She was more my age, so the
 2 other girls were all younger than I was.
 3 Q. You hung out with Maude Grayhawk, didn't you?
 4 A. Yeah -- well, not all the time, no.
 5 Q. There's an area just on the west side of
 6 Poplar near the river, a little park, is that right, near
 7 the train bridge?
 8 A. Yeah.
 9 Q. Just west of the high school on Highway 2?
 10 A. Yeah -- east, I would say. The high school is
 11 here, and the park's there, so it would be east --
 12 (gesturing.)
 13 Q. And you've been there many times in the late
 14 '70s?
 15 A. No, I didn't make it a habit of going there.
 16 Q. Is that a place where you would go and party
 17 with your friends?
 18 A. No.
 19 Q. Now, in the, in the late -- well, let's turn
 20 to June of 1979. Okay?
 21 A. Hm-hmm.
 22 Q. And, in particular, the night of June 15th of
 23 1979. Where were you living at the time?
 24 A. With my mother in Poplar.
 25 Q. In Poplar. Where in Poplar?

34 (Pages 133 to 136)

1 A. Right beside our bar. My mom owned a bar.
 2 **Q. Which bar is that?**
 3 A. Baracker's Bar.
 4 **Q. And did you have a car?** }
 5 A. No, not at that time.
 6 **Q. Okay. When you would go out to go around**
 7 **places, would you use Maude Kirn's car?**
 8 A. No.
 9 **Q. Did you ever use Maude Kirn's car?**
 10 A. No.
 11 **Q. Would you go riding around with Maude in her**
 12 **car?**
 13 A. No. She was a friend of my sister, Lois.
 14 **Q. So you would never, ever ride in Maude's car?**
 15 A. I did one night, yes.
 16 **Q. And would that night be June 15th of 1979?**
 17 A. Yeah; I think, yeah.
 18 **Q. The night that Kim Nees was killed.**
 19 A. Okay, yeah; that night, I did, yes.
 20 **Q. And that was the one and only time you ever**
 21 **rode in Maude's car?**
 22 A. Correct.
 23 **Q. And you rode in Maude's car that night because**
 24 **the two of you were out together?**
 25 A. They come and got -- Maude and Joanne and

1 Roberta come and got me, and they asked me if I would buy
 2 them a six-pack of beer because I was older than they all
 3 were.
 4 **Q. So we have Maude's car. And Maude's there,**
 5 **right?**
 6 A. Hm-hmm, driving.
 7 **Q. Maude's driving?**
 8 A. (Nodding head affirmatively.)
 9 **Q. And you mentioned "Roberta"?**
 10 A. Hm-hmm.
 11 **Q. That's Roberta Jackson?**
 12 A. (Nodding head affirmatively.)
 13 **Q. And you mentioned a "Joanne"?**
 14 A. Hm-hmm.
 15 **Q. Is that Joanne Jackson?**
 16 A. Right.
 17 **Q. Okay. And yourself?**
 18 A. Right.
 19 **Q. Anyone else?**
 20 A. No.
 21 **Q. Jordis Ferguson?**
 22 A. No.
 23 **Q. Either of the Red Dog sisters?**
 24 A. No.
 25 **Q. And the plan was that you were asked to buy**

1 **beer because you were older than the other girls?**
 2 A. Correct.
 3 **Q. Okay. What kind of beer did they want you to**
 4 **buy?**
 5 A. Oh, I can't remember that.
 6 **Q. Was it Schlitz beer?**
 7 A. I don't think so, no.
 8 **Q. Or Miller?**
 9 A. (Shaking head negatively.)
 10 **Q. You don't remember?**
 11 A. No, I don't.
 12 **Q. Okay. Where did you go to purchase the beer?**
 13 A. To the Buck Horn Cafe and Bar.
 14 **Q. And that's located in downtown Poplar?**
 15 A. Correct.
 16 **Q. And is that near the Bum Steer?**
 17 A. Hm-hmm, it's the same street.
 18 **Q. And the Bum Steer is another bar?**
 19 A. (Nodding head affirmatively.)
 20 **Q. And do you recall that -- now, this was a**
 21 **Friday night, wasn't it, the 15th?**
 22 A. Oh, I don't know if this was on a Friday
 23 night. It was too far, it was too far long ago that I
 24 can't remember it, really.
 25 **Q. Okay. Was it crowded in downtown Poplar that**

1 **night?**
 2 A. I don't know. The summertime, yeah, it
 3 probably was.
 4 **Q. All right. And where did you actually --**
 5 **which place did you actually go into to purchase the beer?**
 6 A. The Buck Horn Bar.
 7 **Q. Okay. Did you also go into the Bum Steer?**
 8 A. No.
 9 **Q. Did you ever go into the Bum Steer?**
 10 A. Oh, yeah.
 11 **Q. Do you know who Bobbie Ryan is?**
 12 A. Sure.
 13 **Q. Who is she?**
 14 A. She used to own the Bum Steer.
 15 **Q. Okay. And she owned it back in 1979, didn't**
 16 **she --**
 17 A. I'm sure she did, yeah.
 18 **Q. -- along with her husband?**
 19 **And were you friendly with Bobbie Ryan?**
 20 A. Hm-hmm.
 21 **Q. She would have no reason to say anything**
 22 **untrue about you, would she?**
 23 A. I mean I wouldn't think so.
 24 **Q. No grudge with her, right?**
 25 A. Her and I went and got married in Coeur

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1 d'Alene, Idaho.
 2 **Q. I'm sorry?**
 3 A. Her and I and her boyfriend and my husband --
 4 or my boyfriend at the time, we both -- all went to Coeur
 5 d'Alene, Idaho, and got married.
 6 **Q. So you're pretty close to her?**
 7 A. Hm-hmm.
 8 **Q. No bad blood?**
 9 A. No.
 10 **Q. Okay. And it's your testimony that on June**
 11 **15th, this day that you're out with Maude in Maude's car,**
 12 **you were never in the Bum Steer?**
 13 A. No, I was not. I don't think that night I
 14 was.
 15 **Q. So do you know what time it was that you went**
 16 **to the Buck Horn to get beer for these girls?**
 17 A. No, I don't. It was in the evening. That's
 18 all I know.
 19 **Q. Was it still light out or was it dark?**
 20 A. Oh, it was early evening.
 21 **Q. Early evening?**
 22 A. About 9 - 10-ish, or so.
 23 **Q. Okay. Did you just go in and buy the beer and**
 24 **come right back out, or did you just stay in the Buck Horn**
 25 **for awhile?**

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1 **Q. Now, you said that you saw this car accident**
 2 **and you went back in and told the owner that his car had**
 3 **been hit; is that right?**
 4 A. Right.
 5 **Q. You came back out. And when you came back**
 6 **out, you gave the beer to the other girls?**
 7 A. (Nodding head affirmatively.)
 8 **Q. Isn't it also true that you saw Kim Nees when**
 9 **you were out there at the Bum Steer?**
 10 A. No, I never seen her at the Bum Steer.
 11 **Q. Well, outside in downtown Poplar, when you**
 12 **were out there to purchase the beer and you came out and**
 13 **saw the accident, did you see the Nees pickup truck?**
 14 A. Yes, the pickup truck going down the street,
 15 but I didn't --
 16 **Q. Now, that pickup, that pickup truck, do you**
 17 **remember what color it was?**
 18 A. Kind of a lime green.
 19 **Q. Very distinctive, right?**
 20 A. Hm-hmm.
 21 **Q. Everybody in Poplar knew whose truck that was?**
 22 A. I'm sure.
 23 **Q. Because nobody else had a truck that color in**
 24 **Poplar?**
 25 A. I don't believe so.

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1 A. I went in and bought the beer and came out.
 2 **Q. Okay. Do you know how much you bought?**
 3 A. A six-pack.
 4 **Q. Cans, or -- was it cans?**
 5 A. Cans.
 6 **Q. "Yes"?**
 7 A. Yes.
 8 **Q. And so you come back out with the beer, and**
 9 **then what happens?**
 10 A. When I was coming out of the door of the bar,
 11 there was an individual in the car that ran into a
 12 vehicle, and I seen it. I went back into the bar and told
 13 Frank Marottek - he was the person that owned the bar -
 14 that some individual had ran into his vehicle. And so he
 15 called the cops. I went back, I went back and got into
 16 the car with those girls, and the cops came - and it was
 17 ^{Maude's dad} to investigate that accident. And so I just
 18 told Maude to take me home because I didn't want to be
 19 riding around with them while they were drinking because I
 20 was -- I didn't want to get charged with a contributing to
 21 the delinquency of a minor.
 22 **Q. You weren't concerned about buying beer for**
 23 **minors, but you didn't want to drive around with minors**
 24 **who were drinking?**
 25 A. No.

*only Schlitz
was found in
cans at the
crime scene*

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1 **Q. So you said you saw the Nees pickup truck in**
 2 **downtown Poplar going down the street?**
 3 A. Hm-hmm, going towards Highway 2.
 4 **Q. Toward Highway 2?**
 5 A. Hm-hmm.
 6 **Q. And did you see who was driving it?**
 7 A. No, I didn't, because that was the same time
 8 -- the accident and everything all took place at once.
 9 **Q. Okay. And you also saw somebody chasing after**
 10 **the Nees pickup truck, didn't you?**
 11 A. Well, I seen the truck go by and somebody
 12 running. I can't say that they were chasing that pickup,
 13 but that's what I seen.
 14 **Q. Didn't you tell the detectives and (the FBI on**
 15 **June 16th) that you saw somebody chasing the Nees pickup**
 16 **truck?**
 17 A. Well, chasing after the truck, yeah.
 18 **Q. Okay. So somebody appeared to be chasing**
 19 **after the truck?**
 20 A. Right.
 21 **Q. And it was a man?**
 22 A. Maybe. I don't know. I had too many things
 23 going on with that wreck, you know, and me trying to get
 24 out of there before Maude's dad come, because he was a cop
 25 and I didn't want to get in trouble.

1 Q. Now, "Maude". We're talking about Maude Kirn,
 2 right?
 3 A. Right.
 4 Q. And her father is Steve Grayhawk, Sr.?
 5 A. Right.
 6 Q. And he was a Poplar police officer?
 7 A. Correct.
 8 Q. And he was on duty that night?
 9 A. Correct.
 10 Q. Now, so when you saw that truck, it's your
 11 testimony you did not see the driver?
 12 A. No, I did not.
 13 Q. Now, so you get back in the car with Maude.
 14 And it's the same group of girls again back in the car?
 15 A. Yes.
 16 Q. Now, you said you had them take you straight
 17 home.
 18 A. Right.
 19 Q. Okay. So what time do you get home?
 20 A. Right about a half-hour after that accident.
 21 Q. Okay. Do you know what time that would have
 22 been?
 23 A. No. Ten-thirty - eleven, something around
 24 there.
 25 Q. And you get dropped at your house?

1 A. Hm-hmm.
 2 Q. And do you stay in touch with her?
 3 A. She calls me. She was calling me
 4 periodically. (I never called her; she called me all the
 5 time.
 6 Q. And have you talked to her about this hearing
 7 that's coming up?
 8 A. No. What I did talk to her about was (Dateline)
 9 had come into town that day and I did an interview with
 10 them.
 11 Q. Okay. You did an interview with Dateline?
 12 A. Yes, I did.
 13 Q. Okay. And did you tell Maude about that?
 14 A. Yeah.
 15 Q. Did you tell her what they were investigating?
 16 A. Yeah.
 17 Q. Okay. And did you tell her that this had to
 18 do with the Kim Nees murder?
 19 A. Yes, I did.
 20 Q. Okay. And did you tell her that you denied
 21 being involved in the Kim Nees murder?
 22 A. Excuse me?
 23 Q. Did you tell Maude that you told Dateline you
 24 had nothing to do with it?
 25 A. Well, yeah.

1 A. Yes, I did.
 2 Q. Who's at your house when you get home?
 3 A. My mother.
 4 Q. And her name is?
 5 A. Belle Atkinson.
 6 Q. Anybody else home?
 7 A. No -- and my little girl. She babysat my
 8 little girl until I got home that night.
 9 Q. All right. And you never went back out again
 10 that night?
 11 A. No, I did not.
 12 Q. So there's no way anybody should say that they
 13 saw you in the Bum Steer between 12 and midnight on that
 14 night --
 15 A. No.
 16 Q. -- or 12 and 2 a.m.?
 17 A. I don't believe so. I went home.
 18 Q. Okay. Is it possible you went back out?
 19 A. No, I did not.
 20 Q. Have you talked -- when's the last time you
 21 talked to Maude Kirn or Grayhawk?
 22 A. On my birthday.
 23 Q. Which was when?
 24 A. January 24th.
 25 Q. Of this year?

1 Q. Okay. And what did Maude say to you?
 2 A. That she was going to interview with them if
 3 they wanted her to.
 4 Q. Okay.
 5 A. And that's the last time I heard from her was
 6 that day.
 7 Q. Now, let's go back to 1979. Okay?
 8 The next day or the next morning, the day of June
 9 16th, when did you first find out that Kim Nees had been
 10 murdered?
 11 A. My mother and I and my brother Denver's
 12 girlfriend was sitting at the table. We heard it about --
 13 we heard about it on the scanner. And so "my sister and I
 14 got in a vehicle and we go down there, and -- "
 15 Q. Now, when you say you drove down there, where
 16 did you drive to?
 17 A. She drove. "My sister-in-law had the vehicle.
 18 We drove down on Highway 2. There's a whole line of cars
 19 because that's where -- on the other side is where the
 20 Nees pickup was. And so there was a whole line of cars on
 21 the highway. And Rose and I were sitting there.
 22 And to be honest with you, I told Rose right then
 23 and there that I thought it was Pam that they had found."
 24 We didn't know which Nees girl had been found."
 25 Q. So when you went down there, do you know what

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1 **time of day it was that you went down there?**

2 A. I don't know, nine in the morning. I don't
3 know. I don't, I don't keep looking at the clock whatever
4 I do.

5 **Q. At that point you went down there, there were**
6 **lots of --**

7 A. There was several, several people down there.

8 **Q. Okay. People looking at the police activity?**

9 A. Right.

10 **Q. And the Nees pickup truck was still down in**
11 **the park?**

12 A. Correct.

13 **Q. Okay. And was Kim Nees's body still in the**
14 **river?**

15 A. I don't know at that point. We were just
16 sitting there waiting. And then pretty soon, here comes
17 Pam, Kim's younger sister, walking up. And she jumped in
18 with my sister-in-law Rose and I. And that's how I knew
19 it was Kim -- or -- Kim.

20 **Q. Now, later that day, you were interviewed by**
21 **the detectives, weren't you?**

22 A. Yes, I was.

23 **Q. Okay. And what did they interview you about?**

24 A. Asking me what I -- where I had been the night
25 before, and stuff, like they questioned everybody else, I

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1 **the morning that they discovered the murder when they were**
2 **asking you where you were?**

3 A. I told them I was at home --

4 **Q. Okay.**

5 A. -- with my mother and my daughter.

6 **Q. Now, you were interviewed again a few days**
7 **later, weren't you?**

8 A. By?

9 **Q. On June 21st, did the FBI come back or did --**
10 **excuse me, did Undersheriff Mahlum come back and interview**
11 **you? Do you remember being -- talking to him a few days**
12 **after the murder?**

13 A. No. I remember talking to a redheaded FBI
14 guy.

15 **Q. Okay. And, again, when you were interviewed**
16 **again, you didn't say anything about having Maude take you**
17 **home after you bought beer for the girls.**

18 A. Well, I don't know. That's what I did,
19 though. I don't know.

20 **Q. You didn't tell the FBI or the sheriff, either**
21 **on June 16th or June 21st, what you did later in the**
22 **evening, did you?**

23 A. Well, you asked me, and I told you what I had
24 done.

25 **Q. I understand. I'm not talking about what you**

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1 guess.

2 **Q. Did you tell the police when you were**
3 **interviewed on June 16th that after you bought beer, you**
4 **had Maude take you home?**

5 A. Yeah, I --

6 **Q. Have you seen your statement that you gave to**
7 **the FBI back on June 16, 1979?**

8 A. No, I haven't seen it since then when I gave
9 it.

10 **Q. Okay. Would you like to look at it?**

11 A. Sure.

12 MR. CAMIEL: If I could approach.

13 CHAIRWOMAN O'CONNOR: Yes.

14 **Q. (By Mr. Camiel) Have you had a chance to read**
15 **it?**

16 A. Yeah.

17 **Q. That statement doesn't say anything about**
18 **going home after you purchased the beer for the girls,**
19 **does it?**

20 A. Oh, I don't know. I didn't really look for
21 that. But that's what happened. I didn't put that in
22 this --

23 **Q. Okay.**

24 A. -- but that's where I did go.

25 **Q. All right. But you didn't tell the FBI that**

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1 **did, but what you told the FBI.**

2 A. What I forgot about -- leaving out that I had
3 went home?

4 **Q. Sure.**

5 A. Yeah. Well, maybe I did leave that out, but
6 that is what happened.

7 **Q. Well, would it be fair to say that your memory**
8 **was better about the events back in 1979 than it is today?**

9 A. Yeah.

10 **Q. Okay. So if you didn't tell the FBI or**
11 **Undersheriff Mahlum that you went home after buying the**
12 **beer, is it possible you didn't go home?**

13 A. No, I did go home.

14 **Q. Okay. Now, you're -- you've indicated you've**
15 **stayed in, you've stayed in contact with Maude; is that**
16 **right?**

17 A. She has called me; I have not called her.

18 **Q. Okay. Do you have any kind of bad blood with**
19 **Maude Grayhawk?**

20 A. No.

21 **Q. Any reason she would make up anything that was**
22 **untrue about your activities on the night of June 15,**
23 **1979?**

24 A. I wouldn't believe so. I don't think so.

25 **Q. Let me ask you about a statement that Maude**

1 gave the attorney generals when they interviewed her just
2 a couple months ago. Okay?

3 A. Hm-hmm.

4 Q. She said everyone went into the Buck Horn, but
5 that you disappeared and she never saw you again that
6 night.

7 A. I went home. It was just down the street. I
8 live right by Bum Steer.

9 Q. Okay. So you didn't even tell them you were
10 going home?

11 A. No. I told them -- I went and gave them the
12 beer. I didn't get back in the car with them. I said,
13 "I'm getting out of here because Stevey's coming," and I
14 walked home. It was just around the corner and down the
15 block.

16 Q. Okay.

17 A. I live down the street from the Bum Steer Bar.

18 Q. Do you know who Calvin First is?

19 A. I know the name. I would have to see his
20 face.

21 Q. Okay. Did you know a Poplar police officer,
22 Calvin First?

23 A. Like I said, if I seen his face -- I know that
24 I -- the name is familiar with me, but there's a lot of
25 "Firsts", and I don't know if I -- (pause.)

1 Q. Well, a Deputy First who was on duty during
2 the early morning hours --

3 MS. PLUBELL: Madame Chairperson, at this
4 point I need to ask for a clarification to know whether I
5 should make an objection, because Calvin First was listed
6 on their witness list originally, but we have been -- in
7 the witness list that Mr. Camiel gave us last week, he
8 indicated that he will not be testifying. And he clearly
9 was able to testify. He was subpoenaed. And so I don't
10 think it's appropriate to get into what Mr. First said.

11 CHAIRWOMAN O'CONNOR: Will he not be coming?
12 I was under the impression he would be.

13 MR. CAMIEL: He is ill, so he won't be coming.

14 CHAIRWOMAN O'CONNOR: Well, I mean when you're
15 going to elicit hearsay here after we've been so specific
16 about how we want the underlying declarants --

17 MR. CAMIEL: I understand.

18 CHAIRWOMAN O'CONNOR: -- I think it's not good
19 form, Counsel, to do this if he's not coming, especially
20 after you told us he is coming.

21 So where is he and how sick is he and why
22 isn't he here?

23 MR. CAMIEL: He's in Poplar and he's not able
24 to travel.

25 CHAIRWOMAN O'CONNOR: Well, I think we need, I

1 think we need the underlying declarations, as we have
2 said.

3 MR. CAMIEL: I appreciate that. And I'm not
4 introducing his, I'm not introducing his statement.

5 CHAIRWOMAN O'CONNOR: Well, you are, though,
6 through hearsay. Of course, you are.

7 MR. CAMIEL: I'm asking her whether she did
8 something that, that -- on the night of June 16th.

9 CHAIRWOMAN O'CONNOR: Well, don't testify to
10 what the person, had you gotten him here as you said you
11 were going to get him here, would have said. Just ask
12 your questions, straight questions, without eliciting
13 responses through hearsay. That is really hearsay from
14 you, which is even worse.

15 Q. (By Mr. Camiel) At any point during the
16 early-morning hours of June 16th of 1979, did you drive
17 Maude's car out of the park down by the train bridge and
18 back up onto Highway 2 and into town?

19 A. No, I did not.

20 Q. Now, a couple of days after Kim Nees was
21 murdered, you had a conversation with Maude, didn't you?

22 A. I don't know. You tell me.

23 Q. Do you recall Maude calling you up and telling
24 you that she found Kim Nees's necklace down in the
25 riverbank park?

1 A. Yes, she did. She called me.

2 Q. Okay. And she told you that she had found --
3 first of all, she told you that the investigators who were
4 investigating the crime weren't very good, didn't she?

5 A. Yes.

6 Q. She ridiculed the investigators?

7 A. Yeah.

8 Q. Made fun of them?

9 A. Oh, I don't know.

10 Q. And then she told you that she had Kim Nees's
11 necklace, didn't she?

12 A. Yes.

13 Q. Diamond necklace.

14 A. Right.

15 Q. Okay. Did you ask her how she got it?

16 A. Well, I asked her how she knew it was Kim's.

17 Q. Okay.

18 A. And at the same time, my brother, Bobby, he
19 was the chief of police. And he had just come into my
20 mom's house. And they were sitting there visiting my mom
21 and Bobby. And the phone rang, and it was Maude, and then
22 she proceeded to tell me that she had found a diamond
23 necklace down by the river. And she said the
24 investigators didn't look very good.

25 I said, "Well, how do you know it's Kim's necklace?"

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1 And she said, "Because Kim got it for Christmas."
 2 And so I told my brother (Bobby) and he told her to
 3 wait there. And I guess he went and got it, and was
 4 supposed -- whatever they did with it after that, I don't
 5 know.
 6 **Q. Did Maude tell you whether she was with anyone**
 7 **when she came upon Kim's necklace?**
 8 A. No.
 9 **Q. You know a man named Carl Four Star, don't**
 10 **you?**
 11 A. Junior or senior?
 12 **Q. I think it's junior. Somebody -- how old is**
 13 **the senior?**
 14 A. I don't know.
 15 **Q. Was there a Carl Four Star who worked at A & S**
 16 **Industries with you?**
 17 A. Not with me, but --
 18 **Q. But he worked there?**
 19 A. He worked at A & S, yeah.
 20 **Q. At the same time that you worked there?**
 21 A. I think so.
 22 **Q. You think so?**
 23 A. Hm-hmm.
 24 **Q. And about the same time your boyfriend, Stubby**
 25 **Balbinot, worked there?**

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1 **you remember a guy named Hoss that worked at A & S**
 2 **Industries?**
 3 A. I think that's the Red Eagle guy.
 4 **Q. Okay. Did he work near you?**
 5 A. I know he worked there, but I don't remember
 6 him working with me. Because we worked in the corner of a
 7 Quonset. And we had two edge cord tables, and nobody else
 8 worked in that area with us. There was three to a table.
 9 **Q. Would you talk to your coworkers while you**
 10 **were working?**
 11 A. The people I worked on my table with, yes.
 12 **Q. Okay. And you would have -- while you were**
 13 **doing your job, you would have conversations with them?**
 14 A. Well, yeah.
 15 **Q. You didn't have a problem talking to them?**
 16 A. No.
 17 **Q. It wasn't too noisy so that you couldn't hear**
 18 **them?**
 19 A. Uh-uh.
 20 **Q. "No"?**
 21 A. I don't think so.
 22 **Q. So you were able to hear what your coworkers**
 23 **were saying?**
 24 A. No. I don't understand where you -- what you
 25 mean with all this.

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1 A. Yes.
 2 **Q. And you all worked kind of in the same area of**
 3 **the plant; is that right?**
 4 A. No. We were -- three of us worked on one
 5 machine. He didn't do the job I did --
 6 **Q. Okay. Didn't work --**
 7 A. -- or the job Stub Balbinot did, either.
 8 **Q. Okay.**
 9 A. I can't remember what he did.
 10 **Q. He didn't work at the same table as you, but**
 11 **he worked somewhere nearby?**
 12 A. No, he never worked nearby me, no.
 13 **Q. You don't recall that?**
 14 A. No.
 15 **Q. Okay. Do you recall --**
 16 A. There was three to a crew, and there was two
 17 tables.
 18 **Q. Do you recall a guy named Lawrence Red Eagle?**
 19 A. Lawrence Red Eagle, does he have a nickname?
 20 **Q. I don't know. When you worked at A & S**
 21 **Industries, did you ever talk to (Carl)?**
 22 A. Not by myself I never did, no. The only time
 23 I ever talked to him is if I was with Stub and Stub talked
 24 to him. But I never myself ever talked to him.
 25 **Q. All right. Was there a guy named Hoss? Do**

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1 **Q. Okay. I just want to know whether or not it**
 2 **was so noisy at the plant that you couldn't talk to**
 3 **somebody across the table.**
 4 A. Well, it was very noisy. And then if you
 5 worked out -- and you clamped the cords, that was -- a
 6 clamping machine, that was noisy. Of course, it's noisy
 7 there.
 8 **Q. But there were times when it wasn't noisy?**
 9 A. We had to yell sometimes to get people's
 10 attention.
 11 **Q. Okay.**
 12 A. But, yeah, it was noisy. But I worked with
 13 two edge cord tables and those are very noisy. And so are
 14 the stampers -- stamping -- that you stamp with -- the
 15 edge cord together.
 16 **Q. Did you have to wear earmuffs?**
 17 A. We could if we wanted to.
 18 **Q. But you didn't?**
 19 A. No.
 20 **Q. Okay. Now, going back to Carl Four Star, any**
 21 **reason that you can think of why he would make anything up**
 22 **about you?**
 23 A. I don't think so.
 24 **Q. You never had any incident with him where**
 25 **there was bad blood or a grudge between you?**

1 A. No, I don't believe so. I never, ever did
 2 talk to him by myself because -- only if William Stubby
 3 was there.
 4 **Q. So you never talked to him about the Kim Nees**
 5 **murder?**
 6 A. No.
 7 **Q. And there's no reason you can think of why he**
 8 **would say that you did if you didn't?**
 9 A. No, I don't.
 10 **Q. Now, you know a woman named Vonnie Brown?**
 11 A. Vonnie?
 12 **Q. Yes.**
 13 A. Yes.
 14 **Q. Who is she?**
 15 A. She's an Indian girl from Poplar.
 16 **Q. Okay.**
 17 COURT REPORTER: I'm sorry, I didn't hear your
 18 answer.
 19 THE WITNESS: She's an Indian girl from
 20 Poplar.
 21 **Q. (By Mr. Camiel) And she's a friend of yours,**
 22 **isn't she?**
 23 A. I don't know, I don't think I'd call her a
 24 "friend".
 25 **Q. An acquaintance?**

1 A. Acquaintance.
 2 **Q. Somebody who has visited you from time to**
 3 **time?**
 4 A. Where?
 5 **Q. Did she ever visit you in Great Falls?**
 6 A. Hm-hmm.
 7 **Q. "Yes"?**
 8 A. Yes.
 9 **Q. In 2004, she visited you in Great Falls,**
 10 **didn't she?**
 11 A. Yes, she did.
 12 **Q. And that's where you were staying at the time?**
 13 A. I was living there.
 14 **Q. Okay. You had an apartment there?**
 15 A. Right.
 16 **Q. And she came to your apartment in June of 2004**
 17 **two or three times, didn't she?**
 18 A. A couple times, yeah.
 19 **Q. Okay. And during that time period, you were**
 20 **using drugs, weren't you?**
 21 A. Yes, I was.
 22 **Q. What were you using?**
 23 A. OxyContin.
 24 **Q. Pretty heavily addicted?**
 25 A. Very much.

1 **Q. Using every day?**
 2 A. Yes.
 3 **Q. Multiple times a day?**
 4 A. Yes.
 5 **Q. And were there times where in June of 2004**
 6 **Vonnie Brown visited you when you were under the influence**
 7 **of OxyContin?**
 8 A. Well, yeah.
 9 **Q. Okay. Do you recall an occasion where she**
 10 **came to visit you in June of 2004 where you started to**
 11 **talk to her about the Kim Nees murder?**
 12 A. No, no.
 13 **Q. Were there times where you used the OxyContin**
 14 **and you would get high or intoxicated with it and then you**
 15 **couldn't remember things that happened?**
 16 A. Could you say that again?
 17 **Q. Sure. As a result of being high on OxyContin,**
 18 **would you sometimes not remember things that happened**
 19 **while you were high?**
 20 A. Yes.
 21 **Q. Okay. So sometimes you might have a**
 22 **conversation with someone while you're high and later**
 23 **couldn't remember the conversation?**
 24 A. Sometimes, maybe.
 25 **Q. Okay. And in 2004, that was one of those time**

1 **periods in your life where you were very heavily addicted**
 2 **to this OxyContin?**
 3 A. (Nodding head affirmatively.)
 4 **Q. "Yes"?**
 5 A. Yes.
 6 **Q. Okay. Now, you don't have any bad blood or**
 7 **any grudge with Vonnie Brown, do you?**
 8 A. Yes, I do.
 9 **Q. You do?**
 10 A. Yes.
 11 **Q. Did you in June of 2004?**
 12 A. Yeah, the last time she came to my house,
 13 because she stole all my husband's boxer shorts, all of
 14 our sweats. And I called her probation officer in
 15 Glasgow. She was not even supposed to be off the
 16 reservation. And I told them that I -- she asked to stay
 17 one night. I let her stay the night. And the next
 18 morning, I had a doctor's appointment. And I come back,
 19 and my neighbor told me she had been hauling out bags and
 20 bags of clothes. So I contacted her probation officer,
 21 and he had them, and he said that he retrieved them from
 22 her.
 23 **Q. Okay. So in June of 2004, was there an**
 24 **occasion Vonnie Brown showed up to visit you in Great**
 25 **Falls and you were extremely intoxicated on OxyContin?**

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- 1 A. No, not extremely intoxicated.
 2 **Q. Okay. You were intoxicated?**
 3 A. I was high, yes.
 4 **Q. And you can't remember everything that you**
 5 **talked to Vonnie Brown about?**
 6 A. I know I did not talk to Vonnie Brown about
 7 that.
 8 **Q. Okay. Do you remember everything you talked**
 9 **to her about?**
 10 A. Just about.
 11 **Q. Okay. And so you don't have any memory of**
 12 **saying to Vonnie Brown that you know who really killed Kim**
 13 **Nees?**
 14 A. No, I did not tell Vonnie Brown that.
 15 **Q. Do you remember asking Vonnie Brown, "Do you**
 16 **really want to know who did it?"**
 17 A. No, I did not.
 18 **Q. Okay. Do you remember telling Vonnie Brown**
 19 **that Maude was one of them?**
 20 A. No, I did not.
 21 **Q. Okay.**
 22 A. I don't know that, so how can I say that?
 23 **Q. Well, I'm asking you whether you did say that.**
 24 A. No, I did not.
 25 **Q. Okay.**

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- 1 A. I did not discuss it whatsoever with her at
 2 all.
 3 **Q. Do you have any recollection of telling Vonnie**
 4 **Brown that you were down at the train bridge --**
 5 A. I did not --
 6 **Q. -- on the night that Kim was killed?**
 7 A. No, I did not tell her that. My daughter was
 8 there all the time Vonnie was in my house. Maybe you
 9 should have had her come here, because she was there with
 10 everything we talked about; and so was my husband, Leslie
 11 Wright, but he's dead now. And she will tell you that Kim
 12 Nees's name did not come up one way or another.
 13 **Q. Who's Dunn O'Connor?**
 14 A. He's a farmer six miles north of Poplar.
 15 **Q. Okay. Somebody who lived in the Poplar area**
 16 **back in 1979?**
 17 A. Hm-hmm.
 18 **Q. And you were friends with him back then?**
 19 A. Yes.
 20 **Q. You would see him from time to time?**
 21 A. (Nodding head affirmatively.)
 22 **Q. "Yes"?**
 23 A. Yes.
 24 **Q. And did you see him in downtown Poplar on the**
 25 **evening of June 15, 1979?**

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- 1 A. I don't remember seeing him.
 2 **Q. Okay. During the early morning hours of June**
 3 **16th at about 5 a.m., did you call Dunn O'Connor up?**
 4 A. I don't think I did.
 5 **Q. It's possible that you did?**
 6 A. No, I don't think I -- I was still sleeping by
 7 then.
 8 **Q. Now, would Dunn O'Connor have any reason that**
 9 **you can think of to fabricate that you called him up at 5**
 10 **a.m. on the morning of June 16th of 1979?**
 11 A. I never did call him.
 12 **Q. Can you think of any reason why he would make**
 13 **that up?**
 14 A. No, I don't.
 15 **Q. Okay. And so you deny that you called him at**
 16 **5 a.m. to tell him that Kim was -- that Kim's body was in**
 17 **the river?**
 18 A. At five in the morning? I don't think she was
 19 found that early.
 20 **Q. Well, that's not the question.**
 21 A. Well, no, I did not. Sorry.
 22 **Q. Did you call him at any time to tell him that**
 23 **Kim's --**
 24 A. No, I don't believe --
 25 **Q. -- body was in the river?**

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- 1 A. No, I don't believe I did.
 2 **Q. Okay.**
 3 A. I don't know why I would.
 4 **Q. Now, a little bit earlier, you said that you**
 5 **were, you were a friend of Kim's.**
 6 A. No, I was not a friend of Kim's. She was way
 7 younger than I was. I was 22 and she was 18, but she was
 8 friends with my ¹sister-in-law Sissy Atkinson."
 9 **Q. I see.**
 10 A. Another Sissy Atkinson.
 11 **Q. All right.**
 12 A. They graduated together.
 13 **Q. But you told the attorney general, you told**
 14 **the attorney general a couple months ago when they**
 15 **tape-recorded an interview with you that you didn't even**
 16 **know Kim.**
 17 A. I know who Kim is, but I mean I never, ever
 18 interacted with her, or anything, ever. I never talked to
 19 her before.
 20 **Q. Okay. So did you tell the attorney general,**
 21 **quote (quoted as read): "No, I didn't even know Kim. I**
 22 **didn't even know her. She was quite, quite a lot younger**
 23 **than me".**
 24 A. Yeah.
 25 **Q. Okay. Did you know that Kim Nees had been**

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1 going out with Alex Trottier, the father of your daughter,
2 Belle?

3 A. No, I did not know.

4 Q. You didn't know that at all?

5 A. No.

6 Q. Now, if I understand your testimony about,
7 about the night of June 15th, you're now saying that you
8 had -- you're now saying that after you bought the beer,
9 you walked home.

10 A. I went home, yes.

11 Q. You walked home.

12 A. Yes.

13 Q. Nobody drove you?

14 A. It's just down the street one block.

15 Q. Okay. You walked home?

16 A. Yes.

17 Q. Okay. Do you recall telling the attorney
18 general in a tape-recorded statement that you gave two
19 months ago (quoted as read):

20 "I had them take me home. And my mom was
21 there waiting, and they dropped me off at home, and that
22 was that"?

23 A. Okay, then they gave me a ride. I mean, you
24 know, that's been so many years ago. And I'm -- you know,
25 had a drug problem all these years. I can't remember

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1 every little thing, you know. But, yes, they took me
2 home, I walked home -- "I got home" is what I'm meaning,
3 you know. I mean I'm not trying to lie about anything. I
4 have nothing to lie -- because when you tell the truth,
5 you don't have to remember anything.

6 Q. And you said that it's been a long time, and
7 you've got some problems remembering back all of the
8 details; is that right?

9 A. Say that again.

10 Q. Let me ask you another question: You have a
11 brother J.D.?

12 A. Yes, I do.

13 Q. An older brother?

14 A. Yes.

15 Q. And you're pretty close with that brother?

16 A. Not anymore.

17 Q. Not since he provided a statement indicating
18 that you told him that you were involved -- you were down
19 at the park when Kim Nees was killed?

20 A. I did not tell my brother J.D. that.

21 Q. Okay. Up until he made that statement, you
22 were very close with him, weren't you?

23 A. Not "very close". I'm very close with my
24 brother Bobby.

25 Q. Okay.

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1 A. But, no, me and J.D. aren't really close.

2 Q. You would confide -- up until you found out he
3 made the statement that you told him you were down there
4 when Kim was killed, up until you found out he made that
5 statement, you would confide in him?

6 A. You know, I'm not saying this to be mean or
7 saying this to be anything, but my brother was hit by a
8 train, and I don't know if you realize it, but I can show
9 you it on paper: He's brain-damaged. And I'm not saying
10 that to be mean. He was hit by a train.

11 Q. I'm asking you whether or not --

12 A. But, no, I didn't confide in a lot of things
13 because J.D. talks too much.

14 Q. He does talk too much, doesn't he?

15 A. Yes, he does.

16 Q. And when you would tell him things, you would
17 find out that he would go tell other people?

18 A. Well, not necessarily, no. When he would talk
19 about it to people, I know he would.

20 Q. Okay.

21 A. But I mean it was nothing that couldn't be
22 talked about.

23 Q. Well, you were upset that sometimes you would
24 tell him things that you would think were in confidence
25 that he wasn't going to go tell anybody else --

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1 A. No.

2 Q. -- and then you find out that he did tell
3 somebody else.

4 A. Anything I told him, there was nothing -- no
5 secret. I never told him anything that I would -- I would
6 never tell anything like that because he's too
7 unpredictable.

8 Q. And part of that unpredictability is he might
9 tell somebody else.

10 A. Well, if I was to get mad at him, he would
11 probably -- he's mean, he's mean, J.D. is.

12 Q. So if you were to get mad at him, he might
13 reveal something that you told him?

14 A. No. If I'd say something to him, he might get
15 mad and hit me, or something.

16 Q. Now, the drug problems that you've had during
17 the course of your life began when you were in your early
18 20s?

19 A. Yeah.

20 CHAIRWOMAN O'CONNOR: Excuse me, Mr. Camiel.
21 How much further do you expect your examination to take
22 place?

23 MR. CAMIEL: About another -- I would suspect
24 about another five minutes.

25 CHAIRWOMAN O'CONNOR: I'd surely like you to

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1 wrap up before the lunch recess, but as I told you before,
2 we have to have enough time for them to arrange this thing
3 after lunch. So please try to wrap up.

4 **Q. (By Mr. Camiel) Your drug problem started**
5 **when you were in your early 20s?**

6 A. Yeah.

7 **Q. "Yes"?**

8 A. Hm-hmm.

9 **Q. Right about 1979?**

10 A. No.

11 **Q. Your brother (Bobby) would visit you, wouldn't**
12 **he, when you lived in Great Falls?**

13 A. Yeah.

14 **Q. And he visited you in 2003 and in 2004 in**
15 **Great Falls, didn't he?**

16 A. My brother Bobby?

17 **Q. I'm sorry, your brother -- let's -- your**
18 **brother J.D. Excuse me.**

19 **J.D. would visit you at your Great Falls apartment?**

20 A. Yeah, he would come to Great Falls because he
21 came to Great Falls to see his girlfriend that was in
22 Great Falls, too.

23 **Q. And there were a number of occasions when he**
24 **visited you that you started to tell him about what you**
25 **knew about the Kim Nees murder.**

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1 MR. CAMIEL: That's all I have.

2 CHAIRWOMAN O'CONNOR: We're going to break
3 now. And then you understand that you'll be able to
4 cross, but you'll need to wait until after this Vision Net
5 thing?

6 MS. PLUBELL: I do. And we're scheduled to go
7 at one for that?

8 CHAIRWOMAN O'CONNOR: We're scheduled to go at
9 one for that.

10 MS. PLUBELL: Okay, thank you.

11 CHAIRWOMAN O'CONNOR: And we'll ask you to
12 stay maybe an hour, and then the attorney general's office
13 will ask you questions after lunch. Thanks very much.

14 (The noon recess was taken.)

15 CHAIRWOMAN O'CONNOR: Ladies and gentlemen,
16 we're a few minutes before one o'clock, but I see that all
17 the counsel and Mr. Beach are present. And it appears to
18 be that the Vision Net is ready to go, so I think we'll
19 begin a few minutes earlier than I said we would begin.

20 So how do we do the Vision Net thing.

21 MR. WILKERSON: I'm supposed to make the
22 clarification that this is MET/NET, not Vision Net.

23 CHAIRWOMAN O'CONNOR: MET/NET, I'm sorry.

24 MR. WILKERSON: I was told to do that.

25 Basically, your microphone is on, so they

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1 A. J.D. and I have never, ever had that
2 conversation.

3 **Q. You've read J.D.'s statement, haven't you?**

4 A. I don't believe -- oh, yeah, in the paper
5 that's -- I've read that.

6 **Q. Did the attorney general, when they came to**
7 **interview you, tell you about J.D.'s statement?**

8 A. I believe -- I think so, yeah.

9 **Q. They told you that J.D. said that you told him**
10 **you were down there in the park when Kim was killed,**
11 **right?**

12 A. J.D. did say that, yeah.

13 **Q. And that you told him that you saw a girl with**
14 **a wrench chasing Kim Nees?**

15 A. Oh, no, I never --

16 **Q. Do you remember, do you remember being told**
17 **that J.D. said that?**

18 A. I don't think J.D. said that. I never heard
19 that.

20 **Q. Okay. So anything that J.D. would say about**
21 **your telling him that you were down there when Kim Nees**
22 **was killed or your telling him that Maude and some other**
23 **girls were involved --**

24 A. We never, ever, ever, ever discussed Kim Nees,
25 Maude, any of them, ever.

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1 should be able to hear us. As long as theirs is on, it
2 will go back and forth.

3 CHAIRWOMAN O'CONNOR: And this is the State's
4 witness, so we're going to take this witness out of order,
5 and we'll let the State proceed.

6 Go ahead.

7 MS. PLUBELL: Thank you. The State calls
8 Alfred Calhoun.

9 DIRECT EXAMINATION

10 BY MS. PLUBELL:

11 **Q. Alfred, can you hear me?**

12 A. I do hear you, yes, ma'am.

13 **Q. Hello, Alfred. You can't see me, but I can**
14 **see you. So it's nice to see you in person.**

15 **Can you please state your name?**

16 A. Thank you.

17 **Q. Can you please state your name?**

18 A. My name is Alfred Calhoun.

19 **Q. What is your current occupation?**

20 A. I'm employed as an investigator for the Third
21 Judicial District Attorney's Office in West Louisiana.

22 **Q. How long have you been in law enforcement?**

23 A. I was with the Ouachita Parish Sheriff's
24 Department from 1971 through 1991. I had about three
25 years service with the Union Parish Sheriff's Office until

1 I retired, and I've been in force with the district
2 attorney's office since yesterday.

3 **Q. Okay. Can you just very briefly summarize**
4 **your law enforcement training and experience?**

5 A. I started with the Ouachita Parish Sheriff's
6 Department as a jailer. They call them "corrections
7 officers" now. I did that for about 10 months. They
8 moved me to Uniform Patrol Division. I was in Uniform
9 Patrol Division about 11 months, and they moved me to the
10 Investigative Division. I made sergeant in 1975. In
11 1979, I was appointed as head of the criminal
12 investigations with the rank of major. I held that
13 position from 1979 through 1984 when the sheriff moved me
14 to what is called the "technical services supervisor". I
15 was the rank of lieutenant colonel, and I held that
16 position from 1984 until I retired in 1991.

17 **Q. Did you stay retired?**

18 A. Would you repeat that?

19 **Q. I said, "Did you stay retired?" Or you're**
20 **still --**

21 A. I did not. I did not stay retired, no. I did
22 some homicide investigations for the Union Parish
23 Sheriff's Department under Sheriff Bob Buckley, and then
24 I've been working for the district attorney for the last
25 five years.

1 **Q. Do you know when he passed away?**

2 A. He passed away March 7, 1990.

3 **Q. All right. How would you describe these**
4 **officers who worked under you -- or with you?**

5 A. I would describe them as excellent officers.

6 **Q. All right. And do you know Paul Kidd?**

7 A. I do.

8 **Q. And how do you know him?**

9 A. He's been defense counsel on many of the cases
10 I've had through the years.

11 **Q. And what is your relationship like with**
12 **Mr. Kidd?**

13 A. Mr. Kidd loves me as much as I love him.

14 **Q. Alfred, Paul Kidd claims that Joe Cummings --**
15 **today Paul Kidd told us that Joe Cummings made a**
16 **confession to him that Jay Via perjured himself when he**
17 **came to Montana to testify on the Barry Beach case. Does**
18 **that sound like the Joe you knew?**

19 A. It does not. It sounds like the Paul Henry
20 Kidd I know.

21 **Q. Are you familiar with Barry Beach?**

22 A. With Barry Beach?

23 **Q. Yes.**

24 A. I'm familiar with him to the extent that I
25 first met him on January 7, 1983; I had occasion to be

1 **Q. Thank you. Alfred, are you presently**
2 **undergoing some medical treatment for a serious medical**
3 **illness?**

4 A. Yes, ma'am, I am.

5 **Q. And is that the reason that you weren't able**
6 **to travel to Montana?**

7 A. That is correct.

8 **Q. Where were you employed in January of 1983?**

9 A. I was employed by the Ouachita Parish
10 Sheriff's Department.

11 **Q. And what was your role at that particular**
12 **time?**

13 A. I was Commander of Criminal Investigations for
14 the Parish Sheriff's Office.

15 **Q. Did you know Jay Via?**

16 A. I do.

17 **Q. And did you know him back in 1983?**

18 A. I did.

19 **Q. And how about Richard Medaries?**

20 A. Yes, I know Richard Medaries. I've known him
21 since 1981.

22 **Q. And how about Joe Cummings?**

23 A. I've known Joe Cummings since 1971.

24 **Q. Is Joe still alive?**

25 A. No, he's not.

1 with him again, I think, on January 11, '83; and then the
2 motion to suppress hearings that were held in Montana and
3 the trial in Montana. That's the extent of my knowledge
4 of him.

5 **Q. All right. So did you have any personal**
6 **knowledge of Barry Beach prior to January 7th of 1983?**

7 A. Would you repeat that, please?

8 **Q. Yeah. Are you having trouble hearing me?**

9 **Did you have any personal knowledge of Mr. Beach**
10 **prior to January 7th of 1983?**

11 A. I did not.

12 **Q. Okay. What were the circumstances of your**
13 **first meeting Barry Beach?**

14 A. Beach was initially in connection with -- that
15 he was a juvenile or a family-type charge. He was brought
16 to the interrogation room on January 7th. I don't
17 remember whether I saw him in the hallway or whether I
18 first saw him in that interrogation room, but it was one
19 or the other. Jay Via was interrogating him. Jay Via
20 administered a psychological stress evaluation test on
21 him. He came out and told me that Beach was showing
22 deception and asked me would I run him just to confirm his
23 findings, at which time I did.

24 **Q. Alfred, did you have to be certified or**
25 **licensed or something to run the psychological stress**

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1 **evaluation?**

2 A. Yes, ma'am. You had to be certified by the
3 state of Louisiana.

4 **Q. And were both you and Sergeant Via certified**
5 **to do that?**

6 A. At that time, yes, we were.

7 **Q. And at that time, did you have a polygraph**
8 **machine at the sheriff's department?**

9 A. We did not have a polygraph machine; no, we
10 did not.

11 **Q. And so did you use a polygraph machine in**
12 **conjunction with investigations?**

13 A. No, we did not. The sheriff's office did not.
14 We did not have a polygraph instrument, we did not have a
15 polygraph operator on the payroll at that time.

16 **Q. All right. How long did you spend with Barry**
17 **Beach?**

18 A. Approximately two and a half hours, initially."

19 **Q. All right. Can you, can you just give a**
20 **little bit of explanation of the psychological stress**
21 **evaluation?**

22 A. You do a pre-interview and you discuss the
23 facts that you're going to be going over. You discuss
24 with the person that's going to be taking the test the
25 questions that will be asked. They are assured that no

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1 the truth. We are factfinders, not decision-makers. We
2 want only the truthful facts to come out in any particular
3 situation.

4 **Q. And is one of those rights the right to stop**
5 **an interview at any time and make a request for an**
6 **attorney?**

7 A. I advised Mr. Beach, No. 1, he had the right
8 to remain silent, which meant he didn't have to talk to me
9 or any of the police officers unless he wanted to.

10 Number 2, that he had the right to have an attorney
11 present during questioning. If he desired an attorney but
12 could not afford one, one would be appointed for him by
13 the Court without cost to him.

14 And if he decided to talk without an attorney being
15 present, he had the right to quit talking at any time to
16 speak to counsel -- to an attorney or for any other reason
17 he might have.

18 **Q. Did Beach ever -- did Mr. Beach choose to**
19 **exercise those rights?**

20 A. He did not. He agreed to talk with me without
21 an attorney being present.

22 **Q. How would you describe Beach's demeanor when**
23 **it was you and him?**

24 A. He was calm.

25 **Q. How were you?**

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1 other questions will be asked, there will be no surprise
2 questions. A set-up question is formulated. The subject
3 -- the test that I gave was what's called a "truth versus
4 lie". You ask the same question on two occasions. On one
5 occasion, he's instructed to tell the truth; on the other
6 occasion, he's instructed to tell a lie. And this was the
7 type of test that was administered to Mr. Beach by me on
8 that date.

9 **Q. Was that test administered to him about the**
10 **Montana homicide or was it administered to him about the**
11 **Louisiana homicides?**

12 A. It was solely the Montana homicide.

13 **Q. Did you -- prior to beginning that test, did**
14 **you read Mr. Beach his rights?**

15 A. I orally recited his Miranda rights to him,
16 and he said that he understood each of those rights.

17 **Q. And had Sergeant Via read him his rights prior**
18 **to that?**

19 A. He had.

20 **Q. Is it important to you that for a suspect you**
21 **are interrogating to fully understand their rights prior**
22 **to interviewing them?**

23 A. It is.

24 **Q. And why is that?**

25 A. The job of the investigator is to determine

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1 A. I was calm.

2 **Q. Okay. Would you say that you have any sort of**
3 **particular interview style when you're interviewing a**
4 **crime suspect?**

5 A. When I'm interviewing a suspect, if the facts
6 indicate -- if true to the guilty party, I attempt to
7 appeal to their nobler instinct, to relate to them the
8 guilt that they're feeling is not going to go away unless
9 they decide to remove it, that the solution to any problem
10 that they have is up to them.

11 **Q. Now, your interaction with Barry Beach on**
12 **January 7, 1983, did that have anything to do with those**
13 **local homicides in Louisiana?**

14 A. They did not.

15 **Q. What happened during the time you spent with**
16 **Mr. Beach?**

17 A. We did the pretest interview, he was advised
18 of his rights, we administered the test. The test
19 indicated to me that he was showing deception. He was
20 informed that he, in my opinion, he was showing deception.
21 Excuse me.

22 **Q. Are you doing okay?**

23 A. I'm all right.

24 **Q. Okay.**

25 A. When I informed him that I believed he was

46 (Pages 181 to 184)

1 being deceptive, Mr. Beach kind of threw his hands up a
2 little bit like this - (gesturing) - and stated, "I'm
3 having a vision. I see her by the right rear tire of the
4 truck."

5 At which time, he teared up and he stated he wanted
6 to see Sergeant Via. At which time I left the room and
7 got Sergeant Via, and Sergeant Via went into the room with
8 him alone.

9 **Q. Now, was it, was it Beach who started the talk**
10 **about a vision or was it you who told him to envision it?**

11 A. Mr. Beach came out of the blue with this, "I'm
12 having a vision." I have never heard that before in any
13 situation I've been involved in.

14 **Q. Now, prior to this time, had you threatened**
15 **Mr. Beach in any way?**

16 A. I did not.

17 **Q. Had you pounded on the table?**

18 A. I had not.

19 **Q. Is that your style?**

20 A. It is not.

21 **Q. Are you aware that Mr. Beach has accused you**
22 **of doing so?**

23 A. I am aware of it.

24 **Q. And how do you respond to that?**

25 A. Well, I've been accused of a lot of things.

1 **Q. Now, are you generally allowed to testify in**
2 **court about the psychological stress evaluation and what**
3 **happens during that process?**

4 A. In the state of Louisiana, that test is not
5 admissible unless it's agreed upon -- unless the
6 introduction of that test is agreed upon by both the
7 prosecution and the defense; otherwise, it's not
8 admissible --

9 **Q. When you traveled up to Montana --**

10 A. -- strictly inadmissible.

11 **Q. Okay. When you traveled up to Montana to**
12 **testify at the suppression hearing then, were you supposed**
13 **to be talking about that --**

14 A. Would you --

15 **Q. -- the PSE?**

16 A. Would you repeat that question?

17 **Q. When you testified in Montana, do you recall**
18 **whether you were instructed about whether you could or**
19 **could not talk about that psychological stress evaluation?**

20 A. I believe I was instructed I could not talk
21 about it.

22 **Q. Now, are you aware --**

23 A. It's been --

24 **Q. Oh, go ahead. I'm sorry.**

25 A. It's been 23 years. That's the best I can

1 Some of them I wished I were guilty of, but in this case,
2 I'm not guilty of threatening that young man.

3 **Q. Did you threaten Mr. Beach that you would see**
4 **him fry in the electric chair in order to -- so that you**
5 **could get a confession to a Montana homicide?**

6 A. I did no such thing.

7 **Q. Did you have any motive for getting Barry**
8 **Beach to confess to a Montana homicide?**

9 A. Only to seek the truth.

10 **Q. Did you have any discussions with Sergeant Via**
11 **on January 6th of 1983?**

12 A. I did not.

13 **Q. And how do you know you didn't? Were you**
14 **around?**

15 A. On January 6, 1983, I was in Tallahatchie
16 County, Mississippi, on a \$250,000 chemical company
17 burglary.

18 **Q. When you informed Mr. Beach after**
19 **administering the PSE that you believed he was showing**
20 **some deception, how did he react?**

21 A. When he threw his hands up, he teared up.
22 When he said, "I'm having a vision. I see her at the
23 right rear tire of the truck," and he teared up, he said
24 he wanted to see Sergeant Via. So at that point in time,
25 I got Sergeant Via.

Handwritten note: correct. I never see contradict suppression hearing

1 give you.

2 **Q. Okay. Are you aware that Mr. Beach and**
3 **Centurion Ministries and Dr. Richard Leo are very critical**
4 **that you did not record every part of your encounter with**
5 **Barry Beach?**

6 A. I am aware of that.

7 **Q. And was -- what was the standard practice in**
8 **law enforcement during that time period?**

9 A. Standard practice is that you conduct an
10 interview. It is an oral interview. It is not recorded
11 unless relevant facts come to bear, at which time those
12 relevant facts would be recorded. If you recorded every
13 conversation you had with every individual, within three
14 days' time, you wouldn't have a typist left in the
15 building. They can't keep up with the relevant material,
16 let alone any extra that comes along.

17 **Q. Are you familiar with what the practices are**
18 **in your sheriff's -- well, in the nearby sheriff's**
19 **department now in 2007?**

20 A. I'm sorry, I didn't understand that question.

21 **Q. Okay. Do you know whether now in 2007 the**
22 **local sheriff's departments record everything?**

23 A. It is my understanding that they're continuing
24 the same policy that we had back in 1983 and 1984, and
25 that they record only the relevant information that they

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1 glean from the interrogation or from an interview. If
2 it's pertinent to the case, then it is recorded.

3 **Q. Was the reason you didn't record every part of**
4 **your interaction with Mr. Beach so you could threaten and**
5 **intimidate a confession out of him?**

6 A. If you're asking me if the reason I didn't
7 record it is so that I could threaten him and intimidate
8 him, the answer is "no", I did not, I did not record him
9 for that reason. I did not record him until he gave
10 relevant information in regard to the crime under, under
11 investigation.

12 **Q. Alfred, as a law enforcement officer, how**
13 **important is your reputation to you?**

14 A. My reputation is all that I have.

15 **Q. How far can you get in law enforcement if you**
16 **don't have a good one?**

17 A. Many people join law enforcement, and as a
18 rule of thumb, you can tell the ones that fit and those
19 that don't fit. Those that don't fit don't last long.
20 And if you become noted for being a stranger to the truth
21 in a courtroom, you don't win many cases.

22 **Q. After Beach requested to talk to Sergeant Via,**
23 **did you honor that request?**

24 A. I did.

25 **Q. And was there a period where Sergeant Via and**

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1 **Q. How do you respond to his allegations?**

2 A. I suspect that's the way he makes his living.
3 I make my living looking for the truth.

4 **Q. Does Beach's allegation against other**
5 **officers, such as Richard Medaries or Jay Via, surprise**
6 **you?**

7 A. They don't surprise me, no. Police officers
8 are routinely accused of various acts routinely, so being
9 accused of something is nothing new.

10 **Q. Now, was Richard Medaries present on January**
11 **7, 1983, when you and Jay Via independently administered**
12 **the PSE and then when you took Barry Beach's tape-recorded**
13 **confession?**

14 A. At the time of the PSE examination until at
15 the time of the recorded confession, he was not present.

16 **Q. Did he have anything to do with that**
17 **interrogation?**

18 A. He did not.

19 **Q. How many confessions do you think you've taken**
20 **in the course of your career?**

21 A. I probably have taken between 2,000 and 3,000.
22 confessions during the course of my entire career.

23 **Q. Have any of those confessions been challenged**
24 **in court?**

25 A. They have been.

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1 **Barry Beach were in the room alone together?**

2 A. Yes, there was, for probably (10 - 15 minutes.)

3 **Q. And then what happened after that?**

4 A. Sergeant Via asked me to come back into the
5 room. At that time, Sergeant Via advised him of his
6 constitutional rights again from a Miranda form. He
7 signed the Miranda form, and at that point, he gave a
8 recorded statement.

9 **Q. At the time, were you familiar with Jay Via's**
10 **interrogation skills?**

11 A. I am -- or was.

12 **Q. And as his supervisor, how did you evaluate**
13 **him as an interrogator?**

14 A. I thought he was an excellent interrogator,
15 still do.

16 **Q. Are you aware that Mr. -- well, I guess you**
17 **are, that Mr. Beach has hired Richard Leo who has**
18 **concluded that Mr. Beach's confession to you and Jay Via**
19 **was either coerced, false, or both?**

20 A. I am aware of that.

21 **Q. Have you read Mr. Leo's report?**

22 A. I've read portions of it.

23 **Q. Has Richard Leo ever attempted to interview**
24 **you?**

25 A. He has not.

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1 **Q. Have any of those confessions ever been**
2 **suppressed?**

3 A. When we talked earlier, I told you "no", but
4 upon reflection, I had a case with Mr. Paul Henry Kidd
5 that -- he took the case to Federal Court, and it was
6 remanded back to State Court. So I assume that that one
7 was -- would be one of the ones you're talking about.

8 But I would like to go a little further and tell you
9 that at the time Mr. Kidd took that case to Federal Court,
10 the officer that I had worked with was deceased and there
11 were allegations made that my partner made statements and
12 promises to this young man that were not made. The
13 federal judge did remand it back to State Court. We went
14 back to State Court, we found six of our victims of this
15 young man still available, we charged him with six counts
16 of burglary, we tried him for six counts of burglary. And
17 Mr. Kidd represented him again.

18 And the jury was out 10 minutes, and the young man
19 was convicted and received the original sentence that he
20 received when he pled to his charges initially. So that's
21 the one case I suppose you could say that the confession
22 was suppressed.

23 **Q. To your knowledge, did you question Mr. Beach**
24 **at all about the local homicides on January 7, 1983?**

25 A. I did not.

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- 1 **Q. Did you drug Barry Beach's milkshake?**
 2 A. I did not.
 3 **Q. After Mr. Beach confessed, did you go out and**
 4 **give him a meal? Did someone go get him a meal?**
 5 A. It's my remembrance that we went out and got a
 6 meal, yes.
 7 **Q. And is it your recollection that that was**
 8 **after his confession?**
 9 A. It was after his confession, definitely.
 10 **Q. Did you have any further contact with Barry**
 11 **Beach after the January 7th confession?**
 12 A. I was present on January 11th when Mr. Kidd
 13 was present along with Officer Via and Officer Cummings.
 14 **Q. And what was the basis of that encounter?**
 15 A. It was my understanding that Mr. Kidd was
 16 there to talk about getting Mr. Beach a polygraph Hoyt
 17 examination in connection with the Louisiana homicides,
 18 **Q. Did Barry Beach make any admissions during**
 19 **that date?**
 20 A. On that date, Mr. Beach stated that -- on two
 21 occasions that he was not involved in the Louisiana
 22 homicides. The only involvement he had was with the
 23 Montana homicide. And that was in Mr. Paul Henry Kidd's
 24 presence.
 25 **Q. How do you view your role as an investigator,**

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- 1 **Alfred?**
 2 A. I think I'm searching for the truth. If the
 3 truth sets you free, you're supposed to go free. And we
 4 are all -- once we become adults, we're all equally
 5 responsible for our actions. Good or bad, we have to
 6 stand accountable for those actions.
 7 **Q. Do you believe that it's possible that a**
 8 **person can give a false confession?**
 9 A. I believe it's possible a person can give a
 10 false confession depending on their motivation.
 11 **Q. As you sit here today, do you have any doubts**
 12 **about the legitimacy of Barry Beach's confession that you**
 13 **heard on January 7 of 1983?**
 14 A. I have no reservations whatsoever.
 15 **Q. In light of your current medical condition,**
 16 **why did you make this commitment to appear before the**
 17 **Board in this matter?**
 18 A. Number 1, I was asked to appear before the
 19 Board. And it's my duty as a law enforcement officer to
 20 continue to tell the truth, whether it's 1983, 1984, or
 21 2007.
 22 **Q. Is the truth the same today as it was back in**
 23 **1983 and 1984?**
 24 A. It is the same truth today.
 25 MS. PLUBELL: That's all I have.

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- 1 CHAIRWOMAN O'CONNOR: Mr. Camiel,
 2 MR. CAMEL: Thank you.
 3 CROSS-EXAMINATION
 4 BY MR. CAMEL:
 5 **Q. Mr. Calhoun, can you hear me?**
 6 A. Yes, sir, I can.
 7 **Q. Thank you. Did you have any contact with**
 8 **Sheriff Mahlum up in Roosevelt County, Montana, before you**
 9 **met with Mr. Beach on January 7th?**
 10 A. I did not.
 11 **Q. Did you have any contact at all with Sheriff**
 12 **Mahlum during the course of the day of January 7th?**
 13 A. I did not.
 14 **Q. So you --**
 15 A. I did not.
 16 **Q. You never spoke with Sheriff Mahlum up in**
 17 **Roosevelt County?**
 18 A. Not on that date, no, sir.
 19 **Q. Okay. Do you know if Sergeant Via spoke with**
 20 **him?**
 21 A. It is possible. I'm not sure.
 22 **Q. Okay. Well, now, you had some information**
 23 **about the Montana homicide to work with during the course**
 24 **of your interrogation of Mr. Beach, didn't you?**
 25 A. I had the information furnished to me by

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- 1 Sergeant Via.
 2 **Q. And is it your understanding that he got that**
 3 **information from Sheriff Mahlum?**
 4 A. It was my understanding that he got that
 5 information from the officials in the state of Montana.
 6 I'm not sure, in fact, who he talked with.
 7 **Q. Do you know how many times Sergeant Via spoke**
 8 **with Sheriff Mahlum on January 7th?**
 9 A. I do not.
 10 **Q. The information that you had from Sergeant**
 11 **Via, was that in a -- was that handwritten notes, or was**
 12 **it a report, or was it just something he told you?**
 13 A. It was verbal information.
 14 **Q. Do you recall now what information you had**
 15 **about the Montana murder before you started questioning**
 16 **Mr. Beach?**
 17 A. I was informed by Sergeant Via that he had
 18 been in contact with the officials in Montana and that
 19 they had determined -- or they had informed him that Beach
 20 was a suspect in a homicide there. Sergeant Via also told
 21 me that he contacted the State of Montana, based on the
 22 information from Bob Beach that Barry Alan Beach was a
 23 suspect in a homicide in that state. And that's the
 24 reason he contacted the officials in Montana.
 25 **Q. Did you have any information about the details**

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1 of that homicide?

2 A. Did I have?

3 Q. Yes.

4 A. I had the information furnished to me by
5 Sergeant Via that the girl was beaten to death and she was
6 found in or near the Poplar River in Roosevelt County,
7 Montana, by the Bureau of Indian Affairs police up there,
8 and that her vehicle was near.

9 Q. One of the questions you were asked was about
10 your interrogation style, and I wanted to ask you about
11 that. You said that if the facts indicate that the person
12 is the guilty party, then you have a particular
13 interrogation style; is that right?

14 A. I'm not sure that's exactly what I said. But
15 if the facts indicate that a person is guilty, my policy
16 would be to continue to talk to that individual to try to
17 resolve that.

18 Q. When you commenced your interview with
19 Mr. Beach, you were of the opinion that he was the guilty
20 party, weren't you?

21 A. In all probability, yes, that probably what
22 was in my mind.

23 Q. Okay. So you mentioned in terms of recording
24 the interrogation that you would only record the parts
25 that you thought were relevant; is that right?

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1 Q. And is it true that it's not admissible
2 because the Courts don't deem it to be sufficiently
3 reliable?

4 A. I would assume that would be correct, yes,
5 sir.

6 Q. Okay. So when you first come in to see
7 Mr. Beach, is it fair to say you already are assuming that
8 he's guilty? Right?

9 A. I would think that would be correct, yes, sir.

10 Q. And Sergeant Via told you that Mr. Beach was
11 denying that he committed the Montana homicide, right?

12 A. He told me that Mr. Beach's psychological
13 stress evaluation test was showing deception, and he asked
14 me to run a test to confirm or to un-confirm him.

15 Q. He also told you that Mr. Beach was denying
16 that he was responsible for the Kim Nees murder, right?

17 A. I don't recall that he specifically told me
18 that statement, no, sir. He possibly could have, but I
19 don't recall it specifically.

20 Q. Now, if I understand the decision that you
21 make about when you record something and when you don't
22 record it, if somebody says they didn't do it and you
23 think they did do it, then that's not relevant information
24 when they say they didn't do it, so you wouldn't record
25 that.

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1 A. I think my statement was that we only record
2 those statements which are relevant. We recorded the
3 psychological stress evaluation questions, we recorded his
4 -- you can talk to a dozen people, and if you record a
5 dozen people's statements, relevant or not relevant, then
6 you're going to have a problem with your typing pool. We
7 record only those that -- those --

8 Q. On January 7th, do you know what time Sergeant
9 Via started his interrogation of Mr. Beach?

10 A. According to the reports that I have
11 refreshed (refreshed my memory) on, about 12:52 p.m.

12 Q. And you didn't come into the room until 15:15
13 hours; is that right?

14 A. Or shortly thereafter.

15 Q. So Sergeant Via had already spent almost three
16 hours with Mr. Beach by the time you come in?

17 A. Well, from 12:52 through approximately 15:15,
18 somewhere close to three hours, I guess.

19 Q. All right. And you indicated that Sergeant
20 Via told you that Mr. Beach had, had shown deception on
21 this psychological stress evaluator?

22 A. That's correct.

23 Q. Now, you said that that test is not admissible
24 in Louisiana unless both parties stipulate; is that right?

25 A. That's correct.

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1 A. Sir, if a subject denied knowledge of a
2 convicted crime and continued to deny knowledge of a
3 particular crime, and if they gave a story as to where
4 they were at when this particular time occurred, then I
5 would record that statement because, to me, that would be
6 a relevant statement and that would be an alibi that I
7 could try to determine whether it was true or false. Does
8 that make sense?

9 Q. Well, let me ask you this: From about 12:30
10 on January 7th until 3:15 in the afternoon when you come
11 in and you meet Mr. Beach, he had been denying that he
12 committed the Montana homicide, right?

13 A. It's my understanding that he had denied the
14 murder, yes.

15 Q. So for about three hours of interrogation, he
16 denied committing the murder, and none of that's recorded.

17 A. None of that is recorded.

18 Q. If somebody is trying to evaluate whether
19 there was any improper interrogation technique used in the
20 interrogation of a witness, how do they do that if the
21 interrogation is not recorded?

22 A. Would you repeat that question, please?

23 Q. Sure. If somebody later down the road is
24 trying to look back at your interrogation of a suspect and
25 they want to figure out whether you did something improper

1 during the interrogation, how do they do that if you don't
2 record the interrogation?

3 A. Well, if I record a statement from that
4 person, it's going to be Miranda advisement rights
5 accompanying that particular report. And if a person
6 signed the (Miranda advisement) form freely and voluntarily
7 gives you a statement, then it would, it would indicate to
8 me that there's no coercion used in securing that
9 statement. And in Mr. Beach's case, he signed a waiver of
10 rights on several occasions and agreed to continue -
11 (audio connection cuts out) - Sergeant Via and myself
12 voluntarily.

13 Q. Could you repeat your answer, Mr. Calhoun?
14 The court reporter had trouble getting your answer.

15 A. If a person gives you information concerning a
16 crime that you would deem to be a confession to that
17 crime, that report would be accompanied -- or that
18 statement would be -- transcript would be accompanied by
19 the Miranda right form that you would document prior to
20 receiving that statement. Mr. Beach was advised of his
21 constitutional rights on several occasions. He signed
22 several Miranda right forms waiving the presence of an
23 attorney, agreeing to talk with us voluntarily. And he
24 continued to agree to talk with us voluntarily throughout
25 the afternoon. And to me, you --

1 Q. Did you write any of that in your report?

2 A. I did not.

3 Q. Now, I asked you, I asked you whether or not
4 you asked Mr. Beach to pray with you as a part of your
5 interrogation of him.

6 A. I did not.

7 Q. Do you do that on occasion?

8 A. On occasion, I have, yes.

9 Q. So that's -- one of the styles of your
10 interrogation is to get a suspect to pray with you?

11 A. The style of my interrogation is to load his
12 mind with the guilt that he's brought upon himself to see
13 if he will dump that guilt.

14 Q. Is one of the styles of your interrogation to
15 get the suspect to break down?

16 A. Would you define "break down"?

17 Q. Well, let me ask you: After the -- after you
18 got the taped confession from Mr. Beach, Sergeant Via
19 called Sheriff Mahlum. Were you present when he made that
20 call?

21 A. I was not.

22 Q. Did he tell you about that call?

23 A. I do not recall that he told me about it, no,
24 sir.

25 Q. Was one of the tests you ran on Mr. Beach

1 Q. And I wanted --

2 A. Yes.

3 Q. I'm sorry, I didn't mean to cut you off. Did
4 you finish your answer?

5 A. To me, that's how you would determine whether
6 or not it was voluntary, by the statement itself and by
7 the Miranda right forms.

8 Q. How do we know what you told Mr. Beach before
9 he signed that rights form?

10 A. Because I'm telling you what I told him.

11 Q. All right. But we don't have any other way to
12 verify that, do we?

13 A. No, sir, you do not.

14 Q. Now, you told us that one of the things that
15 you do if you think you have a guilty suspect is that you
16 appeal to their nobler instincts; is that right?

17 A. That is correct, sir.

18 Q. And do you do that by having the suspect pray
19 with you?

20 A. In this particular case, I told Mr. Beach that
21 he would never be the man that he knew he wanted to be,
22 the man he knew he should be, and the man he knew that he
23 ought to be if he didn't get this problem behind him; that
24 he had a solution to the problem, and that it was his
25 decision as to what he wanted to do with it.

1 something called a "truth versus lie"?

2 A. It was a truth versus lie.

3 Q. Let me read you a part of the phone call
4 between Sergeant Via and Sheriff Mahlum and ask you about
5 it. Sergeant Via says (quoted as read):

6 "Then we ran him on what's called a 'truth
7 versus lie' where you tell the absolute truth the first
8 time; and the second time, you tell an absolute lie. And
9 he bombed the shit out of that. Then we went in and
10 started interviewing him until he broke down. And the
11 statement we got from him is a damn good statement."

12 Is that what happened, that after you told him that
13 he flunked this test, you went back and interviewed him
14 until he broke down?

15 A. No, sir, that is not correct.

16 Q. Well, is Sergeant Via incorrect when that's
17 what he tells Mr. Mahlum?

18 A. Sir, I have not seen that report nor read that
19 report, and I have no knowledge of the conversation that
20 he had with Sheriff Mahlum.

21 Q. Now, by the time you finished the whole day of
22 interviewing Mr. Beach, all of the detectives involved in
23 interviewing Mr. Beach were tired, weren't they?

24 A. You say they were "tired" or "retired"?

25 Q. Tired.

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It's only he/VIA?

- 1 A. I'm sure ^{“ ”}they were, yes, sir.
- 2 **Q. And Sergeant Via had even lost his voice at**
- 3 **the end of the interrogation, hadn't he?**
- 4 A. I do not recall that, no, sir.
- 5 **Q. Did you know that he told Sheriff Mahlum,**
- 6 **"Right now I lost my voice, and everything else"?**
- 7 A. I did not know that, no, sir.
- 8 **Q. Okay. Would the fact that Sergeant Via lost**
- 9 **his voice indicate to you that maybe he was raising his**
- 10 **voice when he was interrogating Mr. Beach?**
- 11 A. I have no way of knowing that, sir.
- 12 **Q. Is that one of the things that you know**
- 13 **Sergeant Via to do, is to raise his voice during an**
- 14 **interrogation?**
- 15 A. It is not.
- 16 **Q. I asked if that's something that you know him**
- 17 **to do.**
- 18 A. It's not something that I know him to do, no,
- 19 sir.
- 20 **Q. Okay. Would it be fair, would it be fair to**
- 21 **say that Mr. Beach wasn't even aware of what was going on**
- 22 **by the time you finished your interrogation?**
- 23 A. That would not be a fair statement, no, sir.
- 24 **Q. Did you know that Sergeant Via told Sheriff**
- 25 **Mahlum in a phone call right after the interrogation,**

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- 1 **wouldn't it?**
- 2 A. I don't know about the word "deliberately".
- 3 Somebody inadvertently erased that tape. And that would
- 4 be improper procedure, yes, sir.
- 5 **Q. Okay.**
- 6 A. But I choose "inadvertently erased the tape"
- 7 rather than "deliberately".
- 8 **Q. But the goal is to preserve the tape, right?**
- 9 A. The goal is to preserve the tape, yes, sir.
- 10 **Q. Because you would like to be able to bring it**
- 11 **into court and actually play it for the jury?**
- 12 A. That's correct.
- 13 **Q. Okay. So there was no standard procedure in**
- 14 **your department to erase murder confession tapes?**
- 15 A. Not until the case is disposed of and all of
- 16 the appeals are exhausted.
- 17 **Q. Okay. So you wait through the trial and after**
- 18 **the appeal, and when that's all done, then they can get**
- 19 **rid of the tape?**
- 20 A. That's correct.
- 21 **Q. But not before the suppression hearing?**
- 22 A. Not before, no.
- 23 **Q. Now, you interviewed a guy named Darryl Kraft**
- 24 **as a part of the Beach investigation, didn't you?**
- 25 A. I did not.

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- 1 **"He's not even aware right now at all," referring to**
- 2 **Mr. Beach?**
- 3 A. Sir, I've already answered that question. I'm
- 4 not aware of that conversation that you're talking about.
- 5 **Q. Now, you recorded the -- starting at 7:08 in**
- 6 **the evening, you recorded this statement from Mr. Beach,**
- 7 **right?**
- 8 A. That's correct.
- 9 **Q. Okay. And that recorded statement is**
- 10 **evidence, isn't it?**
- 11 A. Is that a what, sir?
- 12 **Q. That recording of that confession is evidence,**
- 13 **is it not?**
- 14 A. It is.
- 15 **Q. Okay. That's something that you would want to**
- 16 **preserve so they could use it up here in Montana?**
- 17 A. That's correct.
- 18 **Q. Okay. So you wouldn't want to go and erase**
- 19 **that original tape of that confession, would you?**
- 20 A. No, you would not.
- 21 **Q. And it would not be standard procedure to**
- 22 **erase a murder confession, would it?**
- 23 A. It would not.
- 24 **Q. And so if somebody deliberately erased that**
- 25 **murder confession, that would be improper procedure,**

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- 1 **Q. Well, I'm looking at a report right now that**
- 2 **indicates that on January 9th of 1983, you and Sergeant**
- 3 **Via interviewed Mr. Kraft at the Ouachita Parish**
- 4 **Courthouse. Were you aware of that?**
- 5 A. If you have a report, it must be true, but I
- 6 do not recall that interview.
- 7 **Q. It also indicates you recorded that interview.**
- 8 **Does that surprise you?**
- 9 A. I would have to review the statement in order
- 10 to answer that question.
- 11 CHAIRWOMAN O'CONNOR: Excuse me. Who's Darryl
- 12 Kraft?
- 13 MR. CAMIEL: He was a witness they contacted
- 14 as a part of the Louisiana investigation.
- 15 CHAIRWOMAN O'CONNOR: It doesn't have anything
- 16 to do with this Beach case. It mean it has to do with
- 17 these three other deals that --
- 18 MS. PLUBELL: They asked him about Mr. Beach.
- 19 CHAIRWOMAN O'CONNOR: Okay, got it. Thank
- 20 you, go ahead.
- 21 **Q. (By Mr. Camiel) Mr. Calhoun, I want to ask**
- 22 **you about one of the things that you testified about. You**
- 23 **said that -- you said that it was Barry Beach who brought**
- 24 **up the idea of having a vision.**
- 25 A. That is correct.

52 (Pages 205 to 208)

1 (Electronic interruption.)

2 BY MR. CAMIEL:

3 Q. I think that's near you, not us.

4 Now, is one of the techniques that you're aware of
5 that you used to use hypothetical questions during —

6 A. From time to time, you could use a
7 hypothetical question to see what the response would be.

8 Q. And you did that with Barry Beach, didn't you?

9 A. I don't recall having those types of questions
10 with him. Perhaps you can refresh my memory.

11 Q. Well, do you recall Sergeant Via using
12 hypothetical questions with Mr. Beach?

13 A. I do not.

14 Q. I'm looking at a January 5, 19 — excuse me, a
15 January 9, 1983 report that Sergeant Via prepared. On
16 page 5, that indicates he was using hypothetical questions
17 with Mr. Beach. Did you review that report before you
18 testified today?

19 A. No, sir, I did not.

20 Q. Now, that's the same report that describes
21 your interrogation of Mr. Beach.

22 A. I did not review that report. I reviewed the
23 statement that Mr. Beach gave.

24 Q. All right. Well, when Mr. Beach gave you that
25 statement, did you believe that the details that he was

1 Sergeant Via tell Mr. Mahlum that he got the clothes
2 wrong?

3 A. I'm not aware of that, sir.

4 Q. Now, it sounds like you have a
5 less-than-friendly relationship with Mr. Kidd.

6 A. I have a strictly business relationship with
7 Mr. Kidd.

8 Q. All right. You've been adversaries in a
9 number of cases?

10 A. That's correct.

11 Q. And he got one of your cases reversed and sent
12 back?

13 A. One case remanded back to State Court.

14 Q. All right. Now, you indicated that you agree
15 that sometimes there are false confessions; is that right?

16 A. I'm sure that there's a possibility of that,
17 yes, sir.

18 Q. Okay. Now, you, as a police officer,
19 sometimes have to decide whether you're getting a reliable
20 confession or whether it's a false confession, don't you?

21 A. You have to take the information that's on
22 hand and seek to verify it, whether it's true or false.

23 Q. Okay. For example, you might have a crime and
24 somebody calls up or walks in and says they're the
25 perpetrator. You're going to ask them questions to see

1 giving you in that statement were accurate?

2 A. At that time, yes, sir.

3 Q. Okay. And did you talk to — well, let me ask
4 you this: How did you know the details were accurate?
5 What made you think they were accurate?

6 A. Because he was volunteering information.

7 Q. Okay. Now, you recall that Mr. Beach told you
8 during the confession statement that he choked the victim?
9 Do you remember that?

10 A. Not really; no, sir, I don't.

11 Q. Okay. Do you remember Mr. Beach saying that
12 the victim exited the driver's side of the truck and he
13 ran around the truck and got her up against the driver's
14 side of the truck?

15 A. I do remember that part, yes, sir.

16 Q. And did you think that was accurate?

17 A. At the time.

18 Q. Okay. Did you later learn that that was not
19 accurate?

20 A. I've learned that it's alleged that it's not
21 accurate.

22 Q. Okay. You knew that Mr. Beach got the
23 clothing of the victim wrong, right?

24 A. I'm aware that that's been alleged, yes, sir.

25 Q. Well, in fact, after the confession, didn't

1 what they know about the crime facts, right?

2 A. That's correct.

3 Q. To see if the information they give you is
4 consistent with the crime scene facts, right?

5 A. That's correct.

6 Q. And to see if they have any nonpublic
7 knowledge about the crime that shows that they must have
8 been there; is that right?

9 A. Was that a question?

10 Q. Yes, please.

11 A. Would you repeat it, please? I'm sorry. I
12 lost you.

13 Q. Sure. When you're trying to figure out
14 whether you're getting a reliable confession, one of the
15 things you look for is whether or not the suspect is
16 giving you nonpublic facts, facts that weren't out there
17 in the public that only the suspect should know?

18 A. That would be true, yes.

19 Q. If the suspect gets the location of the crime
20 wrong, that's an indicator of a problem, right?

21 A. If you know for sure where the crime occurred
22 as opposed to what they're telling you, yes.

23 Q. Okay. If the suspect says that somebody was
24 choked and they weren't choked, that could be a problem,
25 right?

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1 A. It could be.

2 **Q. If the suspect gets the clothes wrong, that's**

3 **a problem, right?**

4 A. You say if he's deposed wrong?

5 **Q. "Clothes", if he gets the clothing of the**

6 **victim wrong.**

7 A. I suppose that would be true, but --

8 **Q. If the suspect can't provide you with any**

9 **information that wasn't already publicly out there, you**

10 **would want to find some way to try to corroborate the**

11 **confession, wouldn't you?**

12 A. Mr. Beach gave a confession that convinced me

13 that he was the person who had committed the murder.

14 **Q. And you believe that because you thought he**

15 **got almost all of the details in that confession right?**

16 A. I had no way of knowing at that particular

17 time whether his details were correct or incorrect, but he

18 was admitting to killing the young lady in the state of

19 Montana.

20 **Q. Now, when you, when you claim that you met**

21 **with Mr. Beach and his lawyer, Paul Kidd, and he**

22 **reaffirmed the Montana murder, did you record that?**

23 A. No, sir, it was not recorded.

24 **Q. Now, I thought I heard you testify that -- and**

25 **you correct me if I'm wrong. Did you interrogate Barry**

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1 A. That's my understanding, yes, sir.

2 **Q. At about three-fifteen you come in, into the**

3 **room, right?**

4 A. Or shortly thereafter.

5 **Q. You're there alone with Mr. Beach until about**

6 **six-thirty, right?**

7 A. That would be correct, yes, sir.

8 **Q. Then Sergeant Via comes back in, right?**

9 A. Yes, sir, he did. And I exited out.

10 **Q. Okay. So what's going on is: Sergeant Via**

11 **spends a couple of hours interrogating Mr. Beach, then he**

12 **gets to take a break; you come in and spend a couple of**

13 **hours with Mr. Beach, then you get to take a break; and**

14 **then Sergeant Via is back in, right?**

15 A. It may appear that way, but that was not the

16 purpose of the way that it transpired, no, sir.

17 **Q. It appears that way because that's the way it**

18 **happened, right?**

19 A. That's the way it happened, yes, sir.

20 **Q. But Mr. Beach didn't get to take a break, did**

21 **he?**

22 A. Mr. Beach was allowed to use the restrooms and

23 drink Cokes. And I'm not sure if he smoked or not, but if

24 he smoked, he was given cigarettes.

25 **Q. Mr. Calhoun, how long did the -- the**

OVER 3 PAGES

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1 **Beach about the Louisiana homicide on January 7th?**

2 A. I did not.

3 **Q. Not at all?**

4 A. Not at all.

5 **Q. Okay. So after you questioned him about the**

6 **Montana murder and then you recorded it, you didn't go**

7 **back in and question him further about the Louisiana**

8 **murders?**

9 A. We did not that night, no.

10 **Q. Okay. Well, I'm looking at a January 26, 1983**

11 **report that Sergeant Via prepared. And let me read this**

12 **to you and see if that refreshes your recollection (quoted**

13 **as read):**

14 **"On January 7, 1983, after recorded**

15 **confessions were taken from Barry Beach regarding the**

16 **Montana homicide mentioned earlier, Barry Beach was then**

17 **questioned regarding local homicides in this area. This**

18 **took place at approximately 2100 hours on January 7, 1983,**

19 **with Sergeant Via and Commander Alfred Calhoun being**

20 **present."**

21 A. I do not recall that, no, sir.

22 **Q. Now, let me just make sure I've got the**

23 **general time period right. It's your understanding that**

24 **they start -- that Sergeant Via starts interrogating**

25 **Mr. Beach at about 12:30, or so, on January 7th, midday?**

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1 **psychological stress tests that you did on Mr. Beach on**

2 **January 7, how long did that take from start to finish?**

3 A. Start to finish, from pretest to finish, 2 hr.

4 probably close to two hours, more or less. PSE

5 **Q. Now, you were with Mr. Beach close to three**

6 **hours; is that right?**

7 A. That's correct.

8 **Q. And you testified that when you finished that**

9 **test, you confronted him with the fact that you believed**

10 **he was deceptive; is that right?**

11 A. That is correct.

12 **Q. Now, that was your word that you put -- that's**

13 **in the report, that you confronted him, right?**

14 A. Yes. I informed him that his test indicated

15 he was being deceptive in regards to the homicide in the

16 state of Montana.

17 **Q. And you just said that in a very calm voice;**

18 **is that right?**

19 A. In a very calm voice, yes, sir.

20 **Q. And in response, he raised up his hands and**

21 **suddenly said he had had a vision; is that right?**

22 A. He said, "I'm having a vision."

23 **Q. Now, if I understand correctly, you've taken**

24 **between 2,000 and 3,000 confessions in your career.**

25 A. That is correct.

1 Q. And your career spans how many years?

2 A. About 28 now.

3 Q. About 28 years?

4 A. About.

5 MS. BOWMAN: Thirty-eight.

6 Q. Thirty-eight? I'm sorry.

7 MR. CAMIEL: That's all I have. Thank you.

8 CHAIRWOMAN O'CONNOR: Do you have anything
9 further?

10 MS. PLUBELL: Yes.

11 REDIRECT EXAMINATION

12 BY MS. PLUBELL:

13 Q. Alfred, is a psychological stress evaluation,
14 is that actually interrogation? Are you actually asking
15 any surprise questions, or --

16 A. You are not asking any surprise questions.
17 And just for the record, the psychological test evaluator
18 and our polygraph instrument is an investigative tool.
19 It's not admissible in the courts unless it's agreed on by
20 both sides. And it, more or less, tells you if a person
21 is concerned about a particular response that they're
22 giving. If that's, if that's clear to that.

23 Q. All right. So do you know how long Sergeant
24 Via's psychological stress evaluation took, the first test
25 that was done?

1 time Barry Beach arrived, was the bulk of the time
2 dedicated to those two psychological stress evaluation
3 tests?

4 A. I'm not sure I understand. I don't think it
5 was the focus of him coming to the courthouse that day to
6 receive the psychological test by Via and me, but as part
7 of the investigation procedure, he was administered by
8 Sergeant Via the psychological stress evaluation test.
9 And based on what Sergeant Via said, he was showing
10 deception in regards to homicide in the state of Montana.
11 And that's the reason that I was asked to give a secondary
12 test to either confirm or rule it out.

13 Q. Aside from giving him that test and then at
14 the end of the test explaining to him that you believe
15 there were indications of deception, did you actually
16 interrogate him?

17 A. Not, not -- no. We discussed the case, we
18 discussed the information around the case that I had
19 knowledge of, and then we administered the test after we
20 formulated the questions.

21 Q. Now, Mr. Camiel asked you about making some
22 assumptions that, perhaps, when you gave him this test or
23 when you interrogated him, that you were operating under
24 (the assumption that he was guilty) of the Montana homicide.

25 A. I assume when I entered the room, based on

1 A. I do not know for sure, no.

2 Q. Is that a question better left to Sergeant
3 Via?

4 A. Would you repeat that?

5 Q. Would it be better for Sergeant Via to answer
6 that question?

7 A. It would be, yes.

8 Q. But if you're conducting the psychological
9 stress evaluation, do you deviate at all from the script?

10 A. Once you formulate your questions, you do not
11 deviate from those questions, no.

12 Q. And is the person you're evaluating informed
13 in advance what the script is?

14 A. They are fully advised as to what questions
15 will be asked and in what order, and that there will be no
16 surprise questions.

17 Q. Is it a standard operating procedure, or was
18 it, that you had one evaluator at a time?

19 A. It is.

20 Q. Did you have any procedures in your local
21 sheriff's department if one evaluator was of the opinion
22 that there was deception what you would do?

23 A. You get a second operator to administer a
24 second test to either confirm or deny it.

25 Q. And was that the bulk of the time -- from the

1 sergeant's Via's test, that he probably was.

2 Q. And were you aware of an interview that
3 Sergeant Via had taken of Barry Beach's father and
4 stepmother?

5 A. I was not.

6 Q. Okay. Now, Barry Beach claims that Sergeant
7 Via picked him up at around seven-thirty in the morning.
8 Do you know whether or not that's accurate?

9 A. The waiver of rights that was executed that
10 day was at 12:52 p.m., which would have been after lunch
11 at the correctional center.

12 Q. Now, Mr. Beach indicated in a statement to
13 Mr. Leo that he remembers that clearly because he was on
14 mop detail at the Pea Farm, the place where he was being
15 held, and that he was interrupted from completing his mop
16 detail. Do you know any information about what pretrial
17 detainees -- if they do such things at your correctional
18 facilities?

19 A. At that time, the pretrial detainees were not
20 required to perform duties in the -- where they were
21 living. There were at that time a mixture of sentenced
22 and pretrial people, and the sentenced people were
23 assigned the job of cleaning the cell blocks.

24 Q. Were you required to log times of when things
25 occurred back in 1983?

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- 1 A. Was I required to log the times --
- 2 **Q. Were officers --**
- 3 A. -- when things occurred?
- 4 **Q. Were officers required to log times of if they**
- 5 **were going to pick someone up to interview them, if they**
- 6 **were reading Miranda?**
- 7 A. Yes. If they picked an inmate up, they would
- 8 radio headquarters and dispatch that they were en route to
- 9 or from a certain location with an inmate or with an
- 10 individual.
- 11 **Q. Do you know what happened to the tape**
- 12 **recording of Mr. Beach's confession?**
- 13 A. It's my understanding that we had a new
- 14 lieutenant assigned to the Records Division, and he
- 15 thought that because it was an out-of-state case that it
- 16 was not important, and he erased that tape.
- 17 **Q. Do mistakes sometimes happen in law**
- 18 **enforcement like that?**
- 19 A. From time to time.
- 20 **Q. Does it -- Alfred, you've indicated that**
- 21 **you've taken a lot of confessions. When you take**
- 22 **someone's confession, do you expect them to give you 100**
- 23 **percent of the facts accurately?**
- 24 A. You never get 100 percent of the truth from
- 25 anybody. That is a -- it just doesn't happen. Everybody

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- 1 is going to, is going to tell the story in a way that it
- 2 makes them look the best. Mine doesn't
- 3 **Q. And in this particular case, were you actually**
- 4 **in a position to go back and corroborate the information**
- 5 **that Barry Beach gave you, or was that left to some other**
- 6 **law enforcement agency?**
- 7 A. You're saying was I able to go back and verify
- 8 any of the information?
- 9 **Q. Was this your case that you had investigated?**
- 10 A. It was not my case, no.
- 11 **Q. Whose case was it?**
- 12 A. It was Sergeant Via's case.
- 13 **Q. Well, I mean where did the crime occur?**
- 14 A. It occurred in Roosevelt County, Montana.
- 15 **Q. Is that the agency that would be responsible**
- 16 **for corroboration?**
- 17 A. I would assume so, yes, ma'am.
- 18 **Q. Alfred, when you appeared at Barry Beach's**
- 19 **trial and his suppression hearing, did you perjure**
- 20 **yourself?**
- 21 A. I did not.
- 22 **Q. Are you aware of the fact that the District**
- 23 **Court and the Montana Supreme Court have already made**
- 24 **findings about the credibility of the Louisiana officers**
- 25 **and the credibility --**

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- 1 **CHAIRWOMAN O'CONNOR: Ms. Plubell, I'm going**
- 2 **to interrupt. We've had 19 questions on whether the**
- 3 **offense occurred in Montana. We're well aware that it**
- 4 **did.**
- 5 MS. PLUBELL: Okay.
- 6 CHAIRWOMAN O'CONNOR: We don't need to hear
- 7 about what the appeals were or any such thing. These
- 8 aren't appropriate questions to direct to this witness.
- 9 Do you have any that are?
- 10 MS. PLUBELL: (Shaking head negatively.)
- 11 CHAIRWOMAN O'CONNOR: Do you have any further
- 12 questions?
- 13 MR. CAMIEL: Just a couple.
- 14 **RE-CROSS-EXAMINATION**
- 15 **BY MR. CAMIEL:**
- 16 **Q. Mr. Calhoun, were you involved in the Kathy**
- 17 **Whorton investigation?**
- 18 A. I'm sorry, I didn't understand that question.
- 19 **Q. Yeah. At the time that Mr. Beach was**
- 20 **arrested, your office was investigating the homicide of a**
- 21 **woman named Kathy Whorton. Do you recall that?**
- 22 A. I do.
- 23 **Q. Okay. And were you involved in that**
- 24 **investigation?**
- 25 A. In a peripheral area. I was commander of the

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- 1 investigative -- the sheriff's office, we had formed a
- 2 task force of local and state and federal officers that
- 3 was investigating the homicide of Kathy Whorton. And I
- 4 just was on the peripheral area, out to the side. I was
- 5 not assigned to that investigation.
- 6 **Q. Were you satisfied with the confession that**
- 7 **Sergeant Via got from Mr. Lucas and Mr. Toole with regard**
- 8 **to Kathy Whorton?**
- 9 A. At the time, I was.
- 10 **Q. You believed that those confessions were valid**
- 11 **confessions, didn't you?**
- 12 A. At that time.
- 13 **Q. You now know that those were false**
- 14 **confessions?**
- 15 A. I know I now don't believe them. I don't know
- 16 that they're false, but I know I don't believe them.
- 17 **Q. And one of the reasons that you did believe**
- 18 **them at the time was that Sergeant Via told you that**
- 19 **Mr. Lucas and Mr. Toole provided lots of details about**
- 20 **that murder, right?**
- 21 A. I don't recall Mr. Via giving me lots of
- 22 details or stating that they gave lots of details. I
- 23 recall that he said that they gave recorded confessions,
- 24 those confessions were typed, and I read them. I don't
- 25 specifically remember a whole lot about confessions.

56 (Pages 221 to 224)

1 MR. CAMIEL: Nothing further. Thank you.
 2 CHAIRWOMAN O'CONNOR: Anything further from
 3 the State?
 4 MS. PLUBELL: No.
 5 CHAIRWOMAN O'CONNOR: Thank you very much for
 6 appearing, Mr. Calhoun.
 7 THE WITNESS: Thank you very much.
 8 CHAIRWOMAN O'CONNOR: We'll continue with the
 9 cross-examination of Sissy Atkinson.
 10 Hello, Ms. Atkinson. Thank you for returning.
 11 I'll remind you that you're still under oath.
 12 It's now the opportunity of the State's
 13 attorneys to ask you questions.
 14 Go ahead, Ms. Plubell.
 15 CROSS-EXAMINATION
 16 BY MS. PLUBELL:
 17 Q. From the time of Kim Nees's murder, have you
 18 always cooperated with law enforcement if they've made
 19 requests of you?
 20 A. Yes.
 21 Q. And you gave fingerprints, you gave palm
 22 prints, you gave hair samples to law enforcement?
 23 A. Yes.
 24 Q. Was the tape-recorded statement you gave to
 25 Ward McKay in the presence of Mike Wellenstein and I up in

1 Poplar, Montana, the --
 2 A. Yes, it was.
 3 Q. Was that the first tape-recorded statement you
 4 ever gave in this case?
 5 A. Yeah.
 6 Q. So when (the FBI and Dean Mahlum questioned)
 7 you, that was not a recorded statement?
 8 A. I don't believe so. I can't remember if they
 9 recorded it or not.
 10 Q. And were -- okay. And were they writing
 11 reports about what you were telling them?
 12 A. Who?
 13 Q. Never mind. When you gave that statement to
 14 us, you didn't have any advanced warning that we were
 15 coming, did you?
 16 A. No, I did not.
 17 Q. Ward McKay knocked on your door and said he
 18 would like to talk to you, and you came down and talked
 19 with us?
 20 A. Right.
 21 Q. And we didn't show you statements from people
 22 like your brother, J.D., did we?
 23 A. No.
 24 Q. During your direct examination with Mr. Camiel
 25 when you were trying to give times of things happening,

1 were those estimations, since you're going back a number
 2 of years?
 3 A. Yes.
 4 Q. But you do know that you saw that accident in
 5 front of the Buck Horn Bar before you went home, right?
 6 A. Right.
 7 Q. And maybe within a half-hour of that, you went
 8 home, right?
 9 A. Right.
 10 Q. So if there are reports that document when
 11 that accident happened, that kind of ties in to when you
 12 went home, correct?
 13 A. Right.
 14 Q. Now, you indicated that you did work at A & S
 15 Industries with Carl Four Star, right?
 16 A. Right.
 17 Q. And you indicated that it was noisy?
 18 A. Very.
 19 Q. And that some people -- there were earplugs
 20 available for people to wear if they wanted to?
 21 A. (Nodding head affirmatively.)
 22 Q. There were big fans there for ventilation,
 23 too, weren't there --
 24 A. Yes.
 25 Q. -- because of the odors?

1 A. Yes.
 2 Q. Did you ever tell Carl Four Star that -- in
 3 reference to Kim Nees's homicide, that Barry Beach was
 4 innocent and you had gotten away with a capital crime?
 5 A. No, I did not.
 6 Q. Did you work very close to Carl Four Star with
 7 respect to distance?
 8 A. Yeah, I mean a long distance.
 9 Q. Now, you indicated that Alex Trottier is the
 10 father of your daughter?
 11 A. Yes.
 12 Q. Did you and him have a pretty steady
 13 relationship, or what was the nature of your relationship?
 14 A. No. I snuck around with him. He wasn't my
 15 boyfriend, I wasn't his girlfriend; it's just that I was
 16 running around like I was, and I got caught, but no
 17 romancing whatsoever.
 18 Q. Would you have cared if Kim Nees had been
 19 seeing Alex Trottier?
 20 A. No.
 21 Q. Now, you talked about how Vonnie Brown came to
 22 visit you sometimes when you were living in Great Falls.
 23 A. Hm-hmm.
 24 Q. And at that particular time, you admitted that
 25 you were using OxyContin, correct?

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1 A. Right.

2 **Q. And you were addicted to that, right?**

3 A. Right.

4 **Q. Was Vonnie Brown using drugs at that time,**
5 **too?**

6 A. Yes, she was.

7 **Q. And Vonnie Brown doesn't like you so much**
8 **anymore, does she?**

9 A. No, because I called her PO after she ripped
10 off all my stuff from my apartment.

11 **Q. And Vonnie Brown got in trouble for that,**
12 **didn't she?**

13 A. Well, her probation officer in Glasgow still
14 has the clothes. I still haven't been able to make it out
15 there to get them.

16 **Q. Are you aware that your brother, J.D., has**
17 **signed a statement that you made some admissions to him**
18 **about at least having some knowledge about Kim Nees's**
19 **homicide?**

20 A. I'm aware of it, yes.

21 **Q. And you learned about it first from the**
22 **newspaper, didn't you?**

23 A. Yes.

24 **Q. And you already indicated that your brother**
25 **J.D. has a brain injury, right?**

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1 my little girl through the air. And so I left with him
2 because I was afraid he was going to hurt my mother, so --

3 **Q. That's not the only time things like that**
4 **happened, is it?**

5 A. No.

6 **Q. And, in fact, he held you to the ground with a**
7 **brick over your head on one occasion, didn't he?**

8 A. Yes. That was the night he beat my head in
9 with a brick.

10 **Q. Other than the fact that Barry Beach confessed**
11 **to killing Kim Nees, do you have any knowledge about Kim**
12 **Nees's murder?**

13 A. No, I do not.

14 **Q. Sissy, did you kill Kim Nees?**

15 A. No, I did not.

16 **Q. Did you participate at all?**

17 A. No, I did not.

18 **Q. How long have these accusations been made**
19 **against you?**

20 A. For 27 years.

21 **Q. And what impact has that had on you?**

22 A. I mean a lot of things happened through the
23 years: Roberta Clincher's trying to take my daughter from
24 the Head Start. On her graduation day, she took her,
25 running out the back door with her.

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1 A. Right.

2 **Q. And because of that, there's not a lot of**
3 **things that you would trust him with?**

4 A. Right.

5 **Q. Are you aware of whether J.D. has ever turned**
6 **other people over to, say, law enforcement if it would**
7 **help himself out?**

8 A. Would you --

9 **Q. Has J.D. ever turned other people over to law**
10 **enforcement in order to help himself out?**

11 A. Oh, I don't know about that.

12 **Q. Okay. Now, J.D. in his statement has**
13 **described your relationship as a close and loving**
14 **relationship. That isn't quite accurate, is it?**

15 A. No, it's not.

16 **Q. You're afraid of J.D., aren't you?**

17 A. Yes, I am.

18 **Q. And why are you afraid of him?**

19 A. Because when my little girl was about 12 years
20 old -- or 2 years old, my mom had me go down to the Legion
21 to check up on another one of my brothers, and J.D. was
22 down there. And I came home and told my mom that my older
23 brother was okay. And then here comes J.D., and he had
24 drank a bunch of whiskey. He come in there and he started
25 beating me up and tearing phones off the walls. He threw

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1 **Q. Has it been -- well, it has been traumatic for**
2 **you to read your name in the paper being accused of this**
3 **murder, isn't it?**

4 A. Yes, it is.

5 **Q. And Barry Beach's mom has been accusing you**
6 **since --**

7 A. Day 1.

8 **Q. -- 1979, hasn't she?**

9 A. Yes, she has.

10 **Q. Are you tired of it?**

11 A. Yes, I am.

12 **Q. Are you trying to get on with your life?**

13 A. Yes, I am.

14 **Q. Are you clean and sober today?**

15 A. Yes, I am.

16 **Q. And how long has that been?**

17 A. Since February 5th.

18 MS. PLUBELL: I have no further questions.

19 MR. CAMIEL: Just a couple of questions.

20 CHAIRWOMAN O'CONNOR: Yes, Mr. Camiel.

21 REDIRECT EXAMINATION

22 BY MR. CAMIEL:

23 **Q. Ma'am, you said that you've been accused of --**
24 **people have been accusing you of being involved in the Kim**
25 **Nees murder for 27 years; is that right?**

58 (Pages 229 to 232)

1 A. Yes.
 2 **Q. So since immediately after Kim Nees was**
 3 **killed, you've been somebody whose been accused of being**
 4 **involved, right?**
 5 A. Well, at first Roberta Clincher would write me
 6 a letter, and she would say that I wasn't the one that did
 7 it, but I was there and I was -- supposedly watched two
 8 girls do it all. And she -- I was excused from Barry's
 9 trial in Glasgow because Roberta Clincher went down to my
 10 brother Bobby's house, and he was going to drive a bus to
 11 the POD class for Barry's trial in Glasgow so the POD
 12 class could observe it. And she went to my brother
 13 Bobby's house and asked if they could talk, and they went
 14 downstairs and talked. And she asked Bobby just to ask me
 15 if I would just give up the other two girls and tell on
 16 the two girls and that she would get me "immunity" or
 17 "immunity", or -- whatever that means.
 18 And I said, "Well, how am I suppose to tell them
 19 when I don't know who they are, you know?" And then --
 20 **Q. Ms. Atkinson, my question was: You've been a**
 21 **suspect with regard to this murder since right after it**
 22 **happened, right?**
 23 A. Right.
 24 **Q. Barry Beach wasn't arrested until 1983. The**
 25 **murder was in 1979, right?**

1 MS. PLUBELL: Just one question.
 2 RE-CROSS-EXAMINATION
 3 BY MS. PLUBELL:
 4 **Q. Sissy, isn't it -- it is also true, isn't it,**
 5 **that Barry Beach has been a suspect since Day 1?**
 6 A. Right.
 7 **Q. And his family knew that?**
 8 A. Right.
 9 MS. PLUBELL: Nothing further.
 10 CHAIRWOMAN O'CONNOR: This witness may be
 11 excused; is that right?
 12 MS. PLUBELL: Yes.
 13 MR. CAMIEL: Yes.
 14 CHAIRWOMAN O'CONNOR: Thank you very much for
 15 appearing.
 16 Let's take a 10-minute break now.
 17 (A brief recess was taken.)
 18 CHAIRWOMAN O'CONNOR: We'll come back to
 19 order.
 20 Mr. Camiel, you may call your next witness.
 21 MR. CAMIEL: Thank you.
 22 CHAIRWOMAN O'CONNOR: Are you Mr. Atkinson?
 23 MR. ATKINSON: Yes.
 24 CHAIRWOMAN O'CONNOR: Will you raise your
 25 right hand, please?

1 A. (Nodding head affirmatively.)
 2 **Q. So long before Barry Beach was ever arrested**
 3 **for this homicide, people were accusing you, right?**
 4 A. No, not accusing me.
 5 **Q. Well, you indicated that for 27 years, you had**
 6 **been accused.**
 7 A. That people have harassed me and said stuff to
 8 me, but no one has ever accused me. Because when they
 9 took my hair samples and my palm print and everything from
 10 Day 1, they told me that they would make sure they left me
 11 alone because none of my matches -- or my hair samples
 12 matched it.
 13 **Q. Well, why is it that for 20 -- why is it that**
 14 **right after the murder, people started accusing you of**
 15 **being involved?**
 16 A. I don't know. Why don't you ask them?
 17 **Q. Now, it wasn't Roberta Clincher who had**
 18 **anything to do with the police wanting your fingerprints,**
 19 **was it? The police came to you in 1979 and wanted your**
 20 **fingerprints, didn't they?**
 21 A. I don't think it was 1979. They just took us
 22 and questioned -- they had questioned us at the tribal
 23 jail.
 24 MR. CAMIEL: I have nothing further.
 25 CHAIRWOMAN O'CONNOR: Any questions?

1 ROBERT ATKINSON, WITNESS, SWORN
 2 CHAIRWOMAN O'CONNOR: You may proceed
 3 Mr. Camiel.
 4 DIRECT EXAMINATION
 5 BY MR. CAMIEL:
 6 **Q. Mr. Atkinson, could you state your full name**
 7 **and spell your last name?**
 8 A. My full name?
 9 **Q. Yes, please.**
 10 A. Robert Atkinson.
 11 **Q. And how do you spell your last name?**
 12 A. A-T-K-I-N-S-O-N.
 13 **Q. And are you the brother of Sissy Atkinson?**
 14 A. Yes, I am.
 15 **Q. And you accompanied her today to come to this**
 16 **hearing?**
 17 A. Yes.
 18 **Q. Now, back in 1979, were you working with the**
 19 **Poplar Police Department?**
 20 A. Yes, I was.
 21 **Q. What was your position back in June of 1979?**
 22 A. I was acting chief of police.
 23 **Q. And were you involved in the investigation of**
 24 **the Kim Nees homicide?**
 25 A. Not directly involved. I worked with the

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- 1 sheriff department, did a little footwork for them,
2 located people that they needed to question.
- 3 **Q. And did you have anything to do with taking**
4 **care of the crime scene?**
- 5 A. Yes, we -- up to the day of gathering the
6 evidence, we locked the evidence in our police office.
- 7 **Q. In Poplar?**
- 8 A. Yes.
- 9 **Q. This is the evidence that's collected from the**
10 **crime scene?**
- 11 A. Yes.
- 12 **Q. What kind of a facility was it locked in?**
- 13 A. It was a Poplar Police Department judge's
14 chamber, and it was connected to -- the judge's chamber is
15 connected to the police office. It's all in one building.
16 And I had locks on the doors and signs on the doors
17 telling people not to enter, that evidence was in the
18 room, so that we could keep track of the chain of command
19 on the evidence.
- 20 **Q. And did the evidence include things like Kim**
21 **Nees's clothing?**
- 22 A. Yes, it did.
- 23 **Q. And her purse?**
- 24 A. Yes, it did.
- 25 **Q. And other things that had been collected from**

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- 1 **the scene?**
- 2 A. Yes.
- 3 **Q. Why was it being kept in the judge's chambers**
4 **at that time?**
- 5 A. Well, we kept it there. The sheriff's
6 department didn't have any way to transport it to Wolf
7 Point to their evidence room. And they were going to just
8 leave it there overnight, finish the crime scene area, and
9 then transport it the next morning.
- 10 **Q. Okay. And the night that it was left in the**
11 **judge's chambers as you've described, did something happen**
12 **in terms of the door to that evidence room?**
- 13 A. Yes.
- 14 **Q. What happened?**
- 15 A. One of our officers kicked the door in, broke
16 the hasp to that door, and entered.
- 17 **Q. Do you know which officer did that?**
- 18 A. Yes, I do.
- 19 **Q. Which officer?**
- 20 A. Steven Grayhawk.
- 21 **Q. And is that Steven Grayhawk, the father of**
22 **Maude Grayhawk?**
- 23 A. Yes.
- 24 **Q. How do you know that he's the one who kicked**
25 **the door in?**

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- 1 A. I asked him.
- 2 **Q. And he told you he did?**
- 3 A. Yes.
- 4 **Q. Okay. When you say "kicked the door in", did**
5 **he actually break the locks, or did --**
- 6 A. Well, he tore the hasp off that we had. It
7 had a padlock hasp, and the screws were torn out of the
8 door, and whatnot.
- 9 **Q. And did he explain to you why he felt it**
10 **necessary to kick in the door?**
- 11 A. He said he needed to use the restroom.
- 12 **Q. Were there other restrooms available near your**
13 **building?**
- 14 A. The notice I put on the door was: "Do not
15 enter, evidence in the room. Use your restroom at home or
16 across the street", is what basically was said.
- 17 **Q. Did he indicate to you whether when he broke**
18 **into that room, he touched anything that was in there?**
- 19 A. He said he didn't, but I couldn't -- I was not
20 there, I could not testify to that, and I do not know
21 whether he did or not, actually.
- 22 **Q. So you're the acting police chief of Poplar at**
23 **the time; is that right?**
- 24 A. Yes.
- 25 **Q. Now, was Steve Grayhawk -- was he on duty the**

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- 1 **evening that Kim Nees was murdered?**
- 2 A. Yes.
- 3 **Q. And are you aware, at some point was he -- as**
4 **a part of his duties, was he asked to respond to some**
5 **screams that were heard coming from the park?**
- 6 A. If I remember his report right, he said that
7 he did hear some screams, or whatever, was radioed about
8 something. I don't remember the exact report right off.
- 9 **Q. Did he say he went down there to investigate?**
- 10 A. I don't recall.
- 11 **Q. Okay. Once you find out that the door has**
12 **been kicked in to where the evidence is being stored, did**
13 **you advise the Roosevelt County Sheriff's Office that that**
14 **occurred?**
- 15 A. One of the officers who was with me that next
16 morning, because they're to gather the evidence and
17 transport it to Wolf Point --
- 18 **Q. Who was that?**
- 19 A. And I am not sure whether it was Dean Mahlum
20 or Red Wilson.
- 21 **Q. Okay.**
- 22 A. It was one of those officers, I believe.
- 23 **Q. So either Dean Mahlum or Red Wilson had seen**
24 **that the evidence room door had been kicked in?**
- 25 A. Yes.

1 Q. And so they learned it when you learned it?
 2 A. Yes.
 3 Q. Okay. Now, did you ever have any subsequent
 4 discussions after that morning where you saw the door was
 5 kicked in with anyone from Roosevelt County?
 6 A. About the evidence?
 7 Q. About the evidence -- the door being kicked
 8 in.
 9 A. No. I just told them that I would investigate
 10 what had happened, I'd find out from my officers. And
 11 later that day, I found Steve, who was on duty that night,
 12 and he told me that he had kicked it in.
 13 And I said, "Even after I posted the notices, you
 14 still did that?"
 15 And he said, "Well, I needed to use the restroom."
 16 And I said, "That's not a good reason."
 17 So he was verbally reprimanded, and I don't recall
 18 what else had happened to him.
 19 Q. Now, you were present at the time of
 20 Mr. Beach's trial?
 21 A. Yes.
 22 Q. And sometime as the trial commenced, did you
 23 have a conversation with the prosecuting attorney,
 24 Mr. Racicot, about the fact that the evidence room door
 25 had been kicked in?

1 the door had been kicked in?
 2 A. No.
 3 Q. You didn't?
 4 A. I don't believe I did.
 5 Q. You don't believe you did?
 6 A. I don't believe I told Mr. Racicot, no.
 7 Q. Okay. Have you had -- did you have any
 8 subsequent discussions with Dean Mahlum to tell him that
 9 you guys knew about this because one of your deputies --
 10 either you or one of your deputies "was there when I
 11 discovered it"?
 12 A. I never -- I don't believe I discussed it with
 13 Dean, but it's been so long ago, I don't -- I can't really
 14 answer that.
 15 Q. Now, the day that you discovered that the door
 16 had been kicked in, was the evidence that day transported
 17 back to Wolf Point?
 18 A. Yes, it was.
 19 Q. Did you write any report indicating that their
 20 room had been kicked in, the door had been kicked in?
 21 A. I wrote it on my daily log sheet.
 22 Q. Did you write any other kind of report --
 23 A. Just a report that -- of the verbal to Steve
 24 Grayhawk about his verbal reprimand.
 25 MR. CAMIEL: That's all I have. Thank you.

1 A. Yes.
 2 Q. Okay. How did that come up?
 3 A. Well, I don't recall if it was at a break or
 4 if it was, I mean, before lunch or at our lunch break. He
 5 asked to see me, and we went downstairs in the Glasgow
 6 courthouse.
 7 And he just said, "I want to question you on the --
 8 review with you the questions I'm going to ask you when
 9 you're on the stand."
 10 And I said, "Well, before you do that, you better
 11 hear what I've got to say." I said, "I haven't told
 12 anybody this since, since it happened, but," I said, "the
 13 evidence room was broke into at that time, and I can't
 14 guarantee the chain of evidence on this."
 15 And he kind of flew off the handle a little bit and
 16 stated that this had been mishandled since Day 1, the
 17 evidence and the witnesses, and whatnot. He said, "I
 18 wouldn't dare put you on the witness stand."
 19 Q. Did he indicate that he didn't want to put you
 20 on the witness stand because he didn't want it to come out
 21 that the room had been broken into?
 22 A. I don't -- he never said that directly, but
 23 that's what I understood him to mean.
 24 Q. Did you tell Mr. Racicot that either Dean
 25 Mahlum or Red Wilson had been with you when you discovered

1 CHAIRWOMAN O'CONNOR: Go ahead.
 2 CROSS-EXAMINATION
 3 BY MS. PLUBELL:
 4 Q. You didn't fire Steve Grayhawk over this, did
 5 you?
 6 A. No.
 7 Q. And because you didn't believe that he was
 8 trying to tamper with the evidence, did you?
 9 A. I never had an opinion of whether that's what
 10 he was trying to do.
 11 Q. Well, if he had been tampering with evidence,
 12 his consequence would have been much more serious,
 13 wouldn't it?
 14 A. Oh, yes.
 15 Q. He made a stupid decision?
 16 A. Yes.
 17 Q. And you give him a reprimand for that, right?
 18 A. Yes.
 19 Q. Are you aware that both -- that the Court and
 20 Timer Moses were aware of this very issue --
 21 A. No, I wasn't.
 22 Q. -- that it was brought to their attention?
 23 A. No, I wasn't.
 24 Q. If that's reflected in the transcript, would
 25 you have any reason to not believe that?

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1 A. That they knew about it?

2 **Q. The Court and Timer Moses both knew, Marc**

3 **Racicot disclosed this information to them.**

4 A. That, I had no idea.

5 **Q. And I believe that Mr. Camiel questioned you**

6 **about Mr. Grayhawk being dispatched on the 16th because of**

7 **hearing screams.**

8 A. Yes.

9 **Q. And we happen to have a copy of that report**

10 **here. Would it help you to refer to that to be able to**

11 **remember times, and such things?**

12 A. I don't believe it would.

13 **Q. Okay.**

14 A. I mean it's been a long --

15 **Q. If the report says that the dispatch was at**

16 **12:38, you would have no reason to think that was**

17 **incorrect, would you?**

18 A. No.

19 **Q. And if, and if the call actually came from**

20 **Mrs. Edna Grayhawk, you would have no reason to dispute**

21 **that, would you?**

22 A. No.

23 **Q. Was Mrs. Edna Grayhawk related to Steve**

24 **Grayhawk?**

25 A. That was his wife.

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1 A. The brain -- came afterwards.

2 **Q. All right. But he does have a brain injury,**

3 **correct?**

4 A. Now he does. I believe he does.

5 **Q. And there have been instances where your**

6 **brother has sort of, I guess, done somewhat intimidating**

7 **things to you, too?**

8 A. Well, when you grow up together with five boys

9 in a family, you usually do things to each other, yes.

10 **Q. And this has been hard on Sissy, hasn't it?**

11 A. Yes. It's more recently than, it seems, than

12 in our younger years, because we all, we all were the

13 pranksters, you know.

14 **Q. But that isn't a prank --**

15 A. No, that was not a prank.

16 **Q. -- when you hit somebody in the head with a**

17 **brick.**

18 A. No.

19 MS. PLUBELL: I have no further questions.

20 REDIRECT EXAMINATION

21 BY MR. CAMIEL:

22 **Q. Mr. Atkinson --**

23 A. Yes.

24 **Q. -- over the years, have you attempted to talk**

25 **to your sister, Sissy Atkinson, about the Kim Nees murder?**

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1 **Q. And their house was not down in the crime**

2 **scene area, was it? It wasn't down in the park, was it?**

3 A. No, just right up the hill from it.

4 **Q. It was on the other side of the street, too,**

5 **wasn't it?**

6 A. Yes.

7 **Q. Are you -- you're aware that Sissy previously**

8 **gave testimony prior to you?**

9 A. Yes.

10 **Q. And during that testimony, she indicated that**

11 **she actually has some fear of your brother J.D.**

12 A. Yes.

13 **Q. And she indicated about being actually**

14 **attacked by him on at least -- well, more than one**

15 **occasion.**

16 A. Yes.

17 **Q. And were you there one time when that**

18 **occurred?**

19 A. One time when he had been -- he had been

20 drinking, and he tried -- he knocked her down, hit her

21 with a brick -- or took a brick to her, or --

22 **Q. And you think that that probably happened**

23 **because of his drinking?**

24 A. I believe so. He couldn't handle his liquor.

25 **Q. And he also had a brain injury, correct?**

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1 A. I talked to her two -- or at least two

2 different times, occasions, on it, yes.

3 **Q. And when you talked to her, you were trying to**

4 **determine whether she had information about the murder or**

5 **whether she was involved?**

6 A. Well, I -- basically telling her that, "If

7 there is information that you are withholding or you know

8 something, let it out. Get it off your conscience, for

9 one."

10 And I never, ever determined myself the guilt or not

11 guilt of Barry. But I said, "If you know something, you

12 must tell. You have to tell what it is."

13 And that's basically what, what I was trying to get

14 through to her.

15 **Q. Why would you, why would you even ask her**

16 **about that?**

17 A. Well, Roberta came to my house, Barry's

18 mother. And we went to the basement and discussed it

19 because she had said that Barry had told her about knowing

20 something, and asked me -- and her and I were good

21 friends, and asked me if I would talk to Sissy; and if she

22 had any information, to come forward with it. So that's

23 what I was doing.

24 And she had done a long, long stretch of drugs, and

25 so people on drugs have a tendency to lie and to deceive

1 you on -- in every turn possible. And she did in a lot of
2 cases. But since her sobriety, now I believe she's
3 telling the truth. I believe she is honest with all of
4 her answers.

5 MR. CAMIEL: That's all I have.

6 RE-CROSS-EXAMINATION

7 BY MS. PLUBELL:

8 Q. So as you sit here today, you don't believe
9 that your sister, Sissy, had anything to do with Kim
10 Nees's murder, do you?

11 A. No, I don't.

12 Q. And the reason you initially went and talked
13 to her about that was because Barry Beach give his mother
14 information, and his mother asked you to do it.

15 A. Yes. And we were good friends.

16 MS. PLUBELL: I have nothing further.

17 MS. BOWMAN: I would just like to ask one
18 question.

19 THE WITNESS: Yes.

20 MS. BOWMAN: When Sissy was speaking earlier,
21 she mentioned that there's another Sissy Atkinson. What
22 can you tell me about the other Sissy Atkinson?

23 THE WITNESS: Okay. At the time, she went by
24 -- it was Sissy Failing. And as it came out, she married
25 my younger brother, made her Sissy Atkinson.

1 MS. BOWMAN: And how long has that been the
2 case?

3 THE WITNESS: Oh, they've been married for 25
4 years.

5 MS. BOWMAN: So any talk about "Sissy
6 Atkinson" around Poplar revolved around your sister and
7 not about your sister-in-law?

8 THE WITNESS: Well, at that time, she was
9 called "Sissy". Sissy Failing was called "Sissy", and
10 then she was called "Sissy Atkinson". So the two were --
11 had the same name. And then since the occasion, since the
12 incident with Kim, she refused to take the name "Sissy";
13 she went by Rose. Her real name is Rose.

14 MS. BOWMAN: But prior to the murder, she was
15 known as "Sissy Atkinson" or just "Sissy"?

16 THE WITNESS: Yeah, "Sissy Atkinson" because
17 they first got married about that time.

18 UNIDENTIFIED SPEAKER: They got married almost
19 in '80.

20 CHAIRWOMAN O'CONNOR: Go ahead.

21 UNIDENTIFIED SPEAKER: Sorry.

22 THE WITNESS: They got married in -- I didn't
23 know, but I know they got married in '80. But she did go
24 by "Atkinson".

25 MS. BOWMAN: Okay.

1 CHAIRWOMAN O'CONNOR: So the question is: Is
2 there any confusion when there are all these rumors
3 running rampant about Sissy Atkinson, might they be
4 speaking about Sissy Rose Failing Atkinson?

5 THE WITNESS: I wouldn't dare answer that.

6 CHAIRWOMAN O'CONNOR: But you have no reason
7 to think either way?

8 THE WITNESS: No.

9 CHAIRWOMAN O'CONNOR: Okay. Who told you to
10 put the evidence in the judge's chambers?

11 THE WITNESS: They asked me, the sheriff.

12 CHAIRWOMAN O'CONNOR: Who was Mahlum?

13 THE WITNESS: No, Mahlum was the undersheriff.
14 Carpenter, Don Carpenter asked me if we could store the
15 evidence in our office at this time, and I said "yes".

16 CHAIRWOMAN O'CONNOR: Okay. And you just
17 testified earlier that you told Mr. Racicot that you had
18 never told anybody this. Why hadn't you ever told anybody
19 this?

20 THE WITNESS: Because I was never -- nobody
21 ever come to me. I was a city police officer, and I
22 didn't get involved with the investigation. And I knew
23 that the sheriff department did know that this had
24 happened because one of the officers was with me when we
25 got the evidence that morning.

1 CHAIRWOMAN O'CONNOR: Okay. Now, had you put
2 the evidence in the room?

3 THE WITNESS: Myself and one of the other
4 sheriff's department -- and I don't recall if it was Dean,
5 the undersheriff --

6 CHAIRWOMAN O'CONNOR: Or Red Wilson.

7 THE WITNESS: -- or whether it was Red Wilson,
8 the deputy.

9 CHAIRWOMAN O'CONNOR: Right. Now, and then
10 did you come in the morning and discover this lock broken,
11 all of that? You did it personally? You discovered it
12 personally?

13 THE WITNESS: He was with me.

14 CHAIRWOMAN O'CONNOR: The other officer.

15 THE WITNESS: One of the other officers was
16 with me when -- and we both found it.

17 CHAIRWOMAN O'CONNOR: Okay. And then you went
18 in the room?

19 THE WITNESS: Yes.

20 CHAIRWOMAN O'CONNOR: And did you see any
21 change in the state of the evidence from the way you had
22 left it the night before?

23 THE WITNESS: No, I didn't.

24 CHAIRWOMAN O'CONNOR: Okay.

25 THE WITNESS: It did not appear -- by viewing

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1 at it, it didn't appear that anything was touched.
 2 CHAIRWOMAN O'CONNOR: Okay.
 3 THE WITNESS: But for me to swear to that, I
 4 couldn't do it.
 5 CHAIRWOMAN O'CONNOR: Right, okay. I have
 6 nothing further.
 7 REDIRECT EXAMINATION
 8 BY MR. CAMIEL:
 9 **Q. Mr. Atkinson, did you have an inventory of any**
 10 **kind of the things that were in, in that judge's chambers?**
 11 A. The sheriff -- of the judge's chambers?
 12 **Q. Yeah. The evidence that you left in there,**
 13 **did you have an inventory of what was in there after you**
 14 **locked it up?**
 15 A. That the sheriff department left, you mean,
 16 for the evidence?
 17 **Q. Yeah.**
 18 A. Yes. There was a -- I didn't log it in as
 19 city evidence. The sheriff department logged it in as
 20 evidence from the sheriff department.
 21 **Q. Well, do you know if anybody took a look at**
 22 **whatever they had collected, the inventory of what they**
 23 **collected at the crime scene, and then took a look at**
 24 **what's in the room after you found it broken into to see**
 25 **if everything's still there?**

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1 A. Well, yes. I said, "You'll have to."
 2 **Q. Thank you.**
 3 A. But we still did transport it. He still took
 4 the evidence that day and transported it.
 5 CHAIRWOMAN O'CONNOR: But in her question to
 6 you, Ms. Plubell said that Mr. Racicot and Mr. Moses had
 7 been informed of this prior to the trial. So I'm unclear
 8 as to what would have caused the kind of consternation and
 9 emotional outburst you're describing by Mr. Racicot. Do I
 10 misunderstand your testimony?
 11 THE WITNESS: No. The only thing that I --
 12 I'm trying to -- is the chain of evidence -- was it
 13 disturbed or not? I could not swear to it when you put me
 14 on the --
 15 CHAIRWOMAN O'CONNOR: I get that, I get that.
 16 But what I don't get is why, if Mr. Racicot had been
 17 informed in advance and Mr. Moses had been informed in
 18 advance, why your telling Mr. Racicot caused the kind of
 19 emotional outburst. Did I misunderstand?
 20 MS. PLUBELL: I think -- I'm sorry if I didn't
 21 make that clear.
 22 CHAIRWOMAN O'CONNOR: Oh, I just might not get
 23 it. That's all.
 24 MS. PLUBELL: Actually, if you -- 535 of the
 25 transcript is where it comes about.

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1 A. That, I don't know.
 2 **Q. Was the stuff that -- was evidence in bags,**
 3 **sealed bags, or was it just laid out on tables?**
 4 A. I would say there was a lot -- most of it was
 5 in bags. It seemed like a sweater was not. And that, it
 6 was laid on the corner of the desk. I can kind of
 7 visualize it sitting there. But it did not appear to be
 8 moved from where we had set it. I do not know for sure.
 9 **Q. When you, when you show up, is it in the**
 10 **morning? You come in the morning to get the evidence with**
 11 **this deputy from Roosevelt County?**
 12 A. Yes.
 13 **Q. Did the two of you -- did you have a**
 14 **discussion about the fact that the door was kicked in?**
 15 A. Yeah. And I said, "This don't look" -- yeah,
 16 I just mentioned, "This don't look good." And he -- and I
 17 said, "I told them to stay out of here." And they didn't,
 18 obviously didn't; they kicked the door in.
 19 **Q. What was the response by the Roosevelt County**
 20 **deputy?**
 21 A. Well, he was very surprised to see it, as I
 22 was. You know, he says, "This is uncalled for," which was
 23 my exact reasoning.
 24 **Q. So you assumed that he would report that to**
 25 **the sheriff?**

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1 CHAIRWOMAN O'CONNOR: Where it comes about
 2 that --
 3 MS. PLUBELL: And I think my question I was
 4 trying to ask him is whether he was aware that the Court
 5 and Timer Moses was fully aware of that. In other words,
 6 Mr. Racicot did not keep this information secret.
 7 CHAIRWOMAN O'CONNOR: Oh, right.
 8 MS. PLUBELL: I think they all found out at
 9 the time of trial.
 10 CHAIRWOMAN O'CONNOR: Okay. So you're not
 11 suggesting that Mr. Racicot or anybody else was informed
 12 previous to the time --
 13 MS. PLUBELL: Oh, no, I think it was -- I
 14 think everyone --
 15 CHAIRWOMAN O'CONNOR: I get it now.
 16 MS. PLUBELL: -- was surprised.
 17 CHAIRWOMAN O'CONNOR: I see, I understand.
 18 Do you have any further questions?
 19 MS. PLUBELL: No.
 20 MR. CAMIEL: No.
 21 CHAIRWOMAN O'CONNOR: Okay, all right. You
 22 may be excused, Mr. Atkinson. Thank you for testifying.
 23 Your next witness?
 24 MR. CAMIEL: Madame Chairman, it's Bobby Ryan.
 25 CHAIRWOMAN O'CONNOR: Bobby Ryan, thank you.

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1 ROBERTA LOUISE RYAN, WITNESS, SWORN
2 CHAIRWOMAN O'CONNOR: You may proceed.

3 MR. CAMIEL: Thank you.

4 DIRECT EXAMINATION

5 BY MR. CAMIEL:

6 **Q. Ms. Ryan, could you tell us your full name and
7 spell your last name for us?**

8 A. Roberta Ryan, Roberta Louise Ryan, R-Y-A-N.
9 But "Bobby" is what I go by.

10 **Q. Everybody knows you as "Bobby"?**

11 A. Yeah.

12 **Q. Where do you live?**

13 A. In Glasgow now.

14 **Q. In 1979, where did you live?**

15 A. In Poplar.

16 **Q. Where did you grow up?**

17 A. In Glasgow.

18 **Q. And when you lived in Poplar, when did you
19 first move to Poplar?**

20 A. It was when I got married. It was in '64 --
21 or '65 -- the winter of '64 and '65.

22 **Q. And you lived in Poplar until when?**

23 A. Basically, really until -- up until five years
24 ago.

25 **Q. Now, did you recently have some surgery?**

1 **Q. Was that a big event in Poplar?**

2 A. It was pretty good then, yeah.

3 **Q. And did that involve community activities?**

4 A. Yeah. We had a parade on Saturday afternoon,
5 and so I was getting ready for the -- trying to get ready
6 for the parade on Saturday morning when I heard about it.

7 **Q. Now, Saturday morning, June 16th, when you say
8 you heard about it, you're talking about hearing about the
9 Kim Nees murder?**

10 A. Hm-hmm.

11 **Q. How did you hear about that?**

12 A. I go to -- I used to have to go in at six
13 o'clock to clean. And I don't know when -- what -- it was
14 between somewhere -- we didn't open up until eight. So
15 sometime after we opened up at eight, I heard it from
16 somebody that come in. I mean I think it was one of the
17 street people that was helping me clean.

18 **Q. Okay. Now, the dance that you had the night
19 before, was that a pretty popular event?**

20 A. Yeah, it was pretty busy.

21 **Q. Are you familiar -- do you know Sissy
22 Atkinson?**

23 A. Yeah, I know Sissy.

24 **Q. And you knew her back then in 1979?**

25 A. Yeah.

1 A. Yes, the 31st of May I had my bypass.

2 **Q. Are you okay here today?**

3 A. Well, I'm pretty sore and tired.

4 **Q. Okay, we'll try and make this quick. In 1979
5 when you were living in Poplar with your husband, did you
6 and your husband own a business?**

7 A. We had the Bum Steer Bar.

8 **Q. The Bum Steer Bar?**

9 A. (Nodding head affirmatively.)

10 **Q. And where was that located?**

11 A. That was on the corner of Main Street, right
12 next door to Olf's Laundromat.

13 **Q. Okay. Is there another -- was there another
14 bar near yours, the Buck Horn?**

15 A. Yeah. That was kind of kitty-corner across
16 the street.

17 **Q. Okay. I want to take you back to the night of
18 June 15th of 1979 and the early morning of June 16, 1979.
19 Are you aware of what day of the week June 15th was?**

20 A. Friday.

21 **Q. Okay. And was your bar open that evening?**

22 A. Yes. We had a dance because of the rodeo
23 weekend. We had a dance Friday and Saturday.

24 **Q. And that weekend, where was the rodeo?**

25 A. In Poplar.

1 **Q. How about Maude Grayhawk?**

2 A. I know them -- her.

3 **Q. And Jordis Ferguson?**

4 A. Yeah.

5 **Q. Joanne Jackson?**

6 A. Yes.

7 **Q. And Roberta Jackson?**

8 A. Yes.

9 **Q. Now, on Saturday morning, the 16th, were you
10 supposed to be doing anything with these girls?**

11 A. Yeah. Alma Jean Jackson - or I think she went
12 by "Jackson", the mother - and Berta, and the girls, they
13 were going to -- I was supposed to go over to their place
14 with the pickup, and they were going to help me with the
15 float after I got done cleaning at eight. So I was going
16 to be over there at about eight o'clock that morning, and
17 -- or they were going to come over and get me, and we were
18 going to take the pickup.

19 And they never showed up and they never showed up.
20 So then finally about nine o'clock, I went over to Alma
21 Jean's house to see what was going on, if they were going
22 to come help me or not.

23 **Q. Okay. And what happened when you got over to
24 their house?**

25 A. I seen Joanne, but I didn't see -- and then I

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1 seen Mona, and that was the only two that was around. And
2 I couldn't get them aroused to come and help me, and so it
3 was just Alma Jean and Joanne that -- or not Joanne; Mona
4 that had helped, then, do the float that afternoon.

5 **Q. Now, the night before, on June 15, had you**
6 **seen Sissy Atkinson at the Bum Steer?**

7 A. She come in a few times, yes. They were --
8 she was old enough to drink, so she -- it was okay for her
9 to be in there. So she was in and out a few times, I mean
10 quite a bit.

11 **Q. Okay. And during what hours do you recall**
12 **that she was in and out?**

13 A. Until closing.

14 **Q. And what time do you close?**

15 A. At two o'clock, because I always had trouble
16 getting everybody out of there.

17 **Q. Okay. And in addition to seeing Sissy**
18 **Atkinson at the Bum Steer -- did she actually come in and**
19 **sit down?**

20 A. Yeah.

21 **Q. Okay. So you saw her sitting in there?**

22 A. Yeah.

23 **Q. Okay.**

24 A. They were waiting on her.

25 **Q. All right. And in addition to seeing her that**

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1 **they be doing?**

2 A. They'd come in; and they wanted to talk and
3 gather around Sissy, and them; and they'd leave. And I'd
4 get them out of there, and they'd want to come back in.
5 And I just had trouble all night with them.

6 **Q. Okay. All the way up until closing time?**

7 A. (Nodding head affirmatively.)

8 **Q. And closing was at two?**

9 A. Two.

10 **Q. Okay. Is it possible that you only saw them**
11 **sometime before 11 p.m.?**

12 A. No, because it didn't get busy in there until
13 midnight.

14 **Q. Okay. And you saw them when it was busy?**

15 A. (Nodding head affirmatively.)

16 **Q. What kind of mood did they seem to be in from**
17 **what you could tell?**

18 A. I don't know. They were all -- I don't know
19 if it was excited or if they were -- I mean they were all
20 hyped up like -- I mean I don't know if they were having
21 fun, excited, or what it was.

22 **Q. Okay. And how many times do you think you had**
23 **to kick the underage girls that you just mentioned out of**
24 **the bar?**

25 A. I know at least probably seven - eight times.

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1 **evening, did you see Maude Grayhawk?**

2 A. They kept coming in, and they'd come, and
3 they'd come in. I had to keep picking them out because
4 they weren't old enough.

5 **Q. When you say "they kept coming in", who are**
6 **you talking about?**

7 A. I'm talking about several of those girls.
8 There was Jordis and -- Ferguson, and all of them.

9 **Q. Okay. When you -- you mentioned Maude**
10 **Grayhawk as one of them?**

11 A. Yeah, Maude.

12 **Q. And Jordis Ferguson?**

13 A. Jordis.

14 **Q. How about any of the Jackson sisters?**

15 A. There was Leslie and Berta.

16 **Q. Okay.**

17 A. Joanne.

18 **Q. Did you see Rhea Red Dog in there that**
19 **evening?**

20 A. Rhea, she was in there, yeah. She had -- she
21 was old enough. I never had to kick her out. But she
22 would come in, and she was sitting in there.

23 **Q. Okay. How about Rose Failing?**

24 A. Rose was in there because I booted her.

25 **Q. When these girls would come in, what would**

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1 **Q. Okay. Now, after the Kim Nees murder, was**
2 **there a display that was put up in one of the local**
3 **stores?**

4 A. In Beck's window.

5 **Q. What's Beck's?**

6 A. It was a sporting good -- sold guns and
7 fishing poles and stuff like that.

8 **Q. Was that some -- was that near where your bar**
9 **was?**

10 A. It was down from the Buck Horn, kind of the
11 opposite end, kitty-corner of my block. I mean the block
12 that I was on, it would be kind of kitty-corner across the
13 other end.

14 **Q. And what (do you recall was in the display?)**

15 A. It was on the right-hand-side side window.
16 And there was a picture of Kim, and there was a picture of
17 the river where her body was lying, and there was a
18 picture of some tools that he changed the tire with, and a
19 pickup.

20 **Q. Did they look like crime scene photos?**

21 A. They were.

22 **Q. They were?**

23 A. (Nodding head affirmatively.)

24 **Q. Do you know how long those were up?**

25 A. That was up for a long time.

66 (Pages 261 to 264)

1 Q. Weeks or months or days?
2 A. It had to be at least a couple months or more.
3 I would say more than a couple of months.

4 Q. Was there anything about a reward in the
5 display?

6 A. I can't remember that.
7 MR. CAMIEL: Okay, thank you. The attorney
8 general will have some questions for you.

9 CROSS-EXAMINATION

10 BY MR. WELLENSTEIN:

11 Q. Mrs. Ryan, good afternoon. I just have a few
12 questions to ask you. And if something is unclear, just
13 tell me. All right?

14 A. (Nodding head affirmatively.)

15 Q. The night of -- you were talking about June
16 15, 1979. And how many people were in the bar that
17 evening?

18 A. How many people would be in the bar?

19 Q. Yeah.

20 A. I don't know, I would say maybe after -- it
21 never did fill up until like midnight. And after
22 midnight, I would say at least 150, or so.

23 Q. So is that probably about --

24 A. There was a --

25 Q. So that's just an estimate?

1 Q. But you didn't -- you couldn't have your eyes
2 on them the whole time?

3 A. No.

4 Q. In your statement, you say (quoted as read):
5 "Between midnight and 2 a.m. a bunch of girls came -- kept
6 coming in and out."

7 But that's just a rough estimate because it's been,
8 what, 28 years?

9 A. Right.

10 Q. All right. Is it possible that you might have
11 seen them earlier than midnight and that's when you booted
12 them out?

13 A. It wasn't busy then.

14 Q. Okay. Is it possible they were there well
15 after two?

16 A. They weren't after two, no, because I had
17 everybody out of there at two.

18 Q. Okay.

19 A. Actually, I shut the music down at one-thirty.

20 Q. Do you know, do you know which girls were in
21 and out of the bar at what time?

22 A. No, I couldn't say that.

23 Q. Okay. You said the girls were all hyped up
24 and -- but you didn't know what they were talking about, I
25 think, in your testimony and your statement.

1 A. -- a big dance going on there.

2 Q. Yeah. And so you had a dance going on, and it
3 was very busy.

4 I seen your statement that you -- a statement that
5 you gave June 4, 2007, that -- you gave that to Centurion
6 Ministries. Do you remember giving them a statement?

7 A. When was that?

8 Q. It's a written statement. It's a statement
9 that you signed June 4th -- I mean June 4, 2007.

10 A. Yeah.

11 Q. Okay. And in your statement, you say on that
12 evening, there was a dance, and you were overseeing
13 everything.

14 A. Yeah.

15 Q. Okay. So you were pretty busy then?

16 A. Yeah. I wasn't bartending; I was just kind of
17 going around, gathering -- I mean, you know, making sure
18 that everything was okay, my husband and I.

19 Q. So when the girls were coming in and out of
20 the bar, you weren't watching them the entire time, were
21 you?

22 A. No, not --

23 Q. Okay.

24 A. The younger ones I tried to run out right
25 away.

1 A. Yeah.

2 Q. But there was a, there was a dance going on --

3 A. Right.

4 Q. -- and they were trying to sneak in and out of
5 the bar to get alcohol. So is that -- that could be a
6 reason --

7 A. Yeah.

8 Q. -- why they were just hyped up?

9 A. I mean, yeah.

10 Q. Yeah, okay. Did you ever tell anybody in law
11 enforcement about what you testified today or what you
12 stated in your statement?

13 A. I don't know if I said anything in my
14 statement, but I think it was -- I can't remember what his
15 name was. He used to work as a cop. It was after, way
16 afterwards. But I said, "It was funny" -- we were talking
17 about it, and I said, "It was funny they never, ever
18 questioned me because of the fact that the dance was
19 there, and everything. You know, and I never said
20 nothing."

21 Q. Okay. You know, you said this occurred -- are
22 you aware that Barry Beach -- you said you saw the tools
23 and -- in the store, in the store window, or you saw the
24 Beach display? ?

25 A. Display.

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1 **Q. Okay. Are you aware that Barry Beach left**
2 **shortly after the homicide occurred, left Poplar?**

3 A. I don't remember when he left.

4 **Q. Okay.**

5 A. I really didn't know them, so -- I mean just
6 who they were is all I knew.

7 **Q. You know, you've given this statement to**
8 **someone. Who did you give this statement to, first of**
9 **all, your statement here that you signed on June 4th?**

10 A. Rich.

11 **Q. Rich Hepburn. And he's from Centurion**
12 **Ministries?**

13 A. Right.

14 **Q. How did they get in contact with you?**

15 A. I was on my way -- why, I talked to them over
16 five years ago when I was in Poplar. At one time they
17 found me at Frosty's, or -- I was working there then. And
18 this time, I was on my way to Billings to have my surgery,
19 and they called my cell phone.

20 **Q. Did you -- what you testified today and what's**
21 **in your statement, did you tell them the exact same thing**
22 **five years ago, basically?**

23 A. Basically.

24 MR. WELLENSTEIN: Okay, no further questions.

25 ///

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1 **these girls well enough to know which ones were the**
2 **underage --**

3 A. Right, right.

4 **Q. And so it sounds like you spent a lot of time**
5 **chasing them out.**

6 A. I did. And not just that night. I mean every
7 16 years I had the bar, I had trouble with minors.

8 **Q. Well, how do you know, how do you know that**
9 **this is the night, the night that Kim Nees was murdered,**
10 **that they were there between 12 and 2 as opposed to some**
11 **other night?**

12 A. Because it was the rodeo weekend. I was kind
13 of new at having the bar, I hadn't had it that long, and
14 it was my first rodeo weekend with having the bar. I was
15 also working with the Rodeo Club for the concession stand,
16 and I had to do that, too; and then the parade, get ready
17 for that, for the float. So I had kind of everything
18 going.

19 MR. CAMIEL: Thank you. That's all I have.

20 MR. WELLENSTEIN: Nothing more.

21 MR. CURTISS: Did you feel that the
22 information you had was very important to law enforcement,
23 or would be?

24 THE WITNESS: I didn't know. I mean I figured
25 it must not be because they never come and asked me

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1 REDIRECT EXAMINATION

2 BY MR. CAMIEL:

3 **Q. Ms. Ryan, a couple more questions.**

4 **You mentioned that you expected that the police**
5 **would come talk to you?**

6 A. I thought they would, yeah.

7 **Q. Did you see the police out interviewing people**
8 **right after the murder?**

9 A. You know, I knew they were, yeah. I didn't
10 exactly see them, you know, but I knew they were
11 investigating, and everything.

12 **Q. So you were kind of expecting that they would**
13 **show up to talk to you, but you never, you never went down**
14 **to the police station to tell them everything?**

15 A. No, I never; no.

16 **Q. Are you, are you confident in your own mind**
17 **about the times that you saw these girls at your bar?**

18 A. Yes; yes, I am.

19 **Q. And it was sometime between midnight and 2**
20 **a.m.?**

21 A. Yes. Because the bar never, ever got busy --
22 the dance people, I don't know, they just always had to
23 get drunk, it seemed like, before they'd come in to dance.
24 And it was always after midnight.

25 **Q. Okay. And you knew who the under -- you knew**

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1 anything, I mean --

2 MR. CURTISS: The reason I ask is: There was
3 no effort on your part made to go and tell them anything,
4 so you just apparently didn't know that maybe what you had
5 would be important to the case, so to speak?

6 THE WITNESS: Right. I mean it wasn't until
7 later that I kind of thought, well, maybe it was. But it
8 was all over with then.

9 MR. CURTISS: Did you ever go to law
10 enforcement?

11 THE WITNESS: No.

12 MR. CURTISS: Never did. Okay, thank you,
13 ma'am.

14 CHAIRWOMAN O'CONNOR: I'm interested in this
15 -- you said that you spoke four to five years ago to
16 representatives from Centurion Ministries, but then you
17 made a statement this year. Did you make a statement five
18 years ago as well?

19 THE WITNESS: I didn't make a statement, no.
20 I just talked to them.

21 CHAIRWOMAN O'CONNOR: Nothing was written
22 down --

23 THE WITNESS: No.

24 CHAIRWOMAN O'CONNOR: -- no notes were made,
25 that you know of --

1 THE WITNESS: No, no.
 2 CHAIRWOMAN O'CONNOR: -- and you made no
 3 statement?
 4 Did anything change in your statement that you
 5 can recall? I mean it's five years or four years.
 6 THE WITNESS: I don't think so, no.
 7 CHAIRWOMAN O'CONNOR: You don't think so,
 8 okay. Thank you, I have nothing further.
 9 REDIRECT EXAMINATION
 10 BY MR. CAMIEL:
 11 **Q. Ms. Ryan, who's the first person that you told**
 12 **other than talking to your husband about it?**
 13 A. About what, now?
 14 **Q. About having seen these girls in your --**
 15 A. Girls. I talked to several people. I mean --
 16 **Q. Was one of the people the former mayor of**
 17 **Poplar, Dallas --**
 18 A. Dallas O'Connor, yes. I was asking him about
 19 it -- oh, I went to work for him, and I -- that's how I --
 20 I guess you guys -- someone found me is because I had
 21 asked him about it.
 22 **Q. But you told him, and it's your understanding**
 23 **that he told us?**
 24 A. Right.
 25 **Q. And that's how we got to you?**

1 A. Yeah. He was the mayor, I guess, Dallas.
 2 MR. CAMIEL: Thank you, nothing further.
 3 RECROSS-EXAMINATION
 4 BY MR. WELLENSTEIN:
 5 **Q. Just one question, ma'am: Did Centurion**
 6 **Ministries or representatives from Centurion Ministries**
 7 **give you any information regarding the Beach case?**
 8 A. No.
 9 MR. WELLENSTEIN: Okay, thank you.
 10 CHAIRWOMAN O'CONNOR: Thank you for
 11 testifying.
 12 You may call your next witness.
 13 MR. CAMIEL: J.D. Atkinson.
 14 CHAIRWOMAN O'CONNOR: Will you raise your
 15 right hand, please?
 16 JACK DOUGLAS ATKINSON, WITNESS, SWORN
 17 CHAIRWOMAN O'CONNOR: You may proceed.
 18 MR. CAMIEL: Thank you.
 19 DIRECT EXAMINATION
 20 BY MR. CAMIEL:
 21 **Q. Mr. Atkinson, can you tell us your full name**
 22 **and spell your last name for the record?**
 23 A. Jack Douglas Atkinson, A-T-K-I-N-S-O-N.
 24 **Q. Do you go by "J.D."?**
 25 A. That's since I was a little kid, yes.

1 **Q. Okay. Are you -- you're currently in custody;**
 2 **is that right?**
 3 A. I'm at Alternatives in Billings.
 4 **Q. You're finishing up serving a sentence?**
 5 A. Yes. I've got about three months left.
 6 **Q. Okay. And where are you from?**
 7 A. Poplar, Montana.
 8 **Q. How long -- how much of your life has been**
 9 **spent in Poplar?**
 10 A. Fifty-seven years.
 11 **Q. And how old are you?**
 12 A. Fifty-seven.
 13 **Q. And you're the older brother of Sissy**
 14 **Atkinson?**
 15 A. Yes, I am.
 16 **Q. Let me start out first and ask you about**
 17 **testifying today. A couple days ago, did you get a call**
 18 **from an investigator with the attorney general's office,**
 19 **Ward McKay?**
 20 A. Yes, I did.
 21 **Q. And that was a call at the, at the facility**
 22 **that you're staying at right now?**
 23 A. Yes, it was.
 24 **Q. Okay. And when Mr. McKay called you, did you**
 25 **feel threatened by that call?**

1 A. Yes, I did. I thought that's what it was, is
 2 a threat.
 3 **Q. Okay. And what did he tell you?**
 4 A. He brought up my statement that I made for
 5 this -- for Centurion Ministries and asked me if I was
 6 aware of the penalty for perjury, and that he was with the
 7 DCI, and that he worked with Gary Cedar who I did a
 8 session with a year and a half ago, and that he just
 9 wanted to make sure I knew what the penalty for perjury
 10 was.
 11 And I said, "Well, I haven't said anything that I
 12 know that's perjury or lying."
 13 **Q. So he's asking you about the statement that**
 14 **you gave to us. And did you, did you interpret what he is**
 15 **saying as, "If you come into this hearing today and**
 16 **(testify consistent with this statement, that that would be**
 17 **perjury"?)**
 18 A. That's kind of what the point he was trying to
 19 make to me, is that I was to be aware of the penalty for
 20 perjury.
 21 **Q. Did that scare you?**
 22 A. I didn't -- I wasn't, I wasn't very settled
 23 with it. I didn't like it. I felt threatened.
 24 **Q. But you're still here today.**
 25 A. Yes, I am.

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1 **Q. Okay. Now, over the years -- let's go back**
2 **to: Were you living in Poplar in 1979?**

3 A. Yes, I was.

4 **Q. At the time of the Kim Nees murder?**

5 A. Well, I didn't live right in the town of
6 Poplar. I lived out of Poplar on a little place, a house
7 I built. I lived out in the country. But I was -- my
8 wife worked in town, so I was in town pretty much every
9 day.

10 **Q. And you were married at that time and had**
11 **children?**

12 A. Yes, I was.

13 **Q. Okay. And do you recall the morning of Kim**
14 **Nees's death hearing about the fact that she had been**
15 **killed?**

16 A. Yes. We heard there was something happened in
17 Poplar, and so I drove into town. And I happened to drive
18 through town and went up by the school to turn around, and
19 I seen the cop cars and -- a cop car and Kim Nees's pickup
20 sitting down by the train bridge. I drove on down the
21 hill by the school to look, and they had it roped off so I
22 couldn't get there. So I went across the bridge and went
23 down to the train bridge on the other side of the river
24 and walked up onto the ridge and looked down. And I could
25 see a body lying in the water.

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1 her whenever I was around.

2 **Q. Okay. And when you visited her in Great Falls**
3 **either in 2003 or 2004, did she start to talk to you about**
4 **being down at the train bridge, that area, in Poplar on**
5 **the night that Kim Nees was killed?**

6 A. Yes, she -- you know, back through the years,
7 she had brought it up quite a few times; and that night I
8 was visiting her in Great Falls, she happened to bring it
9 up, too. In my own opinion, I always felt she kind of had
10 something on her back. You know, I mean she -- something
11 about her always bothered her. I believe that -- you
12 know, I believe, I believe it made her older before her
13 time because of carrying something with her that she had
14 bothering her.

15 **Q. You said over the years, several times she**
16 **brought this up?**

17 A. Well, we've talked about it, you know,
18 different times. It just happened to -- the point came
19 up, and we'd get to visiting about it. And like I say, I
20 always felt she had something that was kind of bothering
21 her about it.

22 **Q. And so on this occasion when you were visiting**
23 **her in Great Falls, she told you some more things that she**
24 **hadn't told you before.**

25 A. Well, she, she was kind of -- like I said, you

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1 **Q. Were there a lot of people around watching?**

2 A. Well, there was a -- not a lot of people, but
3 there was a cop car, my brother Bobby's cop car; and Kim
4 Nees's pickup; and maybe one other car.

5 **Q. Over the years since Kim Nees's murder, have**
6 **you heard the rumors that suggested that your sister,**
7 **Sissy, was involved in some way with Kim Nees's murder?**

8 A. Well, I've heard through certain people she
9 had knowledge.

10 **Q. Okay.**

11 A. And I mean that's just kind of the story
12 around -- that went around. Poplar is a small town, so
13 there's -- you hear stories and, you know --

14 **Q. In 2003 or 2004, was Sissy living in Great**
15 **Falls?**

16 A. Yes, she was.

17 **Q. And did you visit her at her apartment?**

18 A. Yes, I did.

19 **Q. What was the purpose of the visit? Just a**
20 **casual visit, or --**

21 A. I just happened to be in Great Falls, and just
22 something -- Mom always told us to check on her, and I
23 just happened -- every time I'd be in town, I would stop
24 by and visit her and see how she was. She had a terrible
25 drug problem, and so I just kind of always checked in on

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1 know, she had a bad drug problem. And she was sitting
2 there pretty wacked-out and started talking to me and
3 telling me stuff about it. And she happened to mention
4 that night, that she was down at that party, that she was
5 there. And she mentioned different ones, Maude and
6 Joanne. And she mentioned that kind of a fight broke out,
7 or something, and she thought somebody was chasing Kim
8 around with a wrench, or something. But, of course, I
9 mean she was -- she just talked so far and then clammed
10 up, and then that was it, you know. I mean she --
11 (pause.)

12 **Q. When she was telling you this, she was**
13 **describing having witnessed this happen; is that right?**

14 A. Well, yes. I mean more in the sense that she
15 seemed to be aware of what, what was taking place. I mean
16 she said something about someone chasing somebody around
17 -- Kim around the pickup with a wrench, or something. And
18 I don't remember exactly how she said it, if it was -- if
19 she saw them chasing them around or they said somebody was
20 chasing Kim around the pickup, but I mean that was the
21 point that was being brought up that was --

22 **Q. When she said "somebody chasing Kim" --**

23 A. Her.

24 **Q. -- she said -- she was describing a female**
25 **chasing Kim, wasn't she?**

1 A. Pretty much, yeah. She said somebody was --
2 some girl was chasing Kim with a wrench, or something.
3 And like I said, I mean it was --

4 **Q. Did it appear that she was trying to unload,
5 like relieve herself of this burden when she was talking
6 to you?**

7 A. To tell you the truth, I thought she was going
8 to. I actually thought that's what it was leading to.
9 But after she got to a certain point, she just clammed up
10 and that was the end of it.

11 **Q. And did you press her for more information, or
12 did you let it drop at that point?**

13 A. I never said another word to her about it.

14 **Q. And there had been earlier conversations where
15 she had mentioned parts of it but not as much?**

16 A. Well, back when Sissy was living at my mom's
17 trailer and I used to take her -- the then boyfriend with
18 me to work all the time, and me and him would talk about
19 it different times.

20 MS. PLUBELL: Madame Chairperson?

21 CHAIRWOMAN O'CONNOR: Yes.

22 MS. PLUBELL: I'm going to object to anything
23 that he's going to relay about what Stubby Balbinot may
24 have said since Stubby Balbinot is dead.

25 THE WITNESS: With what?

1 CHAIRWOMAN O'CONNOR: I think that's valid.

2 **Q. (By Mr. Camiel) Let me ask you not about what
3 her former boyfriend said; but on other occasions when
4 Sissy would start to talk about this, what did she say?**

5 A. Well, she just always seemed to know whenever
6 someone was up and around investigating it, or -- she
7 seemed to know most of the facts about, you know, the --
8 every time something was happening on it, being
9 investigated, she would always know when something was
10 going on, I guess. And it would bother her. She would
11 always bring it up.

12 **Q. Mr. Atkinson, why are -- why did you come
13 forward with this conversation that you had with your
14 sister in 2003 or 2004?**

15 A. Well, to tell you the truth, you know, for a
16 good many years, Sissy's been so out of it on drugs,
17 there's something driving her to doing what she's doing.
18 And I just always thought that was kind of a part of the
19 reason or some of the reason that maybe -- I always had
20 the feeling that she knew more than she ever told me. And
21 I'm just kind of Big Brother looking out for her, and --
22 (pause.)

23 **Q. Were you afraid, were you afraid for her, for
24 her health because of your belief that she was carrying
25 this around?**

1 A. I believe it's going to take its toll before
2 long.

3 **Q. Did you think that coming forward would help
4 her in some way?**

5 A. Well, I'll tell you what, what I thought was
6 that maybe somehow, someway she could get some help to, to
7 get rid of the problem and be able to get it off her chest
8 and do whatever it is that's bothering her as bad as it is
9 to keep her drugged up for the past 20 years, you know,
10 maybe longer.

11 **Q. Did you think that she'd be better off in
12 prison than on the streets because of how bad she was with
13 her drug problem?**

14 A. Well, it sure couldn't hurt her.

15 **Q. Mr. Atkinson, did you at some point suffer
16 from some kind of a head injury or brain injury?**

17 A. Friday the 13th of December, 1996, I got hit
18 by a train, and I broke my head 9 inches, and my neck, my
19 chest. I had quite a few injuries out of it.

20 **Q. So pretty severe injuries?**

21 A. Yes.

22 **Q. Has that in any way, do you think, clouded
23 your memory of what your sister told you, or do you have a
24 good memory of that?**

25 A. I tell you, I -- sometimes I fight with my

1 memory problems; but other times, I'm pretty good. You
2 know, it's just -- on a good day -- you know, what I'm
3 saying? I have good and bad days. I have problems once
4 in awhile.

5 **Q. But you do remember your sister telling you
6 the things that you put in your statement?**

7 A. Pretty much, yes. I mean that's something
8 I --

9 **Q. You tried to be as truthful as you could in
10 that statement?**

11 A. I mean I have no reason to lie about it. I'm
12 trying to maybe get to the bottom -- and give her some
13 help one way or another, you know.

14 **Q. You're not getting anything from anybody for
15 coming forward?**

16 A. Not a thing.

17 **Q. In fact, it's caused you some grief, hasn't
18 it?**

19 A. Yes, it has.

20 **Q. In what ways?**

21 A. Just, I don't know, I felt pretty threatened
22 over this last deal where I got called that, called that
23 day. And I've had my own share of problems, and I'm
24 trying to get through them and don't need any more
25 headaches, you know.

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1 **Q. In addition to what you just testified about**
2 **concerning what your sister told you, she told you that**
3 **Barry was innocent, didn't she?**

4 A. She mentioned a couple different times through
5 the years that she thought an innocent man was serving
6 time for it.

7 **Q. Did she tell you why she thought that?**

8 A. Well, just not really why, but she made the
9 statement to me before.

10 **Q. (More than once?)**

11 A. More than once, yeah.

12 **Q. Now, just a couple of other questions. Now,**
13 **your sister, Sissy, is she known in the Poplar community**
14 **as "Sissy Atkinson"?**

15 A. Yes.

16 **Q. Now, was there another -- was there a Rose**
17 **Failing that at one time went by Sissy?**

18 A. That's my brother's wife, my brother Denver.
19 She was a young girl, and Denver and her was just going
20 together, Sissy Failing. But after she got with Denver, a
21 lot of people would call her "Sissy Atkinson". And she
22 just kind of -- because of Sissy's wild ways, she just
23 didn't want to be called "Sissy Atkinson" no more; she
24 wanted to be called "Rose Failing". That was her name. I
25 guess you can't blame her.

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1 **Q. And you haven't used -- ever used any drugs**
2 **since then?**

3 A. I quit smoking pot in 2000, and I don't do no
4 drugs now.

5 **Q. All right. And do you have a copy of your**
6 **statement with you?**

7 A. Yes.

8 **Q. Did you write everything in there, J.D.?**

9 A. Did I what?

10 **Q. Did you write everything in there?**

11 A. No.

12 **Q. Who wrote that statement for you?**

13 A. Mr. McCloskey.

14 **Q. And did you say every one of these words to**
15 **Mr. McCloskey that's in that statement? Can you say that**
16 **for certain?**

17 A. No. I talked to him, and he went back home.
18 And a few weeks later, I got this letter from my counselor
19 about it. And had me come over, and I read through it and
20 signed it.

21 **Q. And you're -- so how many times did you talk**
22 **with people from Centurion Ministries, J.D.?**

23 A. Twice.

24 **Q. Just two times?**

25 A. Yeah.

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1 MR. CAMIEL: Thank you.

2 CROSS-EXAMINATION

3 BY MS. PLUBELL:

4 **Q. J.D., my name is Tammy Plubell. I'm with the**
5 **attorneys general's office.**

6 A. Okay.

7 **Q. Were you having a good memory day or a bad**
8 **memory day the day you wrote your statement?**

9 A. That was out here when I did my statement.
10 I'll tell you, I was -- they've had me taking some
11 medicine for posttraumatic stress disorder, and I think I
12 was having a pretty good day. I mean for a long time, I
13 was -- they just took me off of all my medicine and, and I
14 did go through some bad times for a couple months. I was
15 here two or three months, and then I -- the doctor finally
16 got me on new medicine.

17 **Q. So you also suffer from posttraumatic stress**
18 **disorder in addition to those terrible injuries you**
19 **sustained in that accident?**

20 A. Well, yes, I kind of have ever since I come
21 back from Vietnam.

22 **Q. And you've also had a drug problem, haven't**
23 **you?**

24 A. I did drugs, cocaine, in 1997 and '98. And I
25 quit in '98, and I haven't ever touched it since.

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1 **Q. Was it the same person?**

2 A. I talked to people from NBC News Dateline, and
3 then I talked to Mr. McCloskey the next time.

4 **Q. So you're saying you only talked to**
5 **Mr. McCloskey one time?**

6 A. One time, and then on the phone.

7 **Q. Now, I understand that you and Barry Beach**
8 **have spent some time in prison together. Is that**
9 **accurate?**

10 A. No, not really together. I seen Barry
11 probably a total of three - four times while I was in
12 prison.

13 **Q. Well, I've got both of your movement records,**
14 **and they indicate that you've at least had the ability to**
15 **interact. Would you "quabble" with that -- quibble with**
16 **that?**

17 A. Oh, I could just about tell you to the -- I
18 don't suppose I actually seen Barry or talked to him maybe
19 half a dozen times.

20 **Q. Do you have a girlfriend or did you have a**
21 **girlfriend named Annie Cattrell?**

22 A. Yeah.

23 **Q. And you and she had a child together; is that**
24 **right?**

25 A. That's right.

1 **Q. And while you were in prison, you wrote Annie**
2 **letters, didn't you? Do you remember that?**

3 A. Up until, up until about December. And then I
4 quit writing her. I quit having any contact with her at
5 all.

6 **Q. December of this year, J.D.?**

7 A. Of 2006, right before Christmas.

8 MS. PLUBELL: Madame Chairman, if I may
9 approach.

10 CHAIRWOMAN O'CONNOR: Yes.

11 **Q. (By Ms. Plubell) J.D., I'm handing you that.**
12 **Do you recognize that?**

13 A. (Perusing document.)

14 **Q. Does that look like a letter that you sent to**
15 **Annie Cattrell?**

16 A. Yes, it does.

17 **Q. So that looks like your letter?**

18 A. Yeah. I was getting -- trying to put together
19 paperwork to go in front of the Board of Pardons.

20 **Q. And in that letter, do you indicate that Barry**
21 **Beach was helping you out with something?**

22 A. He showed me a form over at the library that
23 you put where you're going to work, where you're going to
24 live. And we got the form from that library one day.

25 **Q. So what was the reason that you couldn't --**

1 **you had to be secretive about that sort of help? Because**
2 **in the paragraph where you indicate Barry's helping, you**
3 **also indicate that you want to talk to Annie but you can't**
4 **talk on the phone and you can't put anything in the letter**
5 **because people might read it.**

6 A. Where did I put that at?

7 **Q. Would you like me to show you?**

8 A. Okay -- (perusing document.)

9 **Q. Let me ask you a couple other questions, J.D.**

10 **In some other letters to Annie, you weren't very nice to**
11 **her, were you?**

12 A. No.

13 **Q. And, in fact, she got a restraining order**
14 **against you, didn't she?**

15 A. Yeah, she did.

16 **Q. And you were sort of abusive to her in the**
17 **letters, weren't you?**

18 A. No more than she had coming.

19 **Q. Well, is it a fair -- fair to assume, J.D.,**
20 **that if Barry Beach was going to be helping you out, as**
21 **you indicated in your letter, that you were going to do**
22 **something to help him out in return?**

23 A. The only thing he was helping me with is get
24 them forms that I needed for the Parole Board.

25 **Q. So do you remember why you needed to be**

1 **secretive about that to Annie?**

2 A. I don't think that's what I was talking to
3 Annie about.

4 **Q. Oh, okay. I'd like to go through some of the**
5 **matters you have in your written -- well, not your written**
6 **statement but the statement someone else wrote and you**
7 **signed. You described your relationship with Sissy as a**
8 **caring brother/sister relationship, right?**

9 A. (Nodding head affirmatively.)

10 **Q. And both -- well, we've heard testimony about**
11 **an incident where you were intoxicated and physically**
12 **assaultive of Sissy. Do you deny that?**

13 A. When was this?

14 **Q. I can't recall exactly when it happened. It**
15 **was an incident where you pushed her to the ground and had**
16 **a brick that you were hitting her on the head with.**

17 A. Oh, I don't believe that.

18 **Q. You don't believe that ever happened?**

19 A. No.

20 **Q. Well, if it had happened, that wouldn't be a**
21 **very caring sister/brother relationship, would it?**

22 A. No, it wouldn't, but I don't have any --
23 remember it ever happening.

24 **Q. And would you have -- and would you agree,**
25 **then, that your caring sister/brother relationship was**

1 **caring back in 1979?**

2 A. You know something? I haven't drank since
3 about that time.

4 **Q. But Sissy didn't tell you anything in 1979**
5 **related to Kim Nees's homicide, did she?**

6 A. Well, to tell you the truth, not back in those
7 days, but I believe that's about when she kind of crawled
8 in her shell.

9 **Q. And you wouldn't have anything to do with**
10 **that, would you, her crawling in her shell?**

11 A. No.

12 **Q. In your statement, you claim that over the**
13 **years, you have heard talk of Sissy somehow being**
14 **involved, correct?**

15 A. (Nodding head affirmatively.)

16 **Q. But can you remember who you heard that from?**

17 A. To tell you -- through the years, I've heard
18 many statements from many different people.

19 **Q. And would you agree with me that there's been**
20 **a lot of gossip and rumor --**

21 A. Sure.

22 **Q. -- in the Poplar community about this**
23 **homicide?**

24 A. Yeah. It's a small town, so you hear a lot
25 of --

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- 1 Q. Now, are you aware that your sister, Sissy,
2 cooperated with law enforcement's investigation in Kim's
3 homicide? Back in 1979, she talked to the FBI and she
4 talked to the sheriff's office. Are you aware of that?
5 A. I think so, yes.
6 Q. And are you aware that she gave fingerprints
7 and she gave palm prints and a hair sample? Are you aware
8 of that?
9 A. Yeah.
10 Q. And that seems to look like someone who has
11 nothing to hide, right?
12 A. Well, yeah.
13 Q. You claim your sister, Sissy, is a
14 pathological liar because of drug usage; is that correct?
15 A. Sure, I've --
16 Q. And do you have any problem with lying because
17 of your drug usage?
18 A. I haven't. I quit drugs, and that's it.
19 Q. Now, are you aware that Mike Wellenstein and
20 Ward McKay and I actually traveled to Poplar unannounced
21 and we asked Sissy to give us a statement --
22 A. I'm not.
23 Q. -- and she agreed to do that, and we
24 tape-recorded that statement?
25 A. I haven't talked to Sissy for about a year and

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- 1 a half.
2 Q. When you talked to Centurion Ministries, they
3 didn't tape-record your statement, did they?
4 A. I don't believe so, no.
5 Q. Now, in Paragraph 7 of your statement, you
6 claim that Sissy told you during these conversations --
7 and we're not sure when they happened, and we're not sure
8 if the last one happened in 2003 or 2004, right?
9 A. Right.
10 Q. But she told you that certain people were at
11 the scene of Kim's murder, right?
12 A. Right.
13 Q. And you claim that she said Maude Grayhawk was
14 there, right? Or is that not right?
15 A. Well, she said she -- at the time, she told me
16 she was with those girls.
17 Q. Just "those girls"? She didn't identify any
18 of them?
19 A. Well, Joanne and Maude was usually the two
20 names that came up.
21 Q. Well, in your statement, I think you say --
22 A. Jordis.
23 Q. And Jordis, Maude. So are you remembering
24 that clearly, those names that she gave you?
25 A. Well, pretty much, because I -- you know, I

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- 1 mean I have a problem.
2 Q. You have some problems with memory?
3 A. (Nodding head affirmatively.)
4 Q. Do you know Calvin Lester, J.D.?
5 A. Calvin Lester -- yeah, I think I remember
6 Calvin pretty good.
7 Q. Are you aware that Calvin Lester claimed to
8 have witnessed the homicide and people at the homicide?
9 Are you aware of that?
10 A. No, I'm not.
11 Q. You're not aware of that? So you're not aware
12 of the fact that he named these same people that you're
13 naming now?
14 A. No.
15 Q. And are you aware that he later indicated that
16 he had not been truthful about that and he really didn't
17 witness anything?
18 A. No, I don't.
19 Q. You're not aware of that?
20 A. I'm not aware of that, no.
21 Q. So you don't find it curious at all that now
22 your statement seems to mirror Calvin Lester's?
23 A. (Shaking head negatively.)
24 Q. Now, according to what you say -- oh, one
25 thing I wanted to ask you: Are you aware that -- Rose is

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- 1 your sister-in-law, right?
2 A. Right.
3 Q. Are you aware that Rose has provided an alibi
4 for Maude?
5 A. No, not at all.
6 Q. And are you aware that, that -- do you know
7 who Bear Jones is?
8 A. Yes.
9 Q. Are you aware that he provides an alibi for
10 Jordis?
11 COURT REPORTER: I'm sorry, I didn't hear your
12 answer.
13 THE WITNESS: No, I'm not.
14 Q. (By Ms. Plubell) Now, according to what you
15 say, Sissy told you -- that is, that these girls were all
16 partying outside the truck together, right?
17 A. Well, that they -- I mean she just said there
18 was a party. I don't know where it was really taking
19 place. Down at the train bridge is all I knew.
20 Q. Well, doesn't your statement say they were all
21 partying outside the truck together?
22 A. (Perusing document.)
23 Q. Well, at any rate, a fight broke out. That's
24 what she told you, right?
25 A. Right.

1 Q. And that someone began chasing Kim, a girl
2 began casing — chasing Kim, excuse me, around the truck,
3 correct?

4 A. Supposedly, yes.

5 Q. And are you aware that the physical evidence
6 at the crime scene demonstrates that Kim's killer first
7 attacked her inside the truck? Are you aware of that
8 fact?

9 A. No. I'll tell you, I really don't know much
10 about the scene. I never did know nothing.

11 Q. But if that's what Sissy told you, that may
12 not be consistent with what the physical evidence showed,
13 right?

14 A. Possibly.

15 Q. You now claim that Sissy also mentioned Caleb
16 Gorneau and Eddie Van Dover, right?

17 A. Yes.

18 Q. Now, did she mention them in that last
19 conversation or was that in some prior conversation?

20 A. Just back through the years, I've heard her
21 mention it; not necessarily that night, no.

22 Q. And where — those names came from Sissy,
23 right? They didn't come from the other stories you've
24 heard over the years about the homicide? You're really
25 sure those names came from Sissy?

1 A. Pretty much, yes.

2 Q. You're pretty much sure, even though you've
3 heard a lot of stories.

4 Do you know Carl Four Star?

5 A. (Shaking head negatively).

6 Q. Are you aware that he also gave a statement?

7 A. Oh, Carl Four Star?

8 Q. Yes.

9 A. I know Carl, Sr., I guess. That's the, the
10 older man who works for BIA.

11 Q. Right now, are you aware of the fact, J.D.,
12 that every person who gave a tape-recorded statement in
13 preparation for this hearing who had any contact with
14 Centurion Ministries indicated that the investigators
15 twisted or turned or put words in their mouths? Are you
16 aware of that?

17 A. Not -- no.

18 Q. But you suffered a very traumatic brain
19 injury, didn't you?

20 A. (Nodding head affirmatively.)

21 MS. PLUBELL: No further questions.

22 REDIRECT EXAMINATION

23 BY MR. CAMIEL:

24 Q. J.D., did anybody put words in your mouth
25 about what you said today?

1 A. Did who?

2 Q. Did anybody put words in your mouth about what
3 you testified to today?

4 A. No.

5 Q. Did you testify based on what you recall your
6 sister telling you?

7 A. Pretty much, yes.

8 Q. Did you try to tell the truth as best you
9 could?

10 A. Best as I can remember it, yes.

11 MR. CAMIEL: Thank you.

12 MS. PLUBELL: Just a couple quick questions.

13 RE-CROSS-EXAMINATION

14 BY MS. PLUBELL:

15 Q. Now, J.D., you indicated that the reason you
16 gave the statement was --

17 CHAIRWOMAN O'CONNOR: Excuse me. Would you
18 please not put your letter in your pocket. We've got to
19 make a copy of that.

20 THE WITNESS: (Complying.)

21 CHAIRWOMAN O'CONNOR: That's right. Now, go
22 ahead. I just didn't want it already to be deposited in
23 his pocket.

24 MS. PLUBELL: All right, let me get my train
25 of thought back here.

1 CHAIRWOMAN O'CONNOR: Sorry.

2 Q. (By Ms. Plubell) You indicated that the
3 reason you came forward was because you loved your sister
4 and you wanted to help her, right?

5 A. Yes.

6 Q. Yeah. And are you aware that your sister has
7 been clean and sober now for about four months?

8 A. God bless her.

9 Q. Do you have any information about who she sees
10 for a counselor?

11 A. (Shaking head negatively.)

12 Q. Do you know how many times she goes to AA?

13 A. I haven't talked to Sissy for a year and five
14 months.

15 Q. So it appears that without making any sort of
16 confession to a homicide, Sissy on her own has gone out
17 and gotten the help that she needed to beat her drug
18 habit.

19 A. I hope she can stick with it.

20 Q. I do, too.

21 MS. PLUBELL: No further questions.

22 CHAIRWOMAN O'CONNOR: You may be excused.
23 We'd like to have this letter marked as an exhibit.

24
25 ///

///

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1 VONNIE BROWN, WITNESS, SWORN
2 DIRECT EXAMINATION
3 BY MR. CAMIEL:
4 **Q. Ma'am, could you tell us your full name and**
5 **spell your last name for us?**
6 A. Vonnie Rae Brown, B-R-O-W-N.
7 **Q. Where do you live now?**
8 A. Grand Forks, North Dakota.
9 **Q. So you drove all the way out here from there?**
10 A. Yes, I did.
11 **Q. Let me ask you: Do you have family there in**
12 **North Dakota?**
13 A. I reside with my daughter and grandkids.
14 **Q. And are you employed?**
15 A. Pardon?
16 **Q. Are you employed?**
17 A. No, I'm on disability right now.
18 **Q. Did you, did you used to live in Poplar?**
19 A. Yes, I did.
20 **Q. What years did you live in Poplar?**
21 A. I would -- I was born and raised there.
22 **Q. And so you lived there until when?**
23 A. Until I turned 18.
24 **Q. Which is what year?**
25 A. '82 - '83.

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1 **Q. '82?**
2 A. '83.
3 **Q. So were you living there in 1979, the year**
4 **that Kim Nees was murdered?**
5 A. Yes, I was.
6 **Q. How old were you at that time?**
7 A. Sixteen.
8 **Q. Are you acquainted with Sissy Atkinson?**
9 A. Yes, I am.
10 **Q. How do you know her?**
11 A. I kind of grew up with her.
12 **Q. Did you live near each other?**
13 A. No.
14 **Q. But did you hang around together as teenagers**
15 **and as kids?**
16 A. Well, yeah, I've hung out with her.
17 **Q. And were you friends with her?**
18 A. Yes, I was.
19 **Q. Are you still friends with her, or has that --**
20 A. No.
21 **Q. Is there something that led to a break in your**
22 **friendship?**
23 A. Yeah. She wrote a statement on me, on my
24 behalf, and that incarcerated me.
25 **Q. I'm sorry, that what?**

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1 A. And I was incarcerated for it.
2 **Q. Okay.**
3 A. And she also stole money from me.
4 **Q. So because of those problems, the two of you**
5 **are no longer friends?**
6 A. Well, we weren't really close after I moved
7 away.
8 **Q. Did there come a time in -- where you visited**
9 **Sissy when she was living -- Sissy Atkinson when she was**
10 **living in Great Falls?**
11 A. Yes, I did.
12 **Q. How did that come about?**
13 **Do you remember when that was, first of all?**
14 A. I think it was in June.
15 **Q. Of what year?**
16 A. '04.
17 **Q. 2004?**
18 A. (Nodding head affirmatively.)
19 **Q. And what prompted your visit with her in Great**
20 **Falls?**
21 A. I have taken my cousin's wife's baby -- the
22 mother to the baby, up to -- they flew the baby out to
23 Great Falls and she didn't have a ride, so I took her up,
24 took her up there to be with her baby.
25 **Q. Okay. That was for some medical care?**

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1 A. Yes, it was.
2 **Q. And while you were there in Great Falls, did**
3 **you visit with Sissy Atkinson?**
4 A. Yes, I did.
5 **Q. Where did you visit with her?**
6 A. At her home.
7 **Q. Do you remember where her home was at the**
8 **time?**
9 A. I think it was on 10th Avenue.
10 **Q. An apartment?**
11 A. Yes, an apartment.
12 **Q. When you went over to visit with her, what**
13 **happened?**
14 A. She was using at the time.
15 **Q. While you were there?**
16 A. Yes.
17 **Q. What was she using?**
18 A. I don't know what kind of pills she was
19 shooting up, but she was shooting some kind of pill up. I
20 don't know if it was morphine or Oxys or whatever she was
21 taking.
22 **Q. Okay. And so then what happened?**
23 A. We got to be sitting around talking. And she
24 asked me about when I got out of prison. So I kind of
25 told her I sat in Shelby with Barry -- or, no, I sat in

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1 Shelby for about a year and a half. And then the subject
 2 came up with Barry.
 3 And she then said, "Oh, that's too bad Barry's
 4 sitting there for nothing."
 5 And I said, "Oh, why is that?"
 6 And she tells me that, "Well, I know about the Kim
 7 Nees murder. I know who did it. Do you want to know?"
 8 So I said, "Sure."
 9 So she -- we were sitting there, and we got into a
 10 conversation about it. And so I had -- just when -- she
 11 asked me if I'd really like to know, so I said, "Yes."
 12 So she proceeded to tell me that her and Maude
 13 Grayhawk had something to do with it. And she goes on to
 14 talking about Ed Van Dover, which is a friend of mine,
 15 too. But after a minute, she paused and she changed the
 16 subject after that.
 17 **Q. Well, let me back you up for just a minute and**
 18 **ask you how the subject came up again. You said that you**
 19 **had done time at the prison in Shelby?**
 20 A. Yeah. She asked me when I got out, out of the
 21 prison.
 22 **Q. And how did Barry Beach's name come up?**
 23 A. I don't know, she asked me about Barry --
 24 **Q. Did she ask --**
 25 A. -- if Barry was doing time there. And I said,

1 "Yes. I did, I did time with him there."
 2 **Q. So she brought him up --**
 3 A. Yeah.
 4 **Q. -- and wanted to know whether he was there**
 5 **doing time?**
 6 A. Still there doing time, yeah.
 7 **Q. And when you said "yes", her response was?**
 8 A. She said, "That's too bad Barry's sitting
 9 there for nothing."
 10 **Q. And you indicated you asked what she meant by**
 11 **that?**
 12 A. Yeah.
 13 **Q. And what did she say?**
 14 A. She then said I -- about the Barry Beach -- or
 15 Kimberly Nees murder. That was brought up.
 16 **Q. She brought up the Kim Nees murder?**
 17 A. Yes. And that's what she said, that she knew
 18 who did it. So I asked her who.
 19 **Q. And when she -- after you asked her who, do**
 20 **you remember exactly, the best you can, the words she used**
 21 **when she responded to you?**
 22 A. That she knew who did it.
 23 **Q. Did she say who was involved?**
 24 A. Yeah. She said her and Maude had something to
 25 do with it.

1 **Q. Did she say, "We had something to do with it,"**
 2 **or did she describe what they did?**
 3 A. Yeah, kicking and pulling her hair, pulling at
 4 her hair.
 5 **Q. That's what she said --**
 6 A. She said she was doing, yeah.
 7 **Q. Kicking and pulling whose hair?**
 8 A. Pulling Kim Nees's hair.
 9 **Q. And did she indicate whether anyone else was**
 10 **involved?**
 11 A. She started to talk about Ed Van Dover, and
 12 then the subject quit after that. She changed the subject
 13 to a different subject.
 14 **Q. Now, you indicated she was using at the time.**
 15 **Was she actually using drugs that day that you saw her?**
 16 A. Yes, I did see her. We were talking about it
 17 while she was doing it.
 18 **Q. So she was using drugs while you were talking**
 19 **to her?**
 20 A. Oh, yeah.
 21 **Q. Were you using drugs at that time?**
 22 A. No.
 23 **Q. Have you used drugs before?**
 24 A. Oh, yeah.
 25 **Q. But you were not using any drugs that day?**

1 A. No.
 2 **Q. Was anyone else present at the -- at Sissy**
 3 **Atkinson's apartment when you had this conversation with**
 4 **her?**
 5 A. Her boyfriend, Les Wright.
 6 **Q. And where was he when the two of you were**
 7 **talking about the Kim Nees murder?**
 8 A. He was right there.
 9 **Q. Was he also using drugs?**
 10 A. Oh, yes.
 11 **Q. Do you remember -- do you recall what time of**
 12 **day it was that the two of you were talking?**
 13 A. Probably in the afternoon.
 14 **Q. When she stopped talking about it and you said**
 15 **she tried to change the subject, did you make any further**
 16 **inquiry or try and prompt --**
 17 A. No, I didn't. I just told her that she was
 18 lying, that I didn't believe her.
 19 **Q. So even though she told you she was involved,**
 20 **you --**
 21 A. I didn't believe her, what she said. But it
 22 just stopped after that. There was nothing else said
 23 after that.
 24 **Q. Okay. Have you visited Sissy in Great Falls**
 25 **more than once?**

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- 1 A. Yes, I did.
 2 **Q. Have you ever seen her brother J.D. there when**
 3 **you visited her?**
 4 A. Yes, I did.
 5 **Q. Do you know Barry Beach?**
 6 A. A little. I used to date his younger brother.
 7 **Q. His brother, Brad?**
 8 A. Yes.
 9 **Q. Have you talked to his family members about**
 10 **coming forward?**
 11 A. Well, no, I never had no contact or nothing.
 12 **Q. Have you ever talked to his mother about**
 13 **coming forward and giving a statement?**
 14 A. No; no, I haven't.
 15 **Q. How was it that you are now here today giving**
 16 **a statement? How was it that we got ahold of you?**
 17 A. Well, Richard Holen was talking about it. I
 18 talked to him a few times about it, and he wanted me to
 19 come forward and to give my statement. I didn't want to.
 20 I was scared at first. I didn't want to say anything.
 21 But I thought about it. I know how Barry feels, you know,
 22 doing time, and he's doing it for nothing.
 23 **Q. Why were you scared?**
 24 A. I didn't want all this publicity and be in all
 25 this. I didn't want to have part of it. But I came

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- 1 **Q. Okay. And you said that you thought this**
 2 **information was important.**
 3 A. Yes.
 4 **Q. But you never told anyone in law enforcement**
 5 **about it, did you?**
 6 A. No, I didn't.
 7 **Q. And you first told Centurion Ministries about**
 8 **it?**
 9 A. Yes, I did.
 10 **Q. That's the first time it was out, okay.**
 11 **And you said you and Sissy don't get along because**
 12 **Sissy had you thrown in jail; is that right?**
 13 A. Yeah. She also took money from me.
 14 **Q. She took money from you?**
 15 A. Stole it, she stole money.
 16 **Q. So you kind of have a grudge against her?**
 17 A. Well, I don't have a grudge against her.
 18 **Q. But you don't like her.**
 19 A. I just wouldn't be her friend again --
 20 **Q. You wouldn't be --**
 21 A. -- because she stole --
 22 **Q. You wouldn't be her friend again?**
 23 A. No.
 24 **Q. Okay. Did you ever take any clothes or**
 25 **anything from Sissy?**

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- 1 forward because I think it's the right thing to do.
 2 **Q. Did you think that the information you had**
 3 **from your conversation with Sissy was important?**
 4 A. Well, yes, it was.
 5 **Q. When you told Sissy Atkinson that you didn't**
 6 **believe her, why did you say that?**
 7 A. Because I didn't -- you know, I was just
 8 thinking that she was high on pills, she was talking
 9 crazy.
 10 **Q. Are you clear in your own mind what she**
 11 **said --**
 12 A. Oh, yes.
 13 **Q. -- when you talked to her?**
 14 A. Yes.
 15 **Q. Any confusion in your mind?**
 16 A. No.
 17 MR. CAMIEL: Thank you.
 18 CROSS-EXAMINATION
 19 BY MR. WELLENSTEIN:
 20 **Q. Ms. Brown, my name is Mike Wellenstein.**
 21 **You've stated that Sissy relayed some -- talked to**
 22 **you about the Beach homicide --**
 23 A. Hm-hmm.
 24 **Q. -- or the Nees homicide in -- in 2004, was it?**
 25 A. I think it was 2004.

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- 1 A. Well, her daughter gave me some of her
 2 boyfriend's clothes to take back for him. Yes, I did take
 3 clothes.
 4 **Q. You took, you took clothes?**
 5 A. His clothes.
 6 **Q. His clothes.**
 7 A. Yes.
 8 **Q. And it's your interpretation that they were**
 9 **given to you?**
 10 A. They were given to me by her daughter.
 11 **Q. Okay. And you said, you said that Sissy was**
 12 **using drugs in your presence --**
 13 A. Hm-hmm.
 14 **Q. -- when she relayed some information.**
 15 A. Yes.
 16 **Q. And you weren't using drugs that day? Is**
 17 **that --**
 18 A. No.
 19 **Q. -- what I heard?**
 20 **Were you using drugs before or after that?**
 21 A. Well, I used them in the past, just like --
 22 **Q. Did you use any shortly before or --**
 23 A. No.
 24 **Q. -- at any time after?**
 25 **So your memory is not clouded by any --**

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1 A. No.
 2 **Q. You haven't used drugs, okay. And Richard**
 3 **Holen was the person who told you to contact Centurion**
 4 **Ministries; is that right?**
 5 A. Yeah.
 6 **Q. Okay. Did you ever have a conversation with**
 7 **Joanne Jackson about you were going to get back at Sissy**
 8 **Atkinson?**
 9 A. No, I never talked to Joanne.
 10 **Q. You never, never, never told Joanne --**
 11 A. There was never a conversation.
 12 **Q. Never a conversation?**
 13 A. No.
 14 MR. WELLENSTEIN: Okay.
 15 MR. CURTISS: I'm Vance Curtiss. There's just
 16 a couple questions I'd like to ask you.
 17 When did you give this statement to Centurion
 18 Ministries?
 19 THE WITNESS: I think in February.
 20 MR. CURTISS: You gave them a statement?
 21 THE WITNESS: February or March.
 22 MR. CURTISS: Okay. Of this year?
 23 THE WITNESS: Yes, I did.
 24 MR. CURTISS: Okay. And when you were you --
 25 when Sissy was contacting you and she was using drugs at

1 that time, when was that about? Do you remember how far
 2 back that was?
 3 THE WITNESS: I think it was in June. I think
 4 it -- June was -- or '04.
 5 MR. CURTISS: What I'm wondering is: Why all
 6 of a sudden in 2007 when all of this information is
 7 available and there was a lapse of time here -- what I'm
 8 wondering is: Why is it now that you've come forth with
 9 this rather than when she told you?
 10 THE WITNESS: Because I was being
 11 incarcerated.
 12 MR. CURTISS: Pardon?
 13 THE WITNESS: I was incarcerated.
 14 MR. CURTISS: Oh, you were incarcerated.
 15 THE WITNESS: Hm-hmm.
 16 MR. CURTISS: And also for the drugs that you
 17 mentioned, or --
 18 THE WITNESS: No.
 19 MR. CURTISS: Okay. But what -- do you
 20 believe, do you believe that she has a problem - kind of
 21 her self-esteem, and has to be important, and that type of
 22 thing - that she would say this just to make an important
 23 point to you?
 24 I just am wondering what her character is with
 25 -- she's coming, she's telling you these things. What's

1 the reason she's telling you these things, in your
 2 judgment?
 3 THE WITNESS: Maybe she wants help. I don't
 4 know.
 5 MR. CURTISS: (Do you believe her?)
 6 THE WITNESS: At first I didn't believe her,
 7 but I believe it now.
 8 MR. CURTISS: And why?
 9 THE WITNESS: Because what she tells me -- I
 10 believe she had some kind of involvement in it, in the
 11 case.
 12 MR. CURTISS: That's all I have, Madame Chair.
 13 CHAIRWOMAN O'CONNOR: You may be excused.
 14 THE WITNESS: All right, thank you.
 15 CHAIRWOMAN O'CONNOR: We're going to take
 16 another 10-minute break. This will be our last break of
 17 the day. But we'll reconvene at eight minutes after four.
 18 (A brief recess was taken.)
 19 CHAIRWOMAN O'CONNOR: You may call your next
 20 witness.
 21 MR. CAMIEL: They don't have Mr. Beach here
 22 yet.
 23 CHAIRWOMAN O'CONNOR: He should be here at
 24 eight-after, which it is. When I say "eight-after", I
 25 mean "eight-after".

1 MR. CAMIEL: That's something I have no
 2 control over.
 3 CHAIRWOMAN O'CONNOR: Well, where is he?
 4 MR. CAMIEL: I'm not sure where they --
 5 CHAIRWOMAN O'CONNOR: Well, when did he leave
 6 and where is he?
 7 MR. CAMIEL: They take him out at every break.
 8 CHAIRWOMAN O'CONNOR: It shouldn't take longer
 9 than 10 minutes. That's why we have a 10-minute break.
 10 MR. HOLEN: Just sit down?
 11 CHAIRWOMAN O'CONNOR: Yes, sir. You'll have
 12 to wait a minute, though.
 13 In the future, we'll want this done before we
 14 come back into session. Please be mindful of when I say
 15 we'll come back into session. I better swear in your
 16 witness.
 17 RICHARD DEAN HOLEN, WITNESS, SWORN
 18 CHAIRWOMAN O'CONNOR: You may proceed.
 19 DIRECT EXAMINATION
 20 BY MR. CAMIEL:
 21 **Q. Could you state your full name and spell your**
 22 **last name?**
 23 A. Richard Dean Holen, H-O-L-E-N.
 24 **Q. Mr. Holen, where do you live?**
 25 A. Poplar, Montana.

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- 1 **Q. How long have you lived there?**
 2 A. My entire life.
 3 **Q. And what do you do for a living?**
 4 A. Ranch.
 5 **Q. And do you have family?**
 6 A. Yes.
 7 **Q. Kids?**
 8 A. Yes.
 9 **Q. How many kids do you have?**
 10 A. Two.
 11 **Q. And where's your ranch located?**
 12 A. Poplar, Montana.
 13 **Q. Right outside of town?**
 14 A. Yes. We live in between Poplar and Wolf
 15 Point.
 16 **Q. And you were living -- since you've lived**
 17 **there your whole life, you lived there in 1979?**
 18 A. Yes, I was.
 19 **Q. How old were you in 1979?**
 20 A. Nineteen.
 21 **Q. First of all, did you know Kim Nees?**
 22 A. A little bit.
 23 **Q. You knew who she was?**
 24 A. I knew who she was.
 25 **Q. Did you know the Nees pickup truck?**

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- 1 A. Well, it was just an evening out. You know, I
 2 mean everybody was young, and they was uptown and driving
 3 around.
 4 **Q. Where?**
 5 A. The Legion Club in Poplar.
 6 **Q. And that evening, were you within anyone?**
 7 A. Which time?
 8 **Q. When you were out that night.**
 9 A. Well, everybody in the bar, and stuff, bars,
 10 different places.
 11 **Q. Were you at the Legion for awhile?**
 12 A. Yes.
 13 **Q. Do you know what hours you were at the Legion**
 14 **Club?**
 15 A. Not really. It was back and forth. You know,
 16 I mean, you know, you come and go and come back and -- I
 17 was there, I know, until two or after two, you know, until
 18 -- it was late.
 19 **Q. Did you know anybody who was working there?**
 20 A. Yes.
 21 **Q. Okay. And did you have a girlfriend who**
 22 **worked there?**
 23 A. Yes.
 24 **Q. Who was that?**
 25 A. Gretchen.

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- 1 A. Yes.
 2 **Q. What did that pickup truck look like?**
 3 A. Light green Chevy pickup.
 4 **Q. Was it an unusual vehicle? Was it**
 5 **distinctive?**
 6 A. No, it was just an ordinary pickup. It had
 7 like a -- it had a rack on the back, kind of, you know,
 8 like a toolbox. And they call it a "headache rack" there.
 9 **Q. And if you see that truck, would you easily**
 10 **recognize it?**
 11 A. I saw it every day -- or, you know, quite
 12 often.
 13 **Q. Did you know Barry Beach?**
 14 A. A little bit.
 15 **Q. Were you friends with him?**
 16 A. I knew who he was.
 17 **Q. Are you the same age as him or older?**
 18 A. Older.
 19 **Q. A couple years older?**
 20 A. (Nodding head affirmatively.)
 21 **Q. I want to turn your attention to June 15th of**
 22 **1979, the night that Kim Nees was murdered. Do you recall**
 23 **what you were doing that evening?**
 24 A. Yes.
 25 **Q. What were you doing?**

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- 1 **Q. What did she do at the Legion Club?**
 2 A. She waited tables.
 3 **Q. And when you were at the Legion that night,**
 4 **did anything unusual happen? Did you get in a fight?**
 5 A. Yeah, yes.
 6 **Q. Do you remember about what time that happened?**
 7 A. No, I don't -- I mean -- no.
 8 **Q. And did you stay at the Legion until it**
 9 **closed?**
 10 A. Yes.
 11 **Q. And why did you stay until it closed?**
 12 A. Well, that's where everybody was, you know.
 13 **Q. Was that when your girlfriend got off work?**
 14 A. Yes.
 15 **Q. And you already said that she bartended there.**
 16 A. She waited tables, I guess, yes.
 17 **Q. Okay. Do you know what time the Legion Club**
 18 **closed?**
 19 A. Two o'clock.
 20 **Q. Did you and Gretchen, your girlfriend, go**
 21 **anywhere from the Legion that night?**
 22 A. Yes. We drove out of town west of Poplar.
 23 **Q. When you say "drove" -- first of all, when do**
 24 **you think it was that you and your girlfriend left the**
 25 **Legion Club? If it closes at two, do you know when --**

1 A. It was after she got out of there. You know,
 2 I mean after they cleared the tables, and stuff, it could
 3 have been two-thirty, you know, or -- you know.
 4 **Q. Okay. So after things were cleaned up, you**
 5 **waited on her and then the two of you left?**
 6 A. I was outside. She come outside.
 7 **Q. Okay. What were you driving?**
 8 A. A black car.
 9 **Q. And where did the two of you go?**
 10 A. Just out driving around.
 11 **Q. Were you out on Highway 2?**
 12 A. Yes.
 13 **Q. Which direction, east or west, were you**
 14 **headed?**
 15 A. West.
 16 **Q. That takes you out of town?**
 17 A. Yes.
 18 **Q. And while you were driving westbound on**
 19 **Highway 2, did you see any other vehicles around?**
 20 A. I seen Kim Nees's pickup.
 21 **Q. How do you know it was Kim Nees's pickup?**
 22 A. Well, because she was driving it. I could see
 23 her.
 24 **Q. How do you know it was the Nees pickup? You**
 25 **recognized it?**

1 A. I seen it every day.
 2 **Q. Okay. Where was it?**
 3 A. It was ahead of me. I was going out of
 4 Poplar, and the pickup was right directly ahead of me.
 5 **Q. About how far ahead of you, would you say?**
 6 A. Fifty feet -- well, I mean it slowed up. It
 7 was turning off, going down in the park right east of
 8 Poplar. It had to slow up because there was a car coming
 9 from the -- heading east. And then the pickup turned off
 10 and went down in the park beneath Poplar, and then I kept
 11 on going west for a ways.
 12 **Q. Now, while you were following the Nees pickup**
 13 **headed out of town, you're heading westbound on Highway 2.**
 14 **Could you see in through the back window into the cab of**
 15 **the pickup?**
 16 A. Yes.
 17 **Q. Okay. Could you tell how many occupants were**
 18 **in the pickup?**
 19 A. At least five.
 20 **Q. How could you say that?**
 21 A. Because I could see them. The pickup was --
 22 you can see the heads in the pickup. It would be the
 23 driver's, whoever is beside it, the next -- there was
 24 four, and there was somebody sitting on someone's lap on
 25 the passenger side wearing a visor.

1 **Q. Wearing a visor?**
 2 A. A visor, yes.
 3 **Q. And you were close enough to see that?**
 4 A. Oh, yeah.
 5 **Q. Okay. And so you said that the vehicle, the**
 6 **pickup, slowed down to make a left-hand turn?**
 7 A. Yes.
 8 **Q. Was this before or after the bridge that goes**
 9 **over the river?**
 10 A. Before.
 11 **Q. Where was the pickup turning into?**
 12 A. Right where they found it the next morning.
 13 **Q. Is that down in the area they call the "train**
 14 **bridge"?**
 15 A. Yes, yeah.
 16 **Q. So this wasn't back at the ball field or at**
 17 **the high school; this was further west?**
 18 A. What do you mean?
 19 **Q. Well, when you're heading out of, when you're**
 20 **heading out of Poplar on Highway 2 westbound, the high**
 21 **school, the high school is on your left; is that right?**
 22 A. Yes.
 23 **Q. And then there's a field?**
 24 A. There's a football field there right now.
 25 **Q. Okay. And then comes the park where the train**

1 **bridge is?**
 2 A. Yes.
 3 **Q. And then the bridge over the river?**
 4 A. Yes.
 5 **Q. Okay. And so it was clear to you that she was**
 6 **turning the truck down into the park?**
 7 A. Oh, absolutely.
 8 **Q. When the truck slowed down to make the turn,**
 9 **did you get closer to the truck?**
 10 A. Oh, yes.
 11 **Q. (How close did you get?)**
 12 A. Fifty feet.
 13 **Q. Okay. After it turned into the, into the**
 14 **park, where did you go?**
 15 A. There's an old place where everybody used to
 16 go turn around. It's called Saby's. It was about another
 17 half a mile away from there -- or, you know, you just go
 18 over the bridge and it's, I suppose, a half a mile from
 19 where the pickup turned, or three-quarters, something like
 20 that. Everybody drove out there, turned around, and come
 21 back.
 22 Right now to this day, it's all paved. You know,
 23 now they call it the "Four Mile Square". But everybody
 24 would go out and turn around and then go back into town or
 25 wherever, you know. But everybody turned around out

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1 there. And all I did was drive out there, we turned
2 around, come back into -- come back in and noticed the
3 pickup was still down there. But it was talking to a car
4 at this time.

5 **Q. Now, when you say the pickup was still down**
6 **there --**

7 A. Kim Nees's pickup.

8 **Q. -- down in the park where you saw it turn in?**

9 A. Yes. It was real close to the highway then.

10 I mean you could see it.

11 **Q. So how far down the road into the park was it?**

12 A. One hundred yards, fifty yards, seventy-five.

13 You know, I mean at that time, seeing the pickup meant
14 nothing. I mean it's just, you know -- and then but after
15 you hear about things, then it kind of does.

16 **Q. You said that the pickup -- which way was the**
17 **pickup facing --**

18 A. South.

19 **Q. -- when you were coming back?**

20 A. South.

21 **Q. So that's heading into the park?**

22 A. Right.

23 **Q. Okay. (You said there was a car down there) as**
24 **well?**

25 A. Yes.

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1 **found?**

2 A. Oh, yeah.

3 **Q. You heard that it was down near the train**
4 **bridge?**

5 A. Yes.

6 **Q. And at some point after that, did the police**
7 **come talk to you?**

8 A. Well, not -- well, not really. The only thing

9 I remember is being at the Conoco station a few days
10 later. Stevey Grayhawk was there, and he asked me if I
11 had seen anything.

12 And I said, "Well, I just" -- you know, I kind of
13 told this story.

14 And he said, "We're going to get back and talk to
15 you."

16 I never seen anybody until Centurion showed up at
17 the doorstep.

18 **Q. Well, let me -- you're at the Conoco station.**
19 **And how many days after?**

20 A. Three - four, I mean a couple; you know, I
21 mean a couple -- it wasn't very -- it was a few days.

22 **Q. And you're at the station just filling your**
23 **car with gas?**

24 A. I don't know. That was kind of a hangout
25 spot, too.

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1 **Q. Where did you see the car?**

2 A. Well, it was talking to -- the driver, Kim,
3 had to be -- she was driving the pickup. She was talking
4 to whoever was in the car. I don't know. I thought at
5 the time -- well, you know, years and years later if I
6 just would have turned, I would have -- you know, but
7 hindsight's 20/20.

8 **Q. Was the car adjacent or parallel with the --**

9 A. The driver's side windows were talking to each
10 other.

11 **Q. Okay. And then from -- so this is what you**
12 **saw as you were driving back into town?**

13 A. Right.

14 **Q. Where did you go from there?**

15 A. Just drove around.

16 **Q. When did you first hear that Kim Nees had been**
17 **killed?**

18 A. I went out to the farm, my dad's house, the
19 next day. I think my brother come out of the house, Jim
20 Holen, and that's where I heard of it.

21 **Q. Okay.**

22 A. And, yeah, I wasn't -- I never heard nothing
23 until, you know -- he's the one that told me, I think, or
24 everybody standing in the yard.

25 **Q. Did you hear where it was that she had been**

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1 **Q. Okay. And was -- now, you said "Stevey**
2 **Grayhawk". Is this Steve Grayhawk, the Poplar police**
3 **officer?**

4 A. Senior.

5 **Q. Okay. And he was a police officer of the City**
6 **of Poplar?**

7 A. Oh, yeah.

8 **Q. Was he talking to other people there?**

9 A. Yes. Bobby Atkinson was there, too.

10 **Q. Okay. And did he come over and talk to you?**

11 A. No -- which one?

12 **Q. Steve Grayhawk.**

13 A. That's all: He asked me if I seen anything,
14 and I told him, "A little bit."

15 And he said, "I'm going to get back to you."

16 And then I've never talked -- I talked to him
17 hundreds of times since but never about this.

18 **Q. Now, when you say you talked to him, did you**
19 **tell him about seeing the Nees pickup go down into the**
20 **park?**

21 A. Yes.

22 **Q. Do you recall another occasion, any other**
23 **occasion, where a police officer came and talked to you**
24 **about Greg Norgaard?**

25 A. No, I don't.

1 **Q. Do you recall ever being talked to about being**
 2 **down at the Legion that night, the Legion hall?**
 3 A. No.
 4 **Q. So this is back in '79. After you talk to**
 5 **Deputy Grayhawk, did you tell anyone else what you had**
 6 **seen that night?**
 7 A. Years and years later.
 8 **Q. Okay. You said that nobody ever got back to**
 9 **you after you talked to Steve Grayhawk.**
 10 A. Never.
 11 **Q. Okay. You've given a statement in this case**
 12 **that's dated March 1st of 2002. How was it that you came**
 13 **to give a statement?**
 14 A. I was approached by Centurion.
 15 **Q. Okay. And where were you approached?**
 16 A. At home.
 17 **Q. Okay. Do you know how they -- how Centurion**
 18 **Ministries found you?**
 19 A. What they told me.
 20 **Q. What did they tell you?**
 21 A. Tommy Kirn had -- he asked, you know, when the
 22 -- well, it was all over town that they were back in
 23 Poplar, you know, going through the Nees case. And Tommy
 24 had told, well, you guys about me, and then here you come.
 25 **Q. But you talked to Tommy Kirn about what you**

1 **had seen?)**
 2 A. Yes, yes.
 3 **Q. When had you talked to him?**
 4 A. It was within six months or, you know -- not
 5 too long before, you know, I think Jim and yourself showed
 6 up, or somebody.
 7 **Q. And have you been contacted by the attorney**
 8 **general's office to talk to them about what you saw?**
 9 A. Sheriff Crawford called me one day and said,
 10 "Hey, Jay's in town."
 11 And I said, "Send him out."
 12 And he said, "They don't want to come out."
 13 Anyway, we never -- and then the next day, I went to
 14 the sheriffs office, you know, to see where they were or
 15 to see them. And they were at the train bridge in Poplar
 16 taking pictures, and stuff. And I never get hooked up
 17 with them. I wasn't avoiding anybody, but I never did --
 18 they never come after me too much. I invited -- told the
 19 sheriff to tell them to come on out to the house, and
 20 nobody ever did.
 21 **Q. Do you have any recollection of seeing Kim**
 22 **Nees any earlier in the evening that night?**
 23 A. Oh, I'm sure a person did, you know. I don't
 24 know.
 25 **Q. When did you realize that it was significant**

1 **that you had seen her driving down into the, into the park**
 2 **with a cab-load of passengers?**
 3 A. Well, it was very unusual to see her with that
 4 many people anyway.
 5 **Q. When you usually saw her in that truck, was**
 6 **she usually with anyone?**
 7 A. Not usually, no. She was pretty -- alone a
 8 lot. When I lived at Poplar at that time where the Exxon
 9 station is - it's a gas station where all the kids used to
 10 stop and visit or park, you know - she was there a lot.
 11 **Q. Would she be parked in her car sitting there a**
 12 **lot?**
 13 A. Oh, yeah. I mean often, a lot.
 14 **Q. Do you have any doubt in your mind, Mr. Holen,**
 15 **that it was the night of June 15th -- or the early morning**
 16 **hours, I should say, of June 16th that you saw the Nees**
 17 **pickup go down into the park?**
 18 A. Absolutely not.
 19 **Q. Why can you say that now?**
 20 A. What do you mean?
 21 **Q. Well, it's been 27 years since this occurred.**
 22 A. Well, there was a lot of things that happened
 23 that night, too. I mean, you know, there were several
 24 fights at the Legion Club. And I mean that was quite a
 25 deal that that young girl got killed that night, you know.

1 I mean it -- everybody remembers that day.
 2 **Q. And so when you heard the next day that she**
 3 **had been killed, you realized you had seen her that night**
 4 **driving down into the park?**
 5 A. No. When I started really kind of grabbing my
 6 story -- or I mean with seeing her was that somebody was
 7 talking -- I don't even remember who that was or how that
 8 got -- but that Kim was supposedly killed at 11 o'clock or
 9 midnight or in that area. That's absolutely impossible
 10 because I seen her at two-thirty.
 11 **Q. Okay. And you don't have any doubt in your**
 12 **mind that you told Steve Grayhawk what you had seen?)**
 13 A. Oh, absolutely.
 14 **Q. And he told you he would get back to you?**
 15 A. He was going to be right on that, boy. And he
 16 hadn't done it since.
 17 **Q. Okay. Did he take -- did he appear to be**
 18 **taking notes when he talked to you?**
 19 A. No.
 20 MR. CAMIEL: That's all I have. Thank you.
 21 CROSS-EXAMINATION
 22 BY MR. WELLENSTEIN:
 23 **Q. Mr. Holen, my name is Mike Wellenstein. How**
 24 **are you doing?**
 25 A. How are you?

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1 **Q. Good, good. It's getting to be kind of a long**
 2 **day.**
 3 A. This is a long one.
 4 **Q. Yes, it's getting there.**
 5 **I think you testified that you saw Kim Nees in front**
 6 **of you. You saw her --**
 7 A. Absolutely.
 8 **Q. Okay. And you said it was about two-thirty.**
 9 A. Yes.
 10 **Q. Two-thirty. Could it have been later than**
 11 **two-thirty?**
 12 A. Pardon?
 13 **Q. Could it have been later than two-thirty?**
 14 A. It could have been, yeah.
 15 **Q. Okay. Well, you know, I've got your statement**
 16 **here that you gave to Centurion Ministries.**
 17 A. Yes.
 18 **Q. And I'm going to look at it. It was given**
 19 **2002, March 2002. Did you write that out --**
 20 A. Yeah, I give them -- I knew --
 21 **Q. Well, did you ever mention -- you never**
 22 **mentioned seeing Kim Nees in your statement. You just**
 23 **mentioned seeing her pickup truck; isn't that right?**
 24 A. Well, I mean however you want to twist that.
 25 But I mean she was --

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1 **Q. Because in your statement, you said you never**
 2 **talked to her after that. That doesn't sound like a**
 3 **girlfriend at all.**
 4 A. It wasn't too big a deal.
 5 **Q. And do you know, do you know -- so Gretchen**
 6 **could be -- would be corroborating your statement? She**
 7 **could do that? She could verify it?**
 8 A. She's not in very good health.
 9 **Q. She's not in very good health. Where is she?**
 10 A. She's in a nursing home in Wolf Point.
 11 **Q. That's kind of ironic, isn't it?**
 12 **Do you know her mental status now?**
 13 A. No.
 14 **Q. Now, in your testimony today, you said you saw**
 15 **another, you said you saw another vehicle parked next to**
 16 **the Nees pickup truck and they were talking back and**
 17 **forth. That's not in your statement, is it?**
 18 A. I can't help with that. That's --
 19 **Q. So you've given one story to the Centurion**
 20 **Ministries, and now you're giving one story -- you're**
 21 **giving a different story today. Don't you think that fact**
 22 **would have been important to tell Centurion Ministries?**
 23 A. Oh, absolutely, it would have been important.
 24 Because the more you think about it, I mean you know that
 25 -- what it was, you know.

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1 **Q. Well, don't you think it's important whether**
 2 **you saw the truck or you saw Kim Nees?**
 3 A. She was driving the pickup.
 4 **Q. Okay, all right. Well, in Mr. Beach's**
 5 **clemency application to the governor, he says that (quoted**
 6 **as read): "Richard Holen told Officer Brown that**
 7 **approximately at 2 a.m."**
 8 **And now you're saying it's two-thirty. Isn't --**
 9 **wouldn't a half-hour difference be quite a bit?**
 10 A. I don't know what -- I mean I'm just telling
 11 you the way it was.
 12 **Q. You're telling us -- so did you ever --**
 13 A. It couldn't have been two o'clock.
 14 **Q. Did you tell them two or two-thirty? Do you**
 15 **think --**
 16 A. It had to be later.
 17 **Q. It had to be later than two?**
 18 A. And I believe -- oh, yes.
 19 **Q. Okay.**
 20 A. Because the girl that was riding with me, she
 21 was, you know --
 22 **Q. And that's your girlfriend? That was your**
 23 **girlfriend?**
 24 A. That was, you know -- but, yeah, I mean we was
 25 riding around that night.

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1 **Q. Okay. Are you aware that the day after the**
 2 **homicide, June 17, 1979, that you gave a statement to the**
 3 **sheriff's office?**
 4 A. No.
 5 **Q. Would it surprise you if there was a sheriff's**
 6 **note regarding a conversation with you?**
 7 A. I've seen that, and I don't remember it.
 8 **Q. So you've seen it, but there's no -- but**
 9 **you'll agree there's no mention of the Nees pickup truck**
 10 **or seeing Kim Nees that night?**
 11 A. Well, who's the officer that took it?
 12 **Q. Well, that's what happens when you try to go**
 13 **back (and solve a crime 28 years) -- it's difficult to**
 14 **figure out what's what, isn't it?**
 15 A. Yeah.
 16 **Q. Okay. Do you think your memory regarding the**
 17 **events --**
 18 A. It's okay.
 19 **Q. Do you think your memory was better then on**
 20 **June 17th or in 2002 when --**
 21 A. Just then as it is now.
 22 **Q. Just as good as it is now?**
 23 A. Yeah.
 24 **Q. I notice in your statement, you said, you said**
 25 **that - here, let me get it here for you - that it always**

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1 **bothered you that Beach, Barry Beach, confessed to killing**
 2 **her all by himself because that doesn't fit what you saw.**
 3 **We can agree that that's in there, right?**
 4 A. (Nodding head affirmatively.)
 5 **Q. You know, even though you said that after**
 6 **Barry Beach confessed in 1983, even though you said it**
 7 **bothered you, you never came forward and told another law**
 8 **enforcement officer, did you?**
 9 A. Why should a person?
 10 **Q. Well, you said it bothered you that Barry**
 11 **Beach confessed.**
 12 A. There's a whole bunch of people -- you can go
 13 back to Poplar, and, you know, they'll tell you the same
 14 thing I'm telling you. There's two --
 15 **Q. A whole bunch? Who?**
 16 A. I don't -- let's don't get -- you know, but I
 17 mean --
 18 **Q. Well, you just --**
 19 A. -- it's going all over.
 20 **Q. You just said "a whole bunch".**
 21 A. In Poplar, Montana, you can go down the street
 22 and talk to lots of people about this deal.
 23 **Q. And they'll have a lot of rumors on it and**
 24 **stories?**
 25 A. I don't know if they're so much rumors.

1 **Q. But who are those people, then? You said that**
 2 **there's lots of people.**
 3 A. You could -- random pick.
 4 **Q. Random pick?**
 5 A. Yeah. You know, I -- here you go after me,
 6 but I mean I'm just telling you the truth.
 7 **Q. I'm not going --**
 8 A. Yes, you are.
 9 **Q. Well, you know what? You're testifying today**
 10 **about something that occurred in 1979.**
 11 A. Yeah.
 12 **Q. And you're making -- and it involves whether**
 13 **the Board is going to --**
 14 A. Yeah.
 15 **Q. The clemency of Mr. Beach. And that's**
 16 **important that we get all of the facts straight, isn't it?**
 17 A. Yes.
 18 **Q. And that's what I'm questioning you about, the**
 19 **facts.**
 20 **Well, Barry just went to trial -- were you in Poplar**
 21 **in 1984?**
 22 A. Sure.
 23 **Q. And so you knew about his trial then? Were**
 24 **you aware of it?**
 25 A. Yeah, I guess so.

1 **Q. Okay. And you never mentioned anything to any**
 2 **law enforcement officer even though it bothered you?**
 3 A. I did a couple days later, and they didn't
 4 show up.
 5 **Q. In 1984?**
 6 A. No, I mean I, you know --
 7 **Q. Well, that's -- in your statement, you said**
 8 **that's when it bothered you, after he confessed.**
 9 A. You talk about it and you kind of move on.
 10 You know, at that time he supposedly confessed. Well, if
 11 he did it, he did it, you know. And then you put it all
 12 together, you know, more things.
 13 **Q. Have you read Barry Beach's confession?**
 14 A. Oh, just what was in the newspapers.
 15 **Q. So just what's in the newspapers?**
 16 A. Yes.
 17 **Q. So you got quite a bit of your facts from just**
 18 **what's in the newspapers. So do you know Former Sheriff**
 19 **John Grainger?**
 20 A. Yes.
 21 **Q. Okay. And you're married to one of his**
 22 **cousins?**
 23 A. Hm-hmm.
 24 **Q. And you never thought about talking to John**
 25 **about this, what you saw?**

1 A. No.
 2 **Q. No, okay.**
 3 A. In '84, no, I didn't.
 4 **Q. No, I'm talking -- John Grainger was sheriff**
 5 **for quite awhile, wasn't he? He just recently left**
 6 **office. And you never talked to him?**
 7 A. No.
 8 **Q. So you just kind of -- even though, even**
 9 **though you had this valuable information, you just were**
 10 **going to --**
 11 A. I talked to these men.
 12 **Q. That's right, you talked to them first, didn't**
 13 **you?**
 14 A. They're the only ones that asked.
 15 **Q. They're the only ones that asked?**
 16 A. Yeah.
 17 **Q. They were going around Poplar asking a lot of**
 18 **people what happened?**
 19 A. They asked -- they were asking.
 20 **Q. Yeah. Hold on a second, please.**
 21 **You testified that you got in a fight.**
 22 A. Hm-hmm.
 23 **Q. Do you know what time you got in that fight?**
 24 A. No. Well, everybody else is -- that was in
 25 there -- (pause.)

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1 Q. So you can remember seeing the Nees vehicle,
2 but you can't remember who you got in a fight with and
3 what time. And you can remember seeing the Nees vehicle
4 at, you said, two-thirty, but you can't remember anything
5 about the fight?

6 A. Because, you know, you -- it's after the bar
7 is closed.

8 Q. Yeah. And you're drinking a lot, and it's
9 kind of hard to remember if it was --

10 A. Oh, now I know you're going with that. But,
11 no --

12 Q. Well, there's just some -- there's just
13 contradictions in there, and I'm just trying to clear it
14 up.

15 A. It was after two-thirty.

16 Q. It was after two-thirty?

17 A. When I seen -- it was two-thirty on when --
18 Kim Nees driving her pickup.

19 Q. So Barry Beach in his clemency application of
20 the two o'clock time --

21 A. Huh?

22 Q. The two o'clock time is all wrong, then? It
23 wasn't at two o'clock when you saw --

24 A. It had to be after --

25 Q. Okay, thank you.

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1 A. -- from two o'clock on.

2 MR. WELLENSTEIN: Okay.

3 REDIRECT EXAMINATION

4 BY MR. CAMIEL:

5 Q. Mr. Holen, you're using the bar closing time
6 as kind of a way to gauge what time you must have seen the
7 pickup?

8 A. Yes.

9 Q. Because that's something that --

10 A. Well, it took a few minutes for her to get
11 done in there and, you know, to come out and that kind of
12 stuff.

13 Q. Okay. Whereas, you know, the fight was just
14 sometime earlier in the evening?

15 A. That was early, I think, yeah. And
16 everybody -- I mean it was no -- I don't know, but
17 everybody was still in there, you know.

18 Q. Any doubt in your mind that it was after,
19 after bar-closing time?

20 A. Oh, no, no.

21 Q. Any doubt in your mind that it was the Nees
22 pickup?

23 A. No.

24 Q. Any doubt in your mind you saw that pickup
25 turning down into the park?

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1 A. No.

2 Q. Any doubt in your mind that when you came back
3 into town, you saw the pickup again still in the park?

4 A. It's absolutely true.

5 Q. And you're clear that a couple days later, you
6 told Steve -- Officer Steve Grayhawk that you had seen
7 that vehicle?

8 A. (Yes.) Bobby Atkinson was there, too; not
9 talking to me, he was a little ways away.

10 Q. So you were talking to Steve Grayhawk, but
11 Bobby Atkinson was also at the gas station?

12 A. Yes.

13 Q. And you expected Steve Grayhawk to get back to
14 you?

15 MS. PLUBELL: Madame Chairman, may I ask for a
16 point of clarification on leading questioning?

17 CHAIRWOMAN O'CONNOR: On whether -- oh,
18 leading questions should be -- every single question has
19 been asked and answered already. You haven't asked one
20 new question, Mr. Camiel. Wide latitude is wide latitude.

21 Was that your question?

22 MS. PLUBELL: Well, it was whether leading
23 questions were permissible on direct.

24 CHAIRWOMAN O'CONNOR: Well, you've both done
25 plenty of leading questions. We're not being too tough on

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1 that, so we won't be too fuzzy there.

2 Why don't you wrap up, Mr. Camiel?

3 MR. CAMIEL: Thank you.

4 Q. (By Mr. Camiel) Mr. Holen, did you talk --
5 give your statement to Bobby Atkinson or to, or to Steve
6 Grayhawk?

7 A. Steve, Stevey.

8 Q. Well, did you see what Bobby Atkinson was
9 doing at doing at the service station?

10 A. He was driving away -- I mean he was -- I just
11 remember him being there. I think he just left.

12 MR. CAMIEL: Thank you. That's all I have.

13 CHAIRWOMAN O'CONNOR: Do you have anything
14 more, Mr. Camiel -- or Mr. --

15 MR. WELLENSTEIN: May I have just one quick
16 one?

17 CHAIRWOMAN O'CONNOR: Certainly.

18 RE-CROSS-EXAMINATION

19 BY MR. WELLENSTEIN:

20 Q. Are you aware that Sheriff Crawford, Freedom
21 Crawford, has interviewed Steve Grayhawk?

22 A. Uh-uh.

23 MR. WELLENSTEIN: I have no further questions.

24 CHAIRWOMAN O'CONNOR: I have some questions.
25 Describe for me, please, the car that you saw

86 (Pages 341 to 344)

1 driver's side to driver's side --
 2 THE WITNESS: I have no idea. All I could see
 3 was lights. It was -- the pickup, you must have seen a
 4 pickup sometime talking to a car, or --
 5 CHAIRWOMAN O'CONNOR: Yeah, I've seen a pickup
 6 talking to a car.
 7 THE WITNESS: You know, that's how it was.
 8 CHAIRWOMAN O'CONNOR: Okay.
 9 THE WITNESS: The pickup was -- the taillights
 10 on the pickup was higher than the headlights on the car.
 11 I mean it was a car.
 12 CHAIRWOMAN O'CONNOR: And is it true that your
 13 testimony was that you had driven by once west of town,
 14 you turned around, and when you came back, it was -- the
 15 car was there --
 16 THE WITNESS: Yes.
 17 CHAIRWOMAN O'CONNOR: -- is that right?
 18 So it's not -- I mean I haven't done this in
 19 Poplar my whole life, but Culbertson, which isn't that far
 20 away, does the same thing, the same route.
 21 THE WITNESS: Oh, yeah.
 22 CHAIRWOMAN O'CONNOR: Okay, so you did this
 23 little route. So it's a mile, or something. It's not
 24 very far?
 25 THE WITNESS: Yeah. I mean, no, it ain't very

1 far; no.
 2 CHAIRWOMAN O'CONNOR: So it's five minutes
 3 later, if --
 4 THE WITNESS: Oh, no, I mean it's just a few.
 5 CHAIRWOMAN O'CONNOR: Not even.
 6 THE WITNESS: In order to drive it at, oh, 45
 7 - 50 miles an hour and go half to three-quarters -- you
 8 know Poplar bridge?
 9 CHAIRWOMAN O'CONNOR: Hm-hmm.
 10 THE WITNESS: And do you know how -- okay.
 11 You know old Tom Saby's junkyard?
 12 CHAIRWOMAN O'CONNOR: Hm-hmm.
 13 THE WITNESS: That's where we turned around,
 14 right -- turned right there and come back.
 15 CHAIRWOMAN O'CONNOR: I know where you're
 16 talking about.
 17 THE WITNESS: There you go.
 18 CHAIRWOMAN O'CONNOR: There you go, okay. So
 19 this was -- so that car was probably down there when you
 20 saw the truck coming down?
 21 A. I was half-surprised to see the headlights,
 22 too. See, but at the time, the pickup and everybody
 23 driving down -- I mean, you know, she never had that many
 24 people with her, and stuff. You know, she was always kind
 25 of a loner; or one or two, or something, but -- or you

1 would see the pickup sitting at the station by itself. It
 2 was there all the time. You know, I lived within a
 3 stone's throw from that service station.
 4 CHAIRWOMAN O'CONNOR: Now, you said that in
 5 your testimony earlier. Explain for me, please, the
 6 significance of that: She was by herself alone, and she
 7 was parked at the gas station all the time.
 8 THE WITNESS: No -- I mean you didn't see her
 9 with a pickup load of people. I mean either the pickup
 10 would be -- it was -- I mean that pickup was standing
 11 there all the time.
 12 CHAIRWOMAN O'CONNOR: Why would that be?
 13 THE WITNESS: I don't know. That's where she
 14 sat to smoke cigarettes, or whatever. I mean but that
 15 pickup was all the time --
 16 CHAIRWOMAN O'CONNOR: At the gas station?
 17 THE WITNESS: Yes, after -- when it was
 18 closed, you know, at -- but in the evening time, she was
 19 there.
 20 CHAIRWOMAN O'CONNOR: Okay. Now, it does seem
 21 odd, I must say, that you don't remember this fight. Now,
 22 you were 19 years old and the statute of limitations has
 23 obviously passed.
 24 THE WITNESS: Oh, yeah.
 25 CHAIRWOMAN O'CONNOR: Were you in fights a

1 lot? I mean what's the deal with the fight, that you
 2 don't remember the fight?
 3 Were there lots of fights you were in, that
 4 this was just one of many fights? Or was this a special
 5 fight? Or what about this fight?
 6 THE WITNESS: You're trying to get the time of
 7 it?
 8 CHAIRWOMAN O'CONNOR: No, no. I'm trying to
 9 get: You were asked by one side or the other about, "What
 10 was the fight about?" or, "Who was the fight with?"
 11 THE WITNESS: Oh, there was a whole bunch of
 12 fights that night.
 13 CHAIRWOMAN O'CONNOR: That night?
 14 THE WITNESS: Yes.
 15 CHAIRWOMAN O'CONNOR: And then with you?
 16 THE WITNESS: No, I mean that there was --
 17 Alex Trottier was in a fight with John Bruster Alexander.
 18 CHAIRWOMAN O'CONNOR: Okay, you remember who
 19 the other people were in fights with. My question --
 20 THE WITNESS: And it was at, it was at two
 21 o'clock.
 22 CHAIRWOMAN O'CONNOR: It was two o'clock, and
 23 you had been drinking a little. I get all that.
 24 THE WITNESS: It was when the bar -- everybody
 25 was leaving, that was a madhouse in there.

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1 CHAIRWOMAN O'CONNOR: I get that it was a
2 madhouse. But I'm asking you -- it seems strange to me
3 that you don't remember who you were in a fight with, when
4 you --
5 THE WITNESS: Craig Cane.
6 CHAIRWOMAN O'CONNOR: Well, there you go.
7 THE WITNESS: You never asked me who it was.
8 CHAIRWOMAN O'CONNOR: Okay, Craig Cane. Who
9 was Craig Cane?
10 THE WITNESS: Just a guy in there.
11 CHAIRWOMAN O'CONNOR: Some guy who ticked you
12 off that night?
13 THE WITNESS: Yes.
14 CHAIRWOMAN O'CONNOR: All right, so you were
15 in a fight with Craig Cane. You do remember that now?
16 THE WITNESS: Yeah.
17 CHAIRWOMAN O'CONNOR: Now, was there anything
18 else special in town going on this night? Just an
19 ordinary summer night?
20 THE WITNESS: No. There was a dance at the
21 Legion, you know. I don't know if I --
22 CHAIRWOMAN O'CONNOR: Was there often a dance
23 at the Legion?
24 THE WITNESS: Oh, yeah, in them days, it was
25 -- Mark Voorhees, like, in those -- he used to get Moe

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1 Bandy, different, pretty good-sized bands in there, and
2 stuff.
3 CHAIRWOMAN O'CONNOR: Pretty much every --
4 THE WITNESS: Oh, no, not often; you know,
5 once in awhile, yeah.
6 CHAIRWOMAN O'CONNOR: So by your memory, that
7 was one of the many summer nights when they had a band at
8 the Legion.
9 THE WITNESS: Oh, yeah, yeah.
10 CHAIRWOMAN O'CONNOR: So by your memory,
11 that's what made it special?
12 THE WITNESS: No. I mean the memory of the
13 whole thing, all of it --
14 CHAIRWOMAN O'CONNOR: Well, you had been in a
15 fight with old what's-his-name.
16 THE WITNESS: Yeah. All of these things
17 happened, but I mean that girl got killed that night.
18 CHAIRWOMAN O'CONNOR: Right. Well, I get
19 that. But I'm trying to hear what else you remember about
20 that night. So you do now remember the fight now that
21 we've had a little conversation about it.
22 THE WITNESS: Yeah.
23 CHAIRWOMAN O'CONNOR: And you remember there
24 was a dance at the Legion. And you remember it was a
25 summer night, and there were often dances at the Legion.

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1 THE WITNESS: Yes.
2 CHAIRWOMAN O'CONNOR: So that's kind of --
3 THE WITNESS: Hm-hmm.
4 CHAIRWOMAN O'CONNOR: That's about the shape
5 of it. Is there anything else that you're burning to say
6 but nobody's asking you?
7 THE WITNESS: I can't remember here. I seen
8 the girl that night. I mean, you know, that's kind of
9 what it boils -- you know, I seen Kim in that pickup.
10 CHAIRWOMAN O'CONNOR: No, Mr. Camiel, after my
11 whole dog and pony show, do you have more questions?
12 MR. CAMIEL: Well, I don't have the
13 familiarity with the area that you all do.
14 CHAIRWOMAN O'CONNOR: Yeah.
15 REDIRECT EXAMINATION
16 BY MR. CAMIEL:
17 **Q. Does the fact that made this night different**
18 **than just any other Friday night was that -- did that have**
19 **to do with the fact that the next day, you heard Kim was**
20 **killed?**
21 A. Yeah. I mean, well, there was always
22 fighting, and stuff like that. That used to be a pretty
23 fun little town, and things. But I mean that was --
24 that's pretty bad when that girl got killed.
25 MR. CAMIEL: I have nothing else.

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1 MR. CURTISS: Let me just ask you -- and this
2 is kind of a question -- you're straightforward, and I
3 know I'll get an answer or a response.
4 Let me ask you this: Just in as close as you
5 can come to it, how many persons -- how many different
6 stories have you heard in Poplar, Montana, that did this
7 rather than Barry Beach? Just off the cuff.
8 I mean there's three girls mentioned now. Who
9 else? I mean many, many?
10 THE WITNESS: To tell you the truth there,
11 sir --
12 MR. CURTISS: Yeah.
13 THE WITNESS: -- it's always been the same
14 bunch. Like a lot of (people always say), "How did they
15 keep it a secret?"
16 It's never been a secret. It's been (the same
17 names for 30 years.)
18 MR. CURTISS: I'll say that I don't know about
19 that. I was just --
20 THE WITNESS: Oh, yeah.
21 MR. CURTISS: I'm just asking: In a small
22 community --
23 THE WITNESS: It's never been different
24 people.
25 MR. CURTISS: In a small community, there's

1 always going to be a lot of rumors.
2 THE WITNESS: Absolutely. But this one, the
3 names have never changed; just everybody got older, you
4 know.

5 MR. CURTISS: Okay, thank you.

6 RE-CROSS-EXAMINATION

7 BY MR. WELLENSTEIN:

8 **Q. So who are the names you keep hearing over**
9 **time?**

10 A. I don't know who was in the pickup. I can't
11 say that.

12 **Q. You said the names --**

13 A. I said Sissy Atkinson, Maude Grayhawk, Joanne
14 Jackson, and who else -- Rhea Red Dog gets mentioned, and
15 -- I don't know. There's four: Joanne, Sissy -- Maude,
16 Sissy, Joanne, Rhea, Jordis Ferguson. Anyway, it's --

17 **Q. And Van Dover?**

18 A. Eddie, yeah, there you go. Eddie Van Dover,
19 yeah, he's right in there. He's the barefoot man. *

20 **Q. The barefoot guy.**

21 A. Yeah.

22 **Q. And Caleb Gorneau?**

23 A. I've heard the name. I've hear the --

24 **Q. And Shannon O'Brien?**

25 A. Well, I don't know where they all fit in, but

1 some of them -- it's the same ones for 28 years.

2 **Q. And you've heard those names from?**

3 A. You know, there's probably 20 years it never
4 got brought up, I mean to me, that stuff. But I mean
5 everybody's talking about it. You know, ever since when
6 it come back up, it's a lot of people in Poplar talking
7 about it.

8 **Q. A lot of stories.**

9 A. A lot of stories. Well, I'll tell you this
10 much: Why of all of these people --

11 **Q. No, excuse me. That's a lot of stories,**
12 **though.**

13 A. Let me talk, too. They all have all of this
14 -- all of this innocence you're going after, or whatever
15 -- where are them people now when they've asked to be --
16 if they have nothing to do with it or killing this woman,
17 and things, where are they?

18 **Q. Well, Sissy Atkinson was here.**

19 A. Listen. Then she looked good.

20 MS. PLUBELL: Madame Chairperson, none of
21 those people have been released from their subpoenas, and
22 I want that to be on the record. And some of them were
23 never subpoenaed. They were never subpoenaed.

24 CHAIRWOMAN O'CONNOR: Do you have any more
25 questions?

1 MR. WELLENSTEIN: No.

2 CHAIRWOMAN O'CONNOR: Do you have any more
3 questions?

4 MR. CAMIEL: No.

5 CHAIRWOMAN O'CONNOR: Okay. You can be
6 released. Thank you for your testimony.

7 You may call your next witness, Mr. Camiel.

8 MR. CAMIEL: Our next witness is Dunn
9 O'Connor.

10 CHAIRWOMAN O'CONNOR: What?

11 MR. CAMIEL: Dunn O'Connor.

12 DUNN O'CONNOR, WITNESS, SWORN

13 CHAIRWOMAN O'CONNOR: You may proceed,
14 Mr. Camiel.

15 DIRECT EXAMINATION

16 BY MR. CAMIEL:

17 **Q. Can you state your name for us and spell your**
18 **last name?**

19 A. Dunn O'Connor, O-apostrophe-C-O-N-N-O-R.

20 **Q. Mr. O'Connor, where do you live?**

21 A. Poplar, Montana.

22 **Q. How long have you lived there?**

23 A. Life.

24 **Q. How old are you?**

25 A. Fifty-four.

1 **Q. What do you do for a living?**

2 A. I farm and ranch on a place that has been
3 there for two to three generations.

4 **Q. In your family?**

5 A. Yes, sir.

6 **Q. You've been in some trouble before?**

7 A. Yes, sir. I was incarcerated in the federal
8 system for six years for conspiracy of -- to distribute
9 marijuana.

10 **Q. What years was that?**

11 A. From '93 to '98.

12 **Q. And in 1979, how old were you?**

13 A. Well, I'll have to calculate that. Where
14 would that put me -- '52, about 27.

15 **Q. Did you know Sissy Atkinson?**

16 A. Yeah, I've known her for life.

17 **Q. You've known her your whole life?**

18 A. Yeah, pretty much.

19 **Q. And you're several years older than her?**

20 A. Yeah.

21 **Q. And did you know other members of her family?**

22 A. Yes, sir, all of them.

23 **Q. And you know Barry Beach?**

24 A. Yeah, I know of him. He worked for me one
25 time for about, I don't know, maybe a week in his younger

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- 1 days.
- 2 **Q. Working on your ranch?**
- 3 A. Yeah, throwing hay bales.
- 4 **Q. And I want to take you back to 1979. Do you**
- 5 **recall how you first heard about Kim Nees being murdered?**
- 6 A. Yes. I was -- we were out that night.
- 7 **Q. Who's "we"?**
- 8 A. I and my girlfriend --
- 9 **Q. What's her name?**
- 10 A. -- at that time. It was Faith McClammy, which
- 11 she is my wife now.
- 12 **Q. Okay.**
- 13 A. And we were at the American Legion Club, and
- 14 we closed the place down. And I suppose I got home
- 15 anywhere from two-thirty to three o'clock in the morning.
- 16 And, of course, we went to bed, went to sleep. And later
- 17 on that morning, early that morning, I got -- the
- 18 telephone rang, and I got --
- 19 **Q. Now, let me stop you for just a minute.**
- 20 A. Yes, sir.
- 21 **Q. You said you were home. Can you describe your**
- 22 **house at that time?**
- 23 A. I lived in a trailer house, 14 by 72 feet.
- 24 **Q. And where's the phone at in your house?**
- 25 A. Oh, it's in the -- located in the kitchen in

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- 1 the middle of the trailer house. And towards the back of
- 2 the trailer house, it was my bedroom.
- 3 **Q. Okay. Now, you said that after you got home,**
- 4 **you went to bed. And at some point, you got a phone call?**
- 5 A. Yes, sir.
- 6 **Q. And when the phone rang, what did you do?**
- 7 A. I got up out of bed, reluctantly, of course,
- 8 and went and answered the phone.
- 9 **Q. In the kitchen?**
- 10 A. Yes, sir.
- 11 **Q. Okay. And when you answered the phone, did**
- 12 **you notice the time?**
- 13 A. Well, I sat down at the table, and the phone
- 14 -- and I answered the phone. And the o'clock is in very
- 15 plain sight. And I looked at the time, and it was five
- 16 o'clock in the morning.
- 17 **Q. Why would you make any note of the time?**
- 18 A. Well, naturally you look if somebody wakes me
- 19 up that early in the morning.
- 20 **Q. Okay. When you answered phone, who was**
- 21 **calling?**
- 22 A. It was a lady by the name of Sissy Atkinson.
- 23 **Q. And you knew her?**
- 24 A. Yes.
- 25 **Q. You talked to her on the phone before?**

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- 1 A. Yes.
- 2 **Q. No question that it was her calling you?**
- 3 A. Yes, it was her.
- 4 **Q. Okay. What did she say?**
- 5 A. She told me that they found Kim Nees's body
- 6 ⁽¹⁾ **down by the train bridge.**
- 7 **Q. And did she say anything else?**
- 8 A. Not much. I pretty much said "goodbye" and
- 9 hung up and went to bed.
- 10 **Q. Did it mean anything to you that -- when she**
- 11 **said that?**
- 12 A. Well, of course I was kind of shocked, but, I
- 13 mean, at five o'clock in the morning after partying all
- 14 night, I really wasn't thinking about anything much more
- 15 than going back to sleep.
- 16 **Q. Okay. What time did you get up that morning**
- 17 **-- or when you did get up?**
- 18 A. Oh, I suppose I got up around eight o'clock.
- 19 **Q. That day, did you hear that, in fact, Kim Nees**
- 20 **had been found murdered?**
- 21 A. Yes, sir, I believe that day. Of course, it
- 22 was the talk of the community.
- 23 **Q. How did you hear it?**
- 24 A. I heard it from an acquaintance of mine by the
- 25 name of Alex Trottier.

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- 1 **Q. Do you remember where you were when you heard**
- 2 **it?**
- 3 A. On my place.
- 4 **Q. Did it mean anything to you at the time that**
- 5 **Sissy Atkinson had called you at 5 a.m. that morning to**
- 6 **say that Kim Nees was in the river?**
- 7 A. No, I wasn't placing any time on anything.
- 8 Just it was -- we heard the news.
- 9 **Q. Okay.**
- 10 A. I didn't really think in depth or -- about it,
- 11 no.
- 12 **Q. Okay. Well now we're, you know, about 28**
- 13 **years later since 1979. When did you realize that the**
- 14 **fact that Sissy Atkinson had called you at 5 a.m. was**
- 15 **significant?**
- 16 A. Well, as time went along and they tried the
- 17 case and convicted Mr. Beach for it, a person kind of
- 18 forgets about it. And then I was speaking with
- 19 Mr. Richard Holen, and he mentioned it to me that
- 20 Centurion Ministries was investigating this case, and we
- 21 were talking about it. And I mentioned to him about the
- 22 phone call.
- 23 And he said, "Would you like to -- would you talk to
- 24 these people?"
- 25 And I said, "Yeah."

90 (Pages 357 to 360)

1 **Q. When you talked to Mr. -- when did you learn**
2 **that the police had discovered, had discovered Kim Nees's**
3 **body at 7 a.m.?**

4 A. Oh, probably later on in that year.

5 **Q. When you learned later -- you mean the year**
6 **1979?**

7 A. Yeah.

8 **Q. Okay. So you knew that Sissy Atkinson had**
9 **called you at 5 a.m.?**

10 A. Yeah.

11 **Q. And you had heard later on that year that Kim**
12 **Nees's body wasn't discovered by the police until 7 a.m.?**

13 A. Yeah.

14 **Q. So didn't that, didn't that cause you some**
15 **concern? She's calling you two hours before the police**
16 **have found the body.**

17 A. Well, I suppose I thought about it, but I
18 never really put two and two together, or --

19 **Q. Did you go to the police with that information**
20 **back in 1979?**

21 A. No.

22 **Q. Did you trust the police back then?**

23 A. Well, I really didn't have too much to do with
24 the police back then.

25 **Q. Okay. You mentioned that more recently, you**

1 **talked to Mr. Holen and he asked you to talk to the people**
2 **at Centurion Ministries?**

3 A. Yeah. He asked me if I would, and I said
4 "yes".

5 **Q. Okay. And when you talked to the**
6 **investigators at Centurion Ministries, did you tell them**
7 **what you just testified to?**

8 A. Yes, sir.

9 **Q. Okay. And did you sign a statement about**
10 **having received this phone call from Kim Nees at 5 a.m.?**

11 A. Yes, sir.

12 **Q. Did you review it before you signed it?**

13 A. Yes, sir.

14 **Q. Do you have any doubt in your mind that during**
15 **the early morning hours of June 16th of 1979, you got a**
16 **call from Sissy Atkinson at 5 a.m.?**

17 A. Come again?

18 **Q. The morning -- I'm just asking whether you're**
19 **certain that it was 5 a.m. that Sissy Atkinson called you**
20 **with this news that Kim Nees was in the river.**

21 A. Yeah, I'm certain.

22 **Q. Now, were you friendly with the Atkinson**
23 **family?**

24 A. Yeah.

25 **Q. You're friends with Denver?**

1 A. Yeah.

2 **Q. Did you go to school with him?**

3 A. Yes, sir.

4 MR. CAMIEL: Thank you.

5 CHAIRWOMAN O'CONNOR: Any questions?

6 MR. WELLENSTEIN: Just a few.

7 CROSS-EXAMINATION

8 BY MR. WELLENSTEIN:

9 **Q. Are you friends with Richard Holen?**

10 A. Yeah, we've known each other quite some time.

11 **Q. The night that Kim Nees was killed, or the**
12 **16th, is 28 years ago. But the night when you went to the**
13 **Legion Club, you were -- you said you were partying?**

14 A. Yes, we were at the Legion Club; yes.

15 **Q. Okay. And you had a lot to drink?**

16 A. Yeah, I was there drinking; yes.

17 **Q. Okay. And you were drunk?**

18 A. Yeah, I had plenty to drink.

19 MR. WELLENSTEIN: Okay. No further questions.

20 CHAIRWOMAN O'CONNOR: Do you have more
21 questions?

22 MR. WELLENSTEIN: I have no more questions.

23 CHAIRWOMAN O'CONNOR: Any questions?

24 MS. BOWMAN: No.

25 CHAIRWOMAN O'CONNOR: Do you have questions?

1 MR. CURTISS: You know, I can't -- and I don't
2 want -- I'm the only one speaking here, and I don't want
3 you to think that I'm leaning one way or the other. But
4 there are some questions here about -- you know, if I, if
5 I found out the information that you had and a person was
6 sitting in the pen, so to speak, for that information,
7 that maybe I could help him out if he's innocent. How
8 come everyone is not reporting this to the law
9 enforcement?

10 I would like to know that if I can find it
11 out. I would be running down screaming in the middle of
12 the Main Street. Now, is there some reason that you don't
13 contact the law enforcement in Poplar? I don't know.

14 THE WITNESS: Well, at that time, the young
15 man made a confession four years later - three years
16 later, whatever. And why I never contacted the law
17 enforcement? I don't know why.

18 MR. CURTISS: Well, sir, you mentioned that
19 you knew it at the end of the year after that happened.

20 THE WITNESS: Yeah.

21 MR. CURTISS: And you didn't report that to
22 law enforcement, and I just am wondering why. Honest to
23 God, I would be down, I would be down in the middle of the
24 street in Poplar trying to help that guy out if I really
25 believed what I was hearing, type of thing, you know.

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1 THE WITNESS: Yeah.
 2 MR. CURTISS: I just was wondering. That's
 3 why the Board is going to make decisions on all the
 4 information that we can between Mr. Holen, you, and all
 5 these other witnesses. So I appreciate you telling me
 6 just what you have. Thank you. That's all I have.
 7 CHAIRWOMAN O'CONNOR: Anything more?
 8 MR. CAMIEL: No. Thank you.
 9 CHAIRWOMAN O'CONNOR: Anything more?
 10 MR. WELLENSTEIN: No.
 11 CHAIRWOMAN O'CONNOR: You may be excused.
 12 Thank you.
 13 THE WITNESS: Can I say one thing to the
 14 Board?
 15 CHAIRWOMAN O'CONNOR: You may.
 16 THE WITNESS: You know, I mean everybody asks
 17 -- asked a lot of questions here, so I want to say one
 18 thing. I don't know if that young man did or did not do
 19 it, and I don't know if them so-called "band of girls" did
 20 or did not do it, but I know one thing: I got the phone
 21 call.
 22 CHAIRWOMAN O'CONNOR: We heard that.
 23 THE WITNESS: Sure.
 24 CHAIRWOMAN O'CONNOR: Thank you for
 25 testifying. You may be excused.

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1 THE WITNESS: Can I sit and watch?
 2 CHAIRWOMAN O'CONNOR: You may. This is a
 3 public hearing.
 4 You may call your next witness.
 5 We call Susie Bissell.
 6 MR. WELLENSTEIN: Excuse me, Madame Chair.
 7 CHAIRWOMAN O'CONNOR: Yes.
 8 MR. WELLENSTEIN: We contemplate that
 9 Ms. Bissell is going to be testifying about double
 10 hearsay. And we don't think, we don't really think it's
 11 admissible. And it will be relating a conversation she
 12 had with a woman by the name of Orrie Burshia who
 13 supposedly talked to Mike Longtree. Now, they haven't
 14 listed Mike Longtree as one of their witnesses, and now
 15 they're going to bring in this double hearsay. Its
 16 trustworthiness is about zero.
 17 CHAIRWOMAN O'CONNOR: What do you have to say
 18 about that, Mr. Camiel?
 19 MR. CAMIEL: This has to do with the Orrie
 20 Burshia statement. A woman named Orrie Burshia in 19 --
 21 September of 1979, she went to Sheriff Don Carpenter and
 22 gave him a tape-recorded statement. And there's a --
 23 CHAIRWOMAN O'CONNOR: But we've been through
 24 the double-hearsay issue.
 25 MR. CAMIEL: Right.

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1 CHAIRWOMAN O'CONNOR: What have you done to
 2 provide the -- we don't have Michael Longtree, either?
 3 Orrie Burshia is dead, I gather.
 4 MR. CAMIEL: She is.
 5 CHAIRWOMAN O'CONNOR: She is. So what about
 6 Michael Longtree?
 7 MR. CAMIEL: He has been interviewed, and he
 8 obviously denies this statement.
 9 CHAIRWOMAN O'CONNOR: So where is he?
 10 MR. CAMIEL: He's in the state of Montana.
 11 CHAIRWOMAN O'CONNOR: And have you subpoenaed
 12 him?
 13 MR. CAMIEL: No, we haven't.
 14 CHAIRWOMAN O'CONNOR: Why? I mean we've been
 15 through this.
 16 MR. CAMIEL: I understand, I understand.
 17 We're not, we're not calling Ms. Bissell to repeat the
 18 Orrie Burshia statement. We're calling her because she's
 19 the one who told Orrie Burshia to go to her cousin, Don
 20 Carpenter, who was the sheriff.
 21 CHAIRWOMAN O'CONNOR: Okay. So we're not
 22 going to hear double hearsay, that the attorney general's
 23 office is worried over nothing.
 24 MR. CAMIEL: The statement is -- the Orrie
 25 Burshia statement was attached as an exhibit. That is

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1 what it is. But Ms. Bissell is the one who directed Orrie
 2 Burshia to her cousin, Don Carpenter, with the
 3 information.
 4 CHAIRWOMAN O'CONNOR: Well, let's hear the
 5 direct testimony.
 6 MS. PLUBELL: Well, Madame Chairperson, we
 7 have no doubt that she did. We don't have any problem
 8 with that.
 9 CHAIRWOMAN O'CONNOR: So we'll hear the direct
 10 testimony, and we'll not hear double hearsay where there
 11 hasn't even been a subpoena issued.
 12 MR. CAMIEL: I understand.
 13 CHAIRWOMAN O'CONNOR: You're clear on that.
 14 Okay, very well.
 15 It seems you're worried for nothing.
 16 SUSAN BISSELL, WITNESS, SWORN
 17 DIRECT EXAMINATION
 18 BY MR. CAMIEL:
 19 **Q. Ma'am, could you state your name and spell**
 20 **your last name?**
 21 A. Susan Bissell, B-I-S-S-E-L-L.
 22 **Q. Where do you live?**
 23 A. I live in Anchorage, Alaska.
 24 **Q. And what do you do for a living?**
 25 A. I'm a teacher.

1 Q. What grade?
 2 A. Second grade.
 3 Q. Where did you grow up?
 4 A. I grew up in Poplar.
 5 Q. When did you leave Poplar?
 6 A. When I graduated.
 7 Q. Graduated high school?
 8 A. High school, 1985.
 9 Q. How old were -- so you were about 17 or 18?
 10 A. About 17 or 18.
 11 Q. And once you left Poplar, you went off to
 12 college?
 13 A. Right.
 14 Q. Have you ever moved back to Poplar since then?
 15 A. No.
 16 Q. In 1979, how old were you?
 17 A. Twelve and a half or thirteen.
 18 Q. And did you have a friend, Orrie Burshia?
 19 A. Yes, I did.
 20 Q. How old was she in 1979?
 21 A. I believe she was a couple years older than I
 22 was. I'm not quite sure of the exact age.
 23 Q. A close friend?
 24 A. I wouldn't call her a close friend.
 25 Q. Okay.

1 A. Yes, she did.
 2 Q. And how do you know that she did that?
 3 A. Just from -- I'm not exactly sure how I know,
 4 but I just know that she did go tell him.
 5 Q. In 1979, even though you were only 12 years
 6 old at the time, were you aware of the Kim Nees homicide?
 7 A. Yes, I was. *All Public Knowledge*
 8 Q. How were you aware of it? *even at 12 yrs old*
 9 A. It's kind of what everybody talked about. And
 10 I also remember seeing displays in Beck's window, and it
 11 just kind of dominated the conversation at the time. You
 12 couldn't be in Poplar and not know that it happened.
 13 Q. The display in Beck's Sporting Goods window,
 14 do you remember what was in that display?
 15 A. There was some sort of weapon, and I kind of
 16 remember seeing maybe a picture of Kim. And I don't
 17 recall if this was actually in the window, but I kind of
 18 remember seeing a picture of the truck and maybe the crime
 19 scene. I'm not -- those are images that I kind of recall
 20 right now.
 21 Q. Okay. And was this a large display?
 22 A. It was a fairly large display that you would
 23 notice, yeah.
 24 Q. It took up a big portion of their --
 25 A. Yeah.

1 A. I would call her more of an acquaintance who
 2 kind of protected me. She was a protector.
 3 Q. All right. She was older and a little
 4 tougher?
 5 A. Yeah.
 6 Q. And who was the sheriff back in 1979 of
 7 Roosevelt County?
 8 A. Donny Carpenter.
 9 Q. And is he related to you?
 10 A. Yes.
 11 Q. How?
 12 A. He was my mother's second cousin. So I just
 13 kind of knew him as a relative.
 14 Q. I don't want you to go into what Orrie Burshia
 15 told you, but at some point, did she come to you with some
 16 information that she appeared troubled by?
 17 A. Yes.
 18 Q. What was her demeanor when she came to you?
 19 A. She was upset and kind of scared and she
 20 wasn't quite sure what to do.
 21 Q. And what did you direct her to do or suggest
 22 that she do?
 23 A. I felt that she could go tell Donny Carpenter,
 24 who I knew was the sheriff at the time, and tell him.
 25 Q. And do you know whether she did that?

1 Q. -- display window?
 2 A. Maybe half -- like half the window.
 3 Q. Do you remember how long that display was up?
 4 A. It seems like it was up -- I don't know the
 5 exact time, but it seems like it was up for a long, long
 6 time.
 7 Q. Like (weeks or months?)
 8 A. Yes, or maybe even longer.
 9 Q. After you suggested that your friend, Orrie,
 10 contact your cousin, Sheriff Carpenter, did you ever talk
 11 to your cousin --
 12 A. No.
 13 Q. -- about -- Sheriff Carpenter about Orrie
 14 Burshia?
 15 A. I don't recall if I did. I don't think that's
 16 something he talked to me about.
 17 Q. Do you know when it was that Orrie Burshia
 18 passed away?
 19 A. Pardon me?
 20 Q. When did Orrie Burshia die?
 21 A. I'm not sure about the exact -- her death.
 22 MR. CAMIEL: Thank you. That's all I have.
 23 CHAIRWOMAN O'CONNOR: Anything?
 24 MR. WELLENSTEIN: No questions.
 25 CHAIRWOMAN O'CONNOR: Do you have any

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1 questions?
 2 MR. CURTISS: No.
 3 CHAIRWOMAN O'CONNOR: Do you have any
 4 questions?
 5 MS. BOWMAN: No.
 6 CHAIRWOMAN O'CONNOR: You may be excused.
 7 Thank you for your time.
 8 You may call your next witness.
 9 MR. CAMIEL: Madame Chairman, the next witness
 10 is Ron Kemp.
 11 CHAIRWOMAN O'CONNOR: Thank you. Where is Ron
 12 Kemp? Do we know?
 13 MR. CAMIEL: We've sent somebody out to get
 14 him.
 15 CHAIRWOMAN O'CONNOR: We hope Ron Kemp will
 16 be arriving, okay.
 17 MR. CAMIEL: Well, he's here; he's just --
 18 (pause.)
 19 RON KEMP, WITNESS, SWORN
 20 CHAIRWOMAN O'CONNOR: You may proceed.
 21 DIRECT EXAMINATION
 22 BY MR. CAMIEL:
 23 **Q. Sir, could you please state your name and**
 24 **spell your last name for the record?**
 25 A. Ron Kemp, K-E-M-P.

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1 MS. PLUBELL: May I ask one question?
 2 CHAIRWOMAN O'CONNOR: Yes.
 3 MS. PLUBELL: Because when we had our last
 4 conference call, the costs had not been forwarded to her.
 5 And she lives out of state.
 6 MR. CAMIEL: They were forwarded to her. She
 7 signed for them by way of cashier's check.
 8 CHAIRWOMAN O'CONNOR: When?
 9 MR. CAMIEL: Last Friday she received the
 10 advanced costs. I spoke with her --
 11 CHAIRWOMAN O'CONNOR: Six weeks ago, you were
 12 told that you had to bring these people by me.
 13 MR. CAMIEL: She's been under subpoena for
 14 some time. I spoke with her --
 15 CHAIRWOMAN O'CONNOR: But she's really not
 16 under subpoena until the costs are forwarded. Correct,
 17 Counsel?
 18 MR. CAMIEL: I understand that.
 19 MS. PLUBELL: She contacted us yesterday and
 20 indicated that she had been in the hospital, and she sent
 21 the check back that she had gotten last Friday.
 22 CHAIRWOMAN O'CONNOR: Well, I don't think
 23 that's her option, either. Have you spoken with her?
 24 MR. CAMIEL: I did speak to her.
 25 CHAIRWOMAN O'CONNOR: When?

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1 **Q. How are you employed?**
 2 A. I'm the Roosevelt County undersheriff.
 3 **Q. How long have you been the Roosevelt County**
 4 **undersheriff?**
 5 A. Since November of 2006.
 6 **Q. Could you tell us about your law enforcement**
 7 **career, when you started and the different positions**
 8 **you've held?**
 9 A. I started law enforcement in 1978 with the
 10 Glendive Police Department; then I worked for Valley
 11 County Sheriff's Office for a brief time; and then I went
 12 back to Glendive as an officer, finished up there in 1994
 13 as an assistant chief; then I went to Wolf Point as the
 14 chief of police, and I retired in 2003.
 15 **Q. And have you also worked as an investigator**
 16 **for the Roosevelt County District Attorney's Office?**
 17 A. Yeah, I was the criminal investigator for the
 18 Roosevelt County attorney's office until November of 2006.
 19 MR. CAMIEL: Madame Chairman, I'm going to be
 20 asking Undersheriff Kemp about statements he obtained from
 21 Maude Grayhawk.
 22 CHAIRWOMAN O'CONNOR: Where is Maude Grayhawk?
 23 MR. CAMIEL: She is under subpoena. Advanced
 24 costs were provided to her. She indicated she'd be here,
 25 and she hasn't appeared.

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1 MR. CAMIEL: I spoke to her I think last
 2 Wednesday, and she indicated that she would be here, that
 3 she would drive up, that she would be here. We talked to
 4 her about confirming the address.
 5 CHAIRWOMAN O'CONNOR: Have you spoken to her
 6 since then?
 7 MR. CAMIEL: No.
 8 CHAIRWOMAN O'CONNOR: Okay. I think before we
 9 have the sheriff, you'd better be in touch with her. Do
 10 you have another witness you can call? Let's deal with
 11 this tomorrow. You can deal with her. We're about at the
 12 end of business today.
 13 We've told you that you have responsibilities
 14 to provide the direct declarant first. If you've done
 15 everything you can do, well, then we can discuss that.
 16 But you clearly have not, so I think you best do all you
 17 can do at six o'clock tonight, and then we'll discuss the
 18 status tomorrow.
 19 Who else do you have that you can call
 20 tonight?
 21 MR. CAMIEL: We have another witness.
 22 CHAIRWOMAN O'CONNOR: Would you remain
 23 available? And we'll try to get the direct declarant
 24 first, and then you'll be allowed to speak after she
 25 speaks, hopefully.

1 THE WITNESS: Am I excused?
 2 CHAIRWOMAN O'CONNOR: You're excused.
 3 THE WITNESS: All right.
 4 CHAIRWOMAN O'CONNOR: You're not "excused"
 5 excused. You're excused for this moment, yeah.
 6 THE WITNESS: All right, thank you.
 7 MR. CAMIEL: The next witness is Sheriff Dean
 8 Mahlum.
 9 CHAIRWOMAN O'CONNOR: Are we going to have
 10 direct testimony from him?
 11 MR. CAMIEL: I'm sorry?
 12 CHAIRWOMAN O'CONNOR: We're going to have
 13 direct testimony, not hearsay testimony?
 14 MR. CAMIEL: Yes.
 15 CHAIRWOMAN O'CONNOR: Very well.
 16 DEAN MAHLUM, WITNESS, SWORN
 17 CHAIRWOMAN O'CONNOR: You may proceed.
 18 DIRECT EXAMINATION
 19 BY MR. CAMIEL:
 20 **Q. State your name, please, and spell your last**
 21 **name.**
 22 A. Dean Mahlum, M-A-H-L-U-M.
 23 **Q. Sir, how are you employed?**
 24 A. I'm currently the field service coordinator
 25 for the Rocky Mountain Information Network.

1 **Q. And have you previously been the Roosevelt**
 2 **County sheriff?**
 3 A. I have.
 4 **Q. What years were you the Roosevelt County**
 5 **sheriff?**
 6 A. I took office in January of 1983 and left
 7 there through -- or in January of 1987. I served one term
 8 in that position.
 9 **Q. In 1979, how were you employed?**
 10 A. In '79, I was the undersheriff of Roosevelt
 11 County.
 12 **Q. On the morning of June 16, 1979, were you**
 13 **involved in the investigation of the Kim Nees homicide?**
 14 A. Of the crime scene?
 15 **Q. Yes.**
 16 A. No, I was not.
 17 **Q. In fact, you were out of town at that time?**
 18 A. I was in town. I was at -- helping some
 19 friends on a ranch, so I wasn't there that day, the first
 20 morning.
 21 **Q. So that's the morning that they discovered Kim**
 22 **Nees's body and the pickup truck and the evidence was**
 23 **collected?**
 24 A. I believe so, yes.
 25 **Q. So you had no role in examining the crime**

1 **scene?**
 2 A. No, I did not.
 3 **Q. Or taking any pictures or collecting evidence?**
 4 A. No, I did not.
 5 **Q. Now, when the evidence was collected from the**
 6 **crime scene, it was, it was initially stored at the Poplar**
 7 **Police Department; is that right?**
 8 A. I really don't know if -- I know there was
 9 some that was there. I didn't place that; I was told
 10 that. I have no personal knowledge of it being there and
 11 I have no personal knowledge of some of the other evidence
 12 being taken to Wolf Point to the sheriff's office because,
 13 as I testified earlier, I was not there and was not
 14 involved with that.
 15 **Q. You weren't involved in the collection of the**
 16 **evidence or the initial storage of the evidence?**
 17 A. No, sir.
 18 **Q. Were you involved in the retrieval of the**
 19 **evidence from the Poplar police station on the Monday**
 20 **following the homicide?**
 21 A. I have no recollection of being there. I know
 22 I would have been in Poplar or in that area, but as far as
 23 dealing -- actually being at the police department and
 24 retrieving any evidence from there, I don't recall that.
 25 I have no specific memory of that.

1 **Q. Do you recall being with Bobby Atkinson of the**
 2 **Poplar Police Department when it was discovered that the**
 3 **door to the room where the evidence was stored had been**
 4 **kicked in?**
 5 A. I just testified I have no recollection of
 6 being at the police department that day.
 7 **Q. Okay.**
 8 A. I may have been; I may not have been. I just
 9 have no memory of that.
 10 **Q. You did learn at some point that the door to**
 11 **the -- to where the evidence was stored in the Poplar**
 12 **Police Department had, in fact, been kicked in, didn't**
 13 **you?**
 14 A. I believe at the time of trial, yes, was the
 15 first I had heard of that.
 16 **Q. Now, at the time of trial, you were the**
 17 **Roosevelt County sheriff?**
 18 A. Correct.
 19 **Q. In 1984?**
 20 A. Yes.
 21 **Q. And you were also the Roosevelt County sheriff**
 22 **in 1983?**
 23 A. That's correct.
 24 **Q. And so it wasn't until the time of trial that**
 25 **you learned that the evidence room had been entered and**

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1 **the door, the door had been kicked in?**
2 A. That's the first recollection that I have of
3 that, that there -- was being told or hearing of that,
4 that there had been entry into that room or -- of some
5 type.

6 **Q. And how did you first hear of that?**
7 A. I believe Undersheriff Wilson, who was my
8 undersheriff at that time, told me.

9 **Q. Is that Red Wilson?**

10 A. No, Ron Wilson.

11 **Q. Okay.**

12 A. No relation.

13 **Q. All right. And so he told you?**

14 A. I believe so.

15 **Q. And was that before the trial started?**

16 A. I really can't tell you. It was sometime
17 during that time frame, but whether it was before or
18 during or -- I just don't really know. I don't remember.

19 **Q. Now, in terms of your knowledge about the**
20 **crime scene itself, your knowledge came from the police**
21 **reports that you reviewed of the people who had been down**
22 **at the crime scene?**

23 A. Review of reports; talking with those
24 deputies, special agents with the FBI, officers from the
25 tribal police, yes.

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1 **killed?**
2 A. I don't have any specific recollection or
3 recall of any of those conversations, but -- you know, in
4 other words, I can't say to you, "So-and-so in Poplar may
5 have had that kind of conversation with me," or with
6 anyone.

7 **Q. You conducted a number of interviews in the**
8 **days following the murder?**

9 A. Yes, I was -- took part in some of those.

10 **Q. And so was the FBI?**

11 A. Yes.

12 **Q. Dozens and dozens of interviews?**

13 A. Over the course of the investigation, yes,
14 there were -- that would probably be a fair number. I
15 don't know in the, you know, in the immediately following
16 days what that number would be. But, as I said, agents of
17 the FBI, myself, Sergeant Wilson, deputies of the
18 sheriff's office, due to the fact that Poplar is within
19 the exterior boundaries of the reservation, those folks
20 were also involved, tribal police.

21 **Q. Among the, among the interviews that you**
22 **conducted, did you interview Maybelle Sparvier and her**
23 **son, Joel?**

24 A. I believe, yes, I did.

25 **Q. And that was with regard to screams having**

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1 **Q. And also reviewing the photographs of the**
2 **crime scene?**

3 A. As they became available, yes.

4 **Q. Okay. And one of the things that you did, I**
5 **take it, was try to establish a timeline for Kim Nees on**
6 **the night that she was murdered.**

7 A. That was the function of all of the
8 investigators or all of the people who were involved in
9 the investigation, was, obviously, to track -- I mean
10 that's one of the preliminary things that you would always
11 do in those types of cases.

12 **Q. And you developed information that she had**
13 **been seen parked at the Exxon station at about 12:45 in**
14 **the morning?**

15 A. I don't know that I personally had developed
16 that information, but I know that -- I believe that was
17 testified to at trial, if I remember right.

18 **Q. (Right) And one of the things that I wanted to**
19 **ask you about was the -- immediately after the murder, it**
20 **was the talk of the town, wasn't it?**

21 A. Yes, it was -- Poplar is a small community.
22 So it -- yes, it was talked about a lot by, you know,
23 residents or folks that lived there.

24 **Q. And there was talk about where Kim Nees had**
25 **been seen the night before -- or the night that she was**

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1 **been heard?)**
2 A. I believe that was part of the -- or the
3 information that came from that, I think it was done more
4 as a result of, you know, just people in the area of
5 trying to develop information or leads, or whatever. But
6 not -- the specific contact with them was not in that
7 context, but I believe they told us or told myself that.

8 **Q. And that was a part of trying to develop a**
9 **timeline as to when the homicide occurred?**

10 A. That was a part of trying to develop anything
11 we could. I don't know that I would specifically say a
12 "timeline", but any information or any -- you know, anyone
13 we could speak with that may be able to supply us some
14 information about the homicide or anything that may
15 surround it during that -- and, again, it was a time
16 frame. Obviously, we were looking from probably 11 until
17 - we didn't know for sure - until 3 o'clock in the
18 morning. Or it might be who was around, who was moving,
19 all those kinds of things.

20 **Q. One of the things in terms of trying to**
21 **establish this timeline was that you learned from Pam**
22 **Nees, Kim's sister, that Kim had returned at about**
23 **midnight to the house and then taken the pickup truck and**
24 **gone out?**

25 A. I have seen that report, but I personally

1 didn't talk with Pam.

2 **Q. But that's a report that you relied on in part**
3 **of your investigation in developing the timeline.**

4 A. It was one of the interviews that was placed
5 in that. And we may have had conflicting, you know, times
6 to that, also. And I just don't recall.

7 **Q. Now, you initially developed some suspects;**
8 **isn't that true?**

9 A. We had some persons of interest, yes, as we
10 started into the investigation.

11 **Q. Okay. Now, you actually personally talked**
12 **with Pam Nees on June 21st. Do you recall that?**

13 A. I do not recall that.

14 **Q. You indicated you initially developed some**
15 **persons of interest. One of the first persons you**
16 **developed was the person who Kim Nees had been out to the**
17 **movie with that night, the drive-in?**

18 A. I don't know that I would use the term
19 "developed". Anytime you're involved in an investigation
20 of a homicide, one of the first people you're going to
21 talk to and see what information that person has, or -- is
22 whoever was with the person last that you can determine
23 with, obviously. So as part of the investigation, yes, we
24 talked with Mr. Norgaard.

25 **Q. That's Greg Norgaard?**

1 **left for Louisiana?**

2 A. I have no idea what time frame -- you know,
3 how many days. If it was a week and a half or three
4 weeks, I have no idea.

5 **Q. In any event, you didn't interview Mr. Beach**
6 **until -- the first interview you did with him was in**
7 **January of 1980; isn't that right?**

8 A. We spoke with him in January of 1980, but
9 whether that was the first or not, I really don't know. I
10 believe that probably is true, but I can't say that we may
11 not have had a conversation with him or some other folks
12 referenced him. I just -- I have no recollection of that. *no docu*

13 **Q. And some of the early people that that were**
14 **interviewed included Sissy Atkinson; isn't that right?**
15 **June 16, 1979, she was interviewed?**

16 A. That's entirely possible. Again, I don't
17 remember the interview or any interview of her, but I
18 would say that she probably very well could have been
19 interviewed during that time frame.

20 **Q. When she was the first time, June 16th of**
21 **1979, she was never asked where she was in the early**
22 **morning hours, was she?**

23 A. I have no idea. I'd be more than willing to
24 look at whatever the document it is you have and --
25 (pause.)

1 A. Correct.

2 **Q. And he was interviewed a number of times,**
3 **wasn't he?**

4 A. I believe so.

5 **Q. And this was within the first couple of days**
6 **after the homicide?**

7 A. Within the first couple of days, I don't know
8 that he was interviewed numerous times. By my definition,
9 that would be, say, more than two, or whatever the number
10 might be. But he was interviewed over the course of a
11 period of time, which I really can't say from the date of
12 -- that Kim's body was found until a specific date. But
13 we did, you know, spend time and interview Greg, yes.

14 **Q. And one of the other people who was**
15 **interviewed very early on was a Mr. Kirn, Alfred Kirn?**

16 A. Yes.

17 **Q. Mr. Beach was not one of the people that you**
18 **interviewed in the days right after the homicide, was he?**

19 A. I don't remember the date that Mr. Beach was *How*
20 first interviewed, but he had come to our attention *who?*
21 through other interviews that he was also included in that
22 group of persons of interest very early on in the -- in
23 this investigation.

24 **Q. Well, Mr. Beach was in town after the Kim Nees**
25 **murder for about a week and a half, wasn't he, before he**

1 MR. CAMIEL: If I could approach the witness?

2 CHAIRWOMAN O'CONNOR: That's fine. I must
3 say, this seems a little pointless since he doesn't
4 remember anything about it, about anything you've asked
5 him so far. He didn't remember ANYTHING

6 **Q. (By Mr. Camiel) I've handed -- that's a June**
7 **21, 1979 interview that you did with Sissy Atkinson?**

8 A. Yes, sir. This is a Report 302 that was
9 dictated by Special Agent Warberg.

10 **Q. But he's describing an interview you did based**
11 **on information you gave him?**

12 A. He's describing -- no, he's describing an
13 interview that -- he's saying that I was present with him,
14 not that I personally did -- I mean we were both, both
15 there. He remembered

16 **Q. All right. So you were both there to**
17 **interview Sissy Atkinson. And does that report that you**
18 **did indicate whether you asked Ms. Atkinson where she was**
19 **during the late part of the evening or early morning hours**
20 **of September -- excuse me, June 16th?**

21 A. No. This is a summary of that interview, and
22 I don't see anything specific, you know, as far as asking
23 her, "Where were you at 11 p.m. to 3, 4, 5 o'clock in the
24 morning?" whatever it might be. There's no reference to
25 that.

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1 **Q. Okay. Did you also -- were you also involved**
2 **in an interview with Maude Kirn?**

3 A. Again, my answer or response would be the
4 same: I do not recall that interview. It may have been.
5 We talked with an awful lot of people during that time
6 frame.

7 **Q. Now, Maude Kirn's father was a Poplar police**
8 **officer, Steve Grayhawk?**

9 A. I believe so.

10 **Q. And he had been on duty the night that Kim**
11 **Nees was murdered?**

12 A. I believe he was.

13 **Q. Did you interview him about anything that he**
14 **observed that evening?**

15 A. I personally didn't.

16 **Q. Fingerprints were taken from the vehicle;**
17 **isn't that right?**

18 A. Yes.

19 **Q. Okay. There were examinations made of the**
20 **vehicle in terms of bloodstains?**

21 A. When you say "examinations", what do you mean?

22 **Q. Photographs were taken of the various areas**
23 **that had blood on them?**

24 A. Yes.

25 **Q. And the pickup truck, the interior, the seat,**

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1 that." But we had no forensic evidence or proof that said
2 or any examination that said: This is what happened.

3 **Q. Well, that's what your investigation led you**
4 **to believe happened, isn't it?**

5 A. Again, I will say that that was the theory
6 that we had in looking at that. Our investigation didn't
7 say -- we were -- we didn't know for sure at that point in
8 time.

9 **Q. Didn't you write a report dated January 7,**
10 **1983, where you indicated in your report (quoted as read):**
11 **"Victim was dragged from the passenger door of the**
12 **victim's pickup"?**

13 A. I did. That was the information I gave to
14 Sergeant Via, I believe is what you're referring to.

15 **Q. Yes.**

16 A. And, again, I will say to the Board and to
17 you, Mr. Camiel, that that was our theory. We looked at
18 how the pickup was parked, where the blood was located
19 alongside of the pickup, the interior of the truck. And
20 it was our feeling that that may very well have been what
21 happened, but we did not specifically know. There was not
22 blood splatter evidence that said: This is exactly what
23 happened beyond, you know, any doubt, or whatever.

24 It was investigators looking at that that said, "We
25 think this is what happened." And the keyword being we

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1 **had bloodstains that demonstrated that Kim Nees was**
2 **initially attacked inside the truck; isn't that right?**

3 A. That was our belief. There were bloodstains
4 inside the truck.

5 **Q. Okay. And the bloodstains indicated that (she**
6 **was removed from the truck through the passenger side?)**

7 A. No, I can't say that that indicated that. It
8 was our -- I guess law enforcement's theory, if you will,
9 not based totally or -- on bloodstains that were found in
10 the car -- or in the pickup, excuse me, that dealt with
11 probably as much the blood located alongside of the pickup
12 at the crime scene. You know, and, again, I have to say
13 that was a law enforcement -- it was our theory. We had
14 looked at those things, we had put that together, and we
15 thought this may be what would have happened at the time
16 of the homicide.

17 **Q. Right. Well, all of the forensic evidence and**
18 **visual evidence that you were aware of indicated that she**
19 **was removed from the, from the passenger side of the**
20 **truck?**

21 A. No, I can't say that. I won't say that,
22 because the blood that was in the pickup, I mean when we
23 were looking at that, we drew a theory in talking with the
24 agents, the investigators that was there -- or that were
25 there that said, "Yes, this may be what happened with

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1 "think" this is what happened at this point in time.

2 **Q. I understand. And there was no blood evidence**
3 **that led you to the conclusion that she -- that after**
4 **being attacked inside the pickup truck, she exited the**
5 **driver's side?**

6 A. There was nothing that indicated that, but
7 there was also nothing that, beyond any realm, indicated
8 that she was, as you've said and as I said in that report,
9 was drug from the passenger's door, either.

10 **Q. It's fair to say there was no blood on the**
11 **driver's side of the truck by the driver's door?**

12 A. No, that's not correct. I believe there was,
13 there was blood on the inside of the driver's door.

14 **Q. I'm talking about the outside, excuse me.**

15 A. I'm sorry. I don't believe so, not that I
16 recall from, you know, the time frame when the truck was
17 examined by the FBI.

18 **Q. And there was no blood outside the driver's**
19 **side on the ground?**

20 A. That, I don't know, because I wasn't -- as I
21 said, I was not at the crime scene.

22 **Q. The blood evidence that you saw in pictures**
23 **and that you were aware of all indicated that the attack**
24 **that happened outside the truck, after she was removed**
25 **from the truck, took place on the passenger side of the**

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1 truck.

2 A. All I can say or will say or testify to is
3 that there was a large spot, I will use that term, of
4 blood that was located on the passenger side of the truck
5 some distance from the truck and somewhat in line with the
6 rear tire. But as far as -- there were no scuffle marks }
7 that I was told of outside of the truck on either side, }
8 there was not -- as you've stated and to the best of my
9 recall, there was not blood splatter or those types of
10 things on the driver's side. But I have no specific
11 recall - and I'm sure we're going to get there - of the
12 palm print that was on the driver -- or passenger side of
13 the truck. I do not remember any blood splatter, or -- to
14 speak of down the passenger side of the truck, either.

15 Q. Well, in the interior of the pickup truck,
16 there were gouge marks on the passenger-side ceiling of
17 the truck; isn't that right?

18 A. As I recall, the gouge marks were more located
19 center cab. I mean when you say "passenger side", I guess
20 I would envision someone sitting in the truck and directly
21 over that person. And I don't specifically recall any
22 gouge marks -- there were near the passenger side of the
23 seat to my left center; not necessarily to the driver's
24 door, but between that position and the driver's door.

25 Q. Okay. And the bloodstaining that was on the

1 that you were aware of was that they ran the fingerprints
2 that were lifted from the truck.

3 A. Correct.

4 Q. Okay. And numerous people's prints were sent
5 in and compared; is that right?

6 A. That's also correct.

7 Q. Including all of the police officers that were
8 involved in going down to the crime scene?

9 A. I have, again, no specific recollection of --
10 I know officers' prints were sent, but as far as whether
11 it was all that were there or -- that, I really don't
12 know.

13 Q. Okay. And as a result of all those
14 fingerprints being sent, some of Kim Nees's prints were
15 found in various places inside and outside the truck;
16 isn't that right?

17 A. That's correct.

18 Q. And you mentioned earlier this bloody palm
19 print.

20 A. Correct.

21 Q. Okay. That palm print was on the passenger
22 side of the truck; is that right?

23 A. That also is correct.

24 Q. Okay. And you know that Barry Beach was
25 eliminated as the donor of that palm print?

1 seat itself, the most heaviest area of bloodstaining, was
2 on the passenger side or towards the center of the seat --

3 A. That's true.

4 Q. -- rather than the driver's seat?

5 A. In the center; not necessarily to the
6 passenger side, but passenger side center, correct.

7 Q. Okay. Now, you weren't aware of the
8 collection of any garbage bags from the scene or pieces of
9 shredded garbage bag?

10 A. Through my conversations with deputies or
11 officers that were at the scene that day and did that, no,
12 I'm not -- I was not aware of any that were found.

13 Q. There were beer cans that were collected from
14 the scene?

15 A. Correct.

16 Q. And there were cigarette butts taken collected
17 from the vehicle?

18 A. From the vehicle, yes.

19 Q. From the ashtray?

20 A. The ashtray, yes, I believe so.

21 Q. Any brown sports coat found anywhere at the
22 crime scene?

23 A. Again, I guess by definition, no; as far as a
24 brown sports coat, no.

25 Q. Now, you -- one of the things that the FBI did

1 A. His palm print, the inked impressions did not
2 match that palm print, that's correct.

3 Q. And Kim Nees doesn't match -- her ink
4 impressions didn't match that palm print?

5 A. I testified at trial in -- because I was asked
6 that specific question. And looking at the report from
7 the FBI, it was my testimony at trial that I -- my
8 interpretation of that report, that they could not
9 necessarily exclude Kim Nees from that palm print.

10 Q. Well, I'm not -- I'm sorry. I'm not asking
11 you now about your testimony at trial. You know that the
12 FBI eliminated Kim Nees's --

13 A. No, sir, I do not. Again, and I'd go back to
14 that report. And if you have that, I would be more than
15 willing to read it to the Board and explain my rationale
16 with that.

17 Q. Do you understand that the attorney general's
18 office has stipulated that that palm print did not belong
19 to Kim Nees?

20 A. You did not ask --

21 CHAIRWOMAN O'CONNOR: Well, now, just a
22 second. They stipulated -- they sort of stipulated. I
23 mean if you're going to ask him his -- what his opinion is
24 now, then we're going to hear his opinion. I think you
25 had a stipulation that said you didn't have to go there,

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1 but if you're going to go there, then we'll hear what his
2 position is, and he's not circumscribed by any stipulation
3 you had before.

4 So go ahead and testify as to what your
5 position is.

6 THE WITNESS: Again, ma'am, thank you. And
7 from -- as I testified -- or at that -- when I looked at
8 that report, I believe the last -- you know, because I do
9 not have it right in front of me, I'm going to paraphrase
10 just a little bit. The examiner said that, due to there
11 not being enough information on the inked/rolled, known
12 prints of Kim Nees, that they could not draw a conclusion
13 with that.

14 CHAIRWOMAN O'CONNOR: One way or the other.

15 THE WITNESS: Yes, ma'am.

16 **Q. (By Mr. Camiel) Mr. Mahlum, it was -- the**
17 **palm print that was on the truck, the bloody palm print**
18 **was a left palm print, wasn't it?**

19 A. That's correct.

20 **Q. Kim's left palm prints were found in various**
21 **locations on the truck, weren't they?**

22 A. That's also true.

23 **Q. Okay. And those left palm prints that were**
24 **located on the truck, the comparison was -- or the prints**
25 **that were used for comparison were prints that were taken**

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1 but I realize there are exceptions generally made. But to
2 cross-examine and continue to cross-examine this man about
3 an FBI report and he's not an FBI agent, I don't know
4 quite why we're going there.

5 But, yeah, if you want to show it to him, show
6 it to him, and we'll hear his opinion. You've brought us
7 here, so I guess we're here.

8 **Q. (By Mr. Camiel) Take a look at the second**
9 **page of that report. Now, in 1988, you were the Roosevelt**
10 **County sheriff, weren't you?**

11 A. No, I was not.

12 **Q. Okay. Were you still employed at Roosevelt**
13 **County?**

14 A. I was not.

15 **Q. Okay. Do you see the section I'm talking**
16 **about?**

17 **It begins (quoted as read): "It is noted that the**
18 **crime scene investigation developed a bloody palm print."**

19 A. Okay. And it goes on to say (quoted as read):
20 "Which was not identified as belonging to either Kim Nees
21 or Barry Beach."

22 If the Board would like, I have the original report
23 here with me that I testified to, that I would be more
24 than happy to read to the Board, also, where I drew that
25 conclusion when I testified.

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1 after she was deceased.

2 A. That's correct.

3 **Q. Okay. So Kim's left palm print was clear**
4 **enough to be able to use to locate and identify her**
5 **prints, at least three palm prints, on the truck; isn't**
6 **that right?**

7 A. That's correct. But the problem with that is,
8 is that when an examiner speaks of a palm print, we're
9 speaking of an area from here, this entire area --
10 (indicating.) I have nothing that indicates whether those
11 palm fingerprints were here that identified -- that report
12 does not say a -- it says "palm print".

13 **Q. You're aware of the 1988 FBI report that**
14 **provides that the palm print was not identified as -- and**
15 **the palm print we're talking about, the bloody palm print,**
16 **was not identified as belonging to either Kim Nees or**
17 **Barry Beach? You're aware of that report?**

18 A. I had left the sheriff's office, so I don't
19 know if I've seen that particular report or not.

20 MR. CAMIEL: Can I show it to him?

21 CHAIRWOMAN O'CONNOR: Well, you can, but I
22 don't think that's in conflict with what's been said. You
23 know, I'm allowing wide latitude here because these are
24 law enforcement reports. I'm not real comfortable with
25 quadruple hearsay with law enforcement reports, either,

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1 CHAIRWOMAN O'CONNOR: Is there anything in
2 this report that is in conflict with what you have
3 testified to? It wasn't identified, but they also weren't
4 excluded. Is that my understanding of what you're reading
5 here in the '88 report?

6 THE WITNESS: Ma'am, when I -- in this '88
7 report, the paragraph that he's referring to makes the
8 comment (quoted as read):

9 "It is noted that the crime scene
10 investigation developed a bloody palm print on the
11 passenger side of the victim's vehicle which was not
12 identified as belonging -- I'm sorry, belonging to either
13 Kim Nees or Barry Beach."

14 CHAIRWOMAN O'CONNOR: Right.

15 THE WITNESS: My testimony was from that
16 original FBI report --

17 CHAIRWOMAN O'CONNOR: Right.

18 THE WITNESS: -- was that -- in reading that,
19 my interpretation was that the examiner said it was not
20 sufficient inked impressions for him to make that total
21 comparison.

22 Now, again, I will not argue that there were,
23 there were identified left palm prints of Kim Nees found
24 on the pickup. But what I was saying, and it was my
25 testimony, was -- is that from the information that was

1 there, I did not know what part of that palm print had
2 been identified. Was it exactly the same place that made
3 the bloody print on the truck? I didn't know. I couldn't
4 from that. This obviously references that original FBI
5 report, so -- (pause.)

6 **Q. (By Mr. Camiel) Now, Mr. Mahlum, after the --**
7 **you received the July 12, 1979 fingerprint report, you**
8 **started sending in to the FBI various requests for**
9 **examination of other suspects with that palm print, didn't**
10 **you?**

11 A. We did of other persons of interest, yes.

12 **Q. In fact, people from all over the state, if**
13 **they were charged with any kind of a crime involving an**
14 **assault or attack on a female, their palm prints were**
15 **compared at your request.**

16 A. I believe there were two of those -- two
17 requests that were made, if I remember right.

18 **Q. You even sent in a request for a comparison of**
19 **the palm print after Mr. Beach had been charged?**

20 A. Again, I have no recollection of that being
21 done after, you know, after charging -- Mr. Beach being
22 arrested. That may have been done, I don't know, but I
23 have no recollection of that.

24 **Q. Now, you have a theory to try to explain that**
25 **palm print, don't you?**

1 of the passenger side door of that truck were found or
2 were located her sweater and her purse. And they were
3 folded, and the purse was on top of that.

4 And a big part of mine is -- just in my experience
5 and my training, you don't go there that angry to, "I'm
6 going to fold this stuff up of the victim's and place it
7 there."

8 Part of it, as Mr. Camiel stated, with the -- of no
9 one coming forward, having not heard that, if there were
10 numerous people that were there, it was our feeling that,
11 you know, we would have at some point in time have picked
12 up or have heard that type of information. But I continue
13 to, to this day, believe that there was a, if you will, others
14 third party that was at that location. *involved*

15 And, again, that was a very popular area for people
16 to -- you know, there was a lot of travel, a lot of
17 activity that could have happened in that area of the
18 train bridge.

19 **Q. Do you have any forensic evidence to support**
20 **your theory?**

21 A. No.

22 **Q. Okay. Do you have any witness to support your**
23 **theory?**

24 A. No, sir.

25 **Q. Now, if this theory of yours that somebody**

1 A. I do.

2 **Q. Okay. And that theory involves the palm print**
3 **not being from Kim Nees or being from Mr. Beach; isn't**
4 **that right?**

5 A. That's correct.

6 **Q. Okay. You believe that it's possible that**
7 **somebody came upon the crime scene after Ms. Nees was**
8 **killed and prior to the police discovering her body?**

9 A. That's correct.

10 **Q. And somehow got blood on their hands, right --**

11 A. Exactly.

12 **Q. -- touched the truck --**

13 A. Exactly.

14 **Q. -- and left, and in 27-plus years has never**
15 **been identified or come forward?**

16 A. That's correct.

17 **Q. And the evidence you have to support that**
18 **theory is what?**

19 A. And, again, it's theory. In looking at the
20 type of homicide that we dealt with here, it was our
21 feeling -- it was my feeling there was a tremendous amount
22 of anger and rage involved in Kim's death. With the types
23 of injuries she received, the, if you will, violence that
24 was involved with that, the biggest thing that I placed my
25 opinion with that or my theory with that is that alongside

1 **came by after the murder and left their palm print and Kim**
2 **Nees's blood on the truck, if you're wrong about that,**
3 **then, in fact, there was another person involved in the**
4 **murder of Kim Nees? Either there were multiple people**
5 **involved or someone else other than Barry Beach; isn't**
6 **that right?**

7 A. No, that's not correct. I don't know how you
8 jump from that. If that theory, my theory I -- being as
9 valid as the theory that you just presented. Why does
10 that mean that, all of a sudden, there are multiple people
11 present or involved in the homicide of Kim Nees?

12 **Q. Well, you have -- the forensic evidence you**
13 **have at the scene includes this palm print that doesn't**
14 **match Mr. Beach, right?**

15 A. Correct.

16 **Q. That's established. Okay? If it's not**
17 **somebody who's coming by after the murder and getting**
18 **blood on their hands from touching some kind of bloody**
19 **object, then it was somebody who was there at the time**
20 **that she was killed; isn't that right?**

21 A. Well, the sweater -- and I will say this in
22 support of my theory. The sweater and the purse both had
23 blood on them. If they were dealt with by that person, a
24 third-party person, that could very well have, you know,
25 caused that.

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1 If there was not a third-party person there, was
2 someone else involved in the homicide? I don't believe
3 that.

4 **Q. I understand you don't believe it. But
5 there's simply no forensic evidence to support your
6 theory, is there?**

7 A. No, there isn't.

8 **Q. Now, the location of the truck, Kim Nees's
9 truck, as you understand it, was about 256 feet from where
10 her body was left.**

11 A. Approximately, yes.

12 **Q. So about 80 yards, or so?**

13 A. Yeah, about that; yes.

14 **Q. And somehow, her body had to be moved from the
15 area where she was attacked outside the truck to where
16 it's left in the river.**

17 A. Correct.

18 **Q. Okay. And you had developed a theory that she
19 had to have been wrapped in something; is that right?**

20 A. No. At the time of the homicide and as we
21 were investigating that, it was an area of concern to us
22 trying to explain why there was no blood along that drag
23 trail. Because of the types of injuries that Kim had
24 received, the amount of blood that was on the ground, that
25 became a point of interest to us. We had no logical

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1 explanation out as far as why that wasn't -- we didn't
2 know what had caused that. We just knew that there was
3 not blood on that trail -- or a large volume of blood on
4 that trail.

5 **Q. And to try to explain how that could be
6 possible, how her body could be moved from one point to
7 another point without blood on the trail, one of the
8 things you surmised was she could have been wrapped in
9 something.**

10 A. No, I didn't surmise that. I did not have an
11 answer to that. That was a question that I was hoping our
12 investigation would supply.

13 **Q. Now, when Mr. Beach returned and you
14 interviewed him in 1980, he provided his fingerprints; is
15 that right?**

16 A. I don't know if it was at that interview in
17 1980. We did obtain those or he provided those, but as
18 far as time frame, I don't recall.

19 **Q. You also had him provide a footprint, didn't
20 you?**

21 A. I have no recollection of a footprint. I know
22 there were -- that we obtained some hair samples and what
23 we call "major" -- what law enforcement calls "major
24 prints", "case prints", which are the palm prints,
25 fingerprints, those types things. But I do not recall a

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1 footprint.

2 **Q. Well, you knew that there were footprints that
3 had been observed by the crime scene investigators in --
4 along the -- what you've called the "drag trail"?**

5 A. I believe that was both of our terminology,
6 the drag trail, yes. And there were photographs of --
7 that I saw of footprints. But there is nothing in those
8 photographs that I saw that necessarily put them in
9 relation to -- that I see of a trail, a drag trail.

10 **Q. Well, they were, they were near the truck?**

11 A. I have no idea.

12 **Q. Do you recall attempts being made to take
13 measurements of Mr. Beach's foot to see if it matched
14 with --**

15 A. No, I don't.

16 **Q. Up until you were contacted by Sergeant Via in
17 January of 1983, you had no evidence whatsoever to connect
18 Mr. Beach to the homicide of Kim Nees.**

19 A. That's not true. Physical evidence, no; but
20 through my interview or -- and Lieutenant West from the
21 Glasgow Police Department, when we had interviewed him;
22 through statements from people that were with him earlier
23 that day; and, particularly, after the interview we
24 conducted in Glasgow, Mr. Beach was a very, very strong
25 person of interest in my find and in the rest of the

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1 investigators that were involved in this investigation.

2 **Q. Well, you had no forensic evidence connecting
3 him to the crime scene, correct?**

4 A. Correct.

5 **Q. You had no witnesses that saw him with Kim
6 Nees at any time on the evening of June 15, 1979, or the
7 early morning hours of June 16th.**

8 A. Correct.

9 **Q. You had no admissions by Mr. Beach that he was
10 present?**

11 A. Had he specifically said, "I was there. I
12 done it," during that interview? No, he had not.

13 But our feeling - again, Lieutenant West and I,
14 County Attorney McCann - watched that particular interview
15 through a window. Mr. Beach's mother, I believe, was
16 there; and I believe his stepfather was there. I strongly
17 felt, again, we were not to the point that the
18 investigation was concluded, but I had had nothing to that
19 point that allowed me to eliminate him as a strong person
20 of interest.

21 **Q. Well, my question wasn't whether you had
22 anything to eliminate him; my question was whether you had
23 any evidence that demonstrated that he had responsibility
24 for Kim Nees's murder. And up until you heard from
25 Sergeant Via, you had none.**

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1 A. We had no physical evidence. We had, as you
2 said, no physical or forensic evidence that was there.
3 But our interviews, our -- as investigators, those types
4 of things, did not take him out of that possible pool of
5 people that may have been involved.

6 Q. Well, you had no eyewitnesss.

7 A. I'm not going to back away, Mr. Camiel, from
8 where I'm at. Barry Beach -- and I have testified here
9 several times: We did not have an eyewitness or
10 witnesses, there was not forensic evidence at that point
11 six months into the investigation, but we had -- we could
12 not eliminate him as we had other folks that we were
13 working on or that we continued to investigated during the
14 course of this investigation.

15 Q. So you had other suspects that fit into the
16 category as Mr. Beach. You couldn't eliminate them; is
17 that right?

18 A. Exactly.

19 Q. Okay. Now, when you hear from -- the first
20 time you hear from Sergeant Via is on January 5th of 1983.

21 A. Correct.

22 Q. Okay. Now, prior to that and immediately
23 after the Kim Nees homicide, you were aware that there was
24 a display in Beck's Sporting Goods in Poplar?

25 A. Correct.

1 and the purse, and I think there may have even been a pack
2 of cigarettes that was lying there on it. But I do not
3 recall or have a recollection of the pool of blood that
4 was away from the truck.

5 Q. Now, the second photo that was used in the
6 display was actually a photo showing from a distance
7 Ms. Nees's body in the river.

8 A. Correct.

9 Q. And so these crime scene photos were made
10 public to the people of Poplar; is that right?

11 A. Yes, they were.

12 Q. It shows where the truck was located?

13 A. No, it does not.

14 MR. CAMIEL: If I could approach.

15 CHAIRWOMAN O'CONNOR: Certainly.

16 Q. (By Mr. Camiel) The photograph that I've
17 handed you, that's one of the photos that we --

18 MR. WELLENSTEIN: Madame Chairman, can we --

19 CHAIRWOMAN O'CONNOR: Would you publish it to
20 the prosecutors first?

21 MR. CAMIEL: Sure.

22 MR. WELLENSTEIN: Thank you.

23 CHAIRWOMAN O'CONNOR: Is this one of the
24 pictures that was in the window? Is that what you're
25 telling us?

1 Q. And actual crime scene photos were used in
2 that display, weren't they?

3 A. They were.

4 Q. How did crime scene photos get into a public
5 display in a storefront window?

6 A. I believe Sheriff Carpenter provided those two
7 photographs to me, included with this poster, in an effort
8 to hopefully jog someone to come forward or whatever we
9 could -- you know, we might be able to gather out of that
10 to just keep this homicide or this death in the public
11 eye.

12 Q. Now, one of the, one of the crime scene photos
13 that was in the Beck's store window showed the passenger
14 side of the truck, didn't it?

15 A. That's correct.

16 Q. And it showed the purse and the sweater that
17 you've described?

18 A. Correct.

19 Q. And it showed the bloodstained area near the
20 truck?

21 A. I don't know if you can see the bloodstained
22 area near the truck or not. I really don't remember. I
23 know that you could see -- my recollection was that it was
24 far enough way -- but as you looked at it, you saw the
25 passenger side of the truck, and under that, the sweater

1 MR. CAMIEL: Well, that's my question.

2 CHAIRWOMAN O'CONNOR: I see.

3 THE WITNESS: It is not.

4 Q. (By Mr. Camiel) This doesn't appear to be --

5 A. That's not the picture that was in that
6 poster.

7 Q. Okay. Was it a picture of further distance,
8 or --

9 A. I'm sorry?

10 MR. CURTISS: I want to see that, please.

11 MR. CAMIEL: Sure.

12 CHAIRWOMAN O'CONNOR: I don't think we have to
13 put that in.

14 THE WITNESS: The photograph that was in that
15 -- or with that poster was taken from, if you will,
16 looking at the -- as I recall, from the front of the -- or
17 at the side of the pickup more towards the front looking
18 at the truck. It was a 3 by 5 or a very -- it was not
19 this size of a photograph. There were two small
20 photographs that were included with that.

21 Q. (By Mr. Camiel) Other than the size of the
22 photo, though, it showed the front portion of the truck on
23 the passenger side?

24 A. I believe it did. I don't know.

25 Q. Okay. And did it show some of the officers,

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1 **the investigating officers, standing near the truck?**
 2 A. There was a photograph that depicted that, but
 3 I do not recall if that was the one that was in that
 4 poster.
 5 MR. CAMIEL: If I could approach again.
 6 CHAIRWOMAN O'CONNOR: Is this a different
 7 picture?
 8 MR. CAMIEL: It is.
 9 CHAIRWOMAN O'CONNOR: Well, then show it to
 10 the prosecutors.
 11 THE WITNESS: (Perusing document) -- the
 12 recollection of the photograph that -- as I recall, this
 13 is much closer. This is -- as I recall, is not the
 14 photograph, either. That picture was taken from a
 15 distance farther away from the truck and more towards the
 16 front end.
 17 CHAIRWOMAN O'CONNOR: And it was a 3 by 5
 18 picture?
 19 THE WITNESS: Yes, ma'am.
 20 **Q. (By Mr. Camiel) There was also in the display**
 21 **at Beck's a tool, wasn't there?**
 22 A. Yes, there was.
 23 **Q. What was the tool that was in the display?**
 24 A. A crescent wrench.
 25 **Q. Any other tool in that display?**

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1 A. No, there wasn't.
 2 **Q. Was that the only place that the display was**
 3 **up?**
 4 A. As I recall, it was.
 5 **Q. Okay. And how long was that display up?**
 6 A. I have no idea.
 7 **Q. When did you first hear from Sergeant Via?**
 8 A. That would have been the conversation on the
 9 5th of January, I'm sorry, in 1983.
 10 **Q. And in response to that conversation, you**
 11 **prepared information -- did you prepare any written**
 12 **information to send to Sergeant Via?**
 13 A. Not as a result of the -- as I recall, of that
 14 conversation on the 5th. That was our intent, but that
 15 was never, was never completed. We sent no information as
 16 a result of that call.
 17 **Q. Now, when Sergeant Via first contacted you,**
 18 **the first conversation that you had with him was actually**
 19 **recorded, wasn't it? And you've seen the transcript of**
 20 **that recording?**
 21 A. Yes.
 22 **Q. How is it that these calls -- some of these**
 23 **calls between you and Sergeant Via are recorded?**
 24 A. I guess I don't understand your question.
 25 **Q. One of the first conversations you had with**

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1 **Sergeant Via you indicated was recorded. And you've seen**
 2 **the transcript of that, haven't you?**
 3 A. Of the --
 4 **Q. When he calls up the sheriff's office --**
 5 A. On the 5th, correct.
 6 **Q. Okay. And that call, when he first calls into**
 7 **Roosevelt County sheriff's office, is tape-recorded?**
 8 A. No, it is not.
 9 **Q. It's not tape-recorded?**
 10 A. No, sir.
 11 **Q. Then how is there a verbatim transcript?**
 12 A. That was done by Sergeant Via's end. That was
 13 not done by the Roosevelt County end of that phone call.
 14 **Q. All right. So Sergeant Via is the one**
 15 **whose --**
 16 A. I assume, yes.
 17 **Q. Okay.**
 18 A. But it was not recorded on the Roosevelt
 19 County end.
 20 **Q. Okay, all right. And is that the one and only**
 21 **call you had with Sergeant Via on January 5th?**
 22 A. I believe so. To the best of my recollection,
 23 it was.
 24 **Q. And in that call, you told him about the**
 25 **polygraph exam that had been done on Mr. Beach?**

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1 A. That's correct.
 2 **Q. Okay. And how did you describe to Sergeant**
 3 **Via the results of that polygraph exam?**
 4 A. I believe I relayed to him the results that
 5 Lieutenant West had given to me that it was his feeling
 6 that Mr. Beach had either been involved, had committed the
 7 homicide, or had direct knowledge of it.
 8 **Q. Didn't you actually tell Sergeant Via that the**
 9 **results were inconclusive and that Mr. Beach didn't hit on**
 10 **actually doing it? Isn't that what you told Sergeant Via?**
 11 A. I don't think so.
 12 **Q. Would you like to look at the transcript?**
 13 A. I would.
 14 **Q. I would refer you to the bottom of the second**
 15 **page and the top of the third page.**
 16 A. My comment that I gave in answer to Sergeant
 17 Via was (quoted as read):
 18 "Did submit to polygraph, but it's
 19 inconclusive. Uh, the operator felt that he possibly had
 20 knowledge of -- you know, firsthand knowledge about the
 21 crime."
 22 Now --
 23 **Q. Go on to the second page.**
 24 A. Question, or Sergeant Via says (quoted as
 25 read): "Right."

1 "ANSWER: But he didn't hit on actually doing it.

2 "SERGEANT VIA: Okay."

3 **Q. That's what you said: He didn't hit on**
4 **actually doing it.**

5 A. Correct.

6 **Q. That's what you told Sergeant Via?**

7 A. In this transcript, that's correct.

8 **Q. All right. Which is January 5th, the first**
9 **day that you talked to Sergeant Via?**

10 A. Yes.

11 **Q. Okay. Now, you actually had a number of calls**
12 **with Sergeant Via between January 5th and through January**
13 **7th of the day that Mr. Beach was interrogated about the**
14 **Kim Nees homicide.**

15 A. I think I had two with Sergeant Via, as I
16 recall, on the 7th.

17 **Q. And only two?**

18 A. As I recall.

19 **Q. Okay. Was there a dispatcher that was working**
20 **for the Roosevelt County sheriff's office at that time, a**
21 **Marie Jansen?**

22 A. There was nobody by that name that I know from
23 the sheriff's office.

24 **Q. How about Toni Cody?**

25 A. Yes.

1 suspect would" -- or "would be known only to the suspect".
2 I don't remember saying that the were not public
3 knowledge.

4 **Q. Okay. And one of the things that you said**
5 **would be known only to the suspect was the fact that the**
6 **keys to the truck were missing?**

7 A. That point is in there, but I do not recall if
8 that was one of the things that I said would be known only
9 to the public (sic).

10 **Q. Do you have that report in front of you that**
11 **you prepared?**

12 A. I do not.

13 **Q. Would you like to look at another copy of it?**
14 **In that report -- and what I've handed you is your**
15 **January 7, 1983 report; is that right?**

16 A. Yes, it is.

17 **Q. Okay. And you list nine points of information**
18 **that you gave to Sergeant Via?**

19 A. That's true.

20 **Q. And right below the nine points, you indicate**
21 **(quoted as read): "Points 2 and 3 are known only to the**
22 **suspect in this case."**

23 A. Correct.

24 **Q. Okay. Point 2 was the location of the murder**
25 **weapon?**

1 **Q. She was a dispatch?**

2 A. That's correct.

3 **Q. And when Sergeant Via would call in, she would**
4 **direct the calls to you?**

5 A. If she was on shift.

6 **Q. Okay. Would you, would you disagree with**
7 **information that there were at least 15 calls between**
8 **you --**

9 A. Absolutely.

10 **Q. -- and Sergeant Via?**

11 A. Absolutely, I would disagree with that.

12 **Q. Okay. Now, on January 7th, that's the day**
13 **that Mr. Beach was interrogated, you gave specific**
14 **information to Sergeant Via --**

15 A. That's correct.

16 **Q. -- about the information you had about the**
17 **Nees homicide.**

18 A. That was the, as we talked or spoke about
19 earlier, the nine points that I gave -- provided to him,
20 yes.

21 **Q. Okay. And among those nine points that you**
22 **provided to him, there were a couple of points that you**
23 **indicated were not public knowledge.**

24 A. I don't believe the specific wording of that.
25 I think, as I recall, it was -- I think I said that "the

1 A. That's correct.

2 **Q. And you assumed that the suspect would know**
3 **what happened to the murder weapon?**

4 A. That's correct.

5 **Q. Okay. And Point 3, location of missing keys**
6 **and description of same.**

7 A. Correct.

8 **Q. Okay. And I take it you gave Sergeant Via a**
9 **description of the keys.**

10 A. No. This was the information that I gave to
11 him. I didn't provide him any information on what the
12 keys, as I recall, were or looked -- he knew the make of
13 vehicle, so he may from that, but as far as description or
14 anything, I did not do that.

15 **Q. Okay. But one of the things -- the fact that**
16 **the keys were missing, was that like a piece of holdback**
17 **information?**

18 A. No.

19 **Q. Okay. But it was something that you were**
20 **operating on the assumption that only the suspect would**
21 **know that the keys were missing.**

22 A. I was operating under the assumption that the
23 first word in there was what the suspect knew, and that
24 was the location. The missing keys or a set of keys were
25 also displayed in that poster that you talked about being

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1 at Beck's; obviously not the keys to Kim Nees's vehicle.
2 But (the location) is what I was stating here was known to
3 the suspect.

4 **Q. All right. Because it was (public knowledge)**
5 **that the keys were missing.**

6 A. Yes, that had been -- I'm sure, was out. I
7 mean like I said, there was a set of keys that were
8 included with that poster.

9 **Q. Okay. And it was also (public knowledge) that**
10 **the murder weapon hadn't been located.**

11 A. That it had not been?

12 **Q. Had not been located. That's why you had the**
13 **crenscent wrench --**

14 A. I would answer that "yes", that that was
15 public.

16 **Q. That's why you had the crescent wrench in the**
17 **display.**

18 A. Correct. But, again, I'm going to go back and
19 add the same comment, that (the location) the murder
20 weapon was missing, as were the keys, but (the "location")
21 is the important word in that because it was my feeling
22 when I gave this and when I made that comment, was that
23 the person that committed this crime would be the one that
24 could provide that information, "Where are those items?"

25 **Q. Now, a few days after -- perhaps a month, in**

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1 it would be like I myself typed in a report as an officer.
2 A 302 is the terminology that the FBI uses for whatever
3 they do. They create a 302 as their report of what that
4 activity was, yes.

5 **Q. Okay. Were you aware that there was an FBI**
6 **report that indicated that the autopsy revealed (quoted as**
7 **read):**

8 **"Victim died as a result of at least 20 blows**
9 **to the head with either a tire iron or a small, light**
10 **hammer"?**

11 A. That phrase, I can't put it in relation of the
12 autopsy revealing that. Again, I would have to look at
13 that report.

14 **Q. And so but you do recall a hammer was**
15 **recovered about 30 feet from where the body was located?**

16 A. I can't put it in relation to 30 feet or 130
17 feet, but I know there was a hammer that was recovered
18 from the river during that search.

19 **Q. You also recall that Dr. Pfaff, in fact,**
20 **compared the wounds that he located in the autopsy report**
21 **to a hammer. He suspected that a hammer was involved as a**
22 **weapon.**

23 A. I don't recall that. I would have to look at
24 that autopsy report in order to do that.

25 **Q. There are diagrams attached to that autopsy**

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1 **July 1979, the river, Poplar River, had been searched to**
2 **see if keys or a murder weapon could be located; isn't**
3 **that right?**

4 A. As far as the date, I don't know. It was
5 searched, but I mean I can't -- I'll have to agree with
6 you as far as the date because I don't -- I have no
7 recollection of that time frame.

8 **Q. Well, you recall that in the -- although you**
9 **don't recall the exact date in 1979?**

10 A. Sometime in '79, I believe it was, yes.

11 **Q. And about 30 feet from where Kim Nees's body**
12 **was found, a hammer was located in the river; isn't that**
13 **true?**

14 A. I believe so, yes.

15 **Q. And the FBI reported and Dr. Pfaff initially**
16 **reported - and he was the medical examiner - that the**
17 **murder weapon might have been a small, light hammer; isn't**
18 **that true?**

19 A. I believe in one of the FBI 302s, that's
20 referenced. I do not remember that being referenced in
21 Dr. Pfaff's reports.

22 **Q. Okay. And when you're talking about an FBI**
23 **302, you're talking about the report that the FBI did**
24 **concerning their examination of the crime scene?**

25 A. That an agent that was involved with that --

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1 **report, if you would take a look at those.**

2 A. (Perusing documents.)

3 MS. PLUBELL: Madame Chairperson, my
4 understanding in the last conference that we had, that the
5 focus of this hearing was supposed to be on the new
6 evidence. And much of what we've heard today has nothing
7 to do with any new evidence.

8 CHAIRWOMAN O'CONNOR: We're going to hear the
9 new evidence. That's what I told you. That was your
10 understanding, was that we would hear the new evidence.

11 MR. CAMIEL: Madame Chairman, it was my
12 understanding that the Board was also interested in the
13 validity of the confession.

14 CHAIRWOMAN O'CONNOR: All that, that's what I
15 said. We're going to hear your witnesses.

16 **Q. (By Mr. Camiel) Attached to Dr. Pfaff's**
17 **autopsy report, he has a diagram, a very detailed diagram**
18 **of a hammer with all kinds of measurements. And he**
19 **compares -- uses that hammer, and there are comparisons to**
20 **the wounds that he observed; isn't that right?**

21 A. I'm still looking at the report, sir.

22 **Q. Okay.**

23 CHAIRWOMAN O'CONNOR: You know, Mr. Camiel,
24 we've allowed you to go through every sort of law
25 enforcement report. I'm not so sure this really is a law

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1 enforcement report. We've reviewed the autopsy report,
2 we've read Dr. Pfaff's testimony at the trial. I don't
3 know what it is you expect to elicit from this man. I
4 mean it really isn't actually a law enforcement report,
5 but we're allowing latitude. But I would expect you to
6 wrap it up here eventually.

7 I mean if you want to bring in Dr. Pfaff to
8 rehash again what his opinion is, I suppose you can do
9 that, but you can only go so far with this gentleman, and
10 I think you're about there.

11 MR. CAMIEL: Where I'm going, Madame Chairman,
12 is the validity of the confession. In the confession,
13 Mr. Beach describes certain weapons.

14 CHAIRWOMAN O'CONNOR: Yes.

15 MR. CAMIEL: And, in fact, there's --
16 Dr. Pfaff considered that those may not have been the
17 weapons that were used, that there were other possible
18 weapons used.

19 CHAIRWOMAN O'CONNOR: Yes. And in his
20 testimony at trial, Dr. Pfaff said that he -- that all of
21 the wounds that were inflicted could have been caused by
22 either a crescent wrench or a tire iron. That was his
23 testimony at trial, right?

24 And you're now going to undermine that with
25 the autopsy report he wrote before. I mean he was --

1 things, true.

2 MR. CAMIEL: That's right.

3 CHAIRWOMAN O'CONNOR: I think that point has
4 been made. It could have been other things, and it could
5 have been the things that Mr. Beach said, right?

6 MR. CAMIEL: I understand.

7 CHAIRWOMAN O'CONNOR: Okay.

8 Q. (By Mr. Camiel) Sheriff Mahlum, on January
9 7th, you get a call later in the evening from Sergeant Via
10 saying you owe him a steak dinner --

11 A. Correct.

12 Q. -- okay, where he tells you that he's got a
13 beautiful recorded confession?

14 A. That's correct.

15 Q. Okay. And this call is also one that is
16 recorded, I take it, by Louisiana -- there's a transcript
17 of this call.

18 A. That's true.

19 Q. Okay. And he tells you in that call, at the
20 beginning of that call, that Mr. Beach has all the
21 details, except for one, right in terms of what you found
22 at the crime scene.

23 A. I believe that's correct.

24 Q. Well, how does Sergeant Via know what the
25 details are in terms of what you found at the crime scene?

1 MR. CAMIEL: And he also indicated that he
2 couldn't say with certainty that either of the weapons --

3 CHAIRWOMAN O'CONNOR: He did all that. So do
4 you expect this gentleman to resay that? We get that. So
5 if there -- so I don't know where you're going here,
6 exactly. I mean just to rehash that that we already know,
7 or is there something new?

8 MS. PLUBELL: Just to have a clear record,
9 Madame Chairperson, we do have an FBI report where they
10 did show the hammer that they got from the river to
11 Dr. Pfaff.

12 CHAIRWOMAN O'CONNOR: And he said, "No, that
13 didn't cause it." That is true, too. I mean we have
14 truly read this file.

15 MR. WELLENSTEIN: I understand.

16 CHAIRWOMAN O'CONNOR: So he said, "No, this
17 wasn't it." So therefore your point is lost on me thus
18 far, if you have a point.

19 MR. CAMIEL: Well, the point is that the State
20 has alleged that Mr. Beach was accurate with regard to the
21 weapons that were used.

22 CHAIRWOMAN O'CONNOR: Right.

23 MR. CAMIEL: And there is ample evidence that
24 it could have been a number of different objects.

25 CHAIRWOMAN O'CONNOR: Could have been other

1 A. I have no -- and you're referring to the
2 sweater or I believe the brown coat that he referred to
3 earlier?

4 Q. No. I'm referring to Sergeant Via tells you
5 that (quoted as read):

6 "The details he ran down are almost identical
7 to what you found at the crime scene. He's only got one
8 thing wrong."

9 A. And, again, I would have to refresh by looking
10 at the report, because I just --

11 Q. Well, my question is: How does Sergeant Via
12 know what the details are that you found at the --

13 A. What I'm saying, Mr. Camiel, in looking at
14 that report to refresh, I don't know if there is
15 additional information prior to that, after that. I have
16 no recollection of -- Sergeant Via and I did not talk
17 about details outside of what was given in the
18 conversation that we had on the 5th and on the morning of
19 the 7th.

20 Q. Okay. Well, so Sergeant Via shouldn't know
21 what the -- all the details are at the crime scene, then,
22 should he?

23 A. And he did not.

24 Q. So how can he say that all the details that
25 Mr. Beach gave were correct except one?

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1 A. You would have to ask Sergeant Via what his
2 terminology was with that. All I can testify is the
3 conversation that I had with Sergeant Via, and they're
4 recorded in those nine points and on the -- in the
5 transcript of that conversation that we had on the 5th.

6 Q. Now, you had a conversation with Sergeant Via
7 about a garbage bag before he called you to tell you that
8 he had a confession from Mr. Beach.

9 A. No, sir, that's not correct.

10 Q. Then why does sergeant in the initial part of
11 his conversation with you when he calls you on January 7th
12 say, "And here's what he says about the garbage bag." (when
13 there's been no mention of any garbage bag in your
14 conversation to that point?)

15 A. Because in his confession, Mr. Beach had
16 talked about a garbage bag, I'm assuming is why he brings
17 that up. I'm telling you that Sergeant Via and I had
18 never prior to that had a conversation about a garbage
19 bag.

20 Q. All right. So when he says, "And here's what
21 he says about the garbage bag" --

22 A. My assumption is he's referring to what
23 Mr. Beach told him in his confession.

24 Q. Okay, all right. Now, when you talked to
25 Sergeant Via, he was under the impression that you told

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1 excuse me, "You said she had on a brown plaid shirt."
2 He's referring to you. You said that -- he thinks
3 that's what you told him. And he's wrong about that,
4 isn't he?

5 A. She was not wearing a brown plaid shirt. And,
6 again, without looking at what you're looking at, I -- I
7 would have to review it.

8 Q. Okay. Well, you indicated that -- you've got
9 a notebook in front of you. Did you review your reports?

10 A. I have, some of them, yes; but that particular
11 one, I didn't. And the portion where you're at, I have no
12 recollection or I can't answer your questions of that
13 without reviewing it.

14 Q. Okay. I've handed you the transcript of a
15 January 7, 1983 conversation between you and Sergeant Via.

16 A. That's correct.

17 Q. And you see at the bottom of the page where he
18 tells you (quoted as read): "But the details he ran down
19 are almost identical to the ones you found at the scene"?
20 Do you see that?

21 A. Correct.

22 Q. And then the next line (quoted as read):
23 "He's only got one thing wrong"?

24 A. Correct.

25 Q. And then: "The clothes the victim was

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1 him that Kim Nees was wearing a sports jacket.

2 A. I don't -- as I recall, that's not correct. I ^{Not in}
3 think our conversation was about a blue -- blue and ^{the}
4 possibly red sweater. And I made a comment to him that ^{9 points}
5 that was the actual top that she had on. I think the
6 conversation of the brown sports coat actually came from
7 Mr. Beach. Sergeant Via may have said that to me, talked
8 about it, again, in the context of what had been told to
9 him by Mr. Beach.

10 Q. Do you recall Sergeant Via telling you in this
11 conversation, "You said she had on a brown plaid shirt"?

12 A. No, I don't remember that.

13 Q. You wouldn't have told him that because that's
14 not what she had on.

15 A. That's correct.

16 Q. Okay. So if he said to you, "You said she had
17 on a brown plaid shirt," that would indicate that --

18 A. Does that say "brown" or does it say "blue"?

19 Q. It says --

20 A. I think I go on in there to say that she was
21 wearing a blue sweater; is that correct?

22 Q. You do, you do.

23 A. Thank you.

24 Q. But he says to you, "He said she had on a" --

25 excuse me, "He said she had on a brown plaid shirt" -- or,

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1 wearing"?

2 A. Yes.

3 Q. (Quoted as read): "You said she had on a
4 brown plaid shirt."

5 A. Correct.

6 Q. That's Sergeant Via misunderstanding what you
7 told him, isn't it?

8 A. Yes. From what is here is, is that ^{VIA} he was of
9 the impression that I had said she was wearing a brown
10 plaid shirt. ^{Yes = Polluted Confession}

11 Q. And that mistake that Sergeant Via made ended
12 up in Mr. Beach's confession, didn't it, where he has her
13 wearing a plaid shirt?

14 A. Again, I'd have to look at that confession. I
15 don't remember that conversation -- I remember the
16 conversations about the sweater or the brown coat, but not
17 about the shirt. ^{He's wrong Again}

18 Q. Mr. Mahlum, you know what "contamination" is
19 in terms of a confession, don't you? You've heard that
20 term?

21 A. Sure.

22 Q. Okay. Where something is said by the
23 interrogator that ends up in the confession?

24 A. Correct.

25 Q. Okay. And so if Sergeant Via misinterprets

1 what you said about the color and style of the clothing
2 and that ends up in Mr. Beach's confession, that same
3 mistake, that's evidence of contamination, isn't it?

4 A. Mr. Camiel, you would have to ask Sergeant Via
5 that. I have no idea of the conversation that he had with
6 Mr. Beach. *Wow/ he has transcript*

7 Q. Okay. Now, he told you that they interviewed
8 Mr. Beach until he broke down, didn't he?

9 A. Yes, that's the term that he uses.

10 Q. Okay. He also explained to you that by the
11 time he's calling you, he's tired.

12 A. Correct.

13 Q. And he's lost his voice.

14 A. Correct.

15 Q. And that Mr. Beach isn't even aware of what's
16 going on.

17 A. But I think that was in, in context of their
18 investigations they were conducting with the state of
19 Louisiana.

20 Q. Okay. Now, Sergeant Via relayed for you that
21 generally -- now, later on you actually hear a part of the
22 confession. You heard part of the tape some days later;
23 is that right?

24 A. I don't remember if I ever heard part of the
25 tape. I've read the transcript of that, but I don't know

1 if I've listened to a tape.

2 Q. In any event, on January 7th, he gives you
3 generally a rundown of what he says, Mr. Beach says.

4 A. Correct.

5 Q. Okay. And there were a lot of things that Mr.
6 that he told you about that were inaccurate in terms of
7 your understanding of the crime scene.

8 A. Correct. *Contamination*

9 Q. For example, he tells you that Mr. Beach said
10 that she, meaning Kim Nees, got out the driver's door.

11 A. Correct.

12 Q. Okay. And that he had pushed her up against
13 the driver's door and choked her.

14 A. Correct.

15 Q. And those were facts that you knew there was
16 no evidentiary support for.

17 A. Those were facts that I could not say did or
18 did not happen with it at that point in time, because this
19 goes back to the conversation that we had earlier that it
20 was our theory in looking at the blood spot on the ground,
21 blood in the trucks, that that was the manner that we
22 thought the victim had probably exited the vehicle. But
23 we didn't know that. That was our theory from looking at
24 that.

25 Q. I understand. But the facts that Sergeant Via

1 is relating to you that he says he got from Mr. Beach, a
2 lot of those facts are inconsistent with your working
3 theory?

4 A. That's correct. *Important*

5 Q. For example, you knew that the autopsy showed
6 no evidence that Ms. Nees had been choked.

7 A. That's correct.

8 Q. Okay. In the confession, Mr. Beach allegedly
9 complained -- explained that he had been scratched. And
10 you knew that the autopsy showed no evidence of skin or
11 blood or tissue under Ms. Nees's fingernails.

12 A. At the time of autopsy, I believe that's
13 correct. Again, I don't have any specific recollection of
14 that being addressed, but -- without reviewing Dr. Pfaff's
15 information.

16 Q. Okay.

17 A. But I -- that has never been testified or
18 brought up, so I'm assuming that's correct.

19 Q. Okay. And there were other things that you
20 simply couldn't corroborate. For example, in the
21 confession, Mr. Beach says that he had placed Ms. Nees in
22 a garbage bag. But you couldn't corroborate that, could
23 you?

24 A. But it also explained our lack of blood trail.
25 And that was the first time that had ever been brought by

1 anyone.

2 Q. I understand. But you couldn't corroborate
3 it?

4 A. No.

5 Q. Now, the surface of the ground where
6 Ms. Nees's body would have had to have been moved from the
7 area of the truck to the -- to where she's eventually put
8 in the river is dirt and grass and small rocks; is that
9 right?

10 A. There's dirt on the trail, grass. As far as
11 rocks, I -- there probably are. I just -- again, I don't
12 know. I know there's grass and there's dirt on the trail.

13 Q. And you understood that if somebody had been
14 placed in a garbage bag and that bag was dragged along the
15 ground, the bag would have probably been shredded.

16 A. No, not necessarily.

17 Q. Okay. But you -- in any event, absolutely no
18 physical evidence to corroborate that part of the
19 confession.

20 A. Not that I was aware of.

21 Q. Well, one of the things you tried to do, then,
22 was to see if you could corroborate the part of the
23 confession having to do with throwing the weapons into the
24 river, right? *Why not the rest of it*

25 A. Correct.

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1 Q. So after the confession, additional searches
2 are made of the Poplar River?

3 A. One was, yes.

4 Q. And, specifically, to see if you could
5 corroborate what, in fact, Mr. Beach had said?

6 A. Correct.

7 Q. Okay. You weren't able to do that. Couldn't
8 find the weapons, couldn't find the keys.

9 A. No.

10 Q. Now, another problem with the confession that
11 you got from Mr. Beach was that he had indicated that when
12 he moved Ms. Nees's body over to the edge of the river,
13 that he simply pushed her into the river. And you knew
14 that in the area where she went into the river, somebody
15 had to, you know, move the body over the edge, jump down,
16 and then move the body into the river because you can't
17 even get it all way into the river.

18 A. No, I didn't know that.

19 Q. Do you recall the FBI's crime scene report
20 indicating that?

21 A. No.

22 Q. Let me ask you if this refreshes your
23 recollection (quoted as read): "Of interest is the fact
24 that the un sub" -- meaning "unidentified subject" --

25 A. Correct.

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1 A. No.

2 Q. Did it concern you that a number of the facts
3 that Mr. Beach gave in the confession were wrong?

4 A. No.

5 Q. As long as you had a confession, none of that
6 was a concern?

7 A. No, sir, I didn't say that.

8 Q. Was there any one fact that Mr. Beach gave in
9 the confession that you can say only -- that wasn't public
10 knowledge and only a suspect could have known --

11 A. Yes, sir.

12 Q. -- that you could corroborate?

13 A. Yes, sir.

14 Q. Which fact is that?

15 A. That fact is that in his confession, Mr. Beach
16 says that as he had the victim on the ground of the driver
17 -- or, sorry, the passenger side of the truck, that he
18 stood up, he looked down at the victim, he took her pulse,
19 it was weak and it stopped, and he then drug her to the
20 river and threw her in.

21 Dr. Pfaff had no indication -- there was no of
22 drowning. The victim was dead prior to that. That fact
23 had never been discussed even amongst the investigators.
24 That was provided by Mr. Beach.

25 Q. Did you know there was a news article that was

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1 Q. -- "drug the victim 256 feet, pushed her over
2 a 10-foot cliff, and jumped down, lifted victim, and threw
3 her into river."

4 A. Okay.

5 Q. Okay. That's from the June 19th FBI report
6 three days after the homicide.

7 A. Okay.

8 Q. Okay. Mr. Beach's confession was inconsistent
9 with that.

10 A. Mr. Beach did not say in his confession that
11 he had jumped down off of the bank. I believe that that
12 report that that FBI put together there was drawn on his
13 conclusion because there was a small spot of blood -- if I
14 can describe, you had a bank here, a little lower bank,
15 and then the water. There was a small spot of blood here.

16 But I did not remember any conversation from any of
17 those people of any indication of jumping down; in other
18 words, footprints driven into that. I just have no
19 recollection of that.

20 Q. Okay. Well, you -- I read you the report and
21 it refreshed your recollection about that report?

22 A. I remember reading that report.

23 Q. Okay. Did it concern you that a number of the
24 facts that Mr. Beach gave in the confession couldn't be
25 corroborated?

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1 introduced earlier today that indicates: "After death,
2 Ms. Nees's body was dragged approximately 100 yards and
3 thrown into the Poplar River"?

4 A. No.

5 Q. You didn't know that?

6 A. No.

7 Q. Do you want to look at it?

8 A. Absolutely. I have no recollection -- is this
9 from -- which paper this is from or where it's from or
10 where it originated.

11 Q. You don't have any recollection of the
12 article?

13 A. No, sir.

14 Q. Okay. You assumed that it wasn't public
15 knowledge that Ms. Nees was deceased before she was put in
16 the river.

17 A. I knew it wasn't public knowledge.

18 Q. Okay. Despite the fact that it appears in a
19 public newspaper article?

20 A. I have nothing to relate this to as far as
21 time frame, or -- if you can tell me in what paper or what
22 time frame it was.

23 Q. Well, suffice it to say, you had, you had no
24 information about that article?

25 A. This is the first I've seen it, as I recall.

1 Q. And, in fact, if that article was published
2 sometime after Kim Nees was murdered but before Beach
3 confessed, then that would demonstrate the fact that she
4 was deceased before she was put in the river was public
5 knowledge; it wasn't something that was known only to law
6 enforcement?

7 A. Well, again, I have no idea where this
8 originates from, so I guess I'm going to stick with my
9 testimony. It was my feeling that that was information in
10 1983 when Barry Beach confessed that it was not public
11 knowledge.

12 Q. There was a, there was a towel that was found
13 in Poplar that had blood on it sometime on the morning
14 that the murder was discovered; isn't that right?

15 A. There was a towel found. As far as time
16 frame, again, I don't know because I wasn't there that
17 day. If it was that morning or that day, or -- I assume
18 it was on the day that Kim's body was found, but I have no
19 idea as far as time.

20 Q. You believe that that towel had a connection
21 to this homicide.

22 A. I believed that?

23 Q. Yes.

24 A. No, I can't say that I had any specific belief
25 that way.

1 Q. Okay. Well, didn't you show that towel to
2 people to see if they could identify it?

3 A. I don't believe I personally did.

4 Q. Did you show the towel to Shannon O'Brien?

5 A. I don't recall that.

6 Q. Okay. Did you believe that Kim Nees's hair
7 was on that towel?

8 A. I had no idea. It was a towel with some blood
9 on it.

10 Q. You also knew that there was hair found on the
11 towel?

12 A. Later, after it had been submitted to the lab.

13 Q. Okay. And you believed that it was Kim Nees's
14 hair that was on that towel?

15 A. I believed from the results of that lab
16 examination, yes.

17 Q. So it was your understanding that this towel
18 that was found had Kim Nees's hair on it, right?

19 A. (Nodding head affirmatively.)

20 Q. And didn't you make it -- didn't you make a
21 note that you were going to show the towel to Shannon
22 O'Brien?

23 A. Again, I have no recollection of making a note
24 or saying that or showing it to her.

25 Q. You interviewed Ted Nees regarding whether he

1 was missing a crescent wrench; isn't that right?

2 A. He was interviewed.

3 Q. And he indicated that his crescent wrench was
4 missing?

5 A. I believe so.

6 Q. He never indicated that he was missing a tire
7 iron.

8 A. I believe Sheriff Carpenter actually had *Pam says it*
9 talked with Ted Nees. My recollection was that there was *was a 4-way*
10 information about a tire iron being missing from the
11 truck, from the back of the truck. But again -- (pause.)

12 Q. Now one of the things, one of the other things
13 that Mr. Beach stated in his confession was that he had
14 seen Kim Nees at the Exxon station that evening.

15 A. Correct.

16 Q. And it was pretty well-known around town that
17 Kim Nees would often park at the Exxon station and sit
18 there in her truck?

19 A. I have no idea as far as "well-known". I
20 couldn't refute it. I couldn't say whether she did or
21 not --

22 Q. Okay. Well, one of the other --

23 A. -- as far as "well-known".

24 Q. All right. Mr. Beach also indicated that he
25 saw Kim Nees talking to Steve Shagunn as he approached her

1 the night of the homicide.

2 A. I believe that's correct, yes.

3 Q. Okay. Well, you were aware that Mr. Shagunn
4 had been interviewed and he denied talking to Kim Nees.
5 He simply said he drove by and saw that she was sitting at
6 the Exxon station. And that's what he testified to at
7 trial as well; isn't that true?

8 A. I thought he testified that he had talked to
9 Kim Nees that night at the Exxon.

10 Q. Assuming that he testified that he did not,
11 because that's his testimony --

12 A. I'm not going to assume that, sir.

13 Q. All right. Well, if he didn't -- if he
14 testified that he didn't stop and talk to her; he simply
15 was driving out of town and saw her sitting at the Exxon
16 station, then Mr. Beach's statement that he saw her
17 talking to Steve Shagunn would be another error --

18 A. And I have no idea if that's what he testified
19 to. It's my recollection that he testified he had talked
20 to her that evening at the Exxon. So I'm not going to
21 assume or go down the trail you would like me to go down
22 there.

23 Q. You asked Sergeant Via to treat the tape
24 recording of the confession with Mr. Beach as evidence,
25 didn't you?

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1 A. I did.

2 **Q. And you expected that he would preserve that**
3 **tape?**

4 A. I did.

5 **Q. Okay. You later learned that the tape had**
6 **been erased.**

7 A. That it wasn't available. And whether or not
8 that was erased, I don't remember the terminology, but I
9 knew it was no longer available, yes, that's correct.

10 **Q. Okay. Were you told that it was standard**
11 **procedure in the county where Sergeant Via worked at his**
12 **office to erase tapes after they're transcribed?**

13 A. I don't think I was directly told that with
14 Sergeant Via. I believe he may have addressed that at
15 either the suppression hearing or the -- at trial.

16 **Q. That it was standard procedure to go ahead and**
17 **erase the --**

18 A. My recollection is, is that it, that it was
19 due to the fact that it was an out-of-state case; not that
20 it was standard procedure for every tape that they may do,
21 or --

22 **Q. So because it -- so it was your understanding**
23 **that because it was an out-of-state case, even though this**
24 **is a tape recording of a homicide confession, they'd go**
25 **ahead and erase it; they wouldn't preserve it?**

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1 **Q. Okay. Do you know what happened to the hair**
2 **evidence that he had that he was going to testify about?**

3 A. No. I know he didn't testify, but the reason,
4 I do not.

5 **Q. Do you know what happened to the cigarette**
6 **butts from the ashtray?**

7 A. I assume they're still with the FBI
8 laboratory. I have no idea.

9 **Q. Were you aware of a statement given by Orrie**
10 **Burshia to Sheriff Carpenter regarding Mike Longtree?**

11 A. In general terms. The specifics, no, not
12 necessarily.

13 **Q. But you knew that Ms. Burshia had come in and**
14 **met with Sheriff Carpenter and had given a taped statement**
15 **to him?**

16 A. Whether she came in and did that, I don't
17 know. I wasn't present. But I know that Sheriff
18 Carpenter had a conversation with her. In what format, I
19 don't know.

20 **Q. Now, one of the things you did as a part of**
21 **your investigation was you hypnotized some potential**
22 **witnesses, didn't you?**

23 A. Correct.

24 CHAIRWOMAN O'CONNOR: At this point,
25 Mr. Camiel, we're 45 minutes after we said we were going

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1 A. Again, Mr. Camiel, you would have to ask
2 Sergeant Via. My recollection is, is that he testified --
3 there was testimony from him. I had no personal
4 conversation with him in regards to that tape that I
5 recall.

6 **Q. There were a number of pieces of evidence that**
7 **we already talked about that were collected. Do you know**
8 **what happened to Kim Nees's clothing?**

9 A. I have no idea.

10 **Q. To your knowledge, was it preserved by**
11 **Roosevelt County, or has it disappeared?**

12 A. It was originally -- well, actually, I guess I
13 can't -- it would have gone with Dr. Pfaff. I believe we
14 would have gotten that back. And after I left the
15 sheriff's office, I have no knowledge what may have
16 happened with that.

17 **Q. When you -- at the time of trial, you recall**
18 **Mr. Melnikoff showing up for trial from the crime lab?**

19 A. No, I don't remember him. He may have been;
20 he may not have been. I have no recollection of him. I
21 don't think I would know Mr. Melnikoff if he walked into
22 this room right now.

23 **Q. Do you recall that there was hair evidence**
24 **that he was going to be testifying about at trial?**

25 A. I believe there was.

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1 to end for the night. There's obviously no end in sight
2 with this examination, so we're going to recess for the
3 evening. We will reconvene tomorrow morning.

4 You'll have to return, Sheriff Mahlum.

5 Before that time, I would ask that you and the
6 attorney general's office attorneys get together. I would
7 like you to go through what witnesses remain. I want any
8 issues with regard to hearsay, double hearsay, triple
9 hearsay to be gone through with you so we have a clear
10 idea when we start in the morning as to who we're actually
11 going to hear and who we're not.

12 If you have witnesses who you didn't really
13 pay for a transport to -- until last Friday, you're going
14 to need to contact them and get them here if that's
15 necessary in order to put your evidence in. Because that
16 is not everything you could do since six weeks ago to
17 provide a direct declarant. I think we've been very, very
18 clear in that. I don't think it's unfair in the slightest
19 to do exactly what we said we'd do. So I want you to
20 visit with the attorney general's people and get to the
21 bottom of that. And I wanted to recess early enough so
22 that you can make some transportation arrangements.

23 We will reconvene tomorrow morning at eight
24 o'clock. We will expect your first witness at
25 eight-thirty. Between eight and eight-thirty, we'll

1 expect a report from all counsel with regard to these
2 hearsay issues and witness issues to know who exactly will
3 be called tomorrow.

4 Thank you very much.
5 (The hearing adjourned at
6 approximately 6:40 p.m.)

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1 STATE OF MONTANA)
: ss.

2 County of Silver Bow)

3
4 I, Jonny B. Nordhagen, Court Reporter - Notary
5 Public in and for the County of Silver Bow, State of
6 Montana, do hereby certify:

7
8 That the witnesses in the foregoing hearing were
9 first duly sworn in the foregoing cause; that the hearing
10 was taken before me at the time and place herein named;
11 that the hearing was reported by me in machine shorthand
12 and later transcribed by computer; and that the foregoing
13 four hundred forty-nine (449) pages contain a true record
14 of the witnesses, all done to the best of my skill and
15 ability.

16 IN WITNESS WHEREOF, I have hereunto set my hand and
17 affixed my notarial seal this _____ day of _____,
18 2007.

19
20
21

22 _____
23 Jonny B. Nordhagen

24 Notary Public for the State of
25 Montana residing at Butte,
Montana. My commission

(NOTARIAL SEAL) expires May 8, 2010.

