

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 II

Heard at Montana State Prison

500 Conley Lake Road

Deer Lodge, Montana

June 14, 2007

8:15 a.m.



NORDHAGEN COURT REPORTING

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APPEARANCES

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1 advanced witness fees, I called her, she confirmed over a
2 week ago that she would be here, she received the fees,
3 and then she doesn't appear yesterday.

4 And what we heard yesterday was that *because*
5 apparently after she had talked to me and said she was *Sissy*
6 going to be here, she called the attorney general's *told her to*
7 office. We heard what she told them; we don't know what
8 they told her. But what we heard yesterday was that she
9 told them that she was going into some kind of counseling
10 and didn't plan to attend.

11 I attempted to contact her again last night,
12 left a message on her cell phone. The message was not
13 returned. It's the only number that I have for her. What
14 we don't know is what the attorney general's office told
15 her when she told them that she wasn't coming, whether
16 they told her that she didn't have to come or told her
17 that she should be here.

18 CHAIRWOMAN O'CONNOR: Let's hear what you did
19 tell her.

20 MR. WELLENSTEIN: I talked to Maude, and she
21 said that she had been sick, and she told me that she
22 wasn't going to come.

23 And I said, "Well, you're under subpoena, so I
24 can't advise you one way or the other what you should do."
25 I said, "You are under subpoena, and you should contact

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1 BARRY BEACH EXECUTIVE CLEMENCY HEARING VOLUME II
2 DEER LODGE, MONTANA
3 ---
4 BE IT REMEMBERED THAT this matter came on for
5 hearing on June 14, 2007, Chairwoman Teresa McCann
6 O'Connor, presiding:
7
8 The following proceedings were had:
9
10 CHAIRWOMAN O'CONNOR: Ladies and gentlemen, we
11 will come to order. We'll note that both attorneys for
12 Centurion Ministries are here, Barry Beach is here, both
13 attorneys for the attorney general's office are here.
14 And we requested last night at the close of
15 the day that we have an update from the attorneys on where
16 we stand with regard to the witnesses: Who's coming, who
17 we're expecting, all that.
18 Did you meet last night as we asked you to?
19 MR. CAMIEL: I've explained to them who we're
20 calling this morning. We have some hearsay issues that I
21 want to bring to the Board's attention.
22 CHAIRWOMAN O'CONNOR: Okay, let's hear them.
23 MR. CAMIEL: With regard to Maude Grayhawk -
24 let me start with her - as I explained to the Board
25 yesterday, we subpoenaed her, she was provided with

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1 Peter Camiel."
2 And I didn't tell her she couldn't come to the
3 hearing.
4 CHAIRWOMAN O'CONNOR: Did you tell her she had
5 to come to the hearing because she was under subpoena, or
6 did you tell her she did not?
7 MR. WELLENSTEIN: I said she was under
8 subpoena and she had to be here.
9 CHAIRWOMAN O'CONNOR: Or did you say you
10 couldn't advise her one way or the other?
11 MR. WELLENSTEIN: I said I couldn't advise
12 her. She's under, she's under subpoena. She said she
13 wasn't going to come. We've had all, we've had all these
14 women come and ask us about legal opinions, about whether
15 the subpoena is lawful, whether they can subpoena people
16 from out of state. And, you know, frankly, that's not my
17 position. If I tell it one way or the other, I don't
18 think she's going to be here. That's the bottom line.
19 CHAIRWOMAN O'CONNOR: Well, certainly you
20 can't suggest that she doesn't need to come and then come
21 in and lie,
22 MR. WELLENSTEIN: No, I didn't make that
23 suggestion.
24 CHAIRWOMAN O'CONNOR: Okay.
25 MR. CAMIEL: When I talked to her last week, I

2 (Pages 455 to 458)

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1 left her with my cell phone number as well as my office
2 number. I told her when she was on the road if she was
3 delayed, to contact me so that we would know. We made
4 arrangements for lodging here in town for her as well as I
5 provided her with travel fees and subsistence fees. So we
6 did everything that we believe was under our power.

7 CHAIRWOMAN O'CONNOR: The problem is that you
8 did it last week when you had six weeks of notice that you
9 needed to. And she's a vital witness. And so you didn't
10 do everything under your power because you did it so late.
11 So that is a real problem. This is a real problem, too, I
12 think.

13 MR. CAMIEL: But she did tell me she would be
14 here, and so we relied on -- once she told us --

15 CHAIRWOMAN O'CONNOR: And I hear that.

16 MR. CAMIEL: Okay. The other thing I would
17 point out is: The witnesses that we want to call with
18 regard to Maude Grayhawk, I don't believe this is hearsay
19 at all. One witness is Judy Grayhawk, Maude Grayhawk's
20 sister-in-law. She would testify about admissions made to
21 her by Maude Grayhawk about being down in the park, about
22 having kicked Kim Nees in the head but not having killed
23 her. That's a statement against her interest, which under
24 the hearsay rule --

25 CHAIRWOMAN O'CONNOR: But not by a party.

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1 MR. CAMIEL: She's not a party, but it's still
2 a statement against her interest. In addition --

3 CHAIRWOMAN O'CONNOR: But not by an
4 unavailable witness. I mean the question is: Is she
5 unavailable?

6 And I'm not so sure she's unavailable, but I
7 hear your argument that she is.

8 MR. CAMIEL: The second witness with regard to
9 Maude Grayhawk is Ron Kemp, who's currently the
10 undersheriff.

11 CHAIRWOMAN O'CONNOR: Right.

12 MR. CAMIEL: He went a couple of years ago at
13 our request and attempted to interview Maude Grayhawk
14 about, about whether she was involved in this. She made
15 statements to him that are not as directly admissions, but
16 for example, when he confronted her about whether she was
17 down there when Kim Nees was killed, she asked him whether
18 it was possible that she had blacked out and doesn't
19 remember it.

20 Now, that's an incriminating statement in the
21 context in which it was made. She also confirmed to him
22 that before she talked to him, she had a conversation with
23 Sissy Atkinson about whether she should talk to him or
24 not, and Sissy Atkinson directed her not to talk to him.
25 So that's what Mr. Kemp would testify about.

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1 CHAIRWOMAN O'CONNOR: Okay. What else?

2 MR. CAMIEL: The other two witnesses that
3 would be considered hearsay witnesses include Maria
4 Decker. Maria Decker is the -- she is the sister of Dana
5 Kirn. Dana Kirn was Maude Grayhawk's husband. Dana Kirn
6 was murdered a few years ago. Prior to his being killed,
7 he had confided in his sister -- he was going through
8 divorce proceedings with Maude Grayhawk at the time. He
9 confided in his sister that at a hearing that was coming
10 up about three days before he was killed, that he was
11 going to reveal that Maude had confessed to him about
12 having been involved in the Kim Nees homicide and having
13 been down there and who the girls were that were down
14 there. Dana Kirn, of course, is deceased, and so we have
15 no way of bringing him into court.

16 CHAIRWOMAN O'CONNOR: What else?

17 MR. CAMIEL: The other witness that we would
18 call is Glenna Lockman. Glenna Lockman is part of the
19 Nees family. After Judy Grayhawk received the admission
20 from Maude Grayhawk about having been down there and
21 kicked Kim Nees, later that night, Judy Grayhawk went and
22 told Glenna Lockman. And we would be offering that to
23 show that this is not recent fabrication on Judy
24 Grayhawk's part, that she almost immediately confided in a
25 Nees family member about what she had been told.

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1 Those are the four witnesses that I think
2 would be considered -- or whether it's debatable about
3 hearsay.

4 The other witness we would call today is Carl
5 Four Star. He had the -- direct contact with Sissy
6 Atkinson and would testify about the statement that she
7 made to him.

8 The other witnesses today would be Barbara
9 Beach, who is Barry's sister; and Mr. Beach himself. We
10 also have Marie Jansen, who was the dispatcher at the
11 Roosevelt County Sheriff's Office in 1983; and
12 Mr. Racicot, who was the prosecuting attorney in this
13 case.

14 CHAIRWOMAN O'CONNOR: How about Steve
15 Grayhawk?

16 MR. CAMIEL: Steve Grayhawk, Sr.?

17 CHAIRWOMAN O'CONNOR: Well, the --

18 MR. WELLENSTEIN: Yes, we --

19 CHAIRWOMAN O'CONNOR: Yeah -- well, the one
20 that dispersions were cast against yesterday.

21 THE WITNESS: We have not subpoenaed him.
22 We're not seeking proof --

23 CHAIRWOMAN O'CONNOR: Why not?

24 MR. CAMIEL: We have not sought to put in his
25 statements.

3 (Pages 459 to 462)

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1 CHAIRWOMAN O'CONNOR: All right. Do you wish
2 to address these?
3 MS. PLUBELL: Well, frankly, Mr. Camiel has
4 just given the testimony that the witnesses are going to
5 give.
6 CHAIRWOMAN O'CONNOR: Well, I mean we've read
7 the testimony. We've read it all, so --
8 MS. PLUBELL: Right. So, frankly, if it will
9 save -- if it will make things quicker, we don't care.
10 CHAIRWOMAN O'CONNOR: Okay.
11 MS. PLUBELL: And we'll keep our cross to a
12 minimum. We do have cross for every one of them, and
13 we'll try to do it quickly, but --
14 CHAIRWOMAN O'CONNOR: And you'd just as soon
15 it come in.
16 MS. PLUBELL: I'd just as soon it come in.
17 CHAIRWOMAN O'CONNOR: I'd just as soon it come
18 in, too, so let's get it done.
19 MR. WELLENSTEIN: Could we probably get a
20 witness order from Mr. Camiel so we know --
21 MR. CAMIEL: Sure.
22 MR. WELLENSTEIN: We also want to put our
23 officers on today because they're leaving tomorrow. And I
24 think that was the plan ahead of time that --
25 CHAIRWOMAN O'CONNOR: Which officers?

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1 as he can.
2 He'd really like to be able to leave today,
3 though, because he has something tomorrow.
4 CHAIRWOMAN O'CONNOR: We'll do our best to
5 accommodate that.
6 And you understand that we'll be doing that?
7 MR. CAMIEL: We do.
8 CHAIRWOMAN O'CONNOR: And we do. And we'll
9 take them. But you let me know -- so these officers who
10 were supposed to leave, do they have a plane reservation?
11 MS. PLUBELL: They leave at eight, yes.
12 MR. WELLENSTEIN: Eight-twenty.
13 MS. PLUBELL: And they leave at eight-twenty
14 from Helena.
15 CHAIRWOMAN O'CONNOR: Tonight?
16 MS. PLUBELL: No, tomorrow morning.
17 CHAIRWOMAN O'CONNOR: So before the end of
18 business today, we have to hear them. That's what you're
19 telling me. Okay, I've got that.
20 MR. WELLENSTEIN: And your -- the witness
21 list? Do you have --
22 CHAIRWOMAN O'CONNOR: Yeah, do you have --
23 MR. CAMIEL: The order?
24 CHAIRWOMAN O'CONNOR: Yeah.
25 MR. CAMIEL: Yeah. We'll finish -- and it

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1 MR. WELLENSTEIN: Officer --
2 MS. PLUBELL: From Louisiana.
3 MR. WELLENSTEIN: From Louisiana.
4 CHAIRWOMAN O'CONNOR: We will take people out
5 of order as time becomes an issue. We said that. And so
6 we don't intend to mess up -- we don't intend to have
7 people leave without testifying. And so as that becomes
8 an issue, you can tell us.
9 MS. PLUBELL: The only other thing is that I
10 think the Board's aware that Mr. Racicot had kind of a
11 terrible day yesterday.
12 CHAIRWOMAN O'CONNOR: I was just told, yes.
13 So he will be here when?
14 MS. PLUBELL: Well, he's going to -- if things
15 go how they're supposed to, he should be here maybe by
16 two-thirty.
17 CHAIRWOMAN O'CONNOR: Well, it's hard to get
18 lost from Minneapolis to here. It's easy to get lost on
19 the way to Minneapolis, but --
20 MS. PLUBELL: Yeah, yeah. I can't guarantee
21 how he'll look because they lost his luggage, too. But
22 he's doing all --
23 CHAIRWOMAN O'CONNOR: I'm sure he'll look
24 fine.
25 MS. PLUBELL: -- he can to get here as quickly

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1 will be very short with Mr. Mahlum, then Carl Four Star,
2 Judy Grayhawk, Ron Kemp, Glenna Lockman, Maria Decker,
3 Marie Jansen, Barbara Salinda, and Barry Beach. And we
4 have to fit Mr. Racicot in when he arrives.
5 CHAIRWOMAN O'CONNOR: Who is Barbara Salinda?
6 MR. CAMIEL: That's Mr. Beach's sister,
7 Barbara Beach.
8 MR. WELLENSTEIN: Peter, excuse me, what was
9 that? Marie Jansen --
10 CHAIRWOMAN O'CONNOR: Go through your order
11 again, would you, please?
12 MR. CAMIEL: Sure.
13 CHAIRWOMAN O'CONNOR: Slowly. I'm hearing
14 slow today.
15 MR. CAMIEL: We'll finish with Mr. Mahlum --
16 CHAIRWOMAN O'CONNOR: Right.
17 MR. CAMIEL: -- Carl Four Star --
18 CHAIRWOMAN O'CONNOR: Right.
19 MR. CAMIEL: -- Judy Grayhawk, Ron Kemp,
20 Glenna Lockman, Maria Decker, Marie Jansen, Barbara
21 Salinda, Barry Beach, and Mr. Racicot.
22 CHAIRWOMAN O'CONNOR: All right. You may call
23 Mr. Mahlum back.
24 MR. CAMIEL: Madame Chairman, if I can hand up
25 a document - I'm going to be referring to it - so we can

4 (Pages 463 to 466)

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1 save time.

2 CHAIRWOMAN O'CONNOR: Good morning,
3 Mr. Mahlum. Thank you for returning. I will remind you
4 that you're still sworn.

5 THE WITNESS: Yes, ma'am.

6 CHAIRWOMAN O'CONNOR: You may continue.

7 MR. CAMIEL: Thank you.

8 DIRECT EXAMINATION (Continuing)

9 BY MR. CAMIEL:

10 **Q. Mr. Mahlum, January of 1983, at the time that**
11 **you got the calls from the Louisiana detectives, you had**
12 **been in office about a week as sheriff?**

13 A. As sheriff, yes, that's correct.

14 **Q. After you got the confession, you went about**
15 **— you basically put together kind of a to-do list to try**
16 **to corroborate information in the confession; isn't that**
17 **true?**

18 A. That would be a normal part of an
19 investigation, yes, to tie ends or try to tie together
20 that, yes.

21 **Q. You wanted to take information that was in the**
22 **confession and see if you could find corroboration for**
23 **specific things in the confession to show the reliability**
24 **of the confession?**

25 A. Not specifically to the confession, even

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1 though, obviously, we would be working with that. It was
2 more whether there were other people, other information
3 that we could get that would, again -- and I'll use the
4 term "flush out our investigation" or what we would be
5 taking to the prosecutor with.

6 We would not necessarily take one thing in the
7 confession and say, "Okay, we need to look into this,"
8 though we did do that with some of the things. A point
9 such as clothing being burned in a railcar: We attempted
10 to locate or see if there had been cars parked down there,
11 those types of things.

12 **Q. And there's a piece of paper sitting in front**
13 **of you. Those are your notes of some things that you**
14 **jotted down after you had learned about Mr. Beach's**
15 **confession?**

16 MR. WELLENSTEIN: Excuse me, Madame Chairman,
17 can we see a copy of that document?

18 MR. CAMIEL: Sure. I thought you had a copy.

19 MR. WELLENSTEIN: Thanks, Peter.

20 CHAIRWOMAN O'CONNOR: You have this in your
21 file, I presume. Right?

22 MR. CAMIEL: Yeah.

23 MS. PLUBELL: No.

24 MR. CAMIEL: We have a copy of the sheriff's
25 file.

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1 CHAIRWOMAN O'CONNOR: "No", or --

2 MS. PLUBELL: Oh, I'm sure we do, yeah.

3 CHAIRWOMAN O'CONNOR: Okay, please proceed.

4 **Q. (By Mr. Camiel) These are some of your notes,**
5 **Mr. Mahlum?**

6 A. This is my handwriting. At what point this
7 was I wrote this down, I don't know if it was after
8 January 1979 or if it was prior to that.

9 **Q. Okay. Well, one of the points there says**
10 **(quoted as read): "Check with BM" — or, excuse me, "BN**
11 **as to railcars."**

12 A. Yes.

13 **Q. So that would suggest that you heard in the**
14 **confession that Mr. Beach claimed he burned his clothes in**
15 **the railcar.**

16 A. Yes, that's pretty possible.

17 **Q. So this appears to be something that you wrote**
18 **after you learned about the confession?**

19 A. Probably.

20 **Q. And among the things that you determined you**
21 **wanted to do was to (quoted as read): "Interview Ted on**
22 **missing wrench."**

23 A. Correct.

24 **Q. Do you see that?**

25 A. Yes.

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1 **Q. And you're referring to Ted Nees?**

2 A. Yes.

3 **Q. Okay. I note that there's nothing in there on**
4 **the missing tire iron.**

5 A. No. It says "missing wrench".

6 **Q. Okay. You also — as you pointed out, you**
7 **wanted to check with Burlington Northern as to railroad**
8 **cars because you wanted to see if you could find out**
9 **whether there was a report or some documentation that**
10 **somebody had burned something in one of the railroad cars.**

11 A. Even to the effect of whether or not there had
12 been any cars on the sidings during that time frame.

13 **Q. And you weren't able to corroborate that**
14 **because they didn't keep the records that long?**

15 A. That's correct. Burlington Northern said --
16 told us that three years was the longest that any of those
17 types of records have been kept.

18 **Q. So this is one fact in Mr. Beach's confession**
19 **that you tried to confirm and you couldn't corroborate**
20 **either way because they just didn't have the records?**

21 A. That's correct. But it was also a common
22 practice that there were -- you know, most often, there
23 were cars parked on those sidings because of the elevators
24 and -- that were in Poplar at that time.

25 **Q. Right. But it would have been helpful, at**

5 (Pages 467 to 470)

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1 least in your mind, if you would have been able to -- if
2 there had been some report that in 1979, they had
3 discovered some -- something had been burned in one of
4 their railroad cars that was parked near the train bridge?

5 A. Absolutely. That's why we made the effort,
6 that if they would have -- could have provided information
7 that something had happened almost five years previous to
8 this, that would have been -- you know, helped our
9 investigation. And that's why we made the effort. And
10 additionally, we wanted to cover that base at the time of
11 trial, that we could say, "Yes, we made the effort to do
12 that, but that information was not available."

13 Q. And that's not something that you tried to do
14 before that confession because that wasn't something that
15 even occurred to you?

16 A. Correct.

17 Q. Okay. One of the other things on your list
18 was (quoted as read): "Check on recovering weapon and
19 keys."

20 And I take it what that refers to is the confession
21 says that the supposed weapons and keys had been thrown
22 into the river, right?

23 A. Correct.

24 Q. So you wanted to see if you could confirm
25 that?

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1 A. Certainly.

2 Q. It would have been very helpful if you went
3 back in the river, and in the area where the confession
4 says the keys and the weapon was thrown, you found them?

5 A. Certainly.

6 Q. But you weren't able to confirm that part of
7 the confession?

8 A. We did not locate any of those instruments or
9 those articles that we were interested in. But that was
10 not uncommon, either, with the amount of time, the
11 fluctuations in the river, and those types of things in
12 the bottom -- that that river had.

13 Q. But, again, it was another effort to try to
14 confirm --

15 A. Certainly.

16 Q. -- a particular fact --

17 A. Certainly.

18 Q. -- in the confession?

19 A. Certainly. And I think it was important that
20 was done for two reasons: It was done, one, to confirm
21 the confession; but also, in our minds, or -- we wanted to
22 be able -- obviously, you told people it was to confirm
23 it; but if there were discrepancies, we wanted to be able
24 to find that out, too.

25 Q. Okay. Well, in terms of a huge discrepancy,

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1 Mr. Beach said in a confession that he threw these things
2 into the river.

3 A. Correct.

4 Q. You didn't find them in the river?

5 A. Correct.

6 Q. That's a discrepancy, isn't it?

7 A. But it was also an explanation for why those
8 may have not been recovered in that river. They may still
9 be in that river.

10 Q. But after how many -- about two - three dives,
11 they haven't found them?

12 A. Two, I believe.

13 Q. Now, at the bottom of the page, you also list
14 some things that you believed needed to be cleared up; is
15 that right?

16 A. That's correct.

17 Q. And the first thing you list is the bloody
18 palm print.

19 A. Right.

20 Q. So even after Mr. Beach's confession, you
21 still felt that there was this unanswered question that
22 needed to be cleared up?

23 A. If there was any way that we could possibly do
24 that, correct.

25 Q. And, in fact, right from the initiation of the

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1 investigation in this case, you were particularly
2 interested in that bloody palm print, weren't you?

3 A. Absolutely.

4 Q. And, in fact, in letters requesting that
5 various people be compared, that was the exact language
6 that you used. You would write to the FBI (quoted as
7 read): "We would be particularly interested in the bloody
8 palm print recovered from the passenger door."

9 MS. PLUBELL: Madame Chairperson, for a point
10 of clarification, could we know what dates we're talking
11 about?

12 MR. CAMIEL: Sure: A letter written
13 December 4, 1980; another letter written January 21, 1980.
14 The exact language in both letters --

15 MS. PLUBELL: That was prior to the
16 confession?

17 CHAIRWOMAN O'CONNOR: And you have those
18 documents?

19 MS. PLUBELL: Yes.

20 CHAIRWOMAN O'CONNOR: I know, because I do,
21 and I've read them.

22 MS. PLUBELL: I just -- you know, to establish
23 pre-confession or post-confession.

24 CHAIRWOMAN O'CONNOR: Okay.

25 MR. CAMIEL: That's fine.

6 (Pages 471 to 474)

CHAIRWOMAN O'CONNOR: Proceed.

THE WITNESS: Madame Chair and Mr. Camiel, would it be possible -- because there were other people that were writing, also, letters and dealing with fingerprints, may I see those to -- I don't know if it was myself, or if it was - the ones you're talking about - FBI requests, or if it was --

Q. (By Mr. Camiel) Well, both of the ones that I'm looking at are -- were written by you, but I'll show them to you.

CHAIRWOMAN O'CONNOR: Before you give them to him, show them to the prosecutors.

THE WITNESS: Thank you. Yes, these are -- were authored by myself, these two.

Q. (By Mr. Camiel) And even after, after Mr. Beach's confession, you still sought to have the palm print compared, didn't you?

A. It was of interest to us. I don't specifically recall the time frame that there were known ink impressions that were submitted. There may have been, but I don't recall particular names of folks, people that would have been submitted.

Q. Now, you were still sheriff in November of 1983?

A. Yes.

Q. Do you recall the submission of the major -- now, let me start over.

Major case prints -- as opposed to just fingerprints, major case prints include palm prints; is that right?

A. That's correct.

Q. And for some people, you just had -- initially, you just had fingerprints?

A. Correct.

Q. And so you would go about trying to get their major case prints so you could compare their palm print to the bloody palm print?

A. Correct.

Q. Okay. And we talked yesterday about the fact that you wanted to make sure that you eliminated all of the police officers that were at the crime scene so that there wasn't the possibility that one of the officers left that print?

A. That would be normal procedure. But I think I also testified yesterday that I personally did not obtain those prints. And I don't know if everyone -- every officer's prints were submitted or not. I would have to -- Number 1, I wasn't there, so I wouldn't know particularly exactly who may or not have been there.

Q. Now, after Mr. Beach's confession, your office

sought to have the major case prints of Alfred Lizzotte, one of the tribal police officers, compared to the palm print; is that right?

And if you don't remember, I'll show you.

A. And I don't, Mr. Camiel. I'd have to look.

MR. CAMIEL: Let me show this to Counsel first.

MS. PLUBELL: I'm familiar with that one.

Thank you.

THE WITNESS: Yes, this was submitted by Undersheriff Wilson to the State ID Bureau in Montana; not to the FBI.

Q. (By Mr. Camiel) Right. And Mr. Lizzotte was eliminated. And you also were aware that the major case prints of a Ronald Eugene Bushman were submitted in April of 1983, about three months -- four months after the confession?

A. I have no particular, again, recall. I'd have to look at that particular document.

This document is a return from the FBI Latent Fingerprint Section addressed to myself as sheriff, but attention to Lieutenant Wilson. So with that, I'm assuming that Lieutenant Wilson had submitted those prints.

Q. So even after the, even after the, the

confession, you're still concerned about who that palm print belongs to?

A. We wanted to know if we could determine whose it was, yes.

Q. Still a mystery?

A. Yes.

Q. And even to this day, it's still a mystery.

A. I have no idea whose palm print that is, that's correct.

Q. Now, one of the things that you did as a part of the investigation is you went about hypnotizing people.

A. I believe we did. I did two -- that I recall, two of those sessions.

Q. Would you be surprised to hear that they're actually reports showing you did about four different witnesses?

A. That's possible. As I say, I recall, I believe, two, but I -- there may have been as many as four.

Q. Okay. And one of the other things you did was you even attempted to have a psychic assist in trying to solve this crime.

A. I believe Sheriff Carpenter did contact early on. And I can't recall the time frame, but early -- like possibly to 1980, that's correct, or '81. Excuse me, I do

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1 not remember the time frame.

2 **Q. You also contacted Sheriff Gene Girtson about**
3 **a psychic, didn't you?**

4 A. Possibly. If you have a document to that, if
5 I could look at it. I don't remember talking to Sheriff
6 Girtson.

7 CHAIRWOMAN O'CONNOR: Counsel, surely we're
8 not going to hear that because the psychic didn't say it
9 was Barry Beach, that it's either new evidence or a
10 defense somehow, are we?

11 MR. CAMIEL: Not from me.

12 CHAIRWOMAN O'CONNOR: Okay.

13 THE WITNESS: (Perusing document) -- yes, this
14 is a letter that I had signed with my last name on the
15 back page.

16 **Q. (By Mr. Camiel) Okay. And the reason that**
17 **you were seeking assistance in 1981 of a psychic is**
18 **because you didn't have any evidence, you didn't have any**
19 **solid suspect as to this homicide?**

20 A. That conversation I originally -- or
21 originated with a gentleman by the name of Mr. Ray
22 Warring, who I believe called me first, spoke with us
23 first, and then we went on to pursue that or see if there
24 was -- it was another lead or attempt we were making to
25 develop new information.

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1 MR. CAMIEL: That's all I have.

2 CROSS-EXAMINATION

3 BY MS. PLUBELL:

4 **Q. Just for the record, how do you pronounce your**
5 **last name?**

6 A. "Mahlum".

7 **Q. Mr. Mahlum, after Kim Nees's homicide, the**
8 **Poplar area was literally crawling with law enforcement**
9 **officers, wasn't it?**

10 A. Absolutely.

11 **Q. And your presence was pretty constant for a**
12 **number of weeks in the community, wasn't it?**

13 A. Yes.

14 **Q. And you encouraged people from the public to**
15 **share any information they had, didn't you?**

16 A. Certainly.

17 **Q. And a lot of people did that, didn't they?**

18 A. Correct.

19 **Q. And you followed up on all of those pieces of**
20 **information you got, didn't you?**

21 A. Yes, ma'am.

22 **Q. And, of course, you were highly motivated to**
23 **solve this case.**

24 A. Certainly.

25 **Q. Now, there were problems with the crime scene**

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1 **processing, wasn't there?**

2 A. Yes, ma'am.

3 **Q. And you were not involved in that, were you?**

4 A. I was not.

5 **Q. But regrettably, there were problems in the**
6 **evidence being preserved properly, wasn't there?**

7 A. That's correct.

8 **Q. And, in fact, there were problems with the**
9 **crime scene itself, wasn't there: The nature of the crime**
10 **scene itself --**

11 A. Certainly.

12 **Q. -- the location of the crime scene?**

13 A. Certainly.

14 **Q. And what was that problem?**

15 A. The greatest problem that we dealt with that
16 was because of the location being a rural, outside
17 location, an area that was a high-traffic area. In other
18 words, as I said, people would party there, they were --
19 there was always vehicles and people moving in and out of
20 that area. We had no idea -- I mean when you work a crime
21 scene, you take everything that's there. At the time
22 you're doing it, you have no idea what may pertain to your
23 investigation.

24 **Q. For example, there were beer cans at the crime**
25 **scene, weren't there?**

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1 A. Absolutely.

2 **Q. They may have had nothing to do with it.**

3 A. Absolutely.

4 **Q. There were fingerprints lifted from those beer**
5 **cans, weren't there?**

6 A. I believe there were, yes.

7 **Q. And none of those fingerprints were ever**
8 **identified, were they?**

9 A. No, they were not.

10 **Q. And the tire tracks at the crime scene had**
11 **limited evidentiary value because of the very nature of**
12 **the fact it was a common place that people went to,**
13 **correct?**

14 A. Absolutely. There was -- there's no way -- if
15 I might for just a moment with that: You may have a set
16 of tire tracks there, but you have no way of establishing
17 connectivity or a timeline. That becomes a problem: How
18 do you do that.

19 **Q. And the footprints were not properly**
20 **preserved. There were -- there are references to**
21 **footprints at the crime scene, correct?**

22 A. That's correct.

23 **Q. But they were not properly preserved in any**
24 **way, were they?**

25 A. No, they were not.

1 Q. As a result of that, you could not rely upon
 2 them for any evidentiary value, could you?
 3 A. No, there's no way of identifying it.
 4 Q. And, in fact, because they had no evidentiary
 5 value, you never took a foot plaster from Barry Beach, did
 6 you?
 7 A. I did not.
 8 Q. You didn't collect skin from him, either, did
 9 you?
 10 A. I did not.
 11 Q. Now, there was also talk of a towel. That
 12 towel, was that a bloody towel as we heard about in the
 13 paper, or was that a towel with blood on it?
 14 A. My recollection is it was a towel with blood
 15 on it.
 16 Q. And that towel was not at the crime scene, was
 17 it?
 18 A. No, ma'am. It was found a substantial
 19 distance from the actual scene of where Kim and her pickup
 20 were located.
 21 Q. And all of that blood at the crime scene was
 22 Kim Nees's blood, wasn't it? Nobody else's blood was ever
 23 found there, was it?
 24 A. Not that I'm aware of. It was all Kim's.
 25 Q. And Kim Nees's blood was not on that towel,

1 aware of the nature of Kim's injuries, injuries she
 2 sustained, correct?
 3 A. That's true.
 4 Q. And they were -- I think it was public
 5 knowledge that she had been bludgeoned or hit in the head,
 6 correct?
 7 A. Yes.
 8 Q. But it was not public knowledge that the
 9 injuries were confined to that part of her body, was there
 10 -- was it?
 11 A. No.
 12 Q. And have you ever, have you ever investigated
 13 a case where there's been a group, sort of, beating or
 14 killing?
 15 A. I have done two of those types of homicides
 16 and numerous felony or major assault cases where there
 17 have been more than one person or perpetrator involved,
 18 yes.
 19 Q. And when you do that kind of case, have you
 20 ever -- in those cases that you worked on, were the
 21 injuries confined to the upper part of the body?
 22 A. In every case that I've been involved with --
 23 and this is probably a poor analogy, but I will use it for
 24 the Board: We've all seen a dog fight. Two dogs start,
 25 there are more that are there, they all get involved, and

1 was it?
 2 A. No, ma'am.
 3 Q. And, in fact, are you aware of DNA testing
 4 that has been done prior to this hearing on that towel?
 5 A. Just recently, yes.
 6 Q. And that -- and the blood on that towel
 7 doesn't belong to a woman, does it?
 8 A. No, ma'am.
 9 Q. So it didn't belong to Sissy?
 10 A. Correct.
 11 Q. It didn't belong to Maude?
 12 A. Correct.
 13 Q. All right. Now, one of the things that was
 14 important to your investigation was the nature of Kim
 15 Nees's injuries, wasn't it?
 16 A. Absolutely.
 17 Q. You have investigated upwards of 50, or so,
 18 homicides, haven't you?
 19 A. Yes, that's correct.
 20 Q. This wasn't your first rodeo, was it?
 21 A. No, ma'am.
 22 Q. And, in fact, you were the lead investigator
 23 because of your experience, weren't you?
 24 A. That's true.
 25 Q. And you are aware of the nature -- you became

1 everybody is looking for a piece of the action wherever
 2 they can get it.
 3 You don't -- my experience is people don't stop and
 4 say, "I'm tired. You take this tool," or, "It's your turn
 5 to get somebody." You would have injuries to extremities;
 6 kicks; indications, you know, that --
 7 Q. Kim Nees --
 8 A. -- it was a mass kind of a thing.
 9 Q. Kim Nees didn't sustain any, according to the
 10 pathologist, kicking sort of injuries to her legs?
 11 A. No.
 12 Q. Or her head, for that matter?
 13 A. No.
 14 Q. And as long as we're talking about that, in
 15 Mr. Beach's confession, he refers to the fact that he
 16 choked Kim Nees. Do you think that when Mr. Beach used
 17 that term, he was thinking about -- I mean that was his
 18 use of the word, correct --
 19 A. Correct.
 20 Q. -- "choking"?
 21 A. (Nodding head affirmatively.)
 22 Q. "Choking" can mean a lot of things, can't it?
 23 A. Certainly. To me as an investigator, if
 24 someone says or if there's going to be physical evidence
 25 of choking, it's -- I mean it's an actual ligature type of

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1 a thing, there's bruising, there's those kinds of things.
2 If I'm restraining somebody, you know, instead of a
3 hold of their coat, or whatever, if I have them like this
4 - (gesturing) - you may not have deep bruising or bruising
5 that shows with it.

6 **Q. It's possible that you have someone like this,
7 isn't it?**

8 A. It could be.

9 **Q. And we don't know what that meant because,
10 frankly, the Louisiana officers didn't say, "Could you
11 tell us exactly what you mean by 'choking'?"**

12 A. That's true.

13 **Q. Barry Beach could never provide you with an
14 alibi, could he?**

15 A. No.

16 **Q. And that was one of the reasons he remained a
17 suspect, isn't it?**

18 A. True.

19 **Q. There were other reasons he remained a
20 suspect, too, wasn't there?**

21 A. Certainly.

22 **Q. Barry Beach had a pretty significant violent
23 outburst the day prior to the homicide, didn't he?**

24 A. Correct.

25 **Q. And you were aware of that close -- within a**

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1 A. We did.

2 **Q. And did he ever deny killing Kim Nees during
3 that interview?**

4 A. Never.

5 **Q. Did he ever deny killing Kim Nees to you?**

6 A. No.

7 **Q. Did that bother you?**

8 A. Absolutely. Again, it's my experience and my
9 training that -- when we interviewed Mr. Beach after the
10 polygraph examination -- and as a result of information
11 that had developed from that, as Counsel says, with
12 hotspots, a normal interview, you start broad-based, and
13 you work down to those specific pointed questions.

14 Barry's nature -- historically in my dealings, this
15 is not the first time - and not just in relation to this
16 case - that I had talked with him. He was somewhat
17 boisterous, you know, very "outgoing". I guess I would
18 use that term. As we begin to draw those questions down
19 and begin to ask specific questions about the homicide,
20 and when we asked him specifically, "Did you kill Kim
21 Nees?" his demeanor as he was sitting -- I mean he had
22 been sitting up talking as we are now. His head went
23 down, slumped more down. (We received answers like, "I
24 don't think I could have done that," "I don't remember."
25 But he never emphatically -- or even said, "I did not kill

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1 few days after --

2 A. Yes.

3 **Q. -- Kim Nees's homicide, weren't you?
4 And that was important information to you, wasn't
5 it?**

6 A. Certainly, certainly.

7 **Q. Now, with respect to -- I'm sorry, just a
8 second here.**

9 **By the way, with respect to the law enforcement
10 being present in the community, people like -- well, you
11 know, you're familiar with who the witnesses are here that
12 Mr. Beach is calling, right?**

13 A. Correct.

14 **Q. Did those people come forward to you with
15 information?**

16 A. No.

17 **Q. Your first real interview with Barry Beach was
18 in 1980, right?**

19 A. Yes.

20 **Q. And he agreed to take a polygraph, correct?**

21 A. That's correct.

22 **Q. And he had some hotspots on the polygraph?**

23 A. Correct.

24 **Q. And you and Bob West interviewed him after the
25 polygraph, didn't you?**

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1 Kim Nees"; it was those kinds of answers.

2 **Q. And, Mr. Mahlum, in Barry Beach's confession,
3 does he talk about the fact that after he arrived home, he
4 went to his room and began trying to convince himself that
5 he didn't kill Kim Nees?**

6 A. He does.

7 **Q. Barry Beach claims that Richard Leo -- to
8 Richard Leo that every time you ever talked with him, you
9 always assured him that you knew that he didn't do it.**

10 A. I didn't do it. There was no reason to
11 because, in my mind, he remained a strong person of
12 interest.

13 **Q. You didn't write a letter to the Navy to get
14 him discharged from the Navy, did you?**

15 A. I did not.

16 **Q. Are you aware he made that allegation against
17 you?**

18 A. In that report from Mr. Leo, yes.

19 **Q. And Mr. Beach himself never came forward with
20 any information to law enforcement, did he?**

21 A. Not that I recall.

22 **Q. He didn't come forward with any information
23 about Sissy, about Maude, about Joanne Jackson --**

24 A. Not --

25 **Q. -- about the Red Dog sisters --**

1 A. No.

2 **Q. -- Jordis Ferguson?**

3 **And he never told you about a conversation that he**
4 **claims he was present, a conversation that occurred**
5 **between Joanne Jackson and Caleb Gorneau, did he?**

6 A. Not that I recall with me myself specifically.
7 I have no recollection of that.

8 **Q. And you're aware of that conversation now,**
9 **aren't you, because of his --**

10 A. Yes, yes.

11 **Q. And that was with respect to seeing them with**
12 **the car keys?**

13 A. I believe so, yes.

14 **Q. With respect to the hammer that was found in**
15 **the river that Mr. Camiel talked about yesterday, can you**
16 **describe that hammer?**

17 A. The hammer that was located by the divers was
18 a -- what I will describe as a framing type claw hammer; a
19 wooden handle, you know, the larger normal head type on
20 it. It was not, as Mr. Camiel and as that report refers
21 to, some type of a light hammer. I guess, to me, that
22 would be, you know, a tacking type of a hammer. It was
23 not that type; it was a normal hammer that you probably
24 all have in your homes that -- a framing type hammer.

25 **Q. And, in fact, you submitted that for**

1 **Dr. Pfaff's examination, didn't you?**

2 A. I believe we did.

3 **Q. And he determined that that was not the weapon**
4 **used to inflict Kim Nees's injuries, correct?**

5 A. Correct.

6 **Q. Now, you submitted a letter, a detailed letter**
7 **to the Board, didn't you --**

8 A. I did.

9 **Q. -- after you read Barry Beach's application?**
10 **And in that letter, you have indicated the ways, all**
11 **of the ways in which you believe that Beach's confession**
12 **is corroborated, haven't you?**

13 A. I did.

14 **Q. And some of the -- I'm not going to go into it**
15 **because the Board has it, frankly, and we're running out**
16 **of time. But would you urge the Board to consider those**
17 **things that you wrote in that letter?**

18 A. I would, very much so. And there are
19 particular interest -- areas of interest that I tried to
20 highlight in there, things of how Kim was lying, Barry's
21 response to that; the fact where he talks about being to
22 the passenger side of the vehicle, you know, that he had
23 moved there and tackled -- the first part of the
24 information in those 29 or 30 points, whatever it is,
25 corroborate exactly and in greater detail than what Caleb

1 Gorneau and Shannon O'Brien had provided to us early on in
2 the information. It falls with that, very detailed as far
3 as the information that was supplied.

4 So I would ask that you, please - and I know that
5 you will - look at that very closely, because I felt it
6 was very, very important. It is very important.

7 **Q. And would you encourage anybody else to read**
8 **that document if they feel they need to do so?**

9 A. Absolutely.

10 **Q. Now, yesterday --**

11 A. Ma'am, if I could make one more point with
12 that report. Ladies and gentlemen, if -- and I don't
13 remember the point number, but one thing that was very
14 explicit to me in my training and in my experience: When
15 Barry talks about that point in time in his confession
16 that everything had been "her", "Kim", "she". There was
17 one point in there - and I made reference to that and I
18 highlighted it - where he uses the term "it", and drug
19 "it" to the river.

20 It's the only place -- and he disassociates and
21 desensitizes himself from the body, from the victim. And
22 I think if -- in my experience and my training, that is a
23 huge point. If I'm giving information to you that I'm not
24 personally involved in it and I have no emotional
25 connection to that, that's not a term I'm going to use.

1 And I'm not going to do that; I'm going to -- there's no
2 reason for me to change at that point in time. I'm going
3 to continue with "her" or "she" or "Kim", or whatever.
4 But that's personal emotion involvement to -- again, as
5 I've stated, in my experience and my training, those were
6 key points.

7 **Q. Now, Mr. Mahlum, yesterday Mr. Camiel asked a**
8 **little bit indicating that there was no forensic evidence**
9 **-- or he took you to task about some of your theories,**
10 **correct?**

11 A. Correct.

12 **Q. And there's always theories about what happens**
13 **after a crime has occurred, correct?**

14 A. Certainly.

15 **Q. Sometimes your theories work out to be right**
16 **and sometimes they don't, correct?**

17 A. Certainly.

18 **Q. And have you worked on a confession where**
19 **(someone got everything absolutely right?)**

20 A. No. In fact, that would be -- to me, I would
21 be more concerned if I had every point, because people
22 don't remember that way.

23 **Q. And the truth of the matter is, is that**
24 **there's absolutely no forensic evidence to support even**
25 **Centurion Ministries' theories --**

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1 A. There is not.
 2 **Q. -- is there?**
 3 A. No.
 4 **Q. And none of the women who they have accused --**
 5 **and it's changed. I mean there's always -- it seems that**
 6 **Sissy and Maude always appear there, and the others kind**
 7 **of float in and out. But none of those women have ever**
 8 **come forward and given a detailed confession to a crime,**
 9 **have they?**
 10 A. No, ma'am, quite the opposite.
 11 **Q. And further, there's plenty to contradict**
 12 **those theories, aren't there?**
 13 A. True.
 14 MS. PLUBELL: No further questions.
 15 REDIRECT EXAMINATION
 16 BY MR. CAMIEL:
 17 **Q. Mr. Mahlum - and I apologize for**
 18 **mispronouncing your name - initially after the homicide,**
 19 **the belief was that there were, there were people out**
 20 **there, there were witnesses in the community who knew what**
 21 **happened down there at the park to Kim Nees?**
 22 A. Would you restate that, Mr. Camiel? I'm not
 23 sure that I'm following your question.
 24 **Q. It was law enforcement's belief that there**
 25 **were people down in the park at the time that the murder**

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1 wasn't involved in that conversation."
 2 So it was not only alone to develop or try and find
 3 out if there had been people in that park. That was part
 4 of it, yes, obviously, in our investigation, but it was
 5 much broader than that.
 6 **Q. You were asked some questions about the crime**
 7 **scene and specifically about the footprints. The**
 8 **footprints were photographed, weren't they?**
 9 A. They were.
 10 **Q. And they were photographed with some kind of a**
 11 **measure next to at least one of the footprints to**
 12 **demonstrate the size of the footprint?**
 13 A. There was in one of the photographs, I
 14 believe, a ruler or tape measure, or something, that was
 15 in that.
 16 **Q. In addition, in your to-do list that I was**
 17 **asking you about earlier, you -- one of the things that**
 18 **you indicated post-confession that you needed to clear up**
 19 **was (quoted as read): "Two sets of footprints at scene."**
 20 A. Correct.
 21 **Q. And the reason you needed to clear them up was**
 22 **you believed that they may have belonged to -- and these**
 23 **are two different sets of footprints, not the same?**
 24 A. Correct.
 25 **Q. Different types of shoes, right?**

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1 **took place that knew what happened?**
 2 A. No. We felt that there -- as you would in a
 3 normal homicide investigation or any investigation, you go
 4 out and attempt to locate or develop: Are there people
 5 that may have been witnesses, may have knowledge, may have
 6 talked to someone.
 7 But as far as law enforcement specifically thinking
 8 or saying there was someone there in the park, that had
 9 not happened. Was it possible that someone had been in
 10 that park or -- you know, in some time frame? Yes, it was
 11 possible. And we pursued that.
 12 **Q. And the reason that the, that the sheriff's**
 13 **office actually released crime scene photos to go up in a**
 14 **public display was to try to get people to come forward**
 15 **who had been down there.**
 16 A. That may have had some time frame that they
 17 had been in that park, again, as I said, prior to, after,
 18 during, whatever it might have been; but also: Had
 19 someone talked to someone? Had they heard a rumor?
 20 And those -- that information did come to us after
 21 that, that we would receive a call or some information
 22 that so-and-so has heard this.
 23 You would pursue it. You would go to two or three
 24 people, and the person that was supposed to be the
 25 originator would tell you, "I've never said that. I

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1 A. Correct.
 2 **Q. Okay. The reason you needed to clear these up**
 3 **was that the way that those footprints were positioned**
 4 **suggested that the people who left those footprints had**
 5 **been involved with the truck and with the homicide?**
 6 A. The only information, Mr. Camiel, that I have
 7 of the footprints is from the photographs. I've also seen
 8 a crime scene diagram that was drawn by Robert Murray, who
 9 at that time was a special deputy and had previously been
 10 the chief of police in Poplar. But I did not, again,
 11 personally see, so I can't -- and that was one of the
 12 problems with the photographs: There was no way to put
 13 them in relation to where -- as I looked at them, in
 14 relation to where the truck was, those types of things.
 15 **Q. Now, you were asked about whether or not Barry**
 16 **Beach had an alibi. Now, Barry Beach maintained that that**
 17 **afternoon, he went home and he went up to bed; isn't that**
 18 **right?**
 19 A. That's correct.
 20 **Q. Okay. In the January 1980 polygraph, the**
 21 **subject of that polygraph given to Barry Beach was whether**
 22 **or not he killed Kim Nees.**
 23 A. Ultimately, yes, (that's what we were looking
 24 for.
 25 **Q. That was one of the key questions in the**

12 (Pages 495 to 498)

1 polygraph, right?

2 A. Yes.

3 Q. And he -- when he was asked that question, he
4 answered "no"?

5 A. I have no idea. I wasn't in the room when he
6 took the polygraph.

7 Q. **All right. Well, presumably, if he answered**
8 **"yes", that would have been an admission that would have**
9 **been used against him, and that was never the case. So we**
10 **can assume, can't we, that he's being asked about whether**
11 **he killed Kim Nees? He must have answered "no";**
12 **otherwise, you would have heard about it.**

13 A. Mr. Camiel, you're asking me, again, to assume
14 or -- perhaps Lieutenant West or Bob West should be
15 sitting here, and you should be asking him those
16 questions. Bob West did not come up to me and say, "Barry
17 Beach said, 'Yes, I killed her.'"

18 Q. Okay.

19 A. He didn't come out to me and say, "No, he said
20 he" -- "no", he did not kill her."

21 Q. **Well, in a polygraph exam, usually the**
22 **questions are framed so that you have to answer them**
23 **either "yes" or "no"; isn't that true?**

24 A. I've never sat through and never been involved
25 in a polygraph.

1 out of this -- if we could, out of this investigation.

2 Q. **All right. Now, you told Sheriff Mahlum --**

3 A. I am Sheriff Mahlum, so I didn't tell myself.

4 Q. **I'm sorry.**

5 A. "Was" Sheriff Mahlum, excuse me.

6 Q. **You were, I apologize. You told Sergeant Via**
7 **that the results of that polygraph were inconclusive but**
8 **he didn't hit on actually doing it?**

9 A. In that first conversation, yes.

10 Q. **Okay. You were asked about your experience**
11 **with confessions where somebody got every single detail**
12 **correct, and you said you've never had that experience.**

13 A. Not that I can recall.

14 Q. **Have you had the experience where you had**
15 **absolutely no physical or forensic evidence or eyewitness**
16 **evidence to corroborate a confession?**

17 A. Physical evidence, I would say probably "yes".

18 Again, I can't specifically cite a case for you, but
19 probably that, that's -- is true, a true statement.

20 Q. **But you have had --**

21 A. Yes, sir.

22 Q. **-- where there's no physical --**

23 A. There's been some, yes.

24 Q. **And in some of those cases, even though you**
25 **didn't have physical evidence, you had some eyewitness**

1 Q. **Come on, Sheriff, you've seen questions that**
2 **have been asked on polygraphs before. You've been in law**
3 **enforcement a long time.**

4 A. Yes, I have.

5 Q. **Okay. And you know that most generally, the**
6 **questions have to be framed either "yes" or "no" to have a**
7 **valid polygraph.**

8 A. Again, I have not personally sat in on one.
9 If you've been there and you're telling me that, I guess I
10 would assume that that's correct, but I have not.

11 Q. **You asked Mr. West to focus on the Kim Nees**
12 **homicide. That was the subject that you asked him to**
13 **focus on with this polygraph with Mr. Beach?**

14 A. Certainly.

15 Q. **And to focus on whether Mr. Beach either did**
16 **it or had knowledge about it?**

17 A. That would be the ultimate goal that we were
18 looking for on it. Now, whether or not I said "focus to
19 whether he did it" or how he was going to establish the
20 questions that he wanted to ask, obviously I'm not going
21 to be able to sit there and tell this polygraph examiner
22 how he's going to conduct his test.

23 Q. **Well, what was the purpose of giving Mr. Beach**
24 **the polygraph, then?**

25 A. Obviously, to either rule him in or rule him

1 **evidence to corroborate the confession?**

2 A. Probably.

3 Q. **In this case, Barry Beach's case, you've got**
4 **no eyewitness testimony to corroborate the confession and**
5 **you've got no physical evidence to corroborate the**
6 **confession; isn't that true?**

7 A. The strongest evidence we have is of the
8 person who was at that crime scene, at that homicide,
9 (Barry Beach's confession.)

10 Q. **In fact, that's all you have, right?**

11 A. Yes.

12 MR. CAMIEL: Nothing further.
13 RE-CROSS-EXAMINATION
14 BY MS. PLUBELL:

15 Q. **Mr. Mahlum, it isn't really all you have, is**
16 **it?**

17 A. That's true.

18 Q. **Because you have the crime scene itself, don't**
19 **you?**

20 A. Yes.

21 Q. **And the crime scene itself actually**
22 **corroborated Barry Beach's confession?**

23 A. Correct.

24 Q. **He knew where the crime scene was and --**

25 A. Correct.

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1 Q. And, you know, that was the area of the train
2 bridge where kids went down to party, right?

3 A. (Nodding head affirmatively.)

4 Q. And the route that he told you to take home,
5 that he took -- not that he told "you", but he told
6 Sergeant Via he took home after, that confession, that was
7 very detailed, wasn't it?

8 A. Yes.

9 Q. And it was very accurate, and it was a way he
10 could get home without being detected, wasn't it?

11 A. Sure.

12 Q. And with respect to that, the railroad cars,
13 you really did corroborate that part of the confession,
14 didn't you, because there were cars that were at the
15 location where he said he burned his clothes?

16 A. During that time frame, yes. *No BN Records*

17 Q. And you didn't have any control over the fact
18 that Burlington Northern destroyed their records, correct?

19 A. Correct.

20 Q. And the pathologist report provides
21 corroborating evidence, doesn't it?

22 A. True.

23 Q. Because her injuries are consistent with what
24 Barry Beach reported, correct?

25 A. True.

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1 they had contacted the Poplar law enforcement --

2 THE WITNESS: At the time.

3 MR. CURTISS: -- in that area. Do you have an
4 explanation for that?

5 I realize there's tribal police, there's city
6 police, there's the sheriff, and there's federal agents,
7 all of these, and BIA, federal, all of this concerned.
8 I've never experienced this in my law enforcement
9 background that there's been this kind of discord.

10 Do you have any answer to that?

11 THE WITNESS: Certainly.

12 MR. CURTISS: I don't mean to get into long
13 detail.

14 THE WITNESS: And I'll be as brief as I can
15 with that, in my response to that.

16 MR. CURTISS: Sure.

17 THE WITNESS: In the time frame - and I won't
18 hit this exactly right - but from probably 1978 to the
19 early 1980s, we had over 15 or 16 homicides in Roosevelt
20 County, the Poplar/Brockton area. We always had
21 information -- we had a good working relationship, both
22 Undersheriff Carpenter, myself, Sheriff Grainger who
23 replaced me. People would come forward, they would talk
24 with us.

25 That didn't happen in this case. And I

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1 Q. Including trying to --

2 A. Defense wounds --

3 Q. -- defend herself, correct?

4 A. -- those types of things.

5 Q. And Barry Beach never, ever testified at trial
6 that he was at home sleeping, did he?

7 A. He did not.

8 Q. In fact, nobody testified to that at trial,
9 did they?

10 A. Not that I recall.

11 Q. And one point of clarification: According to
12 the trial record, there actually was not two sets of
13 footprints, was there? There were three footprints.

14 A. I believe that's the correct number, yes.

15 MS. PLUBELL: Thank you. No further
16 questions.

17 MR. CURTISS: I have a question, sir.

18 THE WITNESS: Yes, sir.

19 MR. CURTISS: I've been listening to all of
20 these witnesses. And I have a concern here, primarily a
21 concern that there seems to be almost a total lack of
22 cooperation between the citizenry and the law enforcement
23 in Roosevelt County. It just -- and I'm saying this --
24 people coming forth years later and giving testimony on
25 things that would have been very beneficial, perhaps, if

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1 contribute that -- was that people didn't know at that
2 time. There was rumor, there was innuendo, people would
3 bring those kinds of -- they would start talking, it would
4 be heard two or three or four times. By then, it was
5 fact. We would hear it, we would try to run that down,
6 you couldn't substantiate it.

7 And to me, that was another indicator that we
8 were not dealing with a group of people. Because, as you
9 said, from law enforcement experience, every time you add
10 a player to a crime scene, the chances of solving that --
11 or to a crime become greater. And we banged our head, if
12 I can use that analogy, on trying to develop those kinds
13 of people.

14 It wasn't that we didn't try and it wasn't
15 that there were a lot of -- people came forward with
16 information or brought information to us. They may not be
17 sitting here today because it wasn't substantiated. We
18 couldn't run that down to the conclusion that was
19 beneficial to the investigation, sir, but there were folks
20 that came forward.

21 And all those homicides resulted in arrests
22 and convictions that I spoke about in -- you know, that
23 number during that time frame. And quite honestly, that
24 would not have happened if we wouldn't have had that
25 involvement from those people.

14 (Pages 503 to 506)

1 MR. CURTISS: Thank you.
2 MS. BOWMAN: I just had one question, and I
3 just wanted it clarified: The palm print that was on the
4 side of the truck, was that Kim Nees's blood? Was that
5 determined that that was her blood?

6 THE WITNESS: Ma'am, I believe it was, but I
7 -- that's the best recollection without -- but it was not
8 -- yes, it was in her blood, because there was no other
9 blood that was found at the scene --

10 MS. BOWMAN: Okay.

11 THE WITNESS: -- or was determined to be at
12 the scene.

13 CHAIRWOMAN O'CONNOR: I don't understand the
14 distinction you made between "a towel with blood on it"
15 and a "bloody towel". If that's significant, it's lost to
16 me. What do you mean?

17 THE WITNESS: I guess the question, and by
18 definition --

19 CHAIRWOMAN O'CONNOR: You just said "yes", I
20 know, but --

21 THE WITNESS: Okay. A bloody towel, ma'am, to
22 me, would be something that would be soaked or covered in
23 blood.

24 CHAIRWOMAN O'CONNOR: Okay.

25 THE WITNESS: As I was describing -- or my

1 truck were found.

2 CHAIRWOMAN O'CONNOR: And that was found when?
3 The day of the homicide?

4 THE WITNESS: I believe the day that her body
5 was found, yes, ma'am.

6 CHAIRWOMAN O'CONNOR: Okay. Now, on the
7 fingerprints, do you -- I heard about the beer cans. Lots
8 of people are here, they throw lots of beer cans, all
9 that. So these beer cans either did or didn't have to do
10 with the murder.

11 What about the footprints? There were
12 footprints there. Are they in that same category with the
13 beer cans? They either did or didn't have to do with the
14 murder? I mean is there blood tracked in them? Is there
15 something that makes us think they had to do with this
16 murder?

17 THE WITNESS: Excuse me. There is -- as I
18 testified to Mr. Camiel's question, there was nothing --
19 in looking at the photographs, again, remembering that I
20 wasn't there --

21 CHAIRWOMAN O'CONNOR: Right.

22 THE WITNESS: -- personally to look at them,
23 there's nothing that I can tie those to the truck, to the
24 body. They were in the general area that the body was
25 found. You come in a trail, and there's a turnaround down

1 understanding of what I remember of that towel was, yes,
2 there was blood on it, but it was not just soaked like
3 there was blood on the floor and you're trying to keep it
4 -- so maybe I'm not answering that to your satisfaction.

5 CHAIRWOMAN O'CONNOR: So it was not all that
6 bloody? Is that what you're telling me?

7 THE WITNESS: That would be basically -- yes,
8 there was blood on the towel, but it was not completely
9 soaked or covered in blood.

10 CHAIRWOMAN O'CONNOR: Okay. And we know it
11 was a man's blood? Is that what you're telling me?

12 THE WITNESS: I believe the report -- well,
13 which would be a logical conclusion because it was not --

14 CHAIRWOMAN O'CONNOR: It was not a woman's
15 blood? Presumably, it's either a man's or woman's blood.

16 THE WITNESS: Yes, ma'am.

17 CHAIRWOMAN O'CONNOR: Okay. And where was it?

18 THE WITNESS: It was located where Kim's truck
19 was found. You go east across a small flat. There's
20 what's called the "bluff" --

21 CHAIRWOMAN O'CONNOR: Right.

22 THE WITNESS: -- up to the city limits of
23 Poplar, and then probably two blocks into Poplar. So I
24 haven't measured it, but I would say it was probably close
25 to a half-mile from the actual scene where her body and

bridge is only 1/4 mile

1 in the area by the train bridge.

2 CHAIRWOMAN O'CONNOR: Right.

3 THE WITNESS: And then there's another road
4 that runs out another way back to the highway, and there
5 are a lot of trails and little roads that ran around in
6 that area. Folks swam off the train bridge, they jumped
7 off of that. You know, so it was basically a high-traffic
8 area.

9 CHAIRWOMAN O'CONNOR: And when they were
10 swimming, they were barefoot?

11 THE WITNESS: Absolutely.

12 CHAIRWOMAN O'CONNOR: So is there any reason
13 to think that these -- but not all of these footprints
14 were bare footprints. There was just one with a big foot
15 that is barefoot.

16 THE WITNESS: Yes, ma'am.

17 CHAIRWOMAN O'CONNOR: Were the others
18 barefoot?

19 THE WITNESS: I believe it was one bare
20 footprint --

21 CHAIRWOMAN O'CONNOR: Right.

22 THE WITNESS: -- and two that had -- that were
23 shoes, shoe prints.

24 CHAIRWOMAN O'CONNOR: Okay. So you have one
25 bare footprint and two shoe prints or two groups of shoe

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1 prints --

2 THE WITNESS: Yes.

3 CHAIRWOMAN O'CONNOR: -- whichever way. I

4 kind of thought it was more than just three, but --

5 THE WITNESS: I think it was just --

6 CHAIRWOMAN O'CONNOR: You may be right. But
7 either way, however many there were, you have no reason to
8 connect them with the murder analogous to the way you have
9 no way to connect the beer cans to the murder; is that
10 right?11 THE WITNESS: That's true. We have nothing
12 that says these were part of this crime scene. In any
13 investigation, you collect -- I've been on my hands and
14 knees in parking lots collecting cigarette butts to
15 take --

16 CHAIRWOMAN O'CONNOR: Right.

17 THE WITNESS: Because you don't know at that
18 point in time --

19 CHAIRWOMAN O'CONNOR: Right.

20 THE WITNESS: -- what may be pertinent to your
21 investigation.

22 CHAIRWOMAN O'CONNOR: Okay.

23 THE WITNESS: But there was nothing in my mind
24 that I can rule in or rule out with the footprints.

25 CHAIRWOMAN O'CONNOR: Okay. Then we heard

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1 "Mr. Holen said that he exited the bar and
2 watched the fight between John Bruster and Alex Trottier.
3 He helped Alex Trottier up, and he went home."

4 So, I don't know. All I can tell you --

5 CHAIRWOMAN O'CONNOR: Okay, I want you to tell
6 me that again. So you were -- I mean you were examined
7 about every single law enforcement note yesterday, so I
8 want to hear about this law enforcement note again. This
9 law enforcement note is taken by a law enforcement
10 officer --

11 THE WITNESS: Yes, Mr. Murray.

12 CHAIRWOMAN O'CONNOR: Mr. Murray, okay. And
13 Mr. Murray did, after the fact, speak with Mr. Holen after
14 the fact that Mr. Holen -- I forget who Mr. Holen said he
15 reported it to.

16 THE WITNESS: I believe Mr. Grayhawk.

17 CHAIRWOMAN O'CONNOR: Okay, I think that's
18 right. So Mr. Holen speaks to Mr. Grayhawk. And after
19 that report, Mr. Murray talks to Mr. Holen?

20 THE WITNESS: That would have been prior.

21 CHAIRWOMAN O'CONNOR: Okay.

22 THE WITNESS: In my understanding of the
23 sequence of events: On Sunday -- and I don't have a
24 calendar, so I wish --

25 CHAIRWOMAN O'CONNOR: Sunday after the 16th.

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1 witnesses yesterday, Mr. O'Connor and Mr. Holen. I
2 understand Mr. O'Connor didn't come forward with his
3 information about an early phone call, but I understand
4 that Mr. Holen did come forward and told a law enforcement
5 agent that he had seen this truck with the many girls in
6 it. He identified them.7 Why with all this tracking down that you did -
8 and I believe you did - why didn't you track that down?
9 Why didn't you go back to him?10 THE WITNESS: I never received that
11 information until this process was started -- was the
12 first time that I was aware of that.13 CHAIRWOMAN O'CONNOR: "This process" meaning
14 the Parole Board?15 THE WITNESS: Yes, ma'am, when I started
16 looking at some of this information and reviewing it
17 20-some years later. I also know, in going back through,
18 that Sheriff Carpenter assigned -- I mentioned Mr. Murray
19 talked with people because we were trying to, at that
20 point in time, develop Greg Norgaard's time frame where he
21 was at, that he talked with people at the American Legion
22 Club. There had been a dance there that night.23 And Mr. Murray is deceased now, but in his
24 writing in there, there is just a short note. He talked
25 to Mr. Holen (quoted as read):

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1 THE WITNESS: I believe it was the 17th --

2 CHAIRWOMAN O'CONNOR: Yeah, okay.

3 THE WITNESS: -- or the 18th. Sheriff
4 Carpenter had -- Mr. Murray and, I believe, Deputy
5 Brockmeyer began trying to talk with people that were at
6 the, at the --

7 CHAIRWOMAN O'CONNOR: Legion.

8 THE WITNESS: -- American Legion Club. There
9 are field notes in that sheriff's file that are in
10 Mr. Murray's handwriting. They're not signed; they're
11 just rough field notes. There is Richard Holen's name,
12 there are several names in there of people he talked to.
13 They were trying to determine who was at the bar, those
14 types of things. Under the notation to Mr. Holen, it
15 speaks about that he had witnessed this -- had left the
16 bar, had witnessed this fight, and went home. And I would
17 assume that that information is in the --18 MS. PLUBELL: Madame Chairperson, just for the
19 Board's convenience, it's State's Exhibit 51 attached to
20 their response.21 CHAIRWOMAN O'CONNOR: Thank you. Okay, so by
22 your understanding, this conversation between Murray and
23 Mr. Holen would have taken place before the time described
24 by Mr. Holen when he spoke to Mr. Grayhawk.

25 THE WITNESS: I know that it was on either the

16 (Pages 511 to 514)

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1 17th or 19th, ma'am. I'm not sure when he stated that he
2 talked to Mr. Grayhawk, but I believe it was prior to
3 that. But, again, I don't know that for sure.

4 CHAIRWOMAN O'CONNOR: You believe that
5 Mr. Murray's conversation was prior to Holen's --

6 THE WITNESS: Yes, ma'am.

7 CHAIRWOMAN O'CONNOR: -- with Mr. Grayhawk,
8 okay.

9 Does that cause more questions?

10 MR. CAMIEL: A few more.

11 CHAIRWOMAN O'CONNOR: I'm holding you to "a
12 few". I don't want you --

13 MR. CAMIEL: Three, three areas.

14 CHAIRWOMAN O'CONNOR: Three.

15 REDIRECT EXAMINATION

16 BY MR. CAMIEL:

17 **Q. With regard to the towel, didn't the FBI crime**
18 **scene investigator in his June 19, 1979 report describe**
19 **the towel as (quoted as read): "An extremely bloody towel**
20 **that was found on a fence one block away from the victim's**
21 **home"?**

22 A. I believe that's the terminology that is used
23 in that report, yes.

24 **Q. Okay, "extremely bloody towel".**

25 A. His wording, yes.

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1 **Q. With regard to the testing many, many years**
2 **ago, blood testing was done on the towel, and both**
3 **Mr. Beach and Ms. -- and Kim Nees were eliminated; isn't**
4 **that right?**

5 A. I believe that's correct, as I recall.

6 **Q. And then later, more recently, DNA testing was**
7 **done, and Mr. Beach and Ms. Nees were again eliminated,**
8 **and it was determined to be a male donor of the blood.**

9 A. I know it was determined to be a male; as far
10 as the elimination process, excuse me, that, I'm not sure.

11 CHAIRWOMAN O'CONNOR: But I think we have that
12 information.

13 **Q. (By Mr. Camiel) In fact, with regard to the**
14 **footprints, there were footprints down in the mud near the**
15 **body, and they were photographed, weren't they?**

16 A. I don't recall those.

17 MR. WELLENSTEIN: I mean there's Kim's body,
18 but --

19 CHAIRWOMAN O'CONNOR: Why don't you have it
20 marked, since we don't know what you're doing? We better
21 admit it.

22 **Q. (By Mr. Camiel) That's one of the crime**
23 **scene photographs, isn't it?**

24 A. It is.

25 **Q. And, obviously, it was taken a short time**

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1 **after the homicide was discovered because Ms. Nees's body**
2 **is in the picture.**

3 A. Yes, in some -- I don't know exactly when, but
4 it was prior to her being removed from the river, yes,
5 that's correct.

6 **Q. Certainly. And there are what appear to be**
7 **footprints in the mud a short distance from the body?**

8 A. Mr. Camiel, I see two areas here that are
9 circled in red ink. Can I determine from this photograph
10 they're footprints? I can't.

11 **Q. Did you inquire of any of the investigating**
12 **crime scene officers, and particular -- particularly,**
13 **whoever it was who thought it was important to take that**
14 **photograph?**

15 A. Well, obviously, the important thing in this
16 photograph -- there are two things: There are -- there's
17 some blood on the bank, and there's Kim Nees's body.

18 **Q. But the photograph is not focused on**
19 **Ms. Nees's body; she's off to the side. It's clearly**
20 **focused on the bank, isn't it?**

21 A. I think it's -- well, again, I'd be answering
22 for someone else. And I really don't know what their
23 thought frame was. Was the picture misfocused
24 unintentionally? Was it focusing on the -- what appears
25 to be some blood on the bank? I can't answer that

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1 question for you.

2 **Q. Let me, let me ask in another area now. You**
3 **were asked about --**

4 CHAIRWOMAN O'CONNOR: Well, we'll take the
5 picture. I do want to note for the record that this would
6 not be a picture admissible in a court of law since you've
7 elicited no testimony that it fairly and accurately
8 depicts anything. You don't know who took it, you don't
9 know when it was taken, but you also don't know that it
10 fairly and accurately depicts anything. But this man
11 wasn't there, so he cannot have that testimony elicited
12 from him. Nonetheless, since you've shown it to him, we
13 will make it a part of the record of this hearing, but
14 not --

15 MR. CAMIEL: Well, he's --

16 CHAIRWOMAN O'CONNOR: -- for more than it is.

17 MR. CAMIEL: He's identified it as one of the
18 crime scene photographs.

19 CHAIRWOMAN O'CONNOR: Well, yeah, he did.
20 Because I mean you can see Kim Nees's body; I guess that's
21 a footprint, I don't know. But I mean, all right, for
22 what it is, we'll make it part of the record.

23 **Q. (By Mr. Camiel) You were asked about the**
24 **field notes of Officer Murray --**

25 A. Correct.

17 (Pages 515 to 518)

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1 **Q. -- with regard to Mr. Holen. Those field**
 2 **notes reflect that Officer Murray was asking questions to**
 3 **try to determine the whereabouts of Greg Norgaard during**
 4 **the evening preceding Kim Nees's murder.**

5 A. I don't know that the questions reflect that
 6 because each one of those is basically a synopsis of what
 7 that person told Officer Murray.

8 **Q. With regard to --**

9 A. But that was the reason he was doing those,
 10 was to try and determine whereabouts and those types of
 11 things; and in addition to that, who else may have been
 12 out or what was -- you know, were there other people we
 13 could follow up with.

14 **Q. The interviews -- particularly the interview**
 15 **of Mr. Holen had to do with him seeing Greg Norgaard at**
 16 **the Legion hall and when he saw him in relation to the**
 17 **fight and the activities going on --**

18 A. That was --

19 **Q. -- at the Legion?**

20 A. Yes. That was also part of that field note
 21 that's there.

22 **Q. He doesn't appear to have been asked about**
 23 **what he did or what he saw after he left the Legion hall**
 24 **that evening.**

25 A. With that assumption and looking at it, it

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1 MS. PLUBELL: Thank you.

2 CHAIRWOMAN O'CONNOR: Are you finished?

3 You may be excused. Thank you for your
 4 testimony.

5 You may call your next witness.

6 MR. CAMIEL: Thank you.

7 MR. MAHLUM: Madame Chair, being excused, can
 8 I now stay and listen to the rest of the testimony here?

9 CHAIRWOMAN O'CONNOR: Yes.

10 MR. MAHLUM: Thank you.

11 CHAIRWOMAN O'CONNOR: Please be seated.

12 CARL EDWIN FOUR STAR, WITNESS, SWORN

13 CHAIRWOMAN O'CONNOR: You may proceed.

14 MR. CAMIEL: Thank you.

15 DIRECT EXAMINATION

16 BY MR. CAMIEL:

17 **Q. Can you tell us your full name and spell your**
 18 **last name, please?**

19 A. It's Carl Edwin Four Star, Jr. My last name
 20 is spelled F-O-U-R S-T-A-R.

21 **Q. Mr. Four Star, where do you live?**

22 A. I live in Wolf Point, Montana.

23 **Q. How long have you lived there?**

24 A. Since 1976, but I -- there were a few years
 25 that I went away to go to college.

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1 appears that he volunteered that information. I don't
 2 know if he was asked that question or not, or if he just
 3 volunteered the information, no.

4 MR. CAMIEL: Thank you.

5 MS. PLUBELL: Just one -- or we'll try to make
 6 it one question.

7 RE-CROSS-EXAMINATION

8 BY MS. PLUBELL:

9 **Q. Mr. Mahlum, Richard Holen surely knew why Bob**
 10 **Murray was interviewing him, didn't he?**

11 A. Yes, I'm sure of that.

12 **Q. Because Kim Nees was dead, right?**

13 A. Absolutely.

14 **Q. And so if he had information about Kim Nees's**
 15 **death, that was the time to share it, wasn't it?**

16 A. Absolutely. And as we continued -- and I've
 17 testified to several different questions -- there was a
 18 high presence of -- an extraordinarily high presence of
 19 folks that were -- you know, you normally have patrol
 20 people, or whatever, but I mean there was the sheriff,
 21 there was myself, there was other investigators, the FBI
 22 was there, and we were talking to people. I mean it
 23 wasn't that there was not opportunity for everybody in
 24 Poplar to talk to us, to come specifically, you know, to
 25 one us and bring any information that they had.

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1 **Q. Okay. Were you living there in 1979?**

2 A. Yes.

3 **Q. And in the early '80s?**

4 A. Yes.

5 **Q. What do you do for a living?**

6 A. I'm a computer professional. I'm an
 7 independent contractor. So right now, I'm between jobs.

8 **Q. Okay. Do you know Sissy Atkinson?**

9 A. Yeah, I know who she is.

10 **Q. And how long have you known her?**

11 A. I got to know who she was when I was working
 12 at A & S. And that's -- I've known her since then, about
 13 1984 or '85.

14 **Q. Okay. When you met -- what years did you work**
 15 **at A & S?**

16 A. I started working there in 1983, and I worked
 17 there for two years; and then I went to Eastern Montana
 18 College, which is now MSU -- Billings, and I went there for
 19 one quarter; and I went back to work at A & S, and I
 20 worked until '87, 1987.

21 **Q. Were you -- so you were in Montana and working**
 22 **at A & S around the time of Barry Beach's trial?**

23 A. Yes, I was.

24 **Q. Do you know Barry?**

25 A. No.

1 Q. Have you ever been friends with him, or --
 2 A. No, sir.
 3 Q. -- lived near him or done anything with him?
 4 A. No.
 5 Q. Do you know the Beach family?
 6 A. No, I don't.
 7 Q. When you worked at A & S, was there a time
 8 where you worked in the same general area as Sissy
 9 Atkinson?
 10 A. Yes, there was.
 11 Q. During that time period, what type of work
 12 were you doing? What were your duties at work?
 13 A. I was what was called a "hex cutter". I cut
 14 bales of raw netting into hexagonal -- hexagon shapes.
 15 Q. And what kind of work was Sissy Atkinson doing
 16 at the time?
 17 A. She worked on an edge cord. They called it
 18 "edge cord".
 19 Q. And about how far away from your workstation
 20 did she work?
 21 A. Oh, about 20 feet, 20 - 25 feet.
 22 Q. Are you also familiar with a man named Stubby
 23 Balbinot?
 24 A. William? Yes.
 25 Q. Yes. And who is he?

1 A. He's my stepfather's nephew.
 2 Q. Did he also work at --
 3 A. That's --
 4 Q. Did he also work at A & S?
 5 A. Yes, he did. He worked on the edge cord along
 6 with Sissy.
 7 Q. So he worked in the same work area as her?
 8 A. Yes.
 9 Q. Did they work side by side?
 10 A. Yeah.
 11 Q. The facility at A & S, how big a building is
 12 it that you worked in?
 13 A. It was a, it was a pretty big Quonset. I
 14 couldn't give you an exact estimate of square footage. It
 15 was, it was at least 80 feet long, because that's how long
 16 the edge cord was, the full hex edge cord. It was just a
 17 typical Quonset.
 18 Q. How many people would -- for example, on your
 19 shift when you're working, how many people are in the
 20 building that you're working in, approximately?
 21 A. Approximately 30 --
 22 Q. Is this an --
 23 A. -- I would say.
 24 Q. Is it constantly extremely noisy in this
 25 building?

1 A. No; not in the building I was at, no.
 2 Q. Are there parts of the building that are
 3 noisier than other parts?
 4 A. Yes. A & S Industries has -- it's like
 5 several different Quonsets put together. And in the front
 6 where you came in, there was a -- that's where they made
 7 medical chests and food containers for the military. And
 8 there was a lot of machine punching iron and hard tin,
 9 excuse me. So it got to be pretty noisy up there. But
 10 back where I was, it was quiet.
 11 Q. Were there, were there big fans in the
 12 building because of the odor?
 13 A. They eventually did put some in, but there
 14 wasn't any at that time. What we did for the odor was
 15 just opened the back door.
 16 Q. It was a big back door?
 17 A. Yeah, it was like a garage door.
 18 Q. When you worked there, did you wear earplugs
 19 or earmuffs?
 20 A. No. I didn't have to. It wasn't very noisy
 21 where I was at.
 22 Q. Sometime after Barry Beach's trial was over,
 23 did you have an occasion where you overheard a
 24 conversation between Sissy Atkinson and a William
 25 Balbinot?

1 A. Yes. I heard -- well, William was reading the
 2 newspaper, and he said, "This is a shame what happened
 3 here."
 4 He was referring not necessarily to the Barry Beach
 5 trial, but to the whole incident in general, the death of
 6 Ms. Nees and so forth.
 7 Q. You heard him say that?
 8 A. Yes.
 9 Q. Who did he say it to?
 10 A. He said that to Sissy Atkinson.
 11 Q. Where were you when he said that?
 12 A. I was standing about 20 feet from him at my
 13 workstation.
 14 Q. You were listening in on their conversation?
 15 A. Well, I wasn't listening in, but it was so
 16 quiet back there that you could hear a pin drop,
 17 basically. And I heard them talking. I mean I wasn't
 18 purposely eavesdropping, but I did hear their
 19 conversation.
 20 Q. Did you hear any response by Sissy Atkinson?
 21 A. Yes, I did.
 22 Q. What did she say?
 23 A. She said that they got the wrong man, that
 24 Mr. Beach didn't have anything to do with it,
 25 Q. Did she say anything else?

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1 A. Yeah. She said that herself, Rose, and a
2 person by the name of Maude were there, responsible for
3 it.

4 **Q. Do you know -- when she said "Maude", did you**
5 **know who she was talking about?**

6 A. No.

7 **Q. Do you know Maude Grayhawk?**

8 A. No.

9 **Q. When she indicated "Rose", did you know who**
10 **she was talking about?**

11 A. No, I didn't.

12 **Q. Okay. When she said this, who did she say**
13 **this to?**

14 A. She said it to William Balbinot.

15 **Q. Okay. And after she said that, what happened?**

16 A. Well, I kind of stood there in disbelief. And
17 I did pay attention to what she was saying after that.
18 And she just went on to say what had happened, and she
19 made some motions as to what, what she was doing. For
20 example, she had her hand out, and she was bending over
21 hitting the air, making a motion like she was hitting
22 something -- (gesturing.) And, you know, the conversation
23 went on for a little bit.

24 And then as -- when it got over, she was walking by
25 me, and (she looked right at me) and she said, "We got away

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1 A. I thought about it, but I didn't know what to
2 do because I didn't feel that the tribal police, the BIA
3 police were -- I felt that they were kind of corrupt and
4 that it wouldn't do any good.

5 **Q. Well, how about going to the county sheriff or**
6 **to the FBI? Did you think about going to one of those law**
7 **enforcement agencies?**

8 A. It may have crossed my mind, but it's -- being
9 a tribal member on the reservation, I just thought that
10 the branch of law enforcement that I would have to go to
11 would be the tribal police.

12 **Q. You didn't have confidence in them?**

13 A. No. I still don't at times.

14 **Q. Did you tell anybody about what you heard?**

15 A. It ate away at me for awhile. And I went and
16 confided in my a priest, a Catholic priest at the Catholic
17 church in Wolf Point.

18 **Q. Which church is that?**

19 A. It's the Immaculate Conception.

20 **Q. Who's the priest that you confided in?**

21 A. His name was Father Jim,

22 **Q. What did you tell him?**

23 A. I just, I told him what I had overheard. I
24 told him that I had overheard somebody say that they took
25 a part in this murder and that Mr. Beach was not

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1 with the perfect crime, a capital crime."

2 **Q. She said that to you?**

3 A. Yeah. And I told her just to stay away from
4 me.

5 **Q. In fact, you used some profanity.**

6 A. Yes, I did. I don't think it's appropriate
7 that I use that in here.

8 **Q. Okay. After she told you that, what did you**
9 **do?**

10 A. I just, I didn't know what to do. I mean it
11 made me -- it was weird.

12 **Q. Now, let me ask you this: In terms of your**
13 **knowledge of Sissy Atkinson, are the two of you friends or**
14 **acquaintances, or do you just know each other?**

15 A. I just -- we just know each other.

16 **Q. Have you ever had any conflict with her or any**
17 **bad blood with her?**

18 A. No; no, I don't have any. I've never had any
19 contact with her, any personal relations with her -- or I
20 mean not "personal" personal relations, but I've never had
21 any reason to -- I tried to stay away from her.

22 **Q. After she said this?**

23 A. Yeah, I did stay away from her.

24 **Q. Okay. Did you take the information and**
25 **contact the police department or any police officers?**

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1 responsible for it and that I didn't know what to do about
2 it and that it was bothering me. And I asked him what I
3 should do.

4 I said, "I don't really have any confidence in the
5 police, with the tribal police, so I don't know what to
6 do."

7 **Q. Okay. And what was the response that you got?**

8 A. Well, I did mention that it was -- concerned
9 Kim Nees's murder.

10 And he said, "Well, there's been a conviction in
11 that, right?"

12 And I said, "Well, yes, but this other person says
13 that he wasn't responsible for it, Mr. Beach wasn't
14 responsible."

15 And he said, "Well, just all you can do is pray
16 about it, and things will work out in the end, they'll
17 come to pass."

18 **Q. Now, at some point, did you end up meeting**
19 **with somebody from -- one of the investigators from**
20 **Centurion Ministries?**

21 A. Yes, I did.

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

23 **And first let me ask you if you remember when that**
24 **was.**

25 A. It was in about 2000 - 2001.

1 **Q. Okay. And how did that come about?**
 2 A. Mr. Richard Hepburn came to my mother's house
 3 - I was back in college - and he was looking for William
 4 Balbinot. My mother's name is Dorothy Balbinot. Her
 5 husband is Robert Balbinot, Stubby's uncle. And I guess
 6 Richard looked up "Balbinot" in the phonebook and seen
 7 Robert and Dorothy, so he called my mother, and they came
 8 up and visited.

9 **Q. Now, was he -- he was coming to see -- to try
 10 to find Mr. Balbinot --**

11 A. Yes, William Balbinot. He was trying to find
 12 William Balbinot, and that's why he came to try to talk to
 13 Dorothy, my mom, to see where he was.

14 **Q. At that point when he shows up at the house,
 15 does he know anything about you, or --**

16 A. No, he didn't know anything about me. I just
 17 happened to come up, and Mom explained what he was doing
 18 and why he was trying to find Stubby. And at that moment,
 19 I just kind of felt: Well, finally, I can let somebody
 20 know about it and get this off of my chest.

21 So I told him what I had overheard.

22 **Q. And at that time in -- during that first
 23 meeting, did he have you sign a statement at all?**

24 A. I don't recall. I don't think so. He asked
 25 me if, if need be, if I would be willing to repeat what I

1 God asks me why I didn't come forward. Not that I'm a
 2 very religious person, but this has just been something
 3 that's bothered me over the years, and --

4 **Q. Did you feel badly about not coming forward
 5 earlier?**

6 A. Yeah; yeah, I do -- I have. But, you know, I
 7 didn't know what to do about it. I mean I was just a
 8 young kid at the time.

9 **Q. You've carried this around for a lot of years?**

10 A. Yes.

11 MR. CAMIEL: That's all I have.

12 CROSS-EXAMINATION

13 BY MS. PLUBELL:

14 **Q. Now, Mr. Four Star, you and I met once
 15 already, didn't we? Do you remember that?**

16 **I'm Tammy Plubell from the attorneys general's
 17 office.**

18 A. Yes, I believe we met --

19 **Q. Mike Wellenstein and I were --**

20 A. -- in Wolf Point at the sheriff's office.

21 **Q. -- were up in -- I can't remember if that was
 22 in Poplar, or --**

23 A. It was in Wolf Point at the sheriff's office.

24 **Q. And you came in, and we took a tape-recorded
 25 statement.**

1 overheard. And I said "yes", I would.

2 **Q. Now, were you fearful at all about coming
 3 forward?**

4 A. Yeah. That's one of the reasons I -- that's
 5 also one of the reasons I didn't go to the police.

6 **Q. What were you fearful of?**

7 A. Retribution from anybody.

8 **Q. What made you think that coming forward with
 9 information about this homicide could lead to retribution?**

10 A. Well, on the reservation, there's a lot of
 11 unsolved murders, and there has been -- there had been for
 12 quite awhile. There were quite a bit of -- quite a few
 13 unsolved murders that were taking place at that time, in
 14 the early '80s - mid '80s. I was just worried that
 15 somebody would come and look for me or some other member
 16 of my family.

17 **Q. In February 2007, you did sign a statement,
 18 didn't you?**

19 A. Yeah.

20 **Q. And you've agreed to come forward. Are you
 21 still fearful about retribution?**

22 A. I'm still kind of nervous about it, yes.

23 **Q. Then why did you come forward?**

24 A. Why did I come forward? Because I was asked
 25 to; and I feel that, you know, what am I going to do if

1 A. Yes.

2 **Q. Okay. Now, you knew after -- you shared all
 3 the information that you had with Centurion Ministries,
 4 didn't you?**

5 **You knew what they were doing, and you wanted to
 6 share with them what you had overheard, correct?**

7 A. Well, you know, I had a few years to think
 8 about it. And then when they contacted me again in 2006,
 9 I decided that, yeah, I would come forward.

10 **Q. You would come forward. And so you put what
 11 you knew or they typed what you knew in the statement that
 12 you gave in February of 2007, correct?**

13 A. Yes. There was a recording, I believe, that
 14 was made, and they typed up a --

15 **Q. Do you have your statement with you today?**

16 A. No, ma'am, I don't.

17 **Q. Would you like to be able to look at it?**

18 A. Sure.

19 **Q. But everything that was important for you to
 20 tell, you told it in this statement, didn't you?**

21 **That was the whole purpose of coming clean and
 22 giving the information, correct?**

23 A. Yeah, I gave the information. I'm not sure
 24 that I gave all of the information that -- but that's what
 25 I wanted to do, yes.

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1 MS. PLUBELL: May I provide the witness a
2 copy?
3 CHAIRWOMAN O'CONNOR: We have this
4 information, right? I mean you --
5 MR. CAMIEL: It's an exhibit, yes.
6 **Q. (By Ms. Plubell) And in that statement, what**
7 **you told -- what you said, what you declared, and what you**
8 **provided to Centurion Ministries is that (quoted as read):**
9 **"Stubby said to Sissy, 'It's a shame what**
10 **happened to Barry,' or 'It's bad what happened to Barry.'**
11 **"Sissy responded, 'They got the wrong man.'**
12 **"She also said, 'I was there.'**
13 **"And she mentioned that Maude, Rose, and**
14 **another girl whose name I don't recall were also there.**
15 **She also said, 'It was a perfect crime. We got away with**
16 **murder.'"**
17 **Correct?**
18 A. (Nodding head affirmatively.)
19 **Q. Now, in your statement, you were very clear**
20 **that this conversation occurred right after Barry Beach**
21 **was convicted in 1984, right? And that's why they were**
22 **talking about it's bad what happened to Barry Beach,**
23 **correct?**
24 **I'm just asking you what you said in your statement,**
25 **Mr. Four Star.**

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1 A. Yeah, but I don't think it was in '84 that
2 this conversation took place.
3 **Q. You don't think it was in '84 anymore, do you?**
4 **That's what you put in your statement, but now you**
5 **don't think it was 1984, do you?**
6 A. Well, it was a long time ago. All I know is
7 it was warm out, and it was either in late '84 or early
8 '85.
9 **Q. And part of the reason you're not sure if it**
10 **was in 1984 is because during the course of that**
11 **interview, you told us there was someone right by you,**
12 **didn't you?**
13 **You said you were working with someone, that that**
14 **was --**
15 A. Yes, yes.
16 **Q. -- your partner.**
17 A. Yes.
18 **Q. And you told us that was Hoss Red Eagle,**
19 **didn't you?**
20 A. Yes, ma'am.
21 **Q. And you're aware now that we went and**
22 **interviewed Hoss Red Eagle, aren't you?**
23 A. Yes.
24 **Q. And we also got his employment records, didn't**
25 **we?**

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1 A. I don't know if you did or not.
2 **Q. Well, would it surprise you that Hoss Red**
3 **Eagle didn't start working at A & S Industries until 1985?**
4 A. Well -- (pause.)
5 **Q. Does that have anything to do with why you**
6 **can't remember that it was in 1984 now?**
7 A. No, it doesn't.
8 **Q. Do you remember me asking you to be real clear**
9 **about that in your statement, and I said, "I want to make**
10 **sure that I understand the timing of this"?**
11 A. Well, I don't recall if you asked me that.
12 The other fellow that was talking to me was getting a
13 little upset with me at the time, so --
14 **Q. And in the statement that you gave to us, you**
15 **added a lot more detail, didn't you?**
16 **You indicated -- you gave lots of detail about --**
17 **now, well, for one thing, in your statement -- today when**
18 **you testified, you were talking about the motions that**
19 **Sissy Atkinson was doing. That's nowhere in your**
20 **statement that you gave to Centurion Ministries, is it?**
21 A. I guess, no, it's not.
22 **Q. And you also indicated in your statement that**
23 **one thing that really struck you as odd was that they had**
24 **made -- that (quoted as read):**
25 **"She said, Sissy said they had made sure they**

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How would he know this?
1 **folded her clothes or a jacket and set it aside. She did**
2 **go into some detail about that."**
3 **Right?**
4 A. Yeah, she did.
5 **Q. Well, that's what you told us when we**
6 **interviewed you, correct? But that's not in your**
7 **statement to Centurion Ministries, is it?**
8 A. Well, no, it's not. But I mean I --
9 **Q. Well, you --**
10 A. -- I don't think that this was clear when I
11 talked to them because I -- when Stubby -- it says here
12 that (quoted as read): "It's a shame what happened to
13 Barry."
14 You know, that's not what William said. I think
15 there was a misunderstanding. Stubby said, "It's a
16 shame," and he meant the murder.
17 **Q. So this statement that was drafted for you has**
18 **some inaccuracies? Is that what you're saying?**
19 A. No, I'm not saying that. I'm just saying that
20 this one particular statement, I don't think that they
21 understood me when they wrote it down.
22 **Q. I see. Did they understand you when you said**
23 **it was the spring of 1984?**
24 A. I would -- yeah. I, I, I --
25 **Q. And you also indicated in your tape-recorded**

22 (Pages 535 to 538)

1 statement to us that (quoted as read):
 2 "They said they were at the park. And they
 3 drug her out of the truck, and they started pushing her
 4 around and hitting her. And things got carried away. And
 5 they took turns hitting her and kicking her."
 6 You didn't say any of those things in this statement
 7 to Centurion Ministries, did you?
 8 A. No, I didn't.
 9 Q. So there was a lot of details that you left
 10 out of your statement, weren't there?
 11 A. I guess there was.
 12 Q. Even though you, even though you felt terrible
 13 about this for years, correct?
 14 And you wanted to get it off of your chest for once
 15 and for all, correct?
 16 And you wanted to be helpful to Centurion
 17 Ministries --
 18 CHAIRWOMAN O'CONNOR: Well, let's at least,
 19 let's at least let him answer a question here.
 20 THE WITNESS: Yeah, I don't -- you're asking
 21 me a bunch of different questions. Now, which one would
 22 you like me to --
 23 Q. (By Ms. Plubell) All right.
 24 A. -- answer, specifically?
 25 Q. I apologize for that, Mr. Four Star.

1 A. I mean I feel like --
 2 Q. You, you wanted --
 3 A. -- you're --
 4 Q. You wanted to --
 5 A. -- harassing me.
 6 Q. Well, maybe I am. You wanted to help
 7 Centurion Ministries, didn't you, because you felt bad
 8 about carrying --
 9 A. Yes, ma'am.
 10 Q. -- this around?
 11 A. Yes, ma'am.
 12 Q. Is that accurate?
 13 A. Yes, ma'am, that's accurate.
 14 Q. And so --
 15 A. Now, you asked me a question about the dates.
 16 That happened a long time ago. And, you know, all I can
 17 remember is that it was warm out and it was just before
 18 the time that my daughter was born.
 19 Q. Why didn't, why didn't that appear in your
 20 statement to Centurion Ministries as that is what you
 21 remembered, then?
 22 A. I guess we didn't go into much detail about
 23 it.
 24 MS. PLUBELL: I have no further questions.
 25 /// ///

1 REDIRECT EXAMINATION
 2 BY MR. CAMIEL:
 3 Q. Mr. Four Star, you mentioned that when you
 4 went to the interview at the sheriff's office with the
 5 representatives of the attorney general's office that
 6 there was a fellow getting upset with you.
 7 A. Yes, there was.
 8 Q. Was he one of the investigators working with
 9 the attorney general's?
 10 A. Well, he was at the interview that I went to
 11 at the sheriff's office. I don't know who he was working
 12 with.
 13 Q. Was he one of the people questioning you?
 14 A. Yeah.
 15 Q. Did you feel like he was trying to get you to
 16 change your story?
 17 A. Yes. I felt like he was upset that I was even
 18 saying that there might be a possibility that some -- you
 19 know, somebody else might be responsible for the death.
 20 Q. In what ways did, did he appear to be getting
 21 upset with you?
 22 A. His voice got louder.
 23 Q. Okay.
 24 A. He stood up.
 25 Q. You were sitting down. And at one point --

1 A. Yeah.
 2 Q. -- he stood up?
 3 A. Yeah.
 4 Q. Did he stand over you?
 5 A. Well, not over me, but he stood up and did
 6 something, and he said a few other things. And at that
 7 point, I'm not sure what her name is - (gesturing) - but
 8 she stepped in and kind of calmed things down.
 9 Q. Okay. Did you feel as if somebody was trying
 10 to intimidate you?
 11 A. Yeah, I did. I kind of feel that way now.
 12 Q. The written statement that you've been
 13 questioned about is, is about a page and a half long; is
 14 that right?
 15 A. Yes, sir.
 16 Q. The interview with the attorney general, the
 17 transcript of that interview runs over 30 pages?
 18 They spent a lot of time with you, didn't they?
 19 A. Yeah, they did, I guess. I don't see how it
 20 got to be 30 pages, but, yeah, they did. They spent -- I
 21 was there for awhile.
 22 Q. The details that you told them about were
 23 things you remember either seeing or hearing at A & S
 24 Industries; isn't that right?
 25 A. Yes, it is.

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1 Q. The statements that you told them about are
2 things you remember that Sissy said?

3 A. Yes.

4 Q. And was it -- let me ask you this: Was it so
5 loud that you couldn't hear what she was saying?

6 A. It was quiet back there. I could hear -- it's
7 like I'm sitting here and I can hear you. That's how it
8 was back there. There was no machine nearby. There was
9 nothing but netting back there.

10 Q. Okay. Is there any chance that, in your mind,
11 that you misinterpreted what she, what Sissy Atkinson
12 said?

13 A. No, sir, I don't believe there's a chance of
14 that; no.

15 Q. Any chance that you misinterpreted her hand
16 motions that she made -- (interrupted by coughing.)

17 A. I'm sorry, I didn't hear what you --

18 Q. Do you think there's any possibility that you
19 misinterpreted the motions that you saw her making?

20 A. No, sir.

21 Q. Did you do your best today to tell the truth?

22 A. Yes, sir, I'm telling the truth --

23 MR. CAMIEL: Thank you.

24 THE WITNESS: -- to my -- the best of my
25 knowledge.

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1 so the tape can -- the Board can listen to that and hear
2 Mr. McKay yelling?

3 A. He didn't yell. I said he raised his voice a
4 little bit and I felt intimidated by him. And I did. And
5 to be honest, I sat there as a courtesy because you told
6 me that I did not have the answer any questions, but --
7 and I felt like not answering any more after your
8 associate got a little aggressive, but I stayed there as a
9 courtesy because I don't have anything to hide.

10 Q. Right. So that, that will be reflected on the
11 tape, correct?

12 A. I would assume. I don't think that the tape's
13 going to reflect him getting up, or anything.

14 Q. And there was someone else present for that
15 interview, wasn't there? Richie McDonald was there,
16 wasn't he?

17 A. Yes, he was.

18 Q. So Richie McDonald will be able to verify
19 those things, too, correct?

20 A. I would assume.

21 MS. PLUBELL: No further questions.

22 MR. CURTISS: Yes, Madame Chair, I have a
23 question.

24 THE WITNESS: Yes, sir.

25 MR. CURTISS: Good morning, Mr. Four Star.

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1 RE-CROSS-EXAMINATION

2 BY MS. PLUBELL:

3 Q. Mr. Four Star, prior to the -- or on the
4 tape-recorded statement -- you're aware that the statement
5 was recorded, right, because Mr. McKay told you that,
6 correct?

7 Do you not remember that today?

8 A. I believe, yes, he said that it was being
9 recorded.

10 Q. And he also told you that if you didn't want
11 to talk, you didn't have to, correct? Do you remember
12 that?

13 A. Yes, I do.

14 Q. And that he would appreciate you talking with
15 us, but you weren't obligated to do so, correct?

16 A. That's correct.

17 Q. And at the end of your statement when you felt
18 very threatened and intimidated, you indicated to us that
19 you understood we were just doing our jobs and why we were
20 there, correct?

21 A. That's true.

22 Q. And you said (quoted as read): "I don't have
23 any questions for you," correct?

24 A. Correct.

25 Q. And the tape has been submitted to the Board,

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1 THE WITNESS: Good morning.

2 MR. CURTISS: I'm Vance Curtiss, one of the
3 board members here.

4 And we're not trying to intimidate you. The
5 main thing is that we are trying to piece a whole bunch of
6 information together. Do you understand?

7 THE WITNESS: Yes, sir.

8 MR. CURTISS: Okay. And I have a question
9 here: How long do you suppose it would have been,
10 Mr. Four Star -- I mean this conversation that you -- you
11 collected a lot of data there, as I'm listening. How long
12 do you suppose this young lady was talking during the time
13 that all of this information came out? Just roughly.

14 THE WITNESS: I would say about 10 minutes.
15 She was -- talked some about it, and then she would pull
16 the edge cord down at the end, and they would cut it off,
17 mark it, and then they would come back, and she'd say some
18 more to them.

19 Now, my work area was in one space. I just --
20 there was a bar, and I would step across in front of the
21 bar and walk around behind it and in front of it to cut
22 the netting that I was working on, so I didn't really move
23 all that much from that area. But I would say it was
24 probably about 10 or 15 minutes.

25 CHAIRWOMAN O'CONNOR: Okay, thank you.

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1 THE WITNESS: You know, it wasn't all at once.
2 She would pull the edge cord down, come back, and say some
3 more.

4 MR. CURTISS: And, Mr. Four Star, did she act
5 like maybe she was under the influence of something? Were
6 you aware of anything along those lines, in your judgment?
7 Did she act normal to you?

8 THE WITNESS: She seemed to act normal. But,
9 you know, like I said, I don't really know her. I didn't
10 know her that well, so --

11 MR. CURTISS: So you wouldn't know normalcy,
12 or --

13 THE WITNESS: (Nodding head affirmatively.)

14 MR. CURTISS: Okay, okay.

15 THE WITNESS: But she seemed to be normal.

16 MR. CURTISS: Okay. Now, one other question,
17 one other question, and I don't want to belabor this: You
18 went to the padre, and you had no faith in the law
19 enforcement at all?

20 THE WITNESS: Well, not with the tribal
21 police, no, I didn't.

22 MR. CURTISS: Okay. And this was really
23 bothering you, correct? It would be me.

24 THE WITNESS: Yeah, it was.

25 MR. CURTISS: Okay.

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1 THE WITNESS: It was bothering me.

2 MR. CURTISS: And your chain of command as far
3 as law enforcement, how about the FBI? Do you have
4 confidence in them?

5 THE WITNESS: I would, yeah. I guess I do,
6 but I didn't really think about going to the FBI or
7 anybody else.

8 MR. CURTISS: Okay. And as far as the padre
9 is concerned, did you -- did he encourage you? Did he
10 give you any direction as to where you could go to --
11 because I'll really confess to you: If I had this kind of
12 information presented to me and I was knowledgeable of it,
13 I'd be yelling from the middle of the street in Poplar,
14 Montana. Because this is pretty big stuff, right?

15 THE WITNESS: Yes, it is.

16 MR. CURTISS: And I certainly would be getting
17 it to someone that -- you know, at least in an interview
18 or carried this investigation on. And the padre, he gave
19 you no information - a question now - as to what direction
20 to go with this?

21 THE WITNESS: No, he didn't. Like I said, he
22 said -- I said that it was concerning the Nees trial, and
23 he said there was already a conviction on it. And he said
24 just to pray about it, and things would work out.

25 MR. CURTISS: I won't belabor this anymore.

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1 You see where I'm coming from, don't you?

2 THE WITNESS: Yes, I do.

3 MR. CURTISS: Because I think that every
4 citizen of this country needs to know where to go if
5 things aren't going right, especially something -- a
6 murder or something along this line. We need to know a
7 direction if we're in doubt. And that's where I'm coming
8 from. Okay? Do you understand what I'm saying?

9 THE WITNESS: It's a different world on the
10 reservation, sir.

11 CHAIRWOMAN O'CONNOR: I know. I've been on a
12 lot of them in my life, so I understand what you're
13 saying.

14 Okay, that's all I have, Madame Chair.

15 MS. BOWMAN: No questions.

16 CHAIRWOMAN O'CONNOR: I have a few.

17 You said it was so quiet, you could hear a pin
18 drop. Now, yesterday Sissy Atkinson testified, you
19 understand, and she was telling us how noisy this edge
20 cord machine is. Now, I don't have a clue about an edge
21 cord machine. Is or is not an edge cord machine noisy?

22 THE WITNESS: No, it's not noisy. All it was,
23 was a stand with eight spools of cord on it, and they
24 would -- there was not really any machinery involved in
25 it. They would pull it, tie it to the -- tie knots in it,

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1 pull it, and then pull it to the edge, put the knots on a
2 little clamp-like thing, pull it tight. And then once
3 they tightened it onto the weights, then a compressor
4 would drop the weights and tighten the cord.

5 So it would make some noise, but it wasn't a
6 constant noise. The compressor --

7 CHAIRWOMAN O'CONNOR: Just when it
8 tightened --

9 THE WITNESS: -- makes the air, and it only
10 took about four seconds.

11 CHAIRWOMAN O'CONNOR: So she goes through this
12 process, and then the compressor pulls it tight. And it
13 only makes noise when the compressor pulls it tight; other
14 than that, it's silent?

15 THE WITNESS: Yeah.

16 CHAIRWOMAN O'CONNOR: Okay. And from like
17 that corner over there, let's say - (gesturing) - how far
18 away were you from her when this was going on? Were you
19 further that this room allows, or not as far?

20 THE WITNESS: No, I wasn't further than the
21 room. I was probably --

22 CHAIRWOMAN O'CONNOR: Okay. So let's say
23 that's the corner -- (gesturing.) So where?

24 THE WITNESS: I was probably, probably on --
25 just right about on this side of your stenographer, maybe

25 (Pages 547 to 550)

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1 about 3 feet on the side of him.
 2 CHAIRWOMAN O'CONNOR: So is that 10 feet,
 3 about? I thought you were describing further than that.
 4 I'm bad at --
 5 THE WITNESS: I think that's about 15 - 20
 6 feet, isn't it?
 7 CHAIRWOMAN O'CONNOR: Is it? Okay. So you're
 8 saying you were 15 or 20 feet?
 9 THE WITNESS: Yeah.
 10 CHAIRWOMAN O'CONNOR: And that's about 3 feet
 11 on this side of -- okay.
 12 Now, when you spoke with the priest, Father
 13 Jim from Immaculate Conception in Wolf Point, when did you
 14 speak with him? Do you know?
 15 I mean I'm not trying to trip you up at like
 16 "the end of '84" or "the beginning of '85". Just
 17 generally, when did you --
 18 THE WITNESS: It would have been -- my wife --
 19 my girlfriend was pregnant, so she was about ready to give
 20 birth. So that, I do know, was about August of 1985.
 21 CHAIRWOMAN O'CONNOR: Okay. And you were also
 22 saying that she was pregnant when this conversation went
 23 on --
 24 THE WITNESS: Yeah.
 25 CHAIRWOMAN O'CONNOR: -- when you heard it?

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1 THE WITNESS: Yeah.
 2 CHAIRWOMAN O'CONNOR: So you told Father Jim
 3 in not very long? It was pretty soon after you heard it
 4 that you went to Father Jim?
 5 THE WITNESS: It was probably three months
 6 after I heard it.
 7 CHAIRWOMAN O'CONNOR: Okay, okay. But not
 8 five years, or something?
 9 THE WITNESS: No.
 10 CHAIRWOMAN O'CONNOR: And was this Father Jim
 11 Reynolds? Do you remember his last name?
 12 THE WITNESS: It may have been.
 13 CHAIRWOMAN O'CONNOR: Describe Father --
 14 THE WITNESS: No, it wasn't Father Jim
 15 Reynolds, because I remember Father Jim Reynolds. No, it
 16 wasn't him.
 17 CHAIRWOMAN O'CONNOR: Which "Father Jim" was
 18 it?
 19 THE WITNESS: I don't know. All I know is his
 20 name was Father Jim.
 21 CHAIRWOMAN O'CONNOR: So he was Father Jim,
 22 and he was at Immaculate Conception Parish in Wolf Point
 23 in the summer of '85; is that right? *Maybe she found*
 24 THE WITNESS: Yes, ma'am. *out for us*
 25 CHAIRWOMAN O'CONNOR: Now, were you in

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1 confession when you spoke to him, or did you speak with
 2 him at the rectory, or --
 3 THE WITNESS: I was in confession. I was
 4 behind the screen.
 5 CHAIRWOMAN O'CONNOR: Okay. How many times
 6 did you speak to Centurion Ministries' people?
 7 THE WITNESS: Well, there was the initial
 8 visit; and after that, I spoke to them maybe three times.
 9 CHAIRWOMAN O'CONNOR: After that, three times?
 10 THE WITNESS: Yeah, prior to giving the
 11 statement. And this would just be conversations asking
 12 how I was doing, and stuff. That's, you know, that's
 13 about the content of the conversations I had with them.
 14 CHAIRWOMAN O'CONNOR: How did you happen upon
 15 Centurion Ministries' people? Did they call you to ask
 16 how you were doing, or did you meet them on the street, or
 17 what?
 18 THE WITNESS: No. They came to my mother's
 19 house looking for William Balbinot, and that's how I came
 20 across them.
 21 MS. BOWMAN: She means when you were just
 22 saying "hi" to them, or whatever.
 23 THE WITNESS: Oh, no, they would call. I
 24 would talk with Richard Hepburn from time to time. And
 25 just to keep up on how things were going, I guess, is why

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1 he called.
 2 CHAIRWOMAN O'CONNOR: So he called you each of
 3 these times?
 4 THE WITNESS: Yeah, yeah.
 5 CHAIRWOMAN O'CONNOR: I see, okay. All right.
 6 Does that cause you more questions?
 7 REDIRECT EXAMINATION
 8 BY MR. CAMIEL:
 9 **Q. Mr. Four Star, the Father Jim, was it Father**
 10 **Jim Burkman?**
 11 A. It may have been.
 12 **Q. Did you tell, did you tell Mr. Hepburn at**
 13 **Centurion Ministries that you were, that you were fearful**
 14 **of retribution?**
 15 A. I believe I did mention it, yeah.
 16 **Q. Was that one of the reasons he was, he was**
 17 **calling you from time to time, to see if you were okay?**
 18 A. I believe so. I don't know what his motives
 19 were, but I -- I don't know exactly what his exact motives
 20 were. I suppose he was trying to make sure I was okay,
 21 you know, because, yeah, I was afraid of something
 22 happening. And I still am.
 23 **Q. The first time that you met with Centurion**
 24 **Ministries, you said you were at your mother's house.**
 25 **Mr. Hepburn showed up looking for information about**

26 (Pages 551 to 554)

1 **William Balbinot, and you said you came upstairs?**
 2 A. Yeah, I came upstairs to get some coffee, and
 3 that's -- yeah, that's --
 4 **Q. Then you found out what he was inquiring**
 5 **about?**
 6 A. Yes.
 7 **Q. And that's when you disclosed to him for the**
 8 **first time --**
 9 A. Yeah, that's the first time I disclosed it to
 10 him or anyone else other than the father.
 11 MR. CAMIEL: Thank you.
 12 CHAIRWOMAN O'CONNOR: Ms. Plubell?
 13 MS. PLUBELL: I have nothing further.
 14 CHAIRWOMAN O'CONNOR: You may be excused. We
 15 will take a 10-minute break.
 16 We will start at 18-minutes-after-10.
 17 (A brief recess was taken.)
 18 CHAIRWOMAN O'CONNOR: We will come to order.
 19 All of the attorneys are present.
 20 JUDY RED DOG GRAYHAWK, WITNESS, SWORN
 21 CHAIRWOMAN O'CONNOR: You may proceed.
 22 Could we have quiet, please?
 23 You may proceed.
 24
 25 /// ///

1 **work?**
 2 A. Since 2000.
 3 **Q. And I don't know if I asked you already: How**
 4 **long have you been married to Steve Grayhawk, Jr.?**
 5 A. Thirty years.
 6 **Q. Do you have children?**
 7 A. Yes, we do. We have three sons.
 8 **Q. How old are your sons?**
 9 A. Thirty, twenty-five, and twenty-three.
 10 **Q. Are you -- in addition to being the**
 11 **sister-in-law of Maude Grayhawk, are you friends with her**
 12 **or acquaintances? Or what's the nature of your**
 13 **relationship?**
 14 A. With Maude?
 15 **Q. Yes.**
 16 A. I guess we're not really best friends or --
 17 we're in-laws, put it that way. But I don't have any
 18 animosity toward her.
 19 **Q. I want to ask you about a phone conversation**
 20 **you had with Maude in the spring of 2004. Was there an**
 21 **occasion where she called you and there was some unusual**
 22 **statements made by her?**
 23 A. Yes, there were.
 24 **Q. Were you at home when she called?**
 25 A. Yes, I was.

1 DIRECT EXAMINATION
 2 BY MR. CAMIEL:
 3 **Q. Ma'am, could you state your full name and**
 4 **spell your last name for us?**
 5 A. My name is Judy Red Dog Grayhawk,
 6 G-R-A-Y-H-A-W-K.
 7 **Q. Where do you live?**
 8 A. Poplar, Montana.
 9 **Q. How long have you lived there?**
 10 A. Pretty close to 50 years. I'm 50 years old.
 11 **Q. And are you related to Maude Grayhawk?**
 12 A. Yes, I am.
 13 **Q. How are you related to her?**
 14 A. She is my sister-in-law. I'm married to her
 15 older brother, Steve Grayhawk, Jr.
 16 **Q. And so your husband is Steve Grayhawk, Jr.**
 17 **Who is your husband's father?**
 18 A. Steve Grayhawk, Sr.
 19 **Q. And he is -- is he the Steve Grayhawk that had**
 20 **been a member of the Poplar Police Department at one time?**
 21 A. Yes, he is.
 22 **Q. What do you do for a living?**
 23 A. I'm a vocational rehabilitation counselor in
 24 Poplar.
 25 **Q. How long have you been doing that kind of**

1 **Q. Was she calling to talk to you or to somebody**
 2 **-- was she looking for somebody else?**
 3 A. She was looking for my oldest son, Steven.
 4 They used to drink together or party together. And my son
 5 Steven's nickname is "Mouse". He's had that since he was
 6 a newborn baby. And most of the time, I refer to him as
 7 "Mouse".
 8 **Q. So she calls. And are you the one who**
 9 **answered the phone?**
 10 A. Yes, I did.
 11 **Q. And tell us about the phone conversation.**
 12 A. Well, she called and asked for Mouse. She did
 13 -- I call him -- well, he's known by "Steven", but she
 14 asked for Mouse and wanted to know where he was.
 15 And I said, "He's downstairs sleeping."
 16 And this was in the late afternoon. She said she
 17 wanted him to come pick her up, because he had a car. She
 18 wanted to get away from some investigator that was
 19 investigating the Kim Nees murder. And she sounded kind
 20 of despondent or -- I can't really think of a word other
 21 than "despondent" or "lethargic", or whatnot. And she
 22 started rambling on about how an investigator was at her
 23 door and she wanted to get away from him, she wanted
 24 Steven to come pick her up.
 25 And I said, "Well, why is that investigator looking

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1 for you?"

2 And she said, "You know, over that Kim Nees murder."

3 And she said, "All I did was kick her in the head a few4 times. And I lured, and I lured her down there."

5 And I just listened. And it just started making me

6 feel -- it really upset me. I just didn't want to talk --

7 it just blew my mind, in other words, because I really --

8 I'm not that close to her that I would know something like

9 this, or -- it just blew my mind. It just really upset

10 me. I just couldn't handle it. And I wanted to know why11 she was leaving it on my shoulders. I mean why did she12 give me that information? I didn't want it, and I didn't13 know what to do with it.

14 So I called -- as soon as I hung up from -- as soon

15 as she hung up, I called my sister who I'm really close to16 because I only have one sister. *Who?*17 And I just said, "Mary, my God, I can't believe what18 Maude said," and then I told her about what I just told19 you people.

20 And it just -- I was just upset. I didn't know what

21 to do. And I wanted to calm down somehow, or -- but the

22 next thing I know, I talked to my husband, and we went

23 down to the Legion Club where Glenna works, and I just24 laid it on Glenna's shoulders next.

25 MS. BOWMAN: And who is Glenna?

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1 that Ron Kemp -- and I never knew who he was until -- I

2 didn't know who he was. But she said something like, "Ron

3 Kemp is looking for me about something to do with this Kim

4 Nees murder."

5 **Q. When you asked her, I think at one point you**6 **said you asked her why they would want to talk to her**7 **about that, or something to that effect.**

8 A. (Nodding head affirmatively.)

9 **Q. As close as you can remember, what are the**10 **words that she said?**

11 A. When I asked -- when --

12 **Q. Yes.**

13 A. Well, she said, "There's an investigator at

14 the house. His name is Ron Kemp, and he's investigating

15 that Kim Nees murder. And I just want to get away. I

16 want Steven -- or Mouse to come pick me up because I just,

17 I just don't want to talk to them."

18 And she said, "All I ever did was just kick her in

19 the head a few times, and -- but I did lure her down

20 there." And that's basically what she said.

21 Is that what you mean?

22 **Q. Did she refer to anyone else, or did she just**23 **refer to herself?**

24 A. She just referred to herself.

25 **Q. How long did the phone conversation last?**

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1 A. About two minutes, maybe; the longest, two

2 minutes -- or, you know, it wasn't very long. She just

3 made that -- asked for my son, made the statement. And,

4 you know, I kind of didn't want to hear any more. I just

5 didn't want hear more. The first sentence, the first

6 sentences about her, you know, kicking her head in a few

7 times, already that just blew my mind, and I didn't want

8 to really hear any more.

9 **Q. Was it the very same day or later that day**10 **that you went down to the Legion --**11 A. Well, it was roughly an hour and a half later,

12 maybe, because I was really upset.

13 **Q. Why was it that you told Glenna Nees? Of all**14 **the people you could tell, why did you tell her?**15 A. Well, because I know that Glenna's related to16 Kim, and I just wanted, I don't know, her to know this

17 information, I guess. I don't know.

18 **Q. Now, at some point, you were contacted by some**19 **of the investigators from Centurion Ministries?**

20 A. Hm-hmm.

21 **Q. Do you remember when that was?**

22 A. No. I think it might have been a couple of

23 months later. I can't really say the time frame.

24 **Q. Do you know how the investigators got to you?**

25 A. I know I was just contacted by -- I think I

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1 THE WITNESS: Glenna Nees. Glenna runs the

2 Legion Club in Poplar.

3 And I just had to get it off my shoulders

4 because I didn't want to carry that around. I mean it's

5 not information that I wanted to keep in me. I mean I

6 just, I just had to get rid of it somehow. I just didn't

7 want no part of it. I mean it just blew my mind. If she

8 told me anything else like, you know, something not like a

9 murder, you know, I probably could handle it; but

10 something like this just really upset me because, you

11 know, it's not every day that you get a phone call and

12 they start talking about their part in a murder, or

13 something. So I just couldn't handle it.

14 **Q. (By Mr. Camiel) Let me go -- I want to make**15 **sure we're clear: First of all, she was referring to the**16 **Kim Nees murder? There's no question in your mind about**17 **that?**

18 A. She directly said, "It's about that Kim Nees

19 murder."

20 **Q. And she said that because the investigator who**21 **was trying to talk to her wanted to talk to her about**22 **that?**

23 A. Yes.

24 **Q. Did she mention the name of the investigator?**

25 A. I think she made a reference, something like

28 (Pages 559 to 562)

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1 was contacted by telephone first, by Richard Hepburn. And
2 I didn't know who he was. And he wanted to know if he
3 could meet me. And I kind of was scared to say anything
4 because, like I said, I wanted that off my shoulders right
5 away, fast. You know, and I just didn't want to talk
6 about it. And so I think he contacted me a few times
7 until I finally agreed to meet with him. It might have
8 been about two or three attempts by Richard.

9 **Q. Were you fearful of coming forward?**

10 A. Actually, I kind of was.

11 **Q. Why?**

12 A. Well, I don't know -- well, I guess probably
13 because I -- Maude plays mind games sometimes with people.
14 And I knew that maybe if, if she knew that I made the
15 statement to Centurion Ministries, I don't know, I thought
16 maybe she would try to get back at me somehow, or -- that,
17 and I'm related so close to this family that I just felt
18 like I was backstabbing my family, because she's my
19 sister-in-law and that's my husband's sister and it's my
20 father-in-law's daughter. And I just have really been at
21 odds with myself over this. This hasn't been easy.

22 **Q. Did you have discussions with your husband**
23 **about coming forward?**

24 A. Yes, I did.

25 **Q. Was there some difficulty because of that?**

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1 A. There was a lot of difficulty. He threatened
2 to divorce me. But we just talked, and I just said,
3 "Well, go ahead and divorce me, but I'm not going to back
4 down from my statement. It's the truth, and I'm not going
5 to perjure myself."

6 **Q. And for awhile, you didn't want to sign a**
7 **statement; isn't that true?**

8 A. Yes.

9 **Q. Why was that?**

10 A. Like I said before, I thought there would be a
11 lot of, a lot of trouble within my family, like my
12 husband, my father-in-law, and her. And, yeah, I just --
13 it was just going to cause a lot of internal turmoil
14 within my family. (And it did,) but I stood my grounds.

15 **Q. You ended up resolving the difficulties with**
16 **your husband? He drove you out here, didn't he?**

17 A. I resolved it finally because, you know, I
18 just, I just finally stood up to him. I mean I just said,
19 "You know, I'm not going to perjure myself, I'm not going
20 to lie for your sister. You can divorce me if you want to
21 - fine, I don't care - but I'm not going to lie about
22 something like this."

23 And we had a long discussion. It took us probably
24 like about a whole day of getting mad at each other,
25 thinking about things, fighting, going back, agreeing to

1 divorce, getting back together. It took us about seven
2 hours; but, finally, he started to see my side of the
3 story, or something. And when I told him I had to be here
4 Wednesday morning at eight, he agreed to drive me out here
5 and to stand beside me. And he's at the hotel right now.

6 **Q. Have you talked to Maude Grayhawk since that**
7 **phone conversation where she told you this stuff?**

8 A. No, I -- after that phone call, I lost contact
9 with her because she moved to Colorado. And I don't
10 really move in the same circles as her. She lives a
11 different life and I live a different life. But I think
12 my children may see her now and then, but I don't.

13 **Q. So you've had no contact with her?**

14 A. No, I haven't; uh-uh.

15 MR. CAMIEL: Thank you, that's all I have.

16 CROSS-EXAMINATION

17 BY MS. PLUBELL:

18 **Q. Is it okay if I call you "Judy"?**

19 A. (Nodding head affirmatively.)

20 **Q. Okay. My name is Tammy Plubell, and I'm from**
21 **the attorney general's office.**

22 **And you and I have never met before, have we?**

23 A. No.

24 **Q. And first of all, I'd like to thank you for**
25 **being here, and I'm really glad that your husband brought**

1 you.

2 **And I'm wondering: When you say you don't move in**
3 **the same circles, Maude has kind of a history of drug and**
4 **alcohol usage, hasn't she?**

5 A. Yeah, she has.

6 **Q. And there was a period of time when she lived**
7 **sort of a rough life, correct?**

8 A. Yeah.

9 **Q. Yeah. And that's not the life you chose to**
10 **live, is it?**

11 A. No.

12 **Q. No. And I just want to get a couple things**
13 **clear, and that is: When Maude called you with that**
14 **conversation that you've relayed, she had not talked to**
15 **Ron Kemp, correct?**

16 **She said she wanted to get away from talking to him,**
17 **right?**

18 A. Yes.

19 **Q. That's what she said?**

20 A. Hm-hmm.

21 **Q. So just to the best of your knowledge, there**
22 **had been no conversation that had occurred?**

23 A. To the -- no.

24 **Q. Okay.**

25 A. It was like she was trying to just --

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1 Q. Because she wanted --
 2 A. Yeah.
 3 Q. -- your son to go --
 4 A. Yeah.
 5 Q. -- pick her up and give her a --
 6 A. Hm-hmm, yeah.
 7 Q. Do you know whether or not she ever did talk
 8 to Ron Kemp?
 9 A. No, I don't. I don't know.
 10 Q. Okay. And did Centurion Ministries give you
 11 any information about this case, Judy?
 12 A. This case?
 13 Q. Hm-hmm.
 14 A. No.
 15 Q. They didn't tell you that they had an
 16 eyewitness that placed Maude at the scene, or anything
 17 like that?
 18 A. No.
 19 Q. Okay. Are you at all familiar with the facts
 20 of the case, Judy?
 21 A. I actually really haven't, you know.
 22 Q. Okay. And I'm talking now -- I'm sorry, I'm
 23 talking about Kim Nees's actual murder.
 24 A. Yeah.
 25 Q. Are you at all familiar with that?

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1 A. When this murder took place, I was like 22
 2 years old.
 3 Q. Okay.
 4 A. And I heard about it, but I was too busy
 5 raising my children and doing other things. And I was
 6 devastated by it. It was a sad thing.
 7 Q. It was a hard for you to keep --
 8 A. Yeah. But I didn't keep up on it, no.
 9 Q. And there is a lot of rumor and gossip that
 10 goes around in Poplar, isn't there?
 11 A. Yeah, it's really --
 12 Q. Because it's a small town, and that sometimes
 13 happens, right?
 14 A. Hm-hmm.
 15 MS. PLUBELL: And I really don't think I have
 16 any more questions for you. And thanks for being here.
 17 CHAIRWOMAN O'CONNOR: Do you have more
 18 questions?
 19 MR. CAMIEL: No, I don't.
 20 CHAIRWOMAN O'CONNOR: When was this phone
 21 call? I think you said, but I didn't --
 22 THE WITNESS: What time of the day, or what
 23 day?
 24 CHAIRWOMAN O'CONNOR: No. Like when about was
 25 it?

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1 THE WITNESS: It was like in February of 2004.
 2 I can't remember the exact date, but I can -- (pause.)
 3 CHAIRWOMAN O'CONNOR: The call, when --
 4 THE WITNESS: I know it was like on a -- it
 5 was a day I really didn't have to work, because I go to
 6 work every day. And so I think it -- it was in February.
 7 And the only thing I can, the only thing I can think of is
 8 it may have been on a holiday or on a day when the tribes
 9 released us because it was too, too much snow, or
 10 something.
 11 CHAIRWOMAN O'CONNOR: And that February of
 12 2004 is when Maude called you?
 13 THE WITNESS: Yes.
 14 CHAIRWOMAN O'CONNOR: That phone call, okay.
 15 THE WITNESS: Yeah.
 16 CHAIRWOMAN O'CONNOR: All right, you may be
 17 excused. Thank you for appearing.
 18 MS. BOWMAN: I have one question.
 19 CHAIRWOMAN O'CONNOR: I'm sorry.
 20 MS. BOWMAN: I just wondered: The fact that
 21 (your father-in-law) was law enforcement in that town, and
 22 stuff, have you had that discussion with him at all about
 23 what you were told that day? Or do you know if your
 24 husband's had any discussion with him?
 25 THE WITNESS: I tried to talk to him about it.

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1 one time in March right after I talked to Richard from
 2 Centurion Ministries. And he's the type of guy that walks
 3 really fast, talks really fast, and doesn't really slow
 4 down enough to talk, talk normally, or whatever. I don't
 5 know. I tried to tell him that Maude may have been
 6 involved -- or bring it up to him, but he walked away from
 7 me really fast.
 8 And he just said, "Well, she either did it or
 9 she didn't," and he just kept on walking.
 10 MS. BOWMAN: So that was the only conversation
 11 you had with him?
 12 THE WITNESS: (Nodding head affirmatively.)
 13 MS. BOWMAN: That was the only conversation.
 14 CHAIRWOMAN O'CONNOR: Do you have any
 15 questions?
 16 MR. CURTISS: No.
 17 CHAIRWOMAN O'CONNOR: Okay, thank you.
 18 MS. BOWMAN: Thank you.
 19 MR. CURTISS: Thank you.
 20 (Pause in proceedings.)
 21 CHAIRWOMAN O'CONNOR: You're still sworn. You
 22 were sworn yesterday. Thank you for returning.
 23 You may proceed.

24
 25 /// Ron Kemp ///

30 (Pages 567 to 570)

1 DIRECT EXAMINATION (Continuing)
 2 BY MR. CAMIEL:
 3 **Q. Good morning, Mr. Kemp.**
 4 A. Morning.
 5 **Q. In 2004, you were in -- were you a law**
 6 **enforcement officer at that time?**
 7 A. No.
 8 **Q. What were you doing in, in about February of**
 9 **2004?**
 10 A. I was the criminal investigator for Roosevelt
 11 County Attorney's Office.
 12 **Q. Who was the district attorney at that time?**
 13 A. The county attorney?
 14 **Q. Yes.**
 15 A. Fred Hoffman.
 16 **Q. Did there come a point in time where you made**
 17 **an attempt to interview Maude Grayhawk?**
 18 A. Yes.
 19 **Q. How did that come about?**
 20 A. I had interviewed an individual by the name of
 21 Calvin Lester prior to the interview of Maude Grayhawk,
 22 and he had given me information that he had about Maude
 23 Grayhawk.
 24 **Q. Did you -- and so when you were going to try**
 25 **to interview Maude Grayhawk, what was the subject matter**

1 **of the interview going to be?**
 2 A. About knowledge she might have about this
 3 case.
 4 **Q. The Kim Nees murder?**
 5 A. Right.
 6 **Q. Did you actually go out and find Maude**
 7 **Grayhawk?**
 8 A. I went out with -- I was actually given a
 9 ride, I believe, by Mr. Hepburn over to Poplar. And he
 10 showed me where she lived. And then I went up to the
 11 house and made contact with her.
 12 **Q. You went up by yourself; Mr. Hepburn didn't go**
 13 **with you?**
 14 A. That's correct.
 15 **Q. And you were working in your official capacity**
 16 **as an investigator for the Roosevelt County attorney?**
 17 A. Yeah, the county attorney directed me to go.
 18 **Q. So you had a discussion with Mr. Hoffman about**
 19 **going out and interviewing -- or trying to interview Maude**
 20 **Grayhawk?**
 21 A. That's correct.
 22 **Q. Where did she live at the time?**
 23 A. In Poplar. I mean I know where the house is,
 24 but they don't have any street signs, or very little, so I
 25 can't tell you the street number or anything like that.

1 **Q. When you went up to try to talk to her on that**
 2 **occasion, what happened?**
 3 A. Well, I walked up -- I was walking up to the
 4 house, and I think she was coming out, actually, as I was
 5 coming up the driveway or the sidewalk. And we met on the
 6 step or close to the front door. And I just introduced
 7 myself and told her who I was and that I would like to
 8 speak with her.
 9 **Q. Did you tell her what you wanted to talk to**
 10 **her about?**
 11 A. I believe I did. Sometimes I tell people what
 12 I want to talk to them about; and other times, I'll just
 13 try to set up an appointment where they'll meet with me,
 14 and then I'd tell them at the time. But on that occasion,
 15 I think I did tell her I wanted to talk to her about the
 16 Kim Nees case.
 17 **Q. When you said that, what was her response?**
 18 A. Nothing that comes to mind. I mean she asked
 19 me when we could meet. And I believe she made some kind
 20 of comment about she had been going back and forth between
 21 Denver, Colorado. And I believe she just happened to be
 22 in Poplar that day -- or that time frame, anyways -- and she
 23 was going to be leaving again.
 24 And I said, "Well, maybe we can do this as quick as
 25 possible before you leave."

1 And so she said, "Okay."
 2 **Q. Okay. Did you interview her right then and**
 3 **there --**
 4 A. No.
 5 **Q. -- or did you set up an appointment?**
 6 A. I set up an appointment.
 7 **Q. Do you know when that was in relation to this**
 8 **first contact?**
 9 A. I believe it was the next day.
 10 **Q. Okay. What happened the next day?**
 11 A. I asked her at that point during the -- on the
 12 initial contact that -- if she would meet me at the Poplar
 13 Police Department the next day. And I don't know the
 14 exact time. It was, I think, around one o'clock or two
 15 o'clock, something like that, in the afternoon.
 16 **Q. Now, before you -- did you -- before you went**
 17 **out to interview or had this interview with Maude**
 18 **Grayhawk, did you talk to her father?**
 19 A. No, I don't believe I did. I don't remember
 20 talking to him.
 21 **Q. Okay. Did you, did you tell -- do you**
 22 **remember whether you told her father that you were going**
 23 **to go talk to her, or tried --**
 24 A. No, I don't believe I did.
 25 **Q. Okay. So the next day, does she come down to**

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1 **the Poplar police station?**

2 A. Yes, she did.

3 **Q. Okay. And tell me what the -- what occurred**
4 **when she came down.**

5 A. Well, do you have my notes?

6 **Q. Yes. Would you like to look at those?**

7 A. Yeah.

8 MR. CAMIEL: I assume Counsel has a copy
9 of them.

10 MS. PLUBELL: Yes, thank you.

11 THE WITNESS: These are the notes that I took
12 during the interview. Well, she came in and I introduced
13 myself again to her. And I don't believe I had ever met
14 her prior to the day that I set the appointment up. So I
15 told her that I needed to talk to her about her alleged
16 involvement in the Kim Nees homicide, and that's how we
17 started.

18 **Q. (By Mr. Camiel) Now, when you saw her down**
19 **at the police station, did she indicate to you whether or**
20 **not between the time you had gone to her house the day**
21 **before and her coming to the police station the next day**
22 **she had contact with Sissy Atkinson?**

23 A. As we were talking through the interview, I
24 just asked her, "How come everybody in town says you were
25 involved in this if you weren't?" and why they would say

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1 **Q. Did she tell you what Sissy told her in any**
2 **more particular terms?**

3 A. She made a comment that I was just fishing and
4 that I didn't have anything, and not to come talk to me.

5 **Q. Describe the rest of the interview with Maude**
6 **Grayhawk.**

7 A. Pardon?

8 **Q. Can you describe, then, the rest of the**
9 **interview that you had with her?**

10 A. It was a typical interview. I asked
11 questions, she answered. She denied being involved. She
12 gave me a story or gave me her rendition that -- or her
13 recollection, I guess, that they went down to the bridge
14 earlier. Her and some other girls had went down there,
15 but nobody was there that -- I have to look at my notes
16 here -- (perusing documents.)

17 At about 9:30 or 10:00 p.m., they ran out of
18 alcohol, so they went back to town to get some more; and
19 that they wound up at the Buck Horn Bar somewhere in that
20 area -- or that time frame; and that everybody went to the
21 bar except for Sissy; and that they never saw Sissy the
22 rest of the night. And that was kind of her story.

23 **Q. Okay. At some point during the interview, did**
24 **the subject of her having been involved in the Kim Nees**
25 **murder but having blacked it out come up?**

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1 that.

2 And she went on to tell me that, you know, there
3 were a lot of people that didn't like her, and things like
4 that, and that's why they would say that. And at one
5 point at the initial part of the interview, I said --
6 well, I had told her that I had a witness that had told me
7 that they saw her there, and that, "Well, a lot of people
8 would -- didn't like you. I couldn't understand why the
9 person I had interviewed would say you were there if you
10 weren't because it appeared that this person had nothing
11 against you."

12 That's how we got started.

13 **Q. Okay. Did she indicate whether she talked to**
14 **Sissy Atkinson about whether or not she should talk to**
15 **you?**

16 A. She did -- well, she said -- she made the one
17 statement that the reason, the only reason she showed up -
18 which I wasn't sure if she would - but the reason she said
19 she showed up is she had talked to her dad and her dad
20 told her to come talk to me.

21 **Q. Okay. Did she indicate whether she talked to**
22 **Sissy?**

23 A. And then she said she had also called Sissy
24 Atkinson and that Sissy had discouraged her from coming to
25 talk to me.

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1 A. Well, after she told me what she told me, I
2 said, "Well, that still doesn't explain to me why this
3 particular individual would say you were there and that
4 they saw you there if you weren't there."

5 And she became upset and was -- I believe she went
6 on to tell me that she had been using a lot of marijuana
7 and smoking a lot during that period of time and --
8 actually, that night. And she wondered if I thought it
9 was possible that she was there and, because of the
10 marijuana use and alcohol use, had blacked out and
11 couldn't remember it.

12 **Q. So she was asking you if you thought it was**
13 **possible that she was there and she just doesn't remember**
14 **it --**

15 A. That's correct.

16 **Q. -- because she blacked out?**
17 **And what was your response?**

18 A. I told her I didn't think that would be
19 possible.

20 **Q. And then what did she say?**

21 A. She was -- like I said, she was upset. And
22 she went into explaining that -- her relationship with Kim
23 Nees: That there were girls that were jealous of Kim, but
24 that Kim had always treated Maude as an equal; that they
25 used to smoke a lot of marijuana together; and that her

1 and Kim were good friends.

2 She said that she believed that there was someone
3 else involved. She thought that Kim was lured down to the
4 bridge by another female because she couldn't see Kim
5 going down there to that area by herself to meet with
6 Mr. Beach. She said that Kim was kind of a scaredy-cat.

7 **Q. Did she indicate to you why she thought**
8 **someone else was involved?**

9 A. No, not that I recall. That was just kind of
10 something she put in there. She said that -- well, she
11 just said that she thought she might have been lured down
12 there by some other female.

13 I told her, "It still doesn't explain to me why
14 someone would say you were there, this individual would
15 say you were there if you weren't."

16 **Q. You indicated that at one point she described**
17 **for you her activities on the evening that Kim Nees was**
18 **killed?**

19 A. She told me that -- yeah, I guess a couple of
20 places they had been.

21 **Q. Okay. And she indicated that she had been**
22 **with a group of girls down by the train bridge?**

23 A. She said there were four girls that were
24 partying together, and they went to the bridge earlier to
25 see if anybody else was there; no one was there. They ran

1 out of alcohol around 9:30 or 10:00, and then they went
2 back into town to get some more. They saw headlights
3 coming and thought it might -- they didn't know who it
4 was. But, anyways, so they left, and they went to the
5 Buck Horn Bar to look for a buyer.

6 And she told me that all four of them went into the
7 bar -- well, three of them went in. She gave me some
8 names. And she said that -- that's when she said that
9 everybody but Sissy had left and that they never saw her
10 the rest of the night.

11 **Q. So did she indicate anything about having**
12 **Sissy buy beer for them?**

13 A. Not that I recall, not that I remember.

14 **Q. Did she indicate having given Sissy a ride**
15 **home that night?**

16 A. No, not that I remember.

17 **Q. She indicates that when they went into the**
18 **Buck Horn Bar, Sissy just disappeared?**

19 MS. PLUBELL: Madame Chairperson, I'm going to
20 object. These questions have been asked and answered.

21 CHAIRWOMAN O'CONNOR: I think there's some
22 truth to that, don't you?

23 MR. CAMIEL: I want to make sure it's clear.

24 CHAIRWOMAN O'CONNOR: So you think you have to
25 tell us four times? We're paying attention, Counsel.

1 **Q. (By Mr. Camiel) How long did the interview**
2 **with Maude last?**

3 A. I don't know. I didn't write down the start
4 or the end time. I'm guessing 45 minutes, maybe an hour.
5 I don't know.

6 **Q. How did the interview conclude?**

7 A. She asked if it would be possible that she
8 could be hypnotized. I said I had no idea.

9 **Q. Did she tell you why she wanted to be**
10 **hypnotized?**

11 A. So she could remember.

12 **Q. Was she claiming a lack of memory of what she**
13 **did that night?**

14 A. Well, she didn't know if she could remember or
15 not, or if she could have blacked out and that's why she
16 can't remember being there, or whatever.

17 And I said, "I don't know about, I don't know about
18 the hypnotism thing." That's when I asked her, "Well,
19 would you be willing to take a polygraph?"

20 **Q. How did she respond to that?**

21 A. Oh, at first she said that she didn't think
22 that she would, but then at the conclusion of the
23 interview, she said that she'd be willing to take the
24 polygraph.

25 **Q. In terms of follow-up, did you ever have her**

1 **take one?**

2 A. I don't know if she did or if she didn't.

3 **Q. You indicated that during the course of the**
4 **interview, she was upset. Could you be a little more**
5 **descriptive in terms of what you meant by that?**

6 A. She was crying.

7 **Q. Throughout the whole interview or most of the**
8 **interview?**

9 A. I would say probably 20 minutes into it, she
10 started crying.

11 **Q. And did that continue until the interview**
12 **ended?**

13 A. Intermittent. I mean at the end of it, she
14 wasn't crying or sobbing, or anything like that.

15 **Q. Okay. In addition to having been with Sissy**
16 **Atkinson that night, did she indicate any of the other**
17 **girls that she was with during the course of that evening?**

18 A. Did she say who she was with?

19 **Q. Yes.**

20 A. (Perusing document) -- Joanne Jackson, I have
21 the name Jordis Ferguson wrote down. That's the names
22 that I've got down -- or a Ramona. Those are the names
23 I've got wrote down.

24 **Q. After this interview with Ms. Grayhawk, did**
25 **you do any follow-up?**

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- 1 A. As far as?
- 2 **Q. With Maude Grayhawk, any further conversations**
3 **with her?**
- 4 A. I don't believe I had ever talked to her
5 again.
- 6 MR. CAMIEL: That's all I have.
7 CROSS-EXAMINATION
- 8 BY MS. PLUBELL:
- 9 **Q. Mr. Kemp, we just met for the first time**
10 **yesterday, I believe.**
- 11 A. Correct.
- 12 **Q. But we did have a telephone conversation last**
13 **— I think it was last Friday. Does that sound about**
14 **right?**
- 15 A. Probably.
- 16 **Q. All right. And just so I'm clear, when you**
17 **went to — well, just let me back up a little bit. It**
18 **wasn't your idea to go interview Maude Grayhawk, was it?**
- 19 A. No.
- 20 **Q. And it wasn't — the person that we're talking**
21 **about, the person who placed Maude at the scene, that was**
22 **Calvin Lester, wasn't it?**
- 23 A. That's correct.
- 24 **Q. And it wasn't your idea to go interview Calvin**
25 **Lester, was it?**

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- 1 A. No.
- 2 **Q. And whose idea was that?**
- 3 A. I was sent there by the county attorney.
- 4 **Q. And was that Fred Hoffman?**
- 5 A. That's correct.
- 6 **Q. And at that time, had Centurion Ministries**
7 **been meeting with Fred Hoffman?**
- 8 A. I believe they had.
- 9 **Q. Had you had much contact with Centurion**
10 **Ministries yourself?**
- 11 A. I don't know how much, but I've spoken with
12 them, gotten phone calls, been involved with meetings at
13 the county attorney's office.
- 14 **Q. And you indicated that Fred was cooperative**
15 **with them and their request to go do these interviews and**
16 **such things?**
- 17 A. That's correct.
- 18 **Q. And one of the things you told me during our**
19 **phone conversation is that part of the reason you thought**
20 **Fred may have done that is he didn't want to be part of a**
21 **conspiracy theory.**
- 22 A. That's correct, a part of it, I believe.
- 23 **Q. And I want to talk about Maude first, and then**
24 **we'll get to Calvin Lester.**
- 25 A. Okay.

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- 1 **Q. But when you first approached Maude, you**
2 **didn't know her at all, right? I mean you knew of her —**
- 3 A. Well, I knew her name and I knew of her, but I
4 had never met her, talked to her, or seen her.
- 5 **Q. Did she know you were a law enforcement**
6 **officer?**
- 7 A. I believe so.
- 8 **Q. Okay. And she asked when you two could meet,**
9 **correct? She was leaving her house at the time.**
- 10 A. Yeah. I don't know how we came about setting
11 the date and time, but I believe she said something about
12 she'd be leaving for Denver in the future, and so --
- 13 **Q. And she volunteered that information to you?**
- 14 A. Right.
- 15 **Q. Okay. And Maude showed up for that interview**
16 **the next day, just how you had it scheduled, didn't she?**
- 17 A. That's correct.
- 18 **Q. And during that interview, you told her that**
19 **there was an eyewitness that placed her at the scene of**
20 **the Kim Nees homicide, correct?**
- 21 A. I did.
- 22 **Q. And you were referring to Calvin Lester,**
23 **weren't you?**
- 24 A. I was.
- 25 **Q. And you were referring to the statement that**

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- 1 **Calvin Lester gave you, right?**
- 2 A. That's correct.
- 3 **Q. And that statement — is that — has that**
4 **statement since — has he since recanted that statement,**
5 **Mr. Kemp?**
- 6 A. I have been told that, that he has.
- 7 **Q. Do you know whether or not it was arranged for**
8 **Calvin Lester to take a polygraph examination?**
- 9 A. Yes, it was.
- 10 **Q. Did you have a part in arranging that?**
- 11 A. I did.
- 12 **Q. And who was supposed to do that?**
- 13 A. The FBI.
- 14 **Q. And did that ever happen?**
- 15 A. I was told that they had attempted to give
16 Calvin Lester a polygraph but that he declined to take it.
- 17 **Q. And did he also recant his statement?**
- 18 A. That's what I was told.
- 19 **Q. But when you interviewed Maude, you didn't**
20 **know that. That hadn't happened yet, correct?**
- 21 A. No.
- 22 **Q. And so you were informing Maude that someone**
23 **had placed her at the scene of the crime, and you did that**
24 **more than once, correct?**
- 25 A. Yeah.

34 (Pages 583 to 586)

1 **Q. And that's where she came up with the theory**
 2 **that, you know, "I was using a lot of drugs and alcohol.**
 3 **Is it possible I could have blacked out?" Right?**
 4 A. That's correct.
 5 **Q. And you told her that you thought, "No, you**
 6 **would remember something like this," correct?**
 7 A. That's what I told her.
 8 **Q. And returning to Calvin Lester just briefly,**
 9 **do you have your notes regarding Calvin Lester in front of**
 10 **you?**
 11 A. No, I don't.
 12 **Q. Okay. Would it help for you to have those?**
 13 A. Yes, it would.
 14 **Q. You can just review those.**
 15 A. Sure.
 16 **Q. Thank you.**
 17 A. (Perusing documents) -- okay.
 18 **Q. And did you -- had Centurion Ministries talked**
 19 **to Calvin Lester before you, Mr. Kemp?**
 20 A. I believe so.
 21 **Q. Okay. And have you seen a statement that**
 22 **Calvin Lester signed?**
 23 A. I hadn't at the time. And I have since seen
 24 it, which I read it last week.
 25 **Q. And isn't it true that there are conflicts in**

1 scaredy-cat.
 2 MR. CAMIEL: I don't have anything further.
 3 CHAIRWOMAN O'CONNOR: You may be excused.
 4 Thank you.
 5 MR. KEMP: Am I excused from the subpoena?
 6 CHAIRWOMAN O'CONNOR: You are.
 7 THE WITNESS: Thank you very much.
 8 CHAIRWOMAN O'CONNOR: You may call your next
 9 witness.
 10 MR. CAMIEL: She'll be right here.
 11 CHAIRWOMAN O'CONNOR: While we're waiting
 12 here, I will announce to counsel that Mr. Holen has
 13 approached the board members and said that he has
 14 additional testimony to offer. I will note that Mr. Holen
 15 is in the room and has been since his testimony. We will
 16 allow during the noon hour counsel to speak with
 17 Mr. Holen, and Mr. Holen will be the first witness after
 18 lunch. We will hear him again.
 19 Isn't it Holen?
 20 MR. CURTISS: Yeah. He mentioned that the
 21 past differences --
 22 CHAIRWOMAN O'CONNOR: Right. So we'll hear
 23 him at noon. But we'll give counsel an opportunity to
 24 speak with him first.
 25 MR. WELLENSTEIN: Madame Chairman, can you

1 **the statement he gave to you versus the statement he gave**
 2 **to Centurion Ministries?**
 3 A. There was some different things, yes.
 4 **Q. And, really, when you interviewed Maude**
 5 **Grayhawk that day, what you wanted to know was, "Why**
 6 **somebody would place you at the scene of the crime,"**
 7 **correct?**
 8 A. That's correct.
 9 **Q. And it turns out that the person who placed**
 10 **her at the scene of the crime doesn't place her there**
 11 **anymore, right?**
 12 A. That's what I've been told.
 13 MS. PLUBELL: I have no further questions.
 14 REDIRECT EXAMINATION
 15 BY MR. CAMIEL:
 16 **Q. Mr. Kemp, in terms of the interview with Maude**
 17 **Grayhawk, she volunteered information that was separate**
 18 **from whether somebody saw her down there, didn't she? She**
 19 **talked about hearing that somebody had lured -- a female**
 20 **had lured Kim Nees down to the park?**
 21 A. She didn't say she heard that; she said she
 22 believed there was someone else involved because she
 23 thought Kim was lured down there to the bridge by another
 24 female. She said she couldn't see Kim going to the area
 25 by herself to meet with Barry because Kim was a

1 recognize that he's been sitting in --
 2 CHAIRWOMAN O'CONNOR: I just did. I just said
 3 that he's been sitting in the room since the time of his
 4 testimony.
 5 MR. WELLENSTEIN: Thank you.
 6 GLENNA LOCKMAN, WITNESS, SWORN
 7 CHAIRWOMAN O'CONNOR: You may proceed.
 8 DIRECT EXAMINATION
 9 BY MR. CAMIEL:
 10 **Q. Ma'am, could you state your full name and**
 11 **spell your last name for us?**
 12 A. Glenna Lockman, L-O-C-K-M-A-N.
 13 **Q. Ms. Lockman, where do you live?**
 14 A. In Poplar.
 15 **Q. How long have you lived in Poplar?**
 16 A. All my life.
 17 **Q. How old are you?**
 18 A. Forty-nine.
 19 **Q. Are you related in any way to Kim Nees?**
 20 A. Yes, I am.
 21 **Q. And how is that?**
 22 A. She's a cousin of mine.
 23 **Q. Could you describe -- she's a cousin of yours?**
 24 A. (Nodding head affirmatively.)
 25 **Q. Can you describe the relationship in terms of**

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1 **the family connections?**

2 A. From when?

3 **Q. Well, she's a cousin through your father, your**
4 **grandfather, or --**

5 A. Yes, her grandfather and my grandfather were
6 brothers.

7 **Q. Okay. You live in Poplar. What do you do for**
8 **a living?**

9 A. I manage a supper club.

10 **Q. And where is that located?**

11 A. In Poplar.

12 **Q. Is that located in downtown Poplar?**

13 A. Yeah.

14 **Q. How long have you done that?**

15 A. I have worked there for 27 years, managed
16 about 15 years.

17 **Q. And is that also known as the Legion?**

18 A. Yes.

19 **Q. Do you know Judy Grayhawk?**

20 A. Yes, I do.

21 **Q. How do you know Judy?**

22 A. I've just always known Judy. We went to
23 school together. A couple years older, but I've always
24 known her.

25 **Q. I want to ask you about an occasion where Judy**

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1 **Q. And did Judy indicate why she was telling this**
2 **to you?**

3 A. No. But I could tell she was very nervous,
4 and, I don't know, I'm guessing maybe beings I'm a
5 relative, she had to tell someone to get it out. I don't
6 know.

7 **Q. When she told you this, this is at the bar in**
8 **the Legion Club?**

9 A. Yeah.

10 **Q. And her husband had gone off? He wasn't**
11 **within earshot at the time?**

12 A. No.

13 **Q. How long did the conversation about this**
14 **subject last with Judy Grayhawk?**

15 A. I'd say less than five minutes.

16 **Q. Did she say anything else about it?**

17 A. Not that I can recall. That was probably the
18 most important that I took in, and -- (pause.)

19 **Q. How did you react when she told this to you?**

20 A. Well, I tried to stay calm, and then I believe
21 I did. I think I had a beer with them, and then I left.

22 **Q. Now, you had heard this information from Judy.**
23 **Did you tell anyone what Judy had told you?**

24 A. Yes, I did.

25 **Q. Who did you tell?**

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1 **came in and talked to you about something to do with the**
2 **murder of Kim Nees. Do you recall an occasion where that**
3 **occurred?**

4 A. Yes, I do.

5 **Q. Do you remember when that was?**

6 A. Maybe in -- like I believe it was February, or
7 so, of '04.

8 **Q. And where did this take place?**

9 A. Right at the Legion.

10 **Q. Describe what happened.**

11 A. Well, Judy and her husband and another couple
12 were at the -- sitting at the end of the bar. I came in
13 the back door and saw them, went to have a beer with them.
14 And Judy was upset.

15 **Q. How could you tell she was upset?**

16 A. She says, "Glenna, I have to tell you
17 something." This was after her husband went to the
18 bathroom. So, you know, in a soft voice, that's when she
19 told me what Maude had told her.

20 **Q. What did she tell you that Maude had told her?**

21 A. That she had talked to her and that she didn't
22 kill her but she kicked her in the head once or twice.

23 **Q. This is what she -- this is what Judy is**
24 **telling you that Maude told her?**

25 A. That Maude had said, yes.

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1 A. I went up to Ron Kemp's office, I believe, the
2 next day or the next working day.

3 **Q. And who did you talk to there?**

4 A. I talked to Ron Kemp.

5 **Q. And what did you tell him?**

6 A. I told him exactly what Judy had told me.

7 **Q. Did you tell anyone else?**

8 A. I'm sure I did, but not that I can recall of
9 as of right now.

10 **Q. At some point, did you talk to the**
11 **investigators from Centurion Ministries --**

12 A. Oh, yes; yeah.

13 **Q. -- about what Judy Grayhawk had told you?**

14 A. Yes, I did.

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

16 A. I believe -- if I'm not mistaken, I believe I
17 called Rich.

18 **Q. Richard Hepburn?**

19 A. Yeah, and told him.

20 **Q. So you told him that --**

21 A. And that was over the phone.

22 **Q. Okay. And you told him what?**

23 A. What Judy had told me.

24 **Q. Okay. You knew that there was -- Centurion**
25 **Ministries was involved in investigating the Kim Nees**

36 (Pages 591 to 594)

1 murder?

2 A. Yeah.

3 **Q. Has anybody from the attorney general's office**
4 **been out to interview you?**

5 A. No.

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

7 CROSS-EXAMINATION

8 BY MR. WELLENSTEIN:

9 **Q. Ms. Lockman, I'm Mike Wellenstein from the**
10 **attorney general's office. I just have a few questions**
11 **for you.**

12 A. Okay.

13 **Q. You said you talked to Judy, that the**
14 **conversation occurred in 2004?**

15 A. I believe so.

16 **Q. Okay. You had met with people from Centurion**
17 **Ministries before that, hadn't you?**

18 A. That's right.

19 **Q. And they discussed their theory of their case,**
20 **told you about their suspects?**

21 A. I'm not, I'm not quite understanding what --

22 **Q. Did they tell you -- before you talked to**
23 **Judy, they had told you about who they thought had killed**
24 **Kim Nees?**

25 A. I don't think at that time, no.

1 **Q. But you had close contact with them?**

2 A. Yes, I did.

3 **Q. For about five years?**

4 A. Yes.

5 **Q. Okay. You know, I see you submitted a letter**
6 **to Governor Schweitzer that was attached to the clemency**
7 **application of Barry Beach. And you're familiar with --**
8 **you've seen -- do you want to look at that letter?**

9 A. Sure.

10 **Q. Okay. In that letter on the last paragraph,**
11 **you state (quoted as read):**

12 "I strongly urge you to read thoroughly the
13 reports on the lengthy and detailed investigation by
14 Centurion Ministries."

15 **Was one of those reports a report on Calvin Lester?**

16 A. Not that I recall.

17 **Q. Not that you recall. But you had, but you**
18 **had --**

19 A. This is just sort of -- I guess when I wrote
20 this, it was in general.

21 **Q. It was in general?**

22 A. Yeah.

23 **Q. All right. But you -- but had you read any of**
24 **the reports from Centurion Ministries? You hadn't, had**
25 **you?**

1 A. No, just -- not that -- no, I have never read
2 any of their reports. I've had conversations with them.

3 **Q. So when you were telling the governor to read**
4 **them, you hadn't read anything?**

5 A. No, but I knew they had them.

6 **Q. But they told you about them? Would they --**

7 A. No, I --

8 **Q. -- have told you about the investigation?**

9 A. -- was just by myself figuring they would have
10 them.

11 MR. WELLENSTEIN: Thank you.

12 MR. CAMIEL: I have nothing else.

13 CHAIRWOMAN O'CONNOR: You may be excused.
14 Thank you for appearing.

15 You may call your next witness.

16 MARIA DECKER, WITNESS, SWORN

17 CHAIRWOMAN O'CONNOR: You may proceed.

18 DIRECT EXAMINATION

19 BY MR. CAMIEL:

20 **Q. Ma'am, can you tell us your name and -- your**
21 **full name and spell your last name for us?**

22 A. My name is Marie Decker. The last name is
23 spelled D-E-C-K-E-R.

24 **Q. And where do you live?**

25 A. Billings, Montana.

1 **Q. And are you related in any way to a Dana Kirn?**

2 A. Yes, he's my -- excuse me, he's my
3 half-brother.

4 **Q. And he's now deceased?**

5 A. He is deceased.

6 **Q. And when did he pass?**

7 A. He was killed April 5, 2003.

8 **Q. And was that a homicide?**

9 A. Yes, it was.

10 **Q. Now, was your brother, Dana, married to Maude**
11 **Grayhawk Kirn?**

12 A. Yes, he was.

13 **Q. At the time that your brother was killed, that**
14 **Dana was killed, was he in the process of divorcing Maude?**

15 A. Yes, he was. He was killed Saturday morning;
16 his divorce would have been final Monday, the following
17 Monday.

18 **Q. To your knowledge, was there a hearing**
19 **scheduled for that following Monday in court?**

20 A. Yes, there was.

21 **Q. Did there come a point in time where Dana was**
22 **separating from Maude and he came to live with you?**

23 A. Yes, there was a time. On June 6, 2002, he
24 showed up at my house approximately 10:15 p.m. On that
25 day, he said that he was leaving her.

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1 Q. And did he end up staying with you for a
2 period of time?

3 A. Yes, he did.

4 Q. Now, because Maude was married to your
5 brother, you knew her as well?

6 A. Yes, I knew who she was.

7 Q. What was your relationship with her?

8 A. We had none.

9 Q. Okay. When you say you had none, was that
10 because of any kind of an incident, or could you describe
11 that?

12 A. We had no, no involvement with her because it
13 was her choice to stay away from our family, just had no
14 contact.

15 Q. When your brother, Dana, came to stay with you
16 in June of 2002, that was in Billings?

17 A. Yes, it was.

18 Q. At that time, did he indicate to you whether
19 his wife, Maude, had any involvement with the Kim Nees
20 murder?

21 A. When he first got there, no, he did not tell
22 me anything. This was over a period of four months that
23 he relayed information to me.

24 Q. What did he tell you?

25 A. He told me that -- on different occasions that

Page 601

1 A. Yes, he did. He was killed on April 5th, and
2 the week before, he had called me and said that he would
3 be coming back to Billings and would be going to the
4 authorities.

5 Q. And did he say what he was going to the
6 authorities for?

7 A. About the information that he had about the
8 Kim Nees murder.

9 Q. Now, Dana was, was murdered. (Who was it that
10 was convicted of murdering him?) Tracy

11 A. Maude's boyfriend.

12 Q. What's his name?

13 A. Tracy McGowan.

14 Q. After your brother, Dana, was killed, what did
15 you do?

16 A. I had contacted Centurion Ministries to let
17 them know that Dana had been killed and that, you know,
18 that he was, he was going to talk to them and the police
19 about the information.

20 Q. He said that -- he said to you that he was
21 going to do that before he was killed?

22 A. Hm-hmm.

23 Q. And did you end up coming forward and giving a
24 statement to Centurion Ministries?

25 A. Yes, I did.

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1 Maude had come to him and told him that she had lured Kim
2 Nees down there, down to the park with -- down to the
3 bridge with Ed Van Dover.

4 Q. Did he describe anything else that he said
5 that Maude had told him?

6 A. Just that she was brutally assaulted, you
7 know, that they had beat her.

8 Q. Did Dana indicate who else was involved in the
9 beating of Kim Nees, who else Maude said was involved?

10 A. Yes, he did.

11 Q. Who did he say Maude mentioned as being
12 involved?

13 A. Sissy Atkinson, Rhea Red Dog, Joanne Jackson,
14 herself. Ed Van Dover (was supposedly in back of the
15 pickup while the beating was going on.) * Ed

16 Q. When Dana told you this, did you -- how did
17 you react?

18 A. Well, my initial reaction was just total
19 shock. I just didn't want to hear it because it was
20 just -- I knew of the incident in Poplar, but as not
21 living there, I never really was too informed, let's put
22 it that way.

23 Q. Okay. Did Dana indicate any intention to do
24 anything with the information that he says he had received
25 from Maude?

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1 Q. Why did you decide to do that?

2 A. Because the information I had. I really
3 thought that it would help, whether it was helping to my
4 brother's death or to get information towards Kim's
5 murder, who committed it. But I felt it was my duty to
6 come forward with the information.

7 Q. Now, did you think that Dana's death had
8 something to do with his having told you he was going to
9 come forward?

10 A. Yes, I did.

11 Q. And did that concern you?

12 A. Yes.

13 Q. Is that one of the reasons why you came
14 forward?

15 A. Yes.

16 Q. Did Dana tell -- to your knowledge, did he
17 tell any other family members that he was going to come
18 forward with the information he received from Maude?

19 A. Yes. He told his --

20 MS. PLUBELL: Your Honor --

21 THE WITNESS: -- his father --

22 MS. PLUBELL: Excuse me.

23 Madame Chairperson, I'm going to object to
24 this. This is already hearsay of a dead man, but now
25 we're going to get into something --

38 (Pages 599 to 602)

1 CHAIRWOMAN O'CONNOR: But you conceded to
2 hearsay this morning. You said we're going to hear it, so
3 we're going to hear it.

4 MS. PLUBELL: No, that isn't what I conceded.
5 With all due respect, I conceded to her testifying to what
6 Dana said, not to what other people said.

7 CHAIRWOMAN O'CONNOR: We're going to hear it.
8 I think we're too far gone now. I mean whether we should
9 have gone there or not, I think we went there this
10 morning. We're going to hear it, and we're going to sort
11 it out, and we're going to take it for what we take it.

12 We are aware that we're in third- and
13 fourth-hand hearsay, and that's a problem. And some of
14 these people could have been brought forward, and that's a
15 problem.

16 But proceed.

17 **Q. (By Mr. Camiel) Ms. Decker, to your**
18 **knowledge, did Dana tell any other family members what he**
19 **told you about Maude confessing to him about having been**
20 **involved in Kim Nees's murder?**

21 CHAIRWOMAN O'CONNOR: Excuse me, ask that
22 question again. I mean if, on the other hand, you're in
23 such deep hearsay, we can't even understand what you're
24 saying, I think you've really gone too far, Counsel.

25 **Q. (By Mr. Camiel) Were other family members**

1 **give him any advice? Did you give him any advice as to**
2 **whether he should come forward with it or not?**

3 A. Well, I told him he should go to the
4 authorities, but he was apprehensive of what the
5 repercussions would be.

6 **Q. Did he tell you that?**

7 A. Yes.

8 MR. CAMIEL: Thank you.

9 CHAIRWOMAN O'CONNOR: Proceed.

10 CROSS-EXAMINATION

11 BY MS. PLUBELL:

12 **Q. May I call you "Maria", or what would --**

13 A. "Maria" will be fine.

14 **Q. We've never met before, have we?**

15 A. No.

16 **Q. My name is Tammy Plubell, and I'm from the**
17 **attorney general's office.**

18 **And I'd like to get some dates straight.**

19 A. Okay.

20 **Q. The first -- what is the first time that Dana**
21 **told you anything about these things that Maude had told**
22 **him?**

23 A. I can't pinpoint a date on that.

24 **Q. Not the specific, but do you know the year?**

25 **Do you know --**

1 **told by Dana what he told you about what Maude said?**

2 A. Yes.

3 **Q. Which family members are you aware of --**

4 A. He told his father.

5 **Q. And who's that?**

6 A. Albert Kirn.

7 **Q. Is Albert Kirn still alive?**

8 A. No, he's deceased.

9 **Q. And when did he pass?**

10 A. Six months after Dana was murdered, he got in
11 a plane crash.

12 **Q. He got in a plane crash coming back from the**
13 **trial --**

14 A. Right.

15 **Q. -- where Tracy McGrady (sic) was convicted of**
16 **murdering Dana?**

17 A. Tracy McGowan.

18 **Q. McGowan, I'm sorry.**

19 **What other family members were told?**

20 A. I would have no idea about that.

21 **Q. Did you talk to Mr. Kirn about what Dana had**
22 **told him?**

23 A. Yes. Before he was killed in a plane crash,
24 yes, I did.

25 **Q. When Dana told you the information, did you**

1 A. Well, yeah, because he showed up at my house
2 on June 6 for -- 2002, which was my daughter's graduation
3 day. He was -- after that date throughout a four-month
4 period.

5 **Q. So that's when it started?**

6 A. Right, right.

7 **Q. Okay. And are you aware that your brother**
8 **physically abused Maude?**

9 A. To my knowledge, I never -- (pause.)

10 **Q. Are you aware that on June 3rd of 2002, there**
11 **was a permanent order, restraining order issued through**
12 **Tribal Court against your brother for him to stay away**
13 **from Maude Kirn?**

14 A. No, I wasn't.

15 **Q. You don't particularly care for Maude, do you?**
16 **I mean you didn't care for her back in 2002.**

17 A. I have no dealings with the lady, none
18 whatsoever.

19 **Q. Is that -- okay. And just so I get it**
20 **straight, the people that he claimed Maude named were**
21 **Sissy, Rhea Red Dog --**

22 A. Rhea Red Dog.

23 **Q. -- and Ed Van Dover?**

24 A. Hm-hmm.

25 **Q. And that's it?**

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1 A. Joanne Jackson.
 2 **Q. And Joanne Jackson?**
 3 A. (Nodding head affirmatively.)
 4 **Q. If Maude had gotten a restraining order**
 5 **against your brother on June 3rd of 2002, he probably**
 6 **wasn't very happy about that, was he?**
 7 A. I wouldn't have no idea. I was not around
 8 Dana. He showed up at my house; other than that, I had no
 9 contact with him.
 10 **Q. All right.**
 11 MS. PLUBELL: Other than the fact that we do
 12 have a certified copy of the restraining order --
 13 CHAIRWOMAN O'CONNOR: You can make it part of
 14 the record.
 15 MS. PLUBELL: -- I have no further questions.
 16 CHAIRWOMAN O'CONNOR: Okay. Do you have any
 17 more questions?
 18 MR. CAMIEL: No.
 19 CHAIRWOMAN O'CONNOR: You may be excused.
 20 Thank you for your testimony.
 21 You may call your next witness.
 22 MARIE ANTOINETTE JANSEN, WITNESS, SWORN
 23 CHAIRWOMAN O'CONNOR: You may proceed,
 24 Mr. Camiel.
 25 /// ///

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1 A. I dispatched. When I first worked for them, I
 2 dispatched, I was a jailer. We did it all: Checked in
 3 prisoners, searched females, answered phone calls.
 4 **Q. What years did you work at the Roosevelt**
 5 **County Sheriff's Office?**
 6 A. I started in 1977 and moved in 1988 -- '87, 10
 7 years.
 8 **Q. Now, you indicated that one of the job -- one**
 9 **of the multiple jobs you had there was a dispatcher.**
 10 **Would you field calls that came into the sheriff's office?**
 11 A. Yes.
 12 **Q. And was there some kind of a central station**
 13 **that you worked from?**
 14 A. Yes.
 15 **Q. Were you working in January of 1983?**
 16 A. Yes.
 17 **Q. And in particular, January 7th of 1983?**
 18 A. Yes.
 19 **Q. Were you aware of calls coming in from**
 20 **detectives in Monroe, Louisiana?**
 21 A. Yes.
 22 **Q. How were you aware of those calls?**
 23 A. Actually, there was two days of calls that
 24 came in. I remember a name, "Jay Via".
 25 **Q. Okay.**

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1 DIRECT EXAMINATION
 2 BY MR. CAMIEL:
 3 **Q. Ma'am, could you state your full name and**
 4 **spell your last name?**
 5 A. My full name is Marie Antoinette Jansen,
 6 J-A-N-S-E-N.
 7 **Q. Do you go by "Toni"?**
 8 A. Yes, I do.
 9 **Q. Where do you live?**
 10 A. Right now, I live in Billings.
 11 **Q. And did you used to live in Roosevelt County?**
 12 A. That's correct --
 13 **Q. Where did you --**
 14 A. -- for 31 years.
 15 **Q. I'm sorry?**
 16 A. For 31 years.
 17 **Q. Were you living in Roosevelt County in 1983?**
 18 A. Yes, I was.
 19 **Q. What time span did you live there?**
 20 A. I lived in Billings for 31 years. I moved --
 21 I mean in Wolf Point. I moved to Billings in 1988.
 22 **Q. At some point in time, did you work for the**
 23 **Roosevelt County Sheriff's Office?**
 24 A. I did.
 25 **Q. What did you do for them?**

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1 A. And after all these years, I finally --
 2 because when he walked in here, he spoke, and I recognized
 3 his voice.
 4 **Q. You remembered calls coming in from Jay Via?**
 5 A. Yes.
 6 **Q. Do you remember calls coming in from anyone**
 7 **else from -- any other law enforcement from Louisiana?**
 8 A. Monroe, Louisiana? I don't remember if his
 9 name was Cunningham or -- the only name I specifically
 10 remember is Jay Via.
 11 **Q. Okay. Was there anything unusual about these**
 12 **calls that came in?**
 13 A. They were annoying because there were so many
 14 of them.
 15 **Q. Over the -- now, what shift were you working**
 16 **then, if you recall?**
 17 A. I worked a day shift -- two day shifts and
 18 three afternoon shifts.
 19 **Q. And what were the hours of the day shifts?**
 20 A. Eight to four, four to twelve, and midnight to
 21 eight.
 22 **Q. Okay. Who was the, who was the sheriff in**
 23 **January of 1983?**
 24 A. Dean Mahlum.
 25 **Q. So you worked for him?**

1 A. Yes, I did.

2 Q. You recall two different days of calls?

3 A. Yes, I do.

4 Q. And did you know what the calls were about?

5 A. Not at the time, no; no.

6 Q. Did you learn what the calls were about?

7 A. Yes.

8 Q. How did you learn what they were about?

9 A. Because they said it was about Barry Beach.

10 Q. Who said they were about Barry Beach?

11 A. The other dispatchers that I worked with, with

12 -- I remember Dean and Ron Wilson and some of the other

13 dispatch -- or some of the other officers, Gary Olfsted,

14 talking about it.

15 Q. During this two-day period that you recall,

16 did -- were some of these calls where somebody would call

17 in and you would just take a message and leave it for --

18 A. Yes.

19 Q. -- Sheriff Mahlum?

20 A. Yes.

21 Q. And were others where you would patch a call

22 through to him?

23 A. Yes.

24 Q. How many, in terms of the total number of

25 calls, do you think came in from Louisiana during this

1 A. Hm-hmm.

2 Q. To speak with who?

3 A. Dean Mahlum. I don't remember if any of them

4 came in for -- Ron Wilson was back there. I don't know if

5 I just patched them through to Ron Wilson. That's

6 possible. But it was mostly for Dean.

7 Q. Now, if Sheriff Mahlum wanted to call out to

8 Monroe, Louisiana, would he go through you, or would he

9 just directly call?

10 A. He'd just dial direct.

11 Q. So we're just talking about calls that are

12 coming in from Louisiana, not calls going out?

13 A. Yes.

14 Q. Now, why do you -- why now all these years

15 later do you remember that there were that number of

16 calls?

17 A. I've always remembered that. Nobody ever

18 asked me.

19 Q. Okay. Was there something -- why would that

20 stick with you?

21 A. Why would it stick with me? Because of the

22 name, Jay Via; because of -- I was there for 10 years;

23 because of the talk of the town; because of Barry Beach's

24 name; because of Barbara Clincher. It's easier for me to

25 remember voices than it does name -- does names.

1 time period?

2 A. I bet you there was at least 10 that were

3 logged, and there were several that probably weren't,

4 logged. *Do we have the log book?*

5 Q. Why would some calls be logged and some not be

6 logged?

7 A. Because at that time, we also cooked. We

8 cooked for the prisoners, we -- you know, we multitasked.

9 There was no jailers, there was no dispatchers, there was

10 no people that answered the phone; we did it all.

11 You know, if a deputy came in and watched the radio

12 systems, then we would go back to the kitchen and also

13 cook for the prisoners at the time. We would feed the

14 prisoners. They would come in and help us. So it was --

15 we multitasked, we did everything: Answered phone calls,

16 dispatched officers. We covered the BIA, we covered the

17 sheriff's office, we covered -- at that time, we didn't

18 have a police department. Later on, we split up and

19 became -- there was a police department and a sheriff's

20 office going back to being two separate units. There was

21 a highway patrol, there was FBI; you know, several.

22 Q. So you recall, you said, at least 10 calls

23 that were logged and then others that weren't logged?

24 A. Yes.

25 Q. And these were calls coming from Jay Via?

1 Q. But you recalled -- I want to make sure we're

2 clear -- that this was just over a two-day period?

3 A. Yes.

4 MR. CAMIEL: Thank you.

5 CHAIRWOMAN O'CONNOR: You may proceed.

6 CROSS-EXAMINATION

7 BY MS. PLUBELL:

8 Q. "Toni", is that right?

9 A. Yes.

10 Q. My name is Tammy Plubell, and I'm with the

11 attorney general's office.

12 And, apparently, since we're a number of years away

13 from 1983, there are many records of those phone calls; is

14 that correct?

15 A. Well, I -- (pause.)

16 Q. Or did you try to go back and look at the

17 records?

18 A. No.

19 Q. Okay. And you're not there anymore, right?

20 A. No. I worked in Wolf Point for 10 years, and

21 then I went to the highway patrol for 15.

22 Q. Okay. And you indicated this was over a

23 two-day period of time. When in 19 --

24 A. January.

25 Q. January of 1983. Do you have any idea what

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1 the nature of those calls were? You weren't privy to the
2 conversations, in other words?

3 A. No -- did I hear the conversations? I did
4 not.

5 **Q. Okay. And do you happen to know if any of**
6 **those calls were related to Jay Via informing Dean Mahlum**
7 **that Barry Beach had given a confession?**

8 A. On the second day, I was told that, yes.

9 **Q. Okay.**

10 A. The second night.

11 **Q. So some of those calls were after Barry Beach**
12 **confessed; is that correct?**

13 A. Well, I don't know what time the confession
14 was given.

15 **Q. Okay. But the second day he confessed, and**
16 **there were more calls; is that correct?**

17 A. Yes.

18 MS. PLUBELL: Okay, I have no further
19 questions.

20 CHAIRWOMAN O'CONNOR: Do you have any
21 questions?

22 MR. CAMIEL: Nothing further.

23 CHAIRWOMAN O'CONNOR: You may be excused.
24 Thank you for your testimony.

25 You may call your next witness.

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1 **Q. And you were living in Poplar in 1979?**

2 A. I was. I had -- partially, because I had gone
3 to college in Glendive, Montana, and I was home for the
4 summer.

5 **Q. Do you remember when the school year in**
6 **Glendive ended and you came home for the summer?**

7 A. It was -- that's a good question. I don't
8 know the specific date when it ended, but I do know that I
9 was home during the time all of this happened.

10 **Q. Would it have ended, then, in either the end**
11 **of May or early June?**

12 A. I'm thinking the end of May.

13 **Q. Where did your, where did your family live in**
14 **Poplar at that time?**

15 A. We lived, what we called, "up on the hill".
16 We lived on the corner, and it was on the same block that
17 Kim lived. Because Kim's grandparents lived next to us,
18 and they were -- Kim lived a few houses up.

19 **Q. Describe your house at that time.**

20 A. It was an older home that we had purchased and
21 remodeled. It was on the corner lot. It had the white
22 pillars with the wraparound porch. So it was a two-story
23 home. And we had remodeled it; gutted it out, remodeled
24 it.

25 **Q. Who lived in that house back in June of 1979?**

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1 A. My stepfather.

2 **Q. What's his name?**

3 A. Silas Clincher; my mother, Roberta Clincher;
4 myself; Barry, my brother; and my youngest brother,
5 Bradley -- or we call him "Brad".

6 **Q. In terms of the layout inside the house, where**
7 **were the different bedrooms located?**

8 A. Our mother's bedroom was downstairs, and the
9 kids' bedrooms were upstairs.

10 **Q. And where were the bathrooms located?**

11 A. There was one bed -- bathroom inside of my
12 mother's bedroom, and that was the bathroom that most of
13 the guests used, and everything like that; and then there
14 was a bathroom upstairs right next to my bedroom.

15 **Q. Where was Barry's bedroom?**

16 A. Right at the top of the stairs.

17 **Q. Next to your room?**

18 A. No, my room was around the corner from his
19 bedroom. I had to go past his bedroom to get to my
20 bedroom.

21 **Q. If you came upstairs --**

22 A. His bedroom was right at the top of the
23 stairs, so it was like right there.

24 **Q. When did you first hear that Kim Nees had been**
25 **murdered?**

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1 BARBARA ANN SALINDA, WITNESS, SWORN

2 CHAIRWOMAN O'CONNOR: You may proceed.

3 DIRECT EXAMINATION

4 BY MR. CAMIEL:

5 **Q. Ma'am, can you tell us your full name and**
6 **spell your last name?**

7 A. Barbara Ann Salinda, formerly Beach Salinda.
8 My last name is spelled S-A-L-I-N-D-A.

9 **Q. Where do you live?**

10 A. I live in Hawthorne, California.

11 **Q. And what do you do for a living?**

12 A. I'm a stay-at-home mom.

13 **Q. How many kids do you have?**

14 A. I have one daughter.

15 **Q. How old is she?**

16 A. She's eight years old. She just turned eight
17 June 2nd.

18 **Q. How old are you?**

19 A. I am 47 years old.

20 **Q. Where did you grow up?**

21 A. Well, primarily in Poplar, Montana. I spent a
22 short time down in Arkansas, in Little Rock, Arkansas; and
23 then when we were nine, we moved up to Poplar, Montana.

24 **Q. And you're the sister of Barry Beach?**

25 A. Yes, older sister.

1 A. The following morning, I was at Fort Peck
2 Market, which was the local clothing store. And I was
3 waiting for it to open, so I got there at like maybe
4 five-to-nine in the morning. I was sitting out front in
5 my car waiting for it to open. And when I went into the
6 store, when they unlocked the doors and I went in, the two
7 ladies behind the counter - Mrs. Kirn and Mrs. Atkinson -
8 were talking. And Mrs. Atkinson had been on the phone.
9 She hung up the phone, and that's when she told Mrs. Kirn
10 that Kim had been killed. And I was -- just overheard the
11 conversation.

12 **Q. And you knew Kim because you had been**
13 **neighbors for years?**

14 A. Right. We had gone to school together. She
15 was a year behind me.

16 **Q. I want to go back now to the earlier day,**
17 **June 15th.**

18 A. Okay.

19 **Q. What did you do that day?**

20 A. Well, we were in Williston, North Dakota. My
21 youngest brother, Brad, had had his appendix removed, so
22 he was in the hospital there. So my mother and I were
23 there with him.

24 **Q. For the entire day?**

25 A. Hm-hmm.

1 **Q. What time did you and your mother come home?**

2 A. We got home, I would say, probably around
3 five-thirty because I -- I'm trying to remember, because I
4 remember I went to Tandy's, which was the grocery store.
5 They closed at six. And I went to Tandy's to get
6 something to cook because we needed to cook dinner.

7 **Q. So you and your mother come home from**
8 **Williston. Did your brother, Bradley, come home with you,**
9 **or did he stay at the hospital?**

10 A. No, he was still there.

11 **Q. Now, did -- at this point in time, did Barry**
12 **have a vehicle of his own?**

13 A. He did.

14 **Q. What did he have?**

15 A. It was a blue El Camino, I think.

16 **Q. When you and your mother got home from**
17 **Williston on the evening of June 15, 1979, did you see**
18 **your brother's car at the house?**

19 A. We did not.

20 **Q. Where did he usually park?**

21 A. In the driveway. Our driveway -- you could go
22 straight towards the garage door, but we also had a spot
23 where you could like veer off, and that's where we'd park
24 our cars. Because I had my car, and Barry had his car,
25 and my dad had his pickup. And so Mom usually parked

1 straight ahead towards the garage door, and -- so that she
2 could get in and out. And then the rest of us parked off
3 to the side at an angle, like parallel parking.

4 **Q. Now, when you and your mother got home, to**
5 **your knowledge, was anyone home?**

6 A. Not to my knowledge. The house was empty, I
7 thought.

8 **Q. Did you make any assumptions about whether**
9 **your brother was home or not?**

10 A. Yes, we just assumed he was not home because
11 his car wasn't home.

12 **Q. And would he -- was it a, was it a common**
13 **occurrence that he would leave his car somewhere else, or**
14 **would he always bring his car home?**

15 A. No, it was -- we were young. When you had a
16 car, you drove the car. So everywhere we went, our cars
17 went.

18 **Q. Okay. So you and your mother get home, you**
19 **described, sometime -- five-thirty, or so, because you had**
20 **to get to the store before it closed at six.**

21 A. Yeah.

22 **Q. And then what did you do the rest of the**
23 **evening?**

24 A. Well, we came home and we made dinner, and
25 then we ate, and then we just sat around and watched TV.

1 And then my uncle came, Calvin Heinz. He came to pick
2 Barry up because he was supposed to go out branding the
3 next day to my grandpa's ranch.

4 **Q. And when your uncle came to pick up Barry,**
5 **what did you do?**

6 A. Well, we told him he wasn't there because his
7 car wasn't home. And so we told him to go look for Barry
8 and that we would go look for him, too.

9 **Q. Now, did you -- since you had been home, did**
10 **you go up and look in Barry's room?**

11 A. We didn't.

12 **Q. Why not?**

13 A. Because his car wasn't home. We just, you
14 know, made the assumption he wasn't home.

15 **Q. Okay. So your uncle went out to look for**
16 **Barry?**

17 A. Hm-hmm.

18 **Q. And what did you do?**

19 A. We went out to look for Barry as well.

20 **Q. Where did you look?**

21 A. Well, Poplar is a very small town. So there
22 was what we called the "main drag". So it was just kind
23 of like an "L" shape, and that's -- everybody would drive
24 and stop and do a -- flip a "U", and just -- it was a
25 continual "L". And that's what you did, you cruised Main.

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1 And so we cruised Main, we just cruised Main looking for
2 him. And I remember that we stopped and asked one of the
3 police officers on duty, and --

4 **Q. Do you remember who that was?**

5 A. It was Calvin First. We asked him if he had
6 seen Barry around. And he said "no", that he hadn't seen
7 him.

8 **Q. Were you looking for Barry's car, as well?**

9 A. We were looking for Barry's car primarily,
10 because that's what we thought --

11 **Q. Okay.**

12 A. -- you know, he would be driving his car, so
13 -- (pause.)

14 **Q. And so then what did you do?**

15 A. Well, we asked some friends of his, as well,
16 and they hadn't seen him.

17 **Q. What time is this that you're out looking for
18 him?**

19 A. This is around -- I would say around nine
20 o'clock at night.

21 **Q. Okay. And, obviously, you don't find him.**

22 A. No.

23 **Q. So then what do you do?**

24 A. We go back home. And I actually would say
25 that it may have even been getting later than nine o'clock

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1 **Q. So then what do you do?**

2 A. Well, we just kind of watched TV, and --

3 **Q. What part of the house was the TV in?**

4 A. The TV was in the family room. Because you
5 come into the house, and you come right into the dining
6 area, and it's open to the living area. And then off the
7 living area kind of around the corner is the family room,
8 and that's where the TV was. And my mother's bedroom was
9 off to the left of the living room.

10 **Q. Both you and your mother watched TV?**

11 A. Hm-hmm.

12 **Q. Did you go upstairs when you first got home?**

13 A. No.

14 **Q. How late into the evening did you watch TV?**

15 A. I watched TV until midnight. The Midnight
16 Special was on, and then the TV went off the air. And so
17 I watched TV until midnight, and then I read for awhile in
18 the family room, so --

19 **Q. What time do you think -- I don't mean to
20 interrupt, but what time do you think you shut off the TV?**

21 A. When it went off the air at midnight.

22 **Q. Okay.**

23 A. And then I stayed reading for about half an
24 hour -- 40 minutes -- about half an hour.

25 **Q. Were you downstairs when you were reading?**

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1 A. Yes, and still in the family room.

2 **Q. Now, where -- in terms of the --**

3 A. And Mom had gone to bed a little bit sooner.
4 She didn't even --

5 **Q. Okay. And your mother's bedroom was where?**

6 A. It was off the left -- off the living room.

7 **Q. On the main floor?**

8 A. On the main floor.

9 **Q. In terms of the entryways and exits to the
10 house, the front and back door, where was the back door?
11 If there was a side door, where was that?**

12 A. It was off the living room. But that was
13 pretty much always kept locked. Nobody ever used that
14 entrance. Everybody used the side door off the driveway.

15 **Q. You indicated you read for awhile. Do you
16 know whether -- were you downstairs when you were reading,
17 or did you go upstairs?**

18 A. I was downstairs when I was reading. And then
19 I went to the bathroom and my mom's bedroom and told her
20 that I was going to bed and "goodnight". And then I went
21 -- that's when I went upstairs.

22 **Q. Okay. When you went upstairs, what happened?**

23 A. Pardon me?

24 **Q. When you went upstairs, what happened?**

25 A. Well, when I went upstairs -- there was a

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1 because it was starting to get dark, and -- but we went
2 back home and basically just told Calvin that -- well,
3 Calvin told us that he would have Grandma pick Barry up in
4 the morning, and -- because she was going to be coming
5 into town. And so he was going to just let Grandma pick
6 him up in the morning.

7 **Q. So then you went home?**

8 A. We -- yeah.

9 **Q. Now, where was your father at that time?**

10 A. I'm assuming that he was downtown at one of
11 the bars.

12 **Q. Okay.**

13 A. That was normally where he was.

14 **Q. So when you went out looking for your brother,
15 were you with your mother?**

16 A. I was with my mother.

17 **Q. Okay.**

18 A. So we were both looking and driving her
19 around. We were in her car.

20 **Q. You were both in her car?**

21 A. Hm-hmm.

22 **Q. You get home?**

23 A. (Nodding head affirmatively.)

24 **Q. And did you see his car at home?**

25 A. No, still wasn't home.

1 hallway light down at the bottom of the stairs and then
2 another switch around the corner over by my bedroom so
3 that I could -- was able to turn the light off once I got
4 around there. But when I had turned the light on to go
5 upstairs -- because I had turned all the lights off. And
6 so when I went upstairs, I was able to see by the light
7 that Barry was in his bedroom. He was in his bed asleep.

8 **Q. Was his bedroom door open?**

9 A. Yes, we all slept with our bedroom doors open.

10 **Q. And was he covered up, or was he --**

11 A. No, he wasn't under any covers. He was just
12 lying on his back on the bed.

13 **Q. How was he dressed?**

14 A. He had on a white -- it was like a T-shirt,
15 but it was like cut off. It was the '70s. It was cut off
16 at the waist. And then he had on short gym trunks. They
17 were like maroon gym trunks. And he had on white tube
18 socks with our -- maroon and gold on them, which are like
19 our school colors.

20 **Q. When you walk and go upstairs, what time was**
21 **that?**

22 A. I would say it was about 12:40 by that time,
23 because by the time I went to the bathroom and got up the
24 stairs, it was probably about 12:40.

25 **Q. Why didn't you use the -- you mentioned you**

1 **used the bathroom down in your mother's room. Why didn't**
2 **you use the upstairs bathroom?**

3 A. The water wasn't working in the upstairs
4 bathroom.

5 **Q. Working at all, or not working --**

6 A. It wasn't working all. I think it was shut
7 off.

8 **Q. So then you went to bed?**

9 A. We were still kind of under construction. It
10 was like the -- so the bathroom upstairs wasn't working,
11 the water wasn't working.

12 **Q. You went to bed?**

13 A. I went to bed.

14 **Q. And in your room when you go to bed, did you**
15 **shut the door to your bedroom?**

16 A. No, I -- like I said, we all slept with our
17 bedroom doors open. Even my mom and -- we all did.

18 **Q. After you went up to bed, did you hear any**
19 **sounds of anyone leaving the house?**

20 A. No. And I would have heard if anybody had
21 left the house. We had dogs at the time, and once we had
22 all gone to bed -- the dogs were very protective over the
23 family. They would have barked.

24 **Q. Even at a family member?**

25 A. Hm-hmm, even a family member.

1 **Q. Do you recall hearing your father come home?**

2 A. I was trying to remember that, because I think
3 he came home before I went to bed.

4 **Q. Okay.**

5 A. Because, because when I went into the
6 bathroom, he was in bed.

7 **Q. So after you went off to bed, did you hear any**
8 **sounds of anyone leaving the house?**

9 A. No.

10 **Q. What time did you get up -- did you sleep**
11 **through the whole night?**

12 A. I did.

13 **Q. Did anything wake you during the night?**

14 A. Nothing.

15 **Q. Any sounds of water running anywhere?**

16 A. No.

17 **Q. Any sounds of the dogs barking?**

18 A. No. I would have -- I mean, again, you know,
19 I went around and turned the light off, and everything.

20 If anybody had come like near my bedroom, even to -- the
21 bathroom was right beside my bedroom. And like I said,
22 the water wasn't working anyway, so we all knew we would
23 have to use the bathroom downstairs.

24 **Q. What time did you get up the next morning?**

25 A. I got up a little before seven, because we

1 were branding that day, and I was expected to go out and
2 help feed the crew that was going to be branding. So I
3 was up pretty early.

4 **Q. When you got up, did you see any other family**
5 **members?**

6 A. My mom was up already, my stepfather had
7 already gotten up. He was a very early riser, and -- but
8 it was still -- it was just us.

9 **Q. Okay. Did you see Barry that morning?**

10 A. Not until -- well, I saw him when I first got
11 up because I walked past his door, and he was still
12 asleep. But then he was still in bed, and so he wasn't up
13 yet.

14 **Q. When you saw him when you got up and walked**
15 **past his bedroom as he went downstairs, how was he**
16 **dressed?**

17 A. In the same thing. He was actually still in
18 the same sleeping position like he hadn't even moved all
19 night long, so --

20 **Q. Okay. He still had the shorts on and the**
21 **shirt and the socks?**

22 A. Still had the shirt, still had the shorts,
23 still had the socks. His shoes were like at the -- by his
24 bed.

25 **Q. You go down and you have breakfast?**

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1 A. Not yet, because we were kind of waiting for
2 Grandma to come, because she was going to be there, and we
3 thought we would all eat.

4 **Q. At any -- what time did Barry get up? Do you
5 know?**

6 A. He got up, I would say probably about
7 quarter-to-seven, or so. Because Grandma got there, and
8 by that time, I had told Mom that Barry was home. And --

9 **Q. When did you tell her that Barry was home?
10 When did you first tell her?**

11 A. When I got up.

12 **Q. Okay.**

13 A. And --

14 **Q. Why -- now, let me stop you for a minute. And
15 I don't mean to interrupt, but you and mother had been out
16 looking for Barry that evening?**

17 A. Right.

18 **Q. And as you went off to bed sometime around
19 12:30, or so --**

20 A. Hm-hmm.

21 **Q. -- you say that's the first time you saw he
22 was home?**

23 A. When I went up the stairs, yes.

24 **Q. You didn't go back down and tell your mother
25 at that time?**

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1 needed something from Fort Peck Market. I can't remember
2 what it was, but that's why she sent me down. And so
3 that's when I went to Fort Peck Market and that's when I
4 heard the ladies talking about what had happened.

5 I went back and told Mom, I said, "Guess what I
6 heard downtown?" and told her that I had heard that Kim
7 had been killed down at the train bridge and that she had
8 been beaten to death.

9 And so we were talking about that, and everything.
10 And then I had to drive out to the ranch, to the farm.

11 **Q. When you got back from the market to your
12 house, was Barry still there?**

13 A. No, he had gone out to -- with Grandma. So he
14 had already gone.

15 **Q. Okay. So then you go out to the ranch?**

16 A. Hm-hmm.

17 **Q. And what happens out there?**

18 A. Well, when I got out there, the guys were
19 already there for a break, and so they were all sitting
20 around in my uncle Calvin's trailer. And I remember that
21 Barry and two of his friends, Dennis Simons and Clint
22 Lithicum, were sitting there on the couch, and they all
23 had their shirts off because it was really hot and they
24 had been obviously working already.

25 And I said, "Guess what happened?" And I said, "Kim

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1 A. No, because she was asleep. I mean she just
2 kind of -- you know, when I left the bathroom and said
3 "goodnight", she said, "Okay, goodnight." But she was
4 obviously asleep, and so I didn't want to disturb her or
5 wake her up.

6 **Q. So you first told her that he was home in the
7 morning?**

8 A. In the morning.

9 **Q. Okay.**

10 A. So then she called up the stairs, and she's
11 the one who woke Barry up.

12 **Q. Okay. Did you hear any discussion about
13 Barry's car?**

14 A. Yeah, she -- well, she saw him come
15 downstairs, and she asked him how come he was still in his
16 swim trunks. Because he used to swim in his -- I call
17 them "gym trunks", but he used to swim in those. And she
18 asked him how come he was still in his swim trunks, and he
19 told her that his car had broken down down at Sandy Beach
20 and that he had had to walk home or walk into town. And
21 so that's why he was still there, and that's why his car
22 wasn't home.

23 And she said, "Oh, I was wondering why."

24 **Q. And what did you do the rest of the morning?**

25 A. Well, we ate breakfast. And I had to -- Mom

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1 Nees was murdered last night."

2 And Barry said, "You're kidding me."

3 And I said, "No."

4 And he said, "What happened?"

5 And I said, "Well, she was beaten to death down at
6 the train bridge."

7 And then I heard over on the right-hand side of me
8 somebody say, "Well, it had to be girls."

9 **Q. Now, you said your brother had his shirt off.
10 Did you see any injuries to him?**

11 A. No.

12 **Q. How long did you stay out at the ranch, then,
13 that day?**

14 A. We stayed out there quite awhile because -- I
15 mean, like I said, we were doing all the dishes and
16 cleaning up, and everything like that, from having them
17 for lunch, and everything. So we were over there for
18 quite awhile.

19 **Q. Now, were you aware of whether or not your
20 brother had any plans to go anywhere for the summer?**

21 A. Yes.

22 **Q. What did he have planned, to your knowledge?**

23 A. He was going to go down and see our father
24 down in Louisiana.

25 **Q. Do you know how long he had been planning**

46 (Pages 631 to 634)

1 that?

2 A. Quite awhile, because it was -- when I turned
3 18, my mother gifted me with a trip to Louisiana, too.
4 Because our parents were divorced, and so it was my
5 opportunity to try and meet my dad and get to know him
6 better. And so Barry was going to try and spend some time
7 down there, as well, after school that year.

8 Q. How was Barry supposed to get down to
9 Louisiana?

10 A. I think he was going to drive. I mean because
11 that's how we went. We never flew; we drove, so --
12 (pause.)

13 Q. Do you know how long after Kim Nees was
14 murdered that Barry went down to Louisiana?

15 A. I know that it was like within that first --
16 I'm thinking within that first week. Because it was
17 supposed to be like right after school got out. And I
18 think he was just kind of waiting for branding to get
19 over, and that kind of thing, because he was supposed to
20 help. And so I think he was supposed to go very shortly
21 right there after the branding.

22 Q. Now, in the, in the days after Kim Nees was
23 murdered, was there talk about that throughout the town?

24 A. About the murder itself?

25 Q. Yes.

1 And I know that we were questioned because we were
2 neighbors. And I was questioned as well.

3 Q. Do you remember who came to question you?

4 A. Well, I was asked to go into the sheriff's
5 department. (I talked to Don Carpenter,) and I told him
6 that we were home that night. Because he asked where I
7 was, and I told him, you know, basically the same thing
8 that I already told you about being in Williston and going
9 to bed that night.

10 And he said, "Well what about Barry? What about
11 Brad?" and basically the same thing. And I told him that
12 Barry was in bed that night, that Brad was in the
13 hospital, that Mom was in bed, and our stepfather was in
14 bed.

15 Q. At any point in time, did you become aware
16 that your brother was a suspect in Kim Nees's murder?

17 A. Well, I knew that they started questioning him
18 more strongly. And at that point, again, you know, I was
19 in Billings. So I was getting all of this secondhand
20 through Mom, through our telephone conversations. So I
21 knew that they started questioning him a little bit more
22 strongly and taking some fingerprints, and that kind of
23 thing. And it never bothered me. It never concerned me,
24 or anything like that.

25 My mom has a law enforcement degree. You know, we

1 A. Oh, it was the talk of town. I mean it was
2 the hugest thing that had ever happened. It was just so
3 shocking, and so much speculation and wondering what had
4 happened, and rumors flying everywhere. It was very
5 shocking to the entire town.

6 Q. When Barry went off to Louisiana, did you stay
7 in touch with him?

8 A. Not really. Because, again, my father and I
9 never really knew each other that well, and so we didn't
10 really stay in touch too much.

11 Q. Did you go back to school in the fall?

12 A. I did. I went back to school, but I moved to
13 Billings. I didn't go back to school in Glendive; I went
14 to school in Billings.

15 Q. Did Barry -- to your knowledge, when did he
16 return back to back to Poplar?

17 A. I would say, I would think, after the summer,
18 but I'm not really sure because I was out of town. I was
19 not in Poplar anymore, so I don't recall, but I would
20 think after the summer.

21 Q. Did you ever become aware that your brother
22 was a suspect in the Kim Nees murder?

23 A. I wasn't aware that he was a suspect. I knew
24 that we were all questioned. I mean there was about 200
25 of us in the high school. They questioned a lot of us.

1 were always friends with the police officers, and
2 everything, so we were always raised to cooperate and do
3 what we could. I mean it was like we kind of had the
4 attitude -- it's like, "Well, whatever we can do to help
5 this case out," you know, so -- (pause.)

6 Q. At some point, you learned that your brother
7 had been arrested in relation to the Kim Nees murder.

8 A. I did. My mom called me about 12:30 at night
9 and told me over the phone that he had just been arrested,
10 and that -- and I said, "For what?"

11 And she said, "Because he confessed to killing Kim
12 Nees."

13 Q. Did you have any contact with your brother
14 after he was arrested?

15 A. I did. Well, of course I was shocked. My
16 first instinct was, "You know, that's impossible. You
17 know, he was home that night."

18 But then we went down to Louisiana, and I saw him.
19 We got to visit him. And I asked him, you know, why he
20 would say something like that. And he just -- you know,
21 that's when he explained what was going on.

22 Q. What did he, what did he tell you?

23 A. He told me that -- well, you kind of have to
24 know the circumstances of all that was going on at the
25 time. He had been in the Navy and gone through a

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1 discharge as a result of some of that. So he told me that
 2 when they were questioning him, that they were very
 3 helpful, that the police officers were very helpful and
 4 very kind to him; and that they said that if he didn't
 5 kill her, that they would have to prove that he didn't do
 6 it with physical evidence -- or prove that he did it
 7 through evidence; and that since there wasn't any physical
 8 evidence matching it up, that he would get off really easy
 9 and that they could never bother him again about it, and
 10 that they would help him get reinstated in the Navy, and
 11 that -- because all he had to do was go through a trial,
 12 and they wouldn't be able to find him guilty because there
 13 wasn't any physical evidence, and so then they wouldn't be
 14 able to bother him anymore.

15 And then he said that then they started -- they kind
 16 of started changing and started threatening him and saying
 17 that they knew he did it, that they were going to prove he
 18 did it, that they were going to see him fry in the
 19 electric chair, that they were going to -- that you could
 20 smell the hair sizzling, and that they were going to see
 21 his eyes pop out of his head and explode.

22 **Q. This is him, Barry, telling you this when you**
 23 **visited him?**

24 A. This is Barry telling me what they were doing
 25 to him.

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1 And he said, "I was just so, so tired." He said,
 2 "It had been a long day. I was so tired. I just want
 3 this all over. I don't want to be bothered about this
 4 anymore." He said, "I've tried to cooperate, I've tried
 5 to do everything I could." He said, "I've given all these
 6 samples, I've been questioned, I've done everything I
 7 could to go through this." He said, "I was just tired."
 8 And he said, "Now" -- and he almost seemed excited,
 9 because he said, "Now they'll prove that I didn't have
 10 anything to do with this. And they said they'll never
 11 bother me again," so -- (pause.)

12 **Q. Did you have any contact, then -- after Barry**
 13 **was extradited from Louisiana back up to Montana, did you**
 14 **ever visit him or have contact with him?**

15 A. With Barry?

16 **Q. Yes.**

17 A. I did. We went and saw him at the jail in
 18 Wolf Point.

19 **Q. Did you have contact with Barry's attorney**
 20 **that represented him at his trial, Timer Moses?**

21 A. With Timer Moses?

22 **Q. Yes.**

23 A. I did. I told (Timer) the same thing that I had
 24 told -- well, okay, before all of that happened, I went to
 25 talk to Dean Mahlum, who was sheriff. And I told him the

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1 same thing, that Barry was at home asleep that night.

2 And he said, "Well, you're his sister, and of course
 3 you're going to say that."

4 And I was like, "No. You know, Mom raised us to" --
 5 you know, I was like, "Mom would be the first one to turn
 6 us in, you know, if we did something wrong."

7 And so he asked us, he said, "Well, if you don't
 8 think that Barry did it, then who do you think did it?"

9 And Mom was there with me at that time. And she
 10 said, you know, that according to all the rumors that had
 11 gone around, and everything like that, that she felt it
 12 was girls.

13 **Q. Did you also explain to Barry's lawyer, Timer**
 14 **Moses, that you had seen him at home when you went up to**
 15 **bed that night?**

16 A. Yes, I did. I told Timer that -- exactly what
 17 I had said earlier about me seeing Barry, and that. And
 18 he kind of said the same thing, that -- because I wanted
 19 to testify at the trial. And he said the same thing, that
 20 basically I wouldn't be perceived as being credible
 21 because I'm his sister and that I wouldn't -- you know,
 22 people wouldn't pay any mind to it, think I wasn't being
 23 honest.

24 **Q. Did you attend Barry's trial?**

25 A. I did. And because I wasn't a witness, I was

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1 able to be inside to hear the entire trial.

2 **Q. Is this the first time you've ever gotten the**
 3 **chance to give any kind of public testimony about what you**
 4 **observed on the night of June 15th of 1979?**

5 A. It is the first time. I mean I wrote up a
 6 deposition -- or a statement, you know, saying that, but
 7 this is the first time I've publicly been able to tell
 8 anybody.

9 **Q. After you found out that your brother had**
 10 **given a confession in Louisiana, did any of the Roosevelt**
 11 **County sheriff deputies or did Sheriff Mahlum ever come**
 12 **talk to you?**

13 A. Well, we talked to him, you know, at his
 14 office.

15 **Q. Did he ever take a statement from you?**

16 A. No. I didn't see him taking any notes, or
 17 anything like that.

18 MR. CAMIEL: Thank you.

19 CHAIRWOMAN O'CONNOR: Okay. It's 10-after-12.
 20 We're going to break for lunch.

21 I think the order of things will be this:

22 We'll allow the State to cross-examine this witness, then
 23 we're going to hear from Mr. Holen, then it seems to me
 24 that we should probably here Officer Via so that that's
 25 finished.

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1 You have two further witnesses, Mr. Racicot
2 and Mr. Beach, correct?
3 MS. PLUBELL: Yes.
4 CHAIRWOMAN O'CONNOR: Okay. And do we have an
5 update on where Mr. Racicot is?
6 MS. PLUBELL: I have no idea because I've been
7 here.
8 CHAIRWOMAN O'CONNOR: You've been here, okay.
9 So, hopefully, we'll have an update when we come back from
10 lunch.
11 MS. PLUBELL: I'll check my cell phone. I
12 have to go and check if he's called.
13 CHAIRWOMAN O'CONNOR: Very well, so we'll
14 expect that update. We will start at 10-after-1.
15 (The noon recess was taken.)
16 CHAIRWOMAN O'CONNOR: So this is your
17 opportunity to cross-examine Ms. Salinda.
18 CROSS-EXAMINATION
19 BY MS. PLUBELL:
20 **Q. Can I call you "Barbara", or what would you**
21 **like me --**
22 A. You can call me "Barb".
23 **Q. Barb?**
24 A. Sure, please.
25 **Q. Okay. Barb, my name is Tammy Plubell, and I'm**

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1 **with the Montana attorney general's office.**
2 **And you and I have never met before, have we?**
3 A. No.
4 **Q. I'd like to start by asking you, Barb: When**
5 **did you give all this information to Centurion Ministries?**
6 A. Well, I think that they probably know through
7 my mother, you know, from the very first.
8 **Q. So for as long as Centurion Ministries has**
9 **been working on this case, they knew that you had an alibi**
10 **for your brother?**
11 A. I would assume so. I don't know when she
12 conveyed that information because I hadn't ever spoken
13 with them or met them until this weekend. And I -- so --
14 **Q. But they knew about your information?**
15 A. Well, I take that back. I did speak with one
16 gentleman, but --
17 **Q. Do you remember who you spoke with?**
18 A. I think it was Peter, I think, so --
19 **Q. And what -- do you know when you spoke with**
20 **him?**
21 A. Maybe a year ago.
22 **Q. And is this what you told him?**
23 A. It is.
24 **Q. You told him all of the information that you**
25 **testified about today?**

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1 A. I did.
2 **Q. All right. And you told Timer Moses the same**
3 **thing?**
4 A. I did.
5 **Q. And you told Dean Mahlum the same thing?**
6 A. Correct.
7 **Q. When is it that you believe you told Dean**
8 **Mahlum that?**
9 A. Well, after Barry's arrest.
10 **Q. So it was -- was it after his conviction -- I**
11 **mean it was after his --**
12 A. No, it was after his arrest.
13 **Q. I'm sorry, after his confession but prior to**
14 **his conviction?**
15 A. Yes.
16 **Q. That's when you would have told Dean Mahlum**
17 **that?**
18 A. Yes. It was very shortly after the statement.
19 **Q. Okay. And did you tell Francis McCarvel the**
20 **same information, too?**
21 A. I don't believe so because I don't believe I
22 had any contact with him.
23 **Q. That was the attorney who first represented**
24 **Barry, correct?**
25 A. Yes.

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1 **Q. And then --**
2 A. But you have to remember I was in Billings, so
3 I was like traveling, and so I wasn't involved in a lot of
4 the communication.
5 **Q. And Timer Moses was privately retained,**
6 **correct?**
7 A. Yes, that is correct.
8 **Q. And he actually had a good reputation as a**
9 **criminal defense attorney at the time, didn't he?**
10 A. We felt so.
11 **Q. Okay. And you claim now that what Timer told**
12 **you was that you wouldn't have any credibility with the**
13 **jury; is that correct?**
14 A. Yes, that it wasn't -- basically, that it
15 wasn't really worth the time, that they didn't -- that he
16 didn't feel that it would be -- that my statement would
17 help the case at all because it would be questioned as to
18 my credibility because I was his sister, and that they had
19 enough other information that they could use. And quite
20 honestly, we just never felt he would be proved guilty.
21 **Q. I understand. So you didn't push that hard,**
22 **then, to testify about this?**
23 A. Not really.
24 **Q. Okay.**
25 A. Because I was very naive. I was under the

49 (Pages 643 to 646)

Page 647

- 1 impression that the confession had to be proven.
 2 **Q. Right. So you just trusted Timer Moses,**
 3 **correct?**
 4 A. I did.
 5 **Q. But then after your brother was convicted, he**
 6 **had a direct appeal, right?**
 7 A. Yes.
 8 **Q. And, I'm sorry, I want to clarify --**
 9 A. I mean I don't know what the steps were.
 10 **Q. Right, I understand. But you indicated that**
 11 **you gave a deposition?**
 12 A. I said just -- no, I made -- I typed a
 13 statement.
 14 **Q. Where is --**
 15 A. And I forwarded that to my brother --
 16 **Q. Okay.**
 17 A. -- who then, I'm assuming, forwarded -- the
 18 intent was for him to forward it to Centurion. But that
 19 was just within the last few months.
 20 **Q. That was within the last few months?**
 21 A. Hm-hmm.
 22 **Q. And are you aware that after your brother had**
 23 **a direct appeal, he had a number of other court things**
 24 **going on where he pursued, tried to pursue getting his**
 25 **conviction overturned?**

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- 1 A. I am. And with every step, we had the eternal
 2 hope that this was going to be the opportunity.
 3 **Q. Right. And, in fact, he was in Federal Court,**
 4 **wasn't he, trying to pursue some relief --**
 5 A. Yes.
 6 **Q. -- from his conviction, correct?**
 7 A. Correct.
 8 **Q. And (Wendy Holton) represented him in Federal**
 9 **Court, didn't she?**
 10 A. I believe so.
 11 **Q. And did you give her the same information,**
 12 **too?**
 13 A. I believe I spoke to Wendy once. And I mean
 14 from Day 1, it has always been my statement to anyone who
 15 would hear me that Barry was home that night. And so if
 16 she asked me about it, then I definitely would have
 17 informed her.
 18 **Q. Oh, but only if she asked you about it?**
 19 A. Oh, no. Obviously --
 20 **Q. You didn't volunteer it to her?**
 21 A. Obviously, I would have told her that. I mean
 22 if there was any question as to Barry's whereabouts and
 23 what he was doing that night, it would have been that he
 24 was home. I was trying to tell everybody who would
 25 listen.

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- 1 **Q. Right. Because you were trying to help your**
 2 **brother with getting this resolved, right?**
 3 A. Yes.
 4 **Q. And you had very valuable information, right?**
 5 A. Because -- yes, I thought it was valuable,
 6 but --
 7 **Q. You gave him an alibi, right? I mean,**
 8 **basically, that's valuable in a case like his, isn't it?**
 9 A. I was telling the truth.
 10 **Q. I know, I was just trying to get at what**
 11 **you've shared with people. Did you tell Paul Kidd, as**
 12 **well?**
 13 A. Yes, I did.
 14 **Q. And did he -- how did he respond to that**
 15 **information?**
 16 A. Well, because I remember we were going over
 17 the statement, and I was telling him that, that Barry was
 18 home that night, that -- and just reading through the
 19 statement that was given, and everything.
 20 **Q. Could I just ask for a clarification, Barb?**
 21 A. Of course.
 22 **Q. When you say "the statement", are you talking**
 23 **about your brother's confession?**
 24 A. Yes.
 25 **Q. Is that the statement you're talking about?**

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- 1 **And was Barry there when you were doing that?**
 2 A. I surely don't refer to it as a "confession",
 3 but -- I mean technically it is, but, yes.
 4 **Q. Okay.**
 5 A. I know that he wasn't there and that he didn't
 6 do it.
 7 **Q. All right. But when you were going through**
 8 **the statement --**
 9 A. Yes.
 10 **Q. -- was Barry there with you and Mr. Kidd then?**
 11 A. No.
 12 **Q. Okay.**
 13 A. But it was in, it was in Mr. Kidd's office.
 14 **Q. All right. So you shared all this information**
 15 **with him, too?**
 16 A. Yes, I did.
 17 **Q. Okay. And how about, do you recognize the**
 18 **name "Richard Carston"?**
 19 A. Yes.
 20 **Q. That was another attorney who worked on your**
 21 **brother's behalf, correct?**
 22 A. I believe he was at the time -- I get
 23 confused, but I think that he was a paralegal. But he was
 24 working with Timer Moses, yes.
 25 **Q. Okay. So he was -- all right. And was there**

50 (Pages 647 to 650)

Page 651

1 a point where -- do you know the name Craig Christie?
 2 A. Yes.
 3 Q. Did you share that information with him, too?
 4 A. I'm sure I had to have.
 5 Q. Oh, just for, I guess, a point of reference -
 6 I'm kind of ahead of myself - is Craig Christie a private
 7 investigator your family hired?
 8 A. I wasn't under the impression that we had
 9 hired him, no.
 10 Q. Okay.
 11 A. But I knew that he was looking into things.
 12 Q. Okay. Now, I just want to make sure that I
 13 have this straight. Okay?
 14 A. (Nodding head affirmatively.)
 15 Q. And so my understanding is, is that you and
 16 your mom were in Williston all day on the 15th. Did you
 17 leave in the morning on the 15th, the day before Kim's
 18 homicide?
 19 A. Right.
 20 Q. You left in the morning?
 21 A. (Nodding head affirmatively.)
 22 Q. And you think you got back around five-thirty,
 23 right?
 24 A. Yes.
 25 Q. Because you tied that to the grocery store --

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1 A. Right.
 2 Q. -- and when they closed.
 3 A. I had time to get to the grocery store and
 4 make my purchases before they closed.
 5 Q. And so then it was you and your mom home that
 6 evening?
 7 A. Yes.
 8 Q. And you made the assumption -- because Barry's
 9 car wasn't there, you made the assumption that he was
 10 gone?
 11 A. Right.
 12 Q. Right. And so -- and it was my understanding
 13 from your testimony that the first time you went upstairs
 14 was when you went upstairs to go to bed.
 15 A. Correct.
 16 Q. And that was at about 12:30?
 17 A. About 12:40, yes.
 18 Q. About 12:40?
 19 A. Hm-hmm.
 20 Q. That was the very first time you went
 21 upstairs?
 22 A. Right.
 23 Q. And I'm assuming, then, that your mom had not
 24 gone upstairs, right?
 25 A. Our mom hardly ever went upstairs.

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1 Q. Well, if she would have went upstairs, she
 2 would have saw Barry, correct?
 3 A. Right, because they were, you know --
 4 Q. And she had no idea when she went to bed where
 5 Barry was, right?
 6 A. Right.
 7 Q. And, in fact, when she went to bed, you didn't
 8 know where he was, either, because you hadn't been
 9 upstairs yet?
 10 A. Correct.
 11 Q. Okay. So then you see him there sleeping, and
 12 you remember clearly what he was wearing, right?
 13 A. Yes, definitely.
 14 Q. Do you remember what you were wearing?
 15 A. I was wearing blue jeans; and I had these -- I
 16 don't know, they were slip-on shoes, slip-on leather shoes
 17 with ties; and a T-shirt.
 18 Q. And then when -- I can't remember what you
 19 said about Barry coming down the next morning. I mean I
 20 know that you were the one who told your mom that Barry
 21 was home, right?
 22 A. Right.
 23 Q. And that was downstairs?
 24 A. That was downstairs. Because I had come
 25 downstairs. I had to be out for the branding, and so I

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1 got up earlier than normal. And so I was already up.
 2 Q. So what time -- just approximately, what time
 3 do you think it was that you told your mom that?
 4 A. I would say around six-thirty in the morning.
 5 Q. All right. Barbara, are you aware of a
 6 statement that your mom, Roberta Clincher, gave to law
 7 enforcement on March 7th of 1980?
 8 A. I'm probably aware that she gave one, but of
 9 the details, I'm not sure, no. I was in Billings at
 10 college at that time, so --
 11 Q. Okay. So you don't know what your mom,
 12 Roberta, said about that morning?
 13 A. (Shaking head negatively.)
 14 MS. PLUBELL: I guess what I'm going to ask is
 15 that we be able to submit this to the Board, because it is
 16 a statement from Roberta and it does conflict with what
 17 this witness says.
 18 CHAIRWOMAN O'CONNOR: Well, have you
 19 subpoenaed her?
 20 MS. PLUBELL: Have I subpoenaed Roberta?
 21 CHAIRWOMAN O'CONNOR: Roberta Clincher.
 22 MS. PLUBELL: No.
 23 CHAIRWOMAN O'CONNOR: Why not?
 24 MS. PLUBELL: I didn't really know this was
 25 going to happen. We had no idea about this.

51 (Pages 651 to 654)

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1 CHAIRWOMAN O'CONNOR: All right. So you want
2 to ask her about this now?

3 **Q. (By Ms. Plubell) Well, does it surprise you**
4 **that your mom says that she went upstairs to Barry's room**
5 **to check for him at five-thirty in the morning?**

6 A. It doesn't surprise me, no, because she was up
7 early. My stepfather was a very early riser.

8 **Q. But you're the one who told her that Barry was**
9 **home, right?**

10 A. Right.

11 **Q. But she had already been upstairs at**
12 **five-thirty in the morning --**

13 A. I didn't know that.

14 **Q. -- according to this statement.**

15 **And you guys, you guys didn't see Barry at all the**
16 **day -- during the day, correct? You didn't know what he**
17 **had done that day?**

18 A. No.

19 **Q. And so would it surprise you in the statement**
20 **that she said that he was in bed still asleep with his**
21 **swim trunks still on?**

22 A. Well, he had his -- like I said, he had his
23 gym trunks. And she always called them his "swim trunks";
24 I called them his "gym trunks". They were the maroon
25 school shorts, the gym shorts.

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1 **of 1984 - and this would have been after your brother gave**
2 **his statement - that you and your mom went to and gave**
3 **some information to Dean Mahlum?**

4 A. Yes. I told him that Barry was home that
5 night.

6 **Q. All right.**

7 MS. PLUBELL: Can I have permission to
8 approach the witness?

9 CHAIRWOMAN O'CONNOR: Certainly.

10 **Q. (By Ms. Plubell) I'm just going to let you**
11 **refer to that. Did you also give Dean Mahlum information**
12 **about a John Red Thunder and a Solomon Gray Bear?**

13 A. Well, I didn't give any of that information,
14 no.

15 **Q. Did your mom give that information?**

16 A. She may have, yes.

17 **Q. Okay.**

18 A. Because I mean that was something that she had
19 heard, yes.

20 **Q. Right. And that's all -- that's documented in**
21 **this report, isn't it?**

22 A. Okay. Can you give me a minute so I can read
23 what it says in here?

24 **Q. Sure, that's fine, yeah.**

25 A. (Perusing document) -- thank you for letting

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1 **Q. You guys didn't know he had been swimming that**
2 **day, did you?**

3 A. I didn't know he had been swimming, no.
4 That's what -- (pause.)

5 **Q. And you indicated that your mom called to him**
6 **to come down for breakfast, and that's how he woke up?**

7 A. Right.

8 **Q. So would it surprise you in this statement**
9 **that your mom said that at seven-thirty, Barry got up**
10 **without being woken up and came downstairs?**

11 A. Well, I just remember that she called up the
12 stairs. And she said, "Barry, come on, let's go.
13 Grandma's here."

14 CHAIRWOMAN O'CONNOR: Counsel, if you want to
15 -- I mean we've heard umpteen hands of hearsay from the
16 other side, so if you would mark that, we'll take it in
17 and make it part of the record.

18 **Q. (By Ms. Plubell) Barb, do you remember in**
19 **February of 1984 - this would have been after Barry**
20 **confessed - that -- (inaudible, interrupted by coughing.)**

21 COURT REPORTER: I'm sorry, I didn't hear what
22 you said.

23 MS. PLUBELL: Oh, I'm sorry. Let me start
24 over.

25 **Q. (By Ms. Plubell) Do you remember in February**

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1 me read that.

2 **Q. Sure. So Dean Mahlum on that particular date**
3 **documented the information that -- you were with your mom,**
4 **but information that you shared with him that you felt was**
5 **pertinent to the Kim Nees homicide?**

6 A. He must have. This is the first time I've
7 seen it, so he obviously must have.

8 **Q. Okay. And yet there's nothing in here about**
9 **you telling him that you saw Barry Beach -- your brother,**
10 **I'm sorry, at home in bed that night?**

11 A. It was his recording and his statement, but I
12 did tell him that.

13 **Q. Okay. And your brother has applied for**
14 **clemency twice before, hasn't he?**

15 A. I'm not sure.

16 **Q. Well, do you know that he's applied for**
17 **clemency before?**

18 A. I am not sure.

19 **Q. Okay. Well, you've never submitted this**
20 **information in any other clemency proceeding, have you?**

21 A. No.

22 **Q. And it would be important to do so if he had**
23 **applied for clemency before?**

24 A. Yes. I mean I thought that I had tried to
25 tell everybody I could tell, but -- (pause.)

52 (Pages 655 to 658)

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1 MS. PLUBELL: All right. I have no further
2 questions.
3 MR. CAMIEL: I have nothing further.
4 CHAIRWOMAN O'CONNOR: Sheriff Mahlum's
5 statement, is this part of our records already? You're
6 not certain?
7 MS. PLUBELL: I'm not certain.
8 CHAIRWOMAN O'CONNOR: I'm not certain, either,
9 so why don't you mark it.
10 MS. PLUBELL: Okay.
11 CHAIRWOMAN O'CONNOR: I believe, actually,
12 that it is, but let's be sure.
13 MS. PLUBELL: There are numerous. I know you
14 know.
15 CHAIRWOMAN O'CONNOR: Thank you very much for
16 your testimony. You may be excused.
17 You may call your next witness -- well, no,
18 you may not call your next witness. You have two
19 witnesses left: Mr. Beach and Mr. Racicot. We will allow
20 the State now to call -- thank you. And make sure you
21 make one for Craig and one for the court reporter.
22 Why don't you call Mr. Via -- or let's call
23 Holen first. Then we'll have that finished.
24 You are still sworn. Have a seat.
25 Did counsel have an opportunity to speak with

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1 Mr. Holen?
2 MS. PLUBELL: I did not.
3 CHAIRWOMAN O'CONNOR: Did you?
4 MR. CAMIEL: Yes.
5 CHAIRWOMAN O'CONNOR: Okay. Would you like to
6 proceed?
7 MR. CAMIEL: Sure.
8 REDIRECT EXAMINATION (Continuing)
9 BY MR. CAMIEL:
10 **Q. Mr. Holen, you had testified yesterday. And**
11 **since then, you've been sitting in the hearing?**
12 A. Yes, sir.
13 **Q. You heard something that you felt that you**
14 **wanted to be able to explain?**
15 A. Well, yeah; yes.
16 **Q. And it had to do with whether or not you were**
17 **interviewed by Mr. Murray?**
18 A. Yes.
19 **Q. Okay. What do you have to say about that?**
20 A. I don't ever remember being interviewed by Bob
21 Murray. I mean is -- these people showed me something
22 that -- where somebody had asked me, you know, in 1979
23 there -- do you have a signed statement from Bob Murray?
24 CHAIRWOMAN O'CONNOR: Sir, you don't get to
25 ask questions.

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1 THE WITNESS: Oh, okay.
2 CHAIRWOMAN O'CONNOR: You may provide whatever
3 testimony you want.
4 THE WITNESS: Okay.
5 CHAIRWOMAN O'CONNOR: Your testimony is you
6 don't remember being interviewed by him.
7 THE WITNESS: No.
8 CHAIRWOMAN O'CONNOR: Okay. Do you have any
9 further testimony to offer?
10 THE WITNESS: Oh, just one thing. You asked
11 questions and questions about the police force, and
12 everything, like on the reservation there. This will be
13 real quick, and then I'll be out of here: The head CI
14 agent, criminal investigator of the Fort Peck Indian
15 reservation -- anyway, it come out in the paper about a
16 year or so ago his aunt and uncle lie dead in their house
17 in Brockton for eight years before anybody found them.
18 That's all I have to say about, you know --
19 CHAIRWOMAN O'CONNOR: Do you have any further
20 questions?
21 MR. CAMIEL: I don't.
22 CHAIRWOMAN O'CONNOR: Do you have any
23 questions?
24 MS. PLUBELL: I have no questions.
25 CHAIRWOMAN O'CONNOR: Do you have any

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1 questions?
2 MR. CURTISS: Yeah, I have a question.
3 CHAIRWOMAN O'CONNOR: "No" was the right
4 answer.
5 MR. CURTISS: I just wanted to comment: You
6 contacted me in the hallway and said that you wanted to
7 clarify, so --
8 THE WITNESS: Yeah, I just -- I don't
9 remember, yeah, about the meeting.
10 MR. CURTISS: Okay. Is there any other
11 information that you wanted to clarify?
12 THE WITNESS: No, just about the --
13 MR. CURTISS: I wanted to make sure that the
14 chairperson gave you an opportunity to clarify whatever
15 you --
16 THE WITNESS: Right.
17 MR. CURTISS: Okay. Thank you, sir.
18 CHAIRWOMAN O'CONNOR: Any further questions?
19 You're excused. Thank you.
20 All right. Now Sergeant Via.
21 MS. PLUBELL: We would call Sergeant Via.
22 JAY VIA, WITNESS, SWORN
23 CHAIRWOMAN O'CONNOR: You may proceed.
24
25 ///

53 (Pages 659 to 662)

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DIRECT EXAMINATION

BY MS. PLUBELL:

Q. Can you please state your name for the record?

A. My name is John E. Via. I go by "Jay Via".

Q. And what is your present occupation?

A. I am a self-employed petroleum landman. I am retired from the Ouachita Parish Sheriff's Office, which I retired approximately five years ago.

Q. And do you also do any sort of coaching?

A. I am a coach at the -- for the Mineral Educational Foundation for River Oak School; and I coach girls softball, basketball, and golf; and I also am on the teaching staff there as well.

Q. What was your occupation in January of 1983?

A. I was assigned to the Criminal Investigative Division of the Ouachita Sheriff's Office.

Q. Who was your commander?

A. At that time -- or during this time, I actually had two different commanders: My commander at the sheriff's office was Alfred Calhoun, the commander of the task force which I was assigned to during this time was Lieutenant Joe Cummings.

Q. Could you explain for the Board the task force?

A. Yes, ma'am. Beginning in April of 1980, there

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crimes investigations; I've been to the William Carey University of Mississippi in regards to crime scene investigations and skeletal remains identification and crime scene construction -- or reconstruction, excuse me; I've been to Northwestern Louisiana University in regard to blood spatter investigation and interpretation; I've been to the Internal Revenue Service school for white-collar and fraudulent crime investigation; I've been to U.S. Customs for smuggling investigation; I've been to schools involving alcohol, tobacco, and firearms for alcohol, tobacco, and firearms investigations.

Q. Can I -- I don't mean to cut you off here, but it's a long list; is that accurate?

A. Yes, ma'am.

Q. Okay. Have you actually done some teaching of law enforcement officers as well?

A. Yes, ma'am. I went on staff with the North Delta Training Academy in 1981 -- or actually 1980, and taught major case investigations at the training academy through the -- at that time, it was the Northeast Louisiana University; it is now Louisiana -- the University of Louisiana at Monroe, and taught interviews, interrogations, sex crime investigations, and major case investigations.

I've also taught at the Louisiana State University

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had been a series of killings of young females: Angela Hill killed in 1980, Kathy Whorton killed in 1981, and Sherri Alfred killed in 1982. *They were a task force*
In February of 1982, a homicide task force was formed to investigate the murders of those three young ladies. I along with several other people were assigned to a homicide task force that was looking into these cases -- (interrupted by coughing.)

MS. PLUBELL: I'm sorry, I couldn't hear the last of that. Were you able to get that?

COURT REPORTER: I was.

Q. (By Ms. Plubell) Can you just briefly, briefly summarize your, your training, law enforcement training and experience?

I know that's not fair to say, "do it briefly", but --

A. Oh, that's fine. I attended Northeast Louisiana University's Criminal Justice Program from 1973 through 1986; I graduated the basic training camp of the Ouachita Parish Sheriff's Office, who ran their own training camp; I graduated from the Louisiana State University Criminal Justice Center in 1990; I've had training from William Harris & Associates in interviews and interrogation; I have been to the Federal Bureau of Investigation for violent crimes investigations, sex

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Law Enforcement Training Institute in regards to task force operations, formations, interviews, interrogations.

I've also taught throughout Arkansas for the Arkansas Sheriffs Association, crime scene investigation and major case investigation.

And I've been a guest consultant for the Violent Criminal Apprehension Program in its conception back in the early '80s.

Q. Are you aware that there's an expert that testified in this case by the name of Dr. Richard Leo?

A. Yes, ma'am.

Q. I want to ask you: Do you think there's a difference between an "interrogation" and an "interview"?

A. There is a technical difference between "interview" and "interrogation" in regards to definitions.

The definition of an "interview", in particular, that I was taught and that we were taught -- or that I taught for my teachings is that an interview is a *he wanted* situation in which you obtain all available information *all he* from all available witnesses, persons, facts, or *could get* individuals relevant to a case. *from Dean*

An "interrogation" would be an individual -- or formal and systematic questioning of a suspect in a criminal case.

I always tried to get away from the interrogation

1 and consider everything an interview for the premise that
2 if an individual is reporting a crime, for instance, that
3 individual could actually turn out to be the person that
4 is responsible for the crime. The goal in our job is to
5 find the truth, plain and simple, and that's what we're
6 looking for. And in an interview situation from the
7 beginning to the end, you never know where it might lead.

8 **Q. I have a quote from one of Richard Leo's law
9 review articles in which he states that (quoted as read):
10 "The singular purpose of American police interrogation is
11 to elicit incriminating statements and admissions."**

12 **Do you agree with that?**

13 A. No, ma'am, I do not.

14 **Q. Do you know Barry Beach?**

15 A. Yes, ma'am.

16 **Q. When were -- how did you first become
17 acquainted with him?**

18 A. My first contact with Mr. Beach came from a
19 phone -- or, actually, it was a phone call to one of my
20 supervisors from a Bob and Carolyn Beach - who was the
21 father and stepmother in Monroe, Louisiana - that they
22 were very concerned that he might be involved in the
23 homicides which we were investigating. They were
24 concerned for their personal safety because he had
25 allegedly made some threats to them in regards to an

1 But she was concerned to the extent that -- she
2 informed us and actually showed us a document that while
3 Barry was in the Navy, this document surfaced that he was
4 a suspect in a homicide in the state of Montana. She was
5 worried that he was capable of committing a violent act
6 against she and Bob at her house and was further concerned
7 that he may actually have been involved in the homicides
8 that we were investigating in Ouachita Parish.

9 **Q. Did Bob and Carolyn indicate to you that they
10 both believed under the right circumstances their
11 son/stepson was capable of murder?**

12 A. Yes, they did, as well -- not only murder, but
13 they were also concerned that he might try to harm
14 himself.

15 **Q. Did they share with you that he had had some
16 suicidal thoughts, at least?**

17 A. Yes, ma'am.

18 **Q. When you went to Bob and Carolyn Beach's house
19 on January 5th, did you have any preconceived notion about
20 Barry Beach or that Barry Beach was somehow a suspect in
21 your three local homicides?**

22 A. No, ma'am.

23 **Q. Did it change somewhat after that interview?**

24 A. Oh, absolutely.

25 **Q. Well, what did you do, based on the**

1 arrest that was made regarding a contributing to the
2 delinquency of a juvenile charge.

3 **Q. So do you know when the arrest occurred on
4 that contributing charge?**

5 A. If memory serves me right - and I've reviewed
6 reports for a couple of days - I think it would have been
7 around January the 4th of 1983, if I'm not mistaken.

8 **Q. Did you actually interview Bob and Carolyn
9 Beach as a result of that contact they made with your
10 supervisor?**

11 A. Yes, I did.

12 **Q. When did you do that?**

13 A. That would have been on January the 5th, 1983,
14 if I'm not mistaken.

15 **Q. And do you remember, did you tape-record that
16 interview?**

17 A. Yes, it was.

18 **Q. Okay. Did Bob and Carolyn Beach share
19 information with you regarding Barry that caused you some
20 concern?**

21 A. Yes, ma'am. During the interview with Bob and
22 Carolyn Beach -- and, actually, the interview started with
23 Carolyn Beach alone; and as the interview was progressing,
24 Bob Beach arrived at the residence where we were at, and
25 then he subsequently joined the interview.

1 **information that they gave you?**

2 A. There were several things that we did. The
3 first thing we did was started a background investigation
4 into Barry Beach as to local charges to kind of get a
5 history on him, find out if he was actually in our area
6 during the time that the homicides occurred.

7 I got in touch with Dean, Dean Mahlum in Roosevelt
8 County, Montana, to confirm that Barry was an actual
9 suspect -- or that there was actually a homicide that took
10 place in Montana and that Barry was a suspect in that
11 crime.

12 During that phone conversation I had with Sheriff
13 Mahlum, he kind of basically went over a few of the *he gave*
14 details of the homicide, not in any great elaboration or *details*
15 length: That Barry had been a suspect, that -- I learned
16 during that conversation that Barry had actually been
17 administered a polygraph examination at -- or by the FBI,
18 I believe it was an FBI examiner, and that during that
19 examination, it was the examiner's belief that Barry had
20 failed a test and had got to the verge of telling what had
21 happened but would back off.

22 I explained to Sheriff Mahlum the nature and
23 circumstances of the homicides that we were working and
24 asked him if he had any objections in us persuing the
25 Montana murder in conjunction with the murders we were

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1 looking at on our end of it.

2 **Q. All right. Did you, did you make contact with**
3 **Mr. Beach?**

4 A. Yes, I did.

5 **Q. When did that initial contact occur?**

6 A. The first time I ever had personal contact
7 with Mr. Beach, it was on the morning of January the 6th,
8 1983. And that would have been at the Ouachita
9 Correctional Center in South Monroe -- or it's actually
10 South Ouachita Parish. That's where Barry was being held
11 on contributing charges.

12 Deputy Richard Medaries and I made the contact with
13 Mr. Beach, the purpose of which was to obtain personal
14 history and background information from Mr. Beach
15 regarding what type of individual we were dealing with -
16 if he was going to be cooperative, if he was going to
17 request an attorney - and basically to get a feel for who
18 this individual was.

19 **Q. Before that interview, did you read him his**
20 **Miranda rights?**

21 A. I informed Barry of his Miranda warnings in
22 detail. He indicated he understood those rights, and he
23 waived the presence of an attorney. We also informed him
24 that we were investigating, you know, a major felony case,
25 a homicide, and that we wanted just to talk to him, you

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1 **with Sheriff Mahlum about that?**

2 A. No, I did not.

3 **Q. Okay. What was Barry like during that**
4 **interview?**

5 A. Oh, very nice. He was very cordial, very
6 soft-spoken.

7 **Q. Did Barry's dad actually describe him in that**
8 **manner during your interview with him?**

9 A. Actually, his dad told us that -- yeah, that
10 if you met Barry and didn't know that he had these violent
11 streaks, that, yeah, he was very nice and very low-key,
12 but that he would fly off in fits of rages and become
13 extremely violent, destroy things.

14 Bob Beach mentioned the fact that on one occasion,
15 he had acquired a pair of cowboy boots from Barry, that
16 Barry got mad and cut the cowboy boots.

17 Carolyn Beach had indicated that there had been
18 other things that Barry had just totally destroyed in
19 these fits of rage and violence - and that that was one of
20 the reasons they were scared - but that he would mask it
21 and that he would try to -- you know, or that you would
22 not know that they were -- these tendencies to be violent
23 if you just didn't talk to him. But if you spent any
24 length of time with him, you would learn that.

25 And also in the initial interview that we did with

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1 know, in regards to him and his background and what was
2 going on.

3 **Q. What did you learn from Barry on that day?**

4 A. I learned that he had gone to school in
5 Poplar, Montana, graduated high school there, that --
6 personal information from him regarding what he felt about
7 himself. He indicated to us that, you know, he liked all
8 of his teachers during high school but that the kids
9 didn't like him, he didn't get along very well with them.

10 I learned through that interview that he did have a
11 temper and that -- what he would describe as "flying off
12 the handle", that he would get extremely violent, that he
13 had violent tendencies.

14 I also learned that he had actually called and
15 threatened Carolyn and Bob Beach. He told us that he did
16 call them and threaten them from the correctional center
17 after his arrest with the contributing charge.

18 I learned that he had been in the Navy and that he
19 was discharged from the Navy at the Navy -- or the
20 convenience of the Government. And at that time, that's
21 when he brought up the fact that he was a suspect in a
22 Montana murder and that -- something to the effect that a
23 letter had been written or some documentation had been
24 given to him up there.

25 **Q. Did you tell him that you had been speaking**

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1 Mr. Beach, he brought out the fact himself that he always
2 took his problems and started trying to block them out,
3 trying to think that they didn't happen and that he would
4 try to, you know, just push them away and not deal with
5 them.

6 **Q. After that interview with Barry on the 6th,**
7 **did you make some decisions about what you wanted to do**
8 **next?**

9 A. We asked Mr. Beach if he minded if we pursued
10 the Montana case - and I'll be glad to explain to you why
11 we were interested in the Montana case, as I'm sure
12 everybody would be interested to hear, while we were
13 investigating our homicides in Ouachita Parish - and he
14 said that that would be fine with him.

15 So we set up an interview situation to take place
16 the next day to administer to Barry Beach a truth ^{more} ~~details~~
17 verification test in the form of a voice stress analyst;
18 PSE, psychological stress evaluation. And I had contacted
19 Dean Mahlum again to determine if there was any peak
20 information that he had that we could use during this test
21 that was not common knowledge to the general public, that
22 only the killer would know and that the law enforcement
23 would know. And we discussed a couple of things.

24 I knew upon talking to Sheriff Mahlum that the
25 weapon that was used in the murder was a crescent wrench.

1 I learned that the victim was wearing a blue sweater, a
2 pullover V-neck, I believe, if memory serves me right; and
3 elected to use the clothing as the peak information in the
4 first series of -- you know, let's face it, it's called a
5 "lie detector test". I hate to use the term "lie ^{I got it}
6 detector" because it's more used to verify if a person's ^{wrong}
7 telling the truth.

8 **Q. Could I get a clarification about that?**

9 A. Yes.

10 **Q. Is this the kind of thing where you're hooked
11 up to any sort of machine?**

12 A. No, it is not a polygraph test; it's a
13 psychological test. It's voice stress analysis, is what
14 it is.

15 **Q. Did the Ouachita Parish have a polygraph
16 machine at that time?**

17 A. No, ma'am, we did not.

18 **Q. Did you have to be certified to give a
19 psychological stress evaluation?**

20 A. Yes, I did.

21 **Q. About how long does it take to do one of those
22 types of tests?**

23 A. Each test, if it is done properly and
24 according to the standards that's set up by the Board of
25 Stress Analysts - which I served on that board and am a

1 has to allow in his account of that situation.

2 **Q. What did you -- what happened after you did
3 the PSE with Barry?**

4 A. Well, the first series of tests that we did is
5 what we call a "DZLC". It's a double-zone comparison, a
6 test for several things. The premise of this test - and,
7 again, I told you most examiners prefer to refer to this
8 as a "truth verification" - it is all geared to prove a
9 person is telling you the truth and not catching him in a
10 lie. In order to do that, there are certain controls set
11 up on this test.

12 The test is designed to get responses in two
13 relevant issues regarding a particular crime. In this
14 case, it's, "Do you know who" or "Do you know about the
15 crime itself?"; "Do you know who committed the crime?";
16 or, "Were you directly involved in the crime itself?"

17 In the inset controls, the first two issues that you
18 go over are what we call "outside issues" and also "guilt
19 complex questions" to test if an individual is a guilt
20 complex responder, feels guilty about anything.

21 As you go through this zone - and these are zones
22 that are set up and the questioning is set up -- that's
23 why it's called a "zone comparison" - then you look at the
24 other end of the zone, which is a master control zone, to
25 test to see if this control is greater than the relevant

1 1/2 hrs. for PSE
1 lifetime member of - it takes approximately an hour and a
2 half, an hour and 45 minutes, to 2 hours to successfully
3 administer a test to an individual (the critical part)
4 being the pretest examination to make sure that all of the
5 controls in the test are functioning and that nothing is
6 done by surprise to get a false read for the test.

7 **Q. Is there any surprises that occur during that
8 type of lie detector test?**

9 A. Oh, absolutely not. The one thing that you
10 try to avoid are anything -- are any surprises, anything
11 out of the ordinary. Every question is gone over in
12 detail, the way the instrument works is explained to the
13 individual. The biggest job of the examiner is to make
14 sure that you convince the individual that the instrument
15 works and that it can be there and it is a valid
16 instrument.

17 **Q. Is there any interrogation that goes on during
18 a PSE?**

19 A. During the pretest, basically what is done is
20 you get an individual's account of what they want to tell
21 you about their knowledge or involvement in an incident.
22 And in this case when we first went in after a Miranda
23 rights waiver form was presented, Barry was given the
24 opportunity to tell us, "What's your involvement? What do
25 you know about it?" And he set the parameters for what he

He told me to imagine it

1 questions.

2 Then there -- at the end of this test, there's
3 what's called a "sky section", which is to degree -- to
4 determine the degree of complicity if deception is
5 indicated.

6 **Q. Now, I'm going to stop you here --**

7 A. Yeah, go ahead.

8 **Q. -- because I'm not -- I don't know how much of
9 this that the Board wants to hear.**

10 MS. PLUBELL: I mean he's here to tell you if
11 it's important to you, but --

12 CHAIRWOMAN O'CONNOR: He's your witness. You
13 decide.

14 **Q. (By Ms. Plubell) Okay, we'll carry on.**

15 A. But in this test, when you run the first
16 series of tests, it is backed up immediately by the second
17 questioning of the same questions in the same manner; thus
18 you get what's called a "double zone". You not only have
19 a built-in control of examining, "Did you know who?" or
20 "Did you?"; but you also check for tendencies and trends
21 between the first series of questions and the second.

22 If there is any doubt in any of these that stress is
23 not indicated or stress falls within the guilt complex
24 outside issue or a nonrelevant control, the individual
25 gets the benefit of the doubt and there's no deception

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1 indicated.
 2 We also had a department policy that we established
 3 that in order for an examiner to determine that the
 4 deception was indicated, that the charts were actually
 5 looked at by additional examiners who were not involved in
 6 the testing of this, and that -- normally, we would like
 7 to take two examiners that -- if both examiners agreed
 8 with the testing examiner that there was deception when
 9 there was deception -- if one of the two disagreed on the
 10 interpretation, there was a benefit of the doubt and the
 11 individual was given the benefit of the doubt and deemed
 12 to be telling the truth.

13 In this case with Barry Beach, he responded strongly
 14 to questions of, "Do you know who killed" and "Did you
 15 kill Kimberly Nees?"

16 I concluded that there was deception indicated in
 17 that test. That was confirmed by Lieutenant Alfred
 18 Calhoun; it was also confirmed by Lieutenant Joe Cummings,
 19 who was also a PSE examiner.

20 **Q. Can I ask for a clarification? Did Lieutenant**
 21 **Joe Cummings actually do a PSE examination --**

22 A. No, he did not.

23 **Q. -- or are you talking about the one you did?**

24 A. I'm talking about reviewing the chart from my
 25 test.

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1 test. *yet I say nothing about it*
 2 And he hit both on blue sweater -- or on the sweater
 3 itself and the color of the sweater going both up and
 4 down. Now, it was also reviewed by -- Commander Calhoun
 5 concurred with my assessment.

6 **Q. Did you eventually, then, ask Commander**
 7 **Calhoun to do a second test?**

8 A. Immediately after I had run my test and
 9 confronted Barry Beach about the fact that it looked like
 10 he was not being honest with us --

11 **Q. Can you tell us how you confronted him?**

12 A. Just like I'm doing now. You know, I went in
 13 and said, "You know, we've looked at your test, and it
 14 shows that you were involved in this case, that you're
 15 not, you know, being honest with us. Do you have an
 16 explanation of why you are showing that you're lying
 17 regarding being involved in this case?"

18 And at that time, it was to the extent, "Well, you
 19 know, I don't remember a lot of things."

20 So what we did, then, is I said, "Okay, let's get
 21 another examiner to come in and run another test, and
 22 we'll go from there." And that's --

23 **Q. I need to ask another question: Do you, do**
 24 **you do Miranda prior to doing these tests --**

25 A. Oh, absolutely.

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1 **Q. Okay.**

2 A. Now, that's in the double-zone comparison, the
 3 DZLC.

4 There's a second test that I administered to Barry
 5 Beach during this setting - that was what we called a
 6 "peak of tension test" - to determine if this individual
 7 knew peak information about the crime that only the killer
 8 would have known and the investigators would know that was
 9 not shared with the public. In this, in the POT, he
 10 directly responded not only to the pullover sweater that
 11 was worn, but he also responded directly to the color of
 12 the pullover sweater. *yet I get it wrong?*

13 And in that test, you have a list of items - and
 14 these would all be clothing since you're dealing with
 15 clothing - two buffers on either side, and then the
 16 relevant issue in the middle. And you see a build. It's
 17 called "peak of tension". As the tension builds and
 18 you're having this individual go down the line and ask the
 19 question, "Was she wearing a rain coat?" he has to answer
 20 "no" because he's already told us he has no idea what the
 21 victim was wearing. And you will see a gradual buildup of
 22 tension and a direct hit on the article of clothing, or
 23 whatever it is you're looking at, followed by an immediate
 24 release from going down. And you do this top to bottom
 25 and bottom to top so you get a double comparison on the

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1 **Q. -- or obtain some sort of consent to these**
 2 **tests?**

3 A. Absolutely.

4 **Q. Okay.**

5 A. So Commander Calhoun's purpose was to come in
 6 and run another series of tests in what we call a "truth
 7 versus lie test". And (after pretesting and conditioning) ★
 8 he ran the test, at which he deemed that there was
 9 deception indicated, and particularly in personal and
 10 direct involvement in the case.

11 **Q. Do you have any notion about how long that**
 12 **took for --**

13 A. Again, anywhere between -- I want to say
 14 approximately -- since the pretest had already been done
 15 in regards to the validity of the instrument, it would
 16 have lessened the time. Probably about 45 minutes to an
 17 hour, somewhere in that range, to actually set up the
 18 questions, go over the questions and the sequence of
 19 events needed in the TVL, and -- somewhere between 45
 20 minutes to an hour. *only 2 hrs for the two*

21 **Q. There's some water --** *test*

22 A. Oh, thank you.

23 **Q. -- in case you can use it.**

24 **Were you in the room when Alfred Calhoun**
 25 **administered that?**

1 A. No, ma'am. No one is in the room but the
2 examiner when the test is being run because, again, that's
3 one of the outside issues you want to avoid.

4 **Q. In that room that you're in, is there orange**
5 **carpeting on the walls?**

6 A. It was not orange; it's kind of gold or tan
7 carpeting. And I believe the reason is because this is an
8 operating office, and it cuts down on the noise.

9 **Q. Okay. What happened after Commander Calhoun**
10 **administered the test?**

11 A. As I stated, he indicated -- or he interpreted
12 that Barry was being deceptive. He confronted him with
13 it.

14 **Q. And I'm assuming you weren't there and you**
15 **don't know what he did.**

16 A. No, ma'am, I don't know what conversation took
17 place between Commander Calhoun and Barry. I know that I
18 was summoned in. Commander Calhoun stated that Barry
19 wanted to see me. When I walked back in the room, Barry
20 was sitting at the table. He was crying. Commander
21 Calhoun walked out. And during that time, Barry told me
22 that he had a hard time in telling the truth, he didn't
23 know how to tell the truth.

24 I reinforced the fact to him that, you know, "This
25 is something that if you're responsible for it, that

1 produced this at the trial: There were records from both
2 the radio log that we produced that -- the correctional
3 center is and has a maximum security facility in it, very
4 similar to the facility we're in here. There are check-in
5 and check-out procedures, which you just cannot go into a
6 facility and pull someone out without it being documented
7 and recorded.

8 On this day -- they usually feed around 11 o'clock.
9 We got down there knowing that he would have already had
10 lunch. I removed him from there, signed the paperwork at
11 the desk that he was going with me for an interview. That
12 was noted in his personal history file by the correctional
13 officer.

14 Once we entered my unit, my patrol or detective
15 unit, the radio dispatcher was notified that I had a
16 prisoner present with me and that we were en route from
17 OCC to the annex building. We traveled from OCC, which is
18 probably a 5-, 10-, 15-minute drive, depending on the
19 traffic. Once I arrived at our annex, I called the radio
20 dispatcher, and she let them know we were leaving the
21 vehicle and were entering the annex. And all of that was
22 noted. I believe the logs were actually produced and
23 provided at trial.

24 **Q. Now, when -- did Barry sign another waiver of**
25 **rights prior to you tape-recording his confession?**

1 you're going to live with. You know what the truth is and
2 you know there's only one way the truth can be told."

3 And I told him that it was my experience that the
4 whole truth has never hurt anybody in their lifetime. I
5 also told him that, you know, it was up to him. You know,
6 if he wanted to get this off his chest for a murder or
7 whatever he was involved in, this was the time to do it.
8 And at that time, he actually admitted to killing Kim Nees
9 in Montana.

10 When he did that, I immediately got Commander
11 Calhoun back into the interviewing room. And after his
12 initial admission, we didn't go into any details. What we
13 did is we went back over the Miranda rights waiver form,
14 the Miranda form, which he signed. And that was -- I want
15 to say it was around 7 p.m.

16 **Q. Are you just, are you just estimating there?**

17 A. If memory serves me right, I think the waiver
18 shows around 1900 hours.

19 **Q. As long as we're on the topic of time, I**
20 **forgot to ask you: What time did you pick Barry Beach up**
21 **that day to start this process?**

22 A. Are we talking about on the 7th?

23 **Q. On the 7th.**

24 A. It would have been after noon. I think it was
25 around 12:20 or 12:25. There were -- and at the trial, we

1 A. Yes.

2 **Q. And did he seem to be coherent and understand**
3 **what he was doing?**

4 A. Oh, absolutely.

5 **Q. At any time in this process, did he make a**
6 **request for an attorney?**

7 A. No, ma'am.

8 **Q. What would have happened if he did?**

9 A. We would have shut the interview down in a
10 heartbeat.

11 **Q. And why didn't, why didn't you tape-record**
12 **every aspect of your encounter with Mr. Beach?**

13 A. The PSE examination was actually recorded,
14 pretest was recorded, everything else was recorded. That
15 was submitted to evidence. You have to understand and
16 realize, though -- and people say, "Well, you didn't
17 record this," or, "You didn't record that." There was a
18 documentation of what took place.

19 A truth verification test or lie detector test is
20 not admissible in a court proceeding; therefore, we cannot
21 testify, as ordered by the judge in this case and
22 according to the rules of evidence, that a PSE or lie
23 detector test was even given. So, therefore, the
24 documentation and all that was a moot point at trial
25 because it could not have been entered as evidence anyway.

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1 It's just simply a tool we use as investigation. So when
2 we testified at trail of this proceeding -- or following
3 an examination of this nature, we can't go into details as
4 to what took place for the two- to four-hours period of
5 time.

6 **Q. Are you ever cross-examined about that time
7 you're spending with someone?**

8 A. Oh, absolutely. And that becomes an issue,
9 because if it looks like you went in an interview room at
10 12:25 and he confesses at 7:00, then there must be
11 something terribly bad going on between that time period.

12 Which most of the time what is taking place is -- in this
13 instance and according with Mr. Beach, is that this was
14 done in a truth verification setting. There was tests
15 being administered. There was no, quote, active question
16 and answer, question and answer; it was going over all of
17 this.

18 So you had a period of time -- the minute that we
19 went back in and confronted Mr. Beach with the results of
20 this test and started talking to him about the truth and
21 telling the truth, and all of that, and the minute -- and
22 I'll use the term that he "broke down" and he told the
23 truth and became vocal about his admission of guilt in
24 this matter. Then immediately when Calhoun came back in,
25 we started a recorded confession from Mr. Beach which was

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1 { owed me a steak dinner because he had admitted to, you }
2 { know, being involved in this crime. }

3 We discussed that. I went over some of the details
4 that Barry had related to me in this interview. I told
5 Sheriff Mahlum that, you know, Barry wanted to talk to
6 him, did he have any problems in talking to him.

7 And at that time, Sheriff Mahlum said, "No, I'll be
8 glad to talk to him about it."

9 We brought Barry out and put Barry on the phone with
10 Sheriff Mahlum. He talked to him for a short period of
11 time. That conversation was terminated. Barry was taken
12 back to the interview area, and I continued for a short
13 time with Sheriff Mahlum.

14 And once that was concluded, we went back to the
15 interview room. Due to the lateness of hour and the
16 testing that had gone on and the time period that elapsed,
17 I didn't feel comfortable, nor did Commander Calhoun, nor
18 did Lieutenant Cummings pursuing any further our
19 investigation into our murders in Ouachita Parish at that
20 time. We did ask him at that time if he was involved in
21 our murders. He emphatically denied it and said he was
22 never involved in those killings. So we told him that --
23 you know, we did provide a meal for him after the
24 confession was done. *Feed afterwards*

25 **Q. What --**

not true

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1 later transcribed, which is the transcription which you
2 have and I'm sure that the Board has.

3 **Q. Who was present at that time?**

4 A. Alfred Calhoun, myself, and Mr. Beach.

5 **Q. Was Richard Medaries there?**

6 A. No, ma'am. Richard Medaries only took part in
7 one interview, and that was the interview that we
8 conducted on the 6th of January at OCC.

9 **Q. Just for a point of -- you're talking about
10 the interview with Barry Beach?**

11 A. That's correct.

12 **Q. Did Richard Medaries participate in the
13 interview with Bob and Carolyn Beach?**

14 A. Absolutely.

15 **Q. What was Barry's demeanor like after, after
16 the confession?**

17 A. After the confession was taken, he was
18 basically relieved. He was remorseful to an extent. He
19 wanted to speak to Sheriff Dean Mahlum and asked us if we
20 would contact and talk to Sheriff Mahlum. And I told him
21 that I didn't think that would be a problem. When I went
22 at it, I was going to notify Sheriff Mahlum anyway about
23 what we had found out and the information we had learned.
24 And I placed a phone call to Dean Mahlum - and you've got
25 the transcripts - and basically told Sheriff Mahlum he

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1 *Bull*
2 { A. During this time period, also - let me say }
3 { this - is that if he needed to go to the restroom during }
4 { the pretest part of the examinations, he was allowed to go }
5 { to the restroom; if he needed to smoke, he could smoke. }
6 { While the test was being conducted, however, he couldn't }
7 { -- and this is something he was told, also, that, you }
8 { know, he couldn't smoke, he couldn't leave, because once }
9 { the test is done, it's done in a structured manner. }

10 So once Barry had finished his meal at the annex
11 building, we went in and briefly talked to him about our
12 homicides. We elected to shut it down at that point, and
13 he was transferred over to the parish jail proper, which
14 was on the fourth floor of the courthouse at the time, and
15 booked in as a fugitive from justice from the state of
16 Montana.

17 **Q. Just so I understand, did the meal occur after
18 the confession but before you briefly asked him about the
19 local homicides?**

20 A. That's correct.

21 **Q. All right. And do you know what time the
22 phone call to Dean Mahlum occurred?**

23 A. I would want to say it was around 8 p.m. -- or
24 between 8 and 9 p.m., somewhere in there. The exact time
25 I can't remember, but it's in the reports.

Q. Okay. And had you done interviews with Alvin

1 -- or "Alvin"; Alfred Calhoun before?

2 A. Yes, I have.

3 **Q. And was he prone to make threats and pound the**
4 **table and yell and scream and --**

5 A. No, ma'am.

6 **Q. Are you prone to do that?**

7 A. No, ma'am.

8 **Q. And what did you do with the tape recording of**
9 **this confession?**

10 A. It was submitted along with the rights waivers
11 and the other documentation we had to -- as per our
12 policy. It was submitted as evidence to our records
13 section to be logged in, catalogued, and filed for later
14 use.

15 **Q. Did that get transcribed?**

16 A. Yes, it did.

17 **Q. Did you review that transcription for**
18 **accuracy?**

19 A. Not only did I review it for accuracy, I was
20 requested - and I want to say I was requested by
21 Mr. McCann, who was the prosecuting attorney in Roosevelt
22 County - to obtain and acquire a certified transcript of
23 the recorded confession, which at that point in time, I
24 had never been asked to do. So, therefore, I went and
25 listened and -- to the entire tape once again, making

1 changes. If there was an "inaudible", trying to fill in
2 the gaps. There were some minor changes made.

3 Excuse me. The transcript was taken to the clerk's
4 office where it was certified, and a copy -- or a
5 certified copy or a transcription copy of that record was
6 made. That was forwarded to the Roosevelt County District
7 Attorney's Office, and the tape was, you know, resubmitted
8 into evidence -- or back in the records section.

9 **Q. Did something happen with the tape?**

10 A. Oh, yeah.

11 **Q. What happened with the tape?**

12 A. It was erased.

13 **Q. And did you erase the tape?**

14 A. Absolutely not. Lieutenant Alan Nall, who was
15 the custodian of record -- when I went -- and it was
16 notified we were having a motion to suppress in this case.
17 I went upstairs to acquire not only the tapes of the
18 recorded confession but of Carolyn Beach and those other
19 people involved and couldn't find them. And I went to
20 Lieutenant Nall and asked him where the tapes were, and he
21 said he had erased them. And I went livid.

22 I said, "What do you mean you erased these tapes?"

23 He said, "I erased them." He said, "They weren't
24 our tapes; they were another state's tapes. I needed the
25 tapes." And he erased the tapes.

1 And, I'm serious, I went into a total -- I really,
2 really got mad. As a matter of fact, that's one of the
3 reasons he was subsequently removed as being custodian of
4 record. The minute I learned that, I contacted
5 Mr. Racicot, who was with the state attorney's office, to
6 let him know that the tapes had been erased and that they
7 were erased by our custodian of record.

8 **Q. Was the certified copy of the transcript**
9 **already done at that time?**

10 A. It was already done. It was completed.

11 **Q. What time, then, did you end with Mr. Beach on**
12 **the 7th?**

13 A. He was probably booked into jail around
14 10 p.m., somewhere along those lines. *AN additional 3 hrs.*

15 **Q. And you're -- are you aware that he's made an**
16 **allegation that someone drugged his milkshake when you**
17 **guys provided him dinner?**

18 A. I'm aware of it.

19 **Q. Well, I need to ask you: Did you do that?**

20 A. Absolutely not.

21 **Q. Have you ever done that?**

22 A. Never. First of all, let me say this - and
23 I'll say this to Mr. Beach and his defense crew - in this
24 test setting, we were running lie detector test, and one
25 thing you do not want to do is have drug influence on the

1 lie detector test.

2 Our goal was to determine the truth, if he was
3 involved in this murder or not. If he were involved in
4 this murder and it came out in the PSE examination, which
5 it did, then we wanted to make sure we had a valid test.
6 Any drug inducement was counterproductive. So, no,
7 absolutely not.

8 **Q. Now, are you also -- have you read the**
9 **transcript of the interview that Mr. Beach gave to Richard**
10 **Leo?**

11 A. I have.

12 **Q. And are you aware of the fact that he has**
13 **accused you of making a sexual advance at him during the**
14 **interview?**

15 A. Oh, I sure am. And that's totally false.

16 **Q. Did you have more contact with Mr. Beach after**
17 **January 7?**

18 A. Yes, I did.

19 **Q. When was that?**

20 A. It would have been -- well, the next morning,
21 we went to talk to Mr. Beach about our homicides; advised
22 him of his rights; and at that time, learned that he had
23 retained counsel in the form of Mr. Paul Henry Kidd. Once
24 we learned that, we shut down any interview attempt. We
25 contacted Mr. Kidd and arranged everything through

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1 Mr. Kidd.
 2 **Q. Let me ask you a question right here: Did you**
 3 **know Mr. Kidd?**
 4 A. Oh, yes.
 5 **Q. Have you had prior dealings with him?**
 6 A. Yes.
 7 **Q. And what was your relationship like?**
 8 A. It was very adversarial. He's a defense
 9 attorney, and I was a law enforcement officer. I
 10 respected Mr. Kidd in his role as a defense attorney, but
 11 it got to the point it became personal between Mr. Kidd
 12 and myself.
 13 **Q. All right. I'm sorry, so after you contacted**
 14 **Mr. Kidd, what happened?**
 15 A. Mr. Kidd, at some point in time - I can't
 16 remember exactly when it was - arranged and allowed us to
 17 interview Mr. Beach regarding our three murders in
 18 Ouachita Parish.
 19 **Q. Did that surprise you?**
 20 A. Oh, absolutely.
 21 **Q. Had that ever happened to you before in a case**
 22 **that Mr. Kidd was on?**
 23 A. To my knowledge, Mr. Kidd had never allowed us
 24 to interview any of his clients prior to this case, nor
 25 has he ever allowed us to interview any of his clients

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1 A. Yes, there was.
 2 **Q. Okay.**
 3 A. As a matter of fact, we set up another PSE
 4 situation with Barry. And during that time -- and I
 5 explained to him that we were there to investigate and
 6 talk to him about these murders, and we weren't
 7 necessarily interested in the Montana murders -- or,
 8 excuse me, murder; and that, you know, that is why we were
 9 there. And he was advised of his Miranda rights. He had
 10 his attorney present.
 11 Right off the bat, he made the comment that, you
 12 know, he wasn't involved in any of our murders here; the
 13 only one he was involved in was the one up here.
 14 **Q. Is that different than what happened with the**
 15 **Montana murder when you --**
 16 A. Oh, absolutely. In the Montana case, Barry
 17 always maintained -- as we got through with the testing
 18 and as the interview went on, it wasn't a denial, that he
 19 didn't do it; it was that he just couldn't remember. And
 20 there were certain things that he couldn't remember and
 21 there were certain things that he could remember in
 22 regards to the Montana deal.
 23 In our case, during that initial part of the
 24 interview, he was in total denial. Once we ran the PSE,
 25 however, we got some significant readings in relevant

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Why this one then?

1 since this case. This is the only time that I can ever
 2 remember that he actually allowed a custodial interview to
 3 take place with one of his clients.
 4 **Q. And what was the date of that? Do you**
 5 **remember?**
 6 A. I want to say it was around January the 20th,
 7 or something like that; the 15th or 20th, in that range.
 8 **Q. Okay. And are you sure, or are you guessing?**
 9 A. I'm guessing on that.
 10 **Q. Okay.**
 11 A. I don't know the actually date.
 12 **Q. And do you know who was there?**
 13 A. Yes, I do.
 14 **Q. Who was there?**
 15 A. The defendant, Mr. Beach, was there; Paul
 16 Henry Kidd was there; Alfred Calhoun was there; Joe
 17 Cummings was there. Richard Medaries was present, but not
 18 part of the interview. He was just there as part of our
 19 task force in case we needed something.
 20 But during the actual interview itself, it was
 21 limited to Calhoun, Cummings, myself, and Mr. Kidd.
 22 **Q. And Mr. Beach?**
 23 A. And the defendant, yes, ma'am.
 24 **Q. And did you -- was there a lengthy interview**
 25 **that occurred?**

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1 issues, and we had also found out some other background
 2 information regarding him in our investigation that we
 3 were conducting, that we were very concerned that he may
 4 be involved in our homicides in Ouachita Parish.
 5 **Q. All right. Now, are you aware that Mr. Kidd**
 6 **has testified at the Board -- and he claims that Barry**
 7 **never admitted that he had any involvement in the Montana**
 8 **homicide?**
 9 A. That doesn't surprise me at all because once
 10 Mr. Kidd found out that that was brought out at the motion
 11 to suppress, he was very livid and upset.
 12 **Q. Did you perjur yourself?**
 13 A. Absolutely not.
 14 **Q. And are you perjuring yourself?**
 15 A. No, ma'am.
 16 **Q. Did you have further contact with Mr. Kidd in**
 17 **and Mr. Beach?**
 18 A. During that time period, or once the
 19 interview, the PSE was concluded?
 20 **Q. Both.**
 21 A. What happened was, is that as this thing went
 22 on, another lie detector test was set up, and that was a
 23 polygraph test.
 24 And let me say this: According to the statement
 25 that I read but that Mr. Beach gave to Mr. Leo, he

1 emphatically insisted that Calhoun was giving him a
2 polygraph test. That couldn't happen. First of all,
3 Alfred Calhoun's not a polygrapher -- or a certified
4 polygrapher.

5 The individual which administered the polygraph test
6 is named Hoyt Moncrief, who was a private individual that
7 was arranged for by Paul Henry Kidd. Hoyt Moncrief set up
8 and ran a separate polygraph test on Barry Beach in
9 regards to our homicides in Ouachita Parish.

10 During this time, Paul Kidd brought up the fact that
11 he was basically very interested in the fact that Barry
12 Beach -- if Barry had committed our murders here or
13 admitted to our murders, it would set up an insanity ?
14 defense for him in Montana. Paul pushed us hard to find
15 out specific details of our homicide that we did not
16 release to anybody so that he could have -- be armed with
17 that and then go back and talk with Barry about our case.

18 We wouldn't give him any details. We simply told
19 him, "Look, if he makes any admissions, let us know what
20 he makes. We'll compare the details of what he said to
21 our information, and we'll go from there."

22 **Q. And I'm going to ask you a question here: Did**
23 **Barry Beach ever confess --**

24 A. Not to us. *So Hoyt Moncrief was*

25 **Q. -- to you --** *supposedly about*
the LA cases

1 A. No, ma'am.

2 **Q. -- about the Louisiana homicides?**

3 A. No, ma'am.

4 **Q. Okay. Did his attorney give you some**
5 **information?**

6 A. After the polygraph examination was done by
7 Hoyt Moncrief, Paul contacted us and told us that Barry
8 had confessed to our murders in Ouachita Parish.

9 And at that time, we met with Mr. Kidd and said,
10 "All right, what details do you have?"

11 The details which Mr. Kidd gave us were totally
12 inconsistent with any of the crime scene investigations.
13 They were totally inconsistent with the facts that we had
14 of the case, so we knew that the statement that Barry had
15 given was false.

16 And we basically told Mr. Kidd at that point that,
17 you know, that's not -- what he's saying is not what
18 happened. And that was actually the last contact we had
19 with Mr. Kidd regarding our cases in Ouachita Parish - and
20 for that matter, Barry Alan Beach in the Ouachita Parish
21 case - with the exception that we continued our
22 investigation and basically proved that on one of the
23 murders, Mr. Beach couldn't have been there.

24 We executed a search warrant on Mr. Beach's
25 residence; acquired several weapons that were involved,

1 submitted them to ballistics; took other evidence that was
2 submitted; and he just -- he wasn't involved in our case.

3 **Q. Did you ever get a confession from anyone on**
4 **those cases?**

5 A. Oh, yes.

6 **Q. And who was that?**

7 A. Got a confession from both Henry Lee Lucas and
8 Otis Elwood Toole. The confession from Henry Lee Lucas
9 took place in June of 1983. Our first interview with
10 Henry Lucas, I want to say it was around June the 3rd of
11 1983 in the Montague County Texas Jail in Montague, Texas.
12 Henry admitting -- admitted at that point killing three
13 girls in the Monroe area. On the specific details, he
14 came up with some particular information that the public
15 did not have access to, nor did anyone else.

16 We concluded that interview, met with our task force
17 and representatives - being the chief of police, the
18 sheriff, and the district attorney - along with the other
19 officers assigned, and informed them what had taken place.

20 There was another subsequent interview on June the
21 9th of 1983. Additional information was gained from Henry
22 Lucas. He was shown a photographic lineup of several
23 white females. At that point, he picked out our victim
24 out of a photo spread as being one of the girls he killed
25 in Ouachita Parish. The manner of death in which he

1 stated that he did that was not common knowledge. He got
2 probably 7 out of 10 points correct on that.

3 We left and learned that he had a partner, Otis
4 Toole, so we traveled to Jacksonville, Florida, some 1800
5 miles away from where Henry was. During the interviews
6 with Otis Toole, Toole admitted to at least two murders in
7 Ouachita Parish, one being the Kathy Whorton murder. And
8 he came up with some details that Henry didn't have and
9 also that corroborated regarding the type of vehicle they
10 were in, a weapon that was used, manner and the mode of
11 death. And, actually, both of them confessed to the
12 homicide. This would have been in September -- or, excuse
13 me, in -- right in September.

14 When we got back, we consulted with the district
15 attorney's office. Arrest warrants were issued based on
16 the statements from both Henry Lucas and Otis Toole. They
17 were never executed. We felt at the time that, you know,
18 we had sufficient evidence to believe that he may have
19 been telling us the truth - in fact, I would tell
20 everybody post that time that we were probably 92 to 95
21 percent sure they had done it - but there was enough doubt
22 that those cases would not be charged and that we would
23 remain and leave those cases open, which is exactly what
24 happened. The murder case was never closed on the
25 confession. There were arrest warrants issued; the arrest

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1 warrants were subsequently recalled.

2 **Q. And has there been new evidence at least with**
3 **respect to one of the victims that they, in fact, did not**
4 **do it?**

5 A. Oh, absolutely. The sheriff's office got a
6 CODIS hit on DNA evidence that was submitted to a local
7 individual for the Kathy Whorton murder that positively
8 linked him to that crime.

9 **Q. So, in essence, it appears that they may have**
10 **given you false confessions.**

11 A. No doubt.

12 **Q. How many confessions do you think you've**
13 **taken?**

14 A. That's a question I really can't answer.

15 **Q. Okay.**

16 A. I mean in 29 years, it's been a lot.

17 **Q. Were any of your confessions challenged in**
18 **court during that career?**

19 A. Oh, yes.

20 **Q. To the best of your knowledge, how many of**
21 **those were ever suppressed?**

22 A. None.

23 **Q. Is it a record you're proud of?**

24 A. Oh, absolutely.

25 **Q. In your experience as a law enforcement**

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1 **officer, when a suspect confesses to a serious crime, does**
2 **he or she necessarily give you all of the details?**

3 A. No, not necessarily. And there's a lot of
4 reasons why that doesn't happen. But a lot of the times,
5 you get a lot of specific details, but you get a lot of
6 stuff that's thrown in that's just off the wall, too.

7 **Q. Did Richard Leo ever attempt to contact you?**

8 A. No, ma'am.

9 **Q. Did he make any effort to verify or disprove**
10 **any of Beach's versions of events?**

11 A. No, ma'am.

12 **Q. If he had done so, based on what you have read**
13 **in Barry Beach's transcript of his interview to him, were**
14 **there -- are there some things you could have proven as**
15 **false?**

16 A. Oh, absolutely.

17 **Q. Are you being paid to be here today?**

18 A. No, ma'am.

19 **Q. Why did you agree to travel from Louisiana to**
20 **Montana to appear here?**

21 A. When I became a law enforcement officer and
22 took an oath, that oath, I felt, carried me beyond my
23 retirement.

24 In this case here, this is a serious case. There is
25 an individual who has been found guilty in the Montana

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1 court systems. He's gone through the Court of Appeals and
2 gone up, and now the question arises here. I felt it an
3 ethical obligation to come here and tell you what the
4 truth is. That obligation doesn't end when I say, "I
5 quit." And that's why I'm here.

6 **Q. As you sit here today, do you have any doubts**
7 **about the confession Barry Beach gave you on January 7th?**

8 A. Absolutely none whatsoever.

9 **Q. What would you do if you did?**

10 A. I would tell somebody about it.

11 MS. PLUBELL: I have no further questions.

12 CHAIRWOMAN O'CONNOR: I've been given the word
13 that Mr. Racicot has arrived. We are, however, going to
14 proceed with the cross-examination of Mr. Via because
15 Mr. Via, too, is trying to catch a plane.

16 So you may proceed.

17 CROSS-EXAMINATION

18 BY MR. CAMIEL:

19 **Q. Mr. Via, you said you're here to tell the**
20 **truth.**

21 A. Yes, sir.

22 **Q. And you started out by saying that on January**
23 **5th of 1983, you had a phone call with Sheriff Mahlum.**

24 A. Yes, sir.

25 **Q. And Sheriff Mahlum told you that Barry Beach**

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1 **was, indeed, a suspect in a homicide up here?**

2 A. Yes, sir.

3 **Q. And that Barry Beach had been given a**
4 **polygraph?**

5 A. Yes, sir.

6 **Q. And that Barry Beach had failed that**
7 **polygraph?**

8 A. Yes, sir.

9 **Q. And that Barry Beach, in failing that**
10 **polygraph, had been on the verge of confessing?**

11 A. Yes, sir.

12 **Q. Now, on January 5th of 1983 when you had that**
13 **phone call with Mr. Beach -- or, excuse me, with Sheriff**
14 **Mahlum, that was recorded, wasn't it?**

15 A. Yes, sir, it was.

16 **Q. The Louisiana office that you worked at -- you**
17 **recorded some of the phone conversations you had with**
18 **Sheriff Mahlum, didn't you?**

19 A. Yes, sir, that's correct.

20 **Q. And what I've handed you is a transcript of**
21 **that January 5, 1983 recording, isn't it?**

22 A. That's correct.

23 **Q. And if you would turn to the second page, at**
24 **the very bottom of the page, there's a conversation**
25 **between you and Sheriff Mahlum about the polygraph that**

1 **Barry was given up here in Montana.**

2 A. Yes, sir -- you're referring to (quoted as
3 read):

4 "He did submit to a polygraph, but it's
5 inconclusive. The operator felt that he probably had
6 knowledge -- he had firsthand knowledge about the crime"?

7 **Q. That's what I'm referring to.**

8 A. Okay.

9 **Q. And it goes on to say (quoted as read): "But**
10 **he didn't hit on actually doing it."**

11 A. Yes, sir.

12 **Q. And there's nothing in this transcript - and**
13 **you can review the whole thing, if you like (about Barry**
14 **failing the polygraph or Barry being on the verge of**
15 **confessing, is there?)**

16 A. I took that as to what Sheriff Mahlum was
17 saying, that -- you know, who was there.

18 **Q. Well, you told --**

19 A. Excuse me just a second, Mr. Camiel. If
20 you're asking me a question you would like me to respond,
21 I will.

22 In this conversation that I had with Sheriff Mahlum
23 - and we talked about the polygraph - it is very possible
24 that he didn't make that comment. Now, we had a
25 subsequent conversation, I want to say, that was not

1 **your mind "flunking the test" and what you testified**

2 **Sheriff Mahlum told you. You said that Sheriff Mahlum**
3 **told you --**

4 A. What Sheriff Mahlum told me --

5 **Q. -- he flunked the test.**

6 A. -- and what I felt is what came out of this
7 conversation.

8 **Q. All right. So when you said that Sheriff**
9 **Mahlum told that to you, that wasn't necessarily true;**
10 **that's just your interpretation.**

11 A. Sir, you have the transcript. You read it,
12 and you make your interpretation and opinion. When I
13 talked to Sheriff Mahlum, as I did, I took what he told me
14 and based that to form an opinion. And that's what I
15 testified to.

16 **Q. So some of your conversations with Sheriff**
17 **Mahlum were not recorded?** *Maria Jensen*

18 A. Yes, sir.

19 **Q. And some were?**

20 A. That's correct.

21 **Q. Why were some recorded and some not?**

22 A. I guess one reason -- well, part of the time
23 -- this one here we recorded because it was initial, and
24 this was leading up to our first interview with him.

25 The second one was because I had just called trying,

1 recorded on the 6th or the 7th in which I was obtaining
2 information regarding particular peak information about
3 the crime itself prior to the test being administered to
4 Mr. Beach.

5 It was during that time, too, that I remember we
6 also crossed those grounds about the polygraph
7 examination. I was very concerned when we were running
8 the lie detector test that I did not want to broach
9 avenues that the other examiner had run. So that's why I
10 posed those questions. It may not be in this transcript
11 or this recording here, but that conversation did take
12 place.

13 **Q. Well, Mr. Via, you testified just a little**
14 **while ago that in your January 5, 1983 conversations, one**
15 **of the first conversations -- the first conversation you**
16 **had with Sheriff Mahlum, he told you that Barry Beach**
17 **flunked the polygraph and he told you he was on the verge**
18 **of confessing. We have a recording of that conversation,**
19 **and it isn't in there, is it?**

20 A. It's in there about him taking the test and it
21 being inconclusive. Now, also, I take it inconclusive
22 that he don't have any personal knowledge as not
23 necessarily passing the test. In my mind, that is
24 flunking the test, Mr. Camiel.

25 **Q. Well, there's a difference between what's in**

1 to get off the information prior to picking up Mr. Beach
2 on January the 7th to obtain the information for the test
3 structure, so there was no need to record. And I was not
4 aware until later that Sheriff Mahlum -- I did not record
5 the conversation after Mr. Beach had admitted to the
6 crime.

7 **Q. You testified for awhile here this afternoon**
8 **about this psychological stress evaluation test.**

9 A. Yes, sir.

10 **Q. It's not admissible in any court in the United**
11 **States, is it?**

12 A. Nor is a polygraph.

13 **Q. I was asking about your stress evaluation.**

14 A. And I'm going -- truth verification tests,
15 period, are not admissible in any courts unless they are
16 stipulated to by both prosecution and defense.

17 **Q. And, in fact, the police department that you**
18 **worked for at the time in 1983 doesn't even use this test**
19 **anymore.**

20 A. I don't know if they do or not, to be honest
21 with you. They were using it as of two years ago.

22 **Q. Now, you said that when you give this**
23 **particular psychological stress test, you record the**
24 **preinterview.**

25 A. The pretest, yes, sir.

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1 **Q. And you record the testing itself?**

2 A. Yes, sir.

3 **Q. And you record the posttest interview?**

4 A. No, the posttest is not recorded.

5 **Q. All right. Where are the recordings?**

6 A. They were submitted into evidence. To tell
7 you where they're at today, I don't know. I've never been
8 asked to produce them, I don't know if they were still
9 there. If they were erased along with the other tapes
10 that were erased, I don't have a clue.

11 **Q. All right. How many calls did you have with**
12 **Sheriff Mahlum between January 5th when you had the first**
13 **call with him, when you first contacted him and introduced**
14 **yourself, and through January 7th in the obtaining of the**
15 **statement, the tape-recorded statement from Mr. Beach?**

16 A. How many phone calls or how many actual
17 conversations?

18 **Q. How many conversations.**

19 A. I want to say that there was probably three,

20 **Q. No more than three?**

21 A. Not that I'm aware of, not conversations.
22 There was one on the 5th initially, which is this one that
23 you alluded to; I know that there was one on the 7th,
24 which I called him in regards to getting the information
25 regarding the clothing, and that; and there was one the

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1 late evening of the 7th after the statement was obtained
2 from Mr. Beach. So that would be three.

3 **Q. Okay. Well, do you recall a -- do you recall**
4 **your testimony during Mr. Beach's trial about the number**
5 **of calls you had?**

6 A. Yes, sir.

7 **Q. And you testified that on January 7th, you had**
8 **several calls with Sheriff Mahlum, didn't you?**

9 A. Sir, I may have used the word "several". I
10 specifically remember that there was a call in the morning
11 and a call in the afternoon -- or the evening. I don't
12 recall several calls.

13 **Q. Well, do you recall that after you picked up**
14 **Mr. Beach on the 7th and you took him and you put him in**
15 **the interview room, then you left him there? And you**
16 **testified, you testified (quoted as read):**

17 **"Mr. Beach was placed in Investigator**
18 **Interview Room No. 1 while I made several phone calls to**
19 **Montana."**

20 A. Yes, sir, I remember that.

21 **Q. So that was several calls just while Mr. Beach**
22 **is in the interview room waiting for the interview to**
23 **begin.**

24 A. Now, that's not "conversations", Mr. Camiel;
25 that's "several calls". That is where the conversation --

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1 I may have taken two or three phone calls to actually get
2 to Sheriff Mahlum. And if you're asking me conversations
3 that we had, I had two specific conversations with Dean
4 Mahlum on January the 7th. Now, I may have made three,
5 four, five, or six phone calls; but to connect and have a
6 conversation, that's it.

7 **Q. Now, one of the things you did was -- before**
8 **January 7th, you said you checked Mr. Beach's background --**
9 **criminal history, I take it -- among other things --**

10 A. Yes, sir.

11 **Q. -- is that right?**

12 A. Yes, sir.

13 **Q. Because you said that you had been given**
14 **information that he had a violent history?**

15 A. Yes, sir. That came from not only him, but
16 his parents -- or parent and stepparent.

17 **Q. And you, in one of the reports that you**
18 **prepared, listed out Mr. Beach's criminal history as of**
19 **January 6, 1983.**

20 A. As of, very possible, yes, sir. Could you
21 show me the document you're talking about? And I'll be
22 able to reflect to it in greater accuracy.

23 **Q. I'm handing you your January 9, 1983 report.**
24 **I'd ask you to take a look at page 2.**

25 A. Yes, sir.

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1 **Q. Do you see Mr. Beach's criminal history there?**

2 A. Are you talking about Item No. 2?

3 **Q. Yes, where you list out his criminal history**
4 **that you uncovered.**

5 A. On January the 6th at No. 1 about (quoted as
6 read): "Was arrested for drunk and disorderly"?

7 **Q. Hm-hmm.**

8 A. Yes, sir.

9 **Q. In looking through, you have -- it looks like**
10 **you have five or six entries. Tell me how many violent**
11 **crimes are listed.**

12 A. Well, the disturbing the peace by fighting is
13 a violent crime.

14 **Q. All right. Any assaults?**

15 A. Well, the disturbing the peace by fighting
16 would be an assault, I guess, in a sense. There was a
17 juvenile disturbance, there were some other comments about
18 him being involved in other fighting; but as far as
19 violent behaviors, the complaint was filed by Bob and
20 Carolyn Beach regarding his violent behavior as well.

21 **Q. Well, I'm just asking what you uncovered when**
22 **you checked his criminal history.**

23 A. And the criminal history out of the state of
24 Montana where he had been supposedly picked up for
25 fighting and violent behavior up there as well.

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1 Q. Now, you said a minute ago that although you
2 might have placed several calls to Montana while Mr. Beach
3 was in the interview room, that that didn't mean you got
4 through —

5 A. That's correct.

6 Q. — that you only remember one call.

7 A. Yes, sir.

8 Q. Okay. Do you remember after you made the
9 statement (quoted as read): "Mr. Beach was placed in the
10 Investigator Interview Room No. 1 while I made several
11 phone calls to Montana," being asked the following
12 question (quoted as read): "And did you gather further
13 information through those phone calls?"

14 And your answer (quoted as read): "Yes, sir, I
15 did."

16 A. Yes.

17 Q. Okay. So you were asked about, plural,
18 through those "phone calls", whether you gathered
19 information. And you said (quoted as read): "Yes, sir, I
20 did" —

21 A. Yes, sir.

22 Q. — relating to the calls you made prior
23 interviewing Mr. Beach?

24 A. Yes, sir.

25 Q. So when you just testified a minute ago that

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1 there was only one actual call that went through where you
2 had a conversation, that was inaccurate?

3 A. There was one conversation, Mr. Camiel. And
4 if I might ask you this question: Have you ever called
5 somebody to talk to them, and it took you five or six
6 times to get through, and somebody asked you, "Well,
7 through the phone calls trying to get ahold of Mr. Camiel,
8 did you gain any information?"

9 "Well, yes, I did."

10 "How many times did you talk to him?"

11 "One time."

12 Q. Now, you did, you did have conversations with
13 Sheriff Mahlum where he provided you with information
14 about some detailed information about the Montana
15 homicide?

16 A. And let's be specific here, since you brought
17 up the issue: There was one conversation with Sheriff
18 Mahlum on January the 5th where I obtained information
19 regarding the particular murder that he was investigating.

20 There was a conversation with Sheriff Mahlum on the
21 7th where I obtained information regarding the clothing,
22 and -- I want to say the clothing that was involved. I
23 believe he told me about one weapon that was involved, and
24 that was a crescent wrench.

25 As far as all of the facts and details of the case,

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1 I never knew all of the facts or details of the case. In
2 fact, I didn't really want to know all the details and
3 facts of the case.

4 Q. All right. And so you mentioned earlier that
5 a couple of the facts that you got information about were
6 — that a crescent wrench was involved?

7 A. Yes, sir.

8 Q. And that was one of the things that you were
9 told was not publicly known?

10 A. I don't know if he had told me that the
11 crescent wrench was public knowledge or not. I know that
12 the blue sweater and pullover sweater supposedly was not
13 public knowledge.

14 Q. Well, didn't you testify earlier that there
15 were two items not publicly known? And you told us,
16 No. 1, that the weapon was suspected to be a crescent
17 wrench; and, No. 2, that she was wearing a blue pullover
18 sweater?

19 A. I remember -- I think my testimony - and I may
20 be wrong on this, and you heard the same thing that I was
21 testifying to - is that the information that I prepared
22 for the PSE examination regarding the peak of tension test
23 revolved around the clothing that was worn and not the
24 weapon that was used; that the clothing that was worn,
25 there was a blue pullover sweater -- or a pullover

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1 sweater, No. 1, a V-neck; and the color of that sweater,
2 No. 2, being the color blue.

3 We did not use the crescent wrench or the weapon in
4 the peak of tension test. Now, whether that was public
5 knowledge or not, you know, I don't know if it was or not,
6 to be honest with you. But that's one of the reasons I
7 didn't want to know that.

8 Q. Now, one of the, one of the reasons why you
9 want to get some detail or some fact that's not public
10 knowledge is because if it's public knowledge, then you're
11 not sure about the reliability of the confession; is
12 that —

13 A. Oh, absolutely.

14 Q. Okay. Because if there's a lot of, if there's
15 a lot facts out there about the crime, you might have
16 somebody giving you a false confession.

17 A. Are you saying --

18 Q. If they're just reciting --

19 A. Are you saying "false confession" or
20 "inconsistent confession"? Because they're two different
21 things.

22 Q. Well, if you get -- if you have an
23 uncorroborated confession and it contains nothing but
24 publicly known facts, you've got to --

25 A. Then I would say that there was questionable

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1 areas regarding that statement, yes, sir.

2 **Q. Okay.**

3 A. If all that is contained is information that
4 you can pick up in a newspaper or listen to, absolutely,
5 yes.

6 **Q. And you would be concerned about an
7 uncorroborated confession that contained nothing but
8 publicly known facts?**

9 A. I would.

10 **Q. Now, it's your memory that you picked up
11 Mr. Beach on the 7th at sometime after 12 noon - 12:30?**

12 A. That's not my memory; that is an established
13 fact.

14 **Q. All right.**

15 A. Yes, sir.

16 **Q. Okay. He's taken to an interview room. He's
17 left there for a few minutes while you make a call or
18 calls to Sheriff Mahlum?**

19 A. Yes, sir.

20 **Q. Okay. Then you go in and you start
21 questioning him?**

22 A. No, sir, I don't start questioning.

23 Mr. Camiel, you have to understand: What this was, was
24 this was a setup for a "lie detector test." The minute I
25 came back into the room and the Miranda rights waiver was

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1 Would that have been after he had admitted to the
2 murder, or was that before, during the pretest?

3 **Q. Well, let me have you take a look at your
4 January 9th report. Do you have that one in front of you?**

5 A. Yes, sir, that's the one you handed me.

6 **Q. Okay. Why don't you take a look at the
7 January 9th report at page, excuse me, page 5 at the
8 bottom.**

9 A. Oh, yes, sir, that is correct.

10 **Q. All right.**

11 A. That was from Mr. Beach, though. That is not
12 me asking him. That's him relating to me that that was
13 his knowledge of what -- the crime happened, and that he
14 had heard that the victim had died as a result of being
15 beaten in the head with either a tire tool or a crescent-
16 wrench. *During PSE Pretest*

17 **Q. All right.**

18 A. Yes, yes.

19 **Q. As a part of your, your scenario for setting
20 up this psychological stress test, you also used a
21 fictitious crime that you asked Mr. Beach about.**

22 A. Oh, yes.

23 **Q. And during the course of the day that you
24 spent with Mr. Beach, you also asked him at one point a
25 hypothetical question, didn't you?**

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1 A. Now, go into context what you mean
2 "hypothetical question".

3 And it may help you and it may help everyone else to
4 understand: The fictitious crime you're speaking of is a
5 crime that comes -- or a question that comes at Question
6 No. 3 in the PSE examination and reiterated at Question
7 No. 10 to determine and elicit a guilt responder -- or a
8 guilt complex response.

9 The crime is something that could have never
10 possibly happened and that is presented to the defendant
11 as truthful and fact, and that if he focuses his attention
12 on something that could have never have happened and he
13 responds to that, then the theory is and the proven method
14 was -- is that if he responds to that, then that's an
15 indication that he is not lying to you and he's being
16 totally truthful and honest because he's then got a guilt
17 complex response inside this controlled situation. It's
18 one of the inherent controls designed for the defendant's
19 benefit to determine if he was telling the truth or not.

20 Now, when you're saying -- you're dealing in
21 "hypothets", I don't know what you're talking about. And
22 maybe you can help me out and point me in the right
23 direction.

24 **Q. Well, during a part of the day when you were
25 questioning Mr. Beach, didn't you ask him hypothetical**

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1 obtained, we began the pretest phase of a truth
2 verification test. The question-and-answer series did not
3 come until after the posttest.

4 The first question I asked Mr. Beach is for him to
5 provide me his knowledge and his details of this crime as
6 to what he was purporting to be truth. Now, that's what
7 was asked him. When we go over that, then we go into the
8 test proper itself: How the test is structured, how the
9 test will do this, and so on and so forth.

10 **Q. So when you went back into the room --**

11 A. We began the test.

12 **Q. Okay. And the beginning of the test is asking
13 Mr. Beach some questions about his knowledge of the crime?**

14 A. Exactly.

15 **Q. To see what he'll tell you he knew?**

16 A. Yes, sir.

17 **Q. So Mr. Beach told you that he had heard things
18 about the crime?**

19 A. Hm-hmm.

20 **Q. And he told you that he had heard that the
21 victim had died as a result of being beaten in the head?**

22 A. If it says that, then, yes, sir, that would be
23 accurate.

24 **Q. With either a tire tool or a crescent wrench?**

25 A. In the pretest, I don't think so.

1 **questions?**

2 A. In regards to what? And that's what I'm
3 asking. You're asking me: Did I ask him a hypothetical
4 question.

5 Are you asking me: Did I pose a guilt-response
6 question to Mr. Beach on a crime that could have never
7 happened that was totally made up?

8 The answer is: Absolutely, yes.

9 If you're asking me if we went through different
10 hypothets during the course of this PSE examination,
11 absolutely not.

12 **Q. Now, you testified that during the course of**
13 **the, course of the day, you didn't raise your voice.**

14 A. Oh, no.

15 **Q. Okay, very calm during the whole thing?**

16 A. Kind of in this manner as we're talking right
17 here, yes, sir.

18 **Q. All right. So there's no reason why you**
19 **should have lost your voice by the end of the day?**

20 A. Mr. Camiel, do you hear my voice right now?
21 Do you understand that my voice, talking in a normal tone
22 back and forth with a sinus problem -- that I do have a
23 tendency to lose my voice?

24 And that's one of the reasons that it was brought to
25 me. So, yes, sir, I do lose my voice in the tone as we're

1 talking right here. I always have.

2 **Q. And by the end of the day of questioning**
3 **Mr. Beach, you had lost your voice?**

4 A. Yes, sir.

5 **Q. And you were tired?**

6 A. At the end of the day, yes, sir.

7 **Q. And you told Sheriff Mahlum that you were**
8 **tired?**

9 A. Yes, sir.

10 **Q. Because of the length of time that you had**
11 **spent with Mr. Beach?**

12 A. I don't know if it's actually due to the
13 length of time. In the conversation that I was having
14 with Sheriff Mahlum, it was at the end of the day. We had
15 gone through two PSE examinations; we had gone through an
16 admission of guilt by the defendant of taking a recorded
17 confession, and I will say a detailed recorded confession
18 from the defendant; and that we still had items to pursue
19 regarding our own homicide. And, yes, sir, it is mentally,
20 taxing, and it is physically taxing. And, yeah, you do
21 get tired, as I'm sure you do during the course of what
22 you're doing here, too, without being overly physically
23 exerted. Let me put it that way.

24 **Q. All right. Well, during the course of the**
25 **day, you did your testing with Mr. Beach for a period of a**

1 **couple hours. Then you left the room, and Alfred Calhoun**
2 **came in.**

3 A. Yes.

4 **Q. And he spent a couple hours with Mr. Beach.**

5 A. Yes.

6 **Q. Okay. You got to take the break; Mr. Beach**
7 **doesn't. He's going from you to Mr. Calhoun.**

8 A. Hm-hmm.

9 **Q. "Yes"?**

10 A. Well, that depends. Between the testing -- at
11 some point in time, and I think it was in between testing,
12 Mr. Beach was taken out of the interview area, and we let
13 him just get either some water or refreshments, use the
14 restroom, or things like that.

15 And that's something else, is that you don't want
16 undue amount of stress on the individual while he's taking
17 the test. And in between the two tests, since there were
18 two separate tests, then you break it up to give a break
19 not only to the examiner, but to the defendant as well.

20 So during this time period, I think Mr. Beach was
21 actually taken out, taken to the restroom, and given a
22 drink of water, or something along those lines.

23 **Q. Now, let's go back for a minute to the**
24 **information that you got from Sheriff Mahlum about the**
25 **crime.**

1 A. Yes, sir.

2 **Q. He told you about the suspected type of murder**
3 **weapon?**

4 A. He told me about a crescent wrench, yes.

5 **Q. He told you about the location of the murder**
6 **weapon?**

7 A. I don't recall him saying -- when you mention
8 "location", where it was found at the scene?

9 **Q. Did he say anything about the location?**

10 A. That's what I'm asking. You're asking me
11 about the location. What location are you talking about?
12 Are you talking about where it was used at the scene or
13 where it was found at the scene?

14 **Q. Did he tell you whether or not the murder**
15 **weapon had been located?**

16 A. You know, I honestly don't recall. I don't
17 think he did. I think he just told me the -- and he may
18 have, Mr. Camiel. He may have told me that it had been
19 located, but it wouldn't have made any difference. I was
20 more interested in the specific weapon that was used.

21 **Q. All right. And did he tell you anything about**
22 **the keys to the vehicle?**

23 A. He may have told me that the keys had not been
24 located. I think that may have been true -- or that he
25 had -- I just don't remember. And I know it would be

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1 reflected in my report.

2 And like I said, I've read my report and kind of
3 skimmed over it, but I figured that we would go over the
4 details. So if there's specific -- in here that you have,
5 I would be glad for you to help me here.

6 **Q. Well, do you recall him telling you anything**
7 **about the victim being dragged from one area to another**
8 **area?**

9 A. I don't have a specific recollection about him
10 saying "being dragged". I recall that the victim had been
11 found away from the vehicle, I think near the water.

12 **Q. Okay. Do you recall him expressing some**
13 **concern to you about whether there was blood or not on the**
14 **drag trail?**

15 A. I don't recall that.

16 **Q. Do you recall him telling you about something**
17 **being used to wrap the victim in?**

18 A. I don't recall that, either.

19 **Q. Do you recall him telling you that the victim**
20 **received defensive wounds?**

21 A. He could have, but I don't recall it.

22 **Q. Okay. You said one of the things you recalled**
23 **is that he said she was wearing a pullover sweater.**

24 A. If memory serves me right, I think he
25 mentioned a pullover V-neck sweater that was blue in tone.

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1 publicly, that only the killer would know and that the
2 investigating officers would have known. So if there was
3 a plaid shirt that was worn, or something along those
4 lines, and it was public knowledge, I didn't want to use
5 that in my test and it was not used in my test. It might
6 have been used as a buffer or control, but not the actual
7 specific item itself.

8 **Q. Do you recall that after you gave Dean Mahlum**
9 **a report about -- an oral report that, generally, that**
10 **Mr. Beach had confessed, that you told Dean Mahlum, "You**
11 **said she had on a brown plaid shirt"?**

12 **You're talking to Dean Mahlum.**

13 A. And that's the conversation I'm talking about.
14 I saw this, and I'm not certain that -- from where that is
15 coming is that it was actually meaning that Dean had told
16 me that she was wearing that. That was related to what
17 Barry Beach had told us in the actual recorded confession.
18 That might have been a misstatement to the fact that "you
19 told me", meaning "Barry told me, not Dean".

20 **Q. Well, you've got the transcript in front of**
21 **you.**

22 A. Oh, absolutely, and that's exactly what the
23 transcript says. But I'm telling you, as I remember that
24 conversation, I don't remember saying "you did it". And
25 if I did, then it was not because I think that Dean had

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1 **Q. Okay. Do you recall that you, in fact, had**
2 **made a mistake about the clothing that the victim was**
3 **wearing?**

4 A. Define "mistake".

5 **Q. Okay. Do you recall believing that Sheriff**
6 **Mahlum had told you that she was wearing different color**
7 **clothes than she was actually wearing?**

8 A. I don't follow you, Mr. Camiel. The
9 information that I had regarding what clothing she had on,
10 as I've testified to, is that I was under the impression
11 she was wearing a blue pullover sweater that was a V-neck.
12 There may have been, somewhere in the line, the fact she
13 was wearing a -- some kind of a blouse or plaid shirt, but
14 I remember the plaid blouse and plaid shirt coming from
15 Barry Beach, not Dean Mahlum.

16 I also remember in one of the phone transcripts,
17 that came up. And I remember the way it was said during
18 the phone conversation it looked like that I had known
19 about that, but I'm telling you what had happened, was
20 that was information that was obtained by Barry Beach, not
21 from Dean Mahlum.

22 And, again, and I will go back and say this: It's
23 very possible that Dean mentioned some kind of clothing
24 along that line, but the specific item that I remember
25 that I was interested in is an item that no one knew

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1 told me that; it was the fact that Barry had told me that.
2 And as you pointed out, we were tired, and this was toward
3 the end of the day, also.

4 **Q. So because it was the end of the day, you were**
5 **making mistakes -- could have been making mistakes?**

6 A. What I'm saying is, is in this, if I made the
7 comment, that I do not ever remember Dean Mahlum telling
8 me about the plaid shirt; I remember about clothing that
9 was worn. And it's possible that he did.

10 What I remember in the context of the phone
11 conversation and the statement that was taken, the
12 knowledge and information that I had came from Barry, not
13 Dean, because that's what I was relating to Dean about
14 what Barry had told us during this tape.

15 **Q. Well, let's take a look at, let's take a look**
16 **at what you said. This is the conversation that you had**
17 **with Sheriff Mahlum immediately after you recorded the,**
18 **recorded the interview with Mr. Beach.**

19 A. Yes, sir.

20 **Q. Okay. This is the phone call where you call**
21 **him up and you talk about him owing you the steak dinner.**

22 A. Oh, absolutely, yes, sir.

23 **Q. Okay. And you tell Sheriff Mahlum (quoted as**
24 **read): "The details he ran down."**

25 **And when you say "he", you're referring to**

1 Mr. Beach, right?

2 A. Hm-hmm.

3 Q. (Quoted as read): "The details he ran down
4 are almost identical to what you found at the scene."

5 A. Hm-hmm.

6 Q. Let's start with that. Okay? (Quoted as
7 read): "The details he ran down are almost identical to
8 what you found at the scene."

9 What are the details that you were aware of--

10 A. What is said. Go further. If you remember,
11 that's transcribed. And let me look at the transcript.
12 There should be an account of what I'm talking about right
13 there, and that would be an accurate reflection of what
14 we're talking about.

15 Now, while he was also talking about of what he
16 found at the scene, when Barry gave us this statement --
17 and as I told you, I did not want to know all the
18 particular details of this crime. And one of the reasons
19 I didn't want to know about all of the details is that:

20 Had Barry given us something in this statement that I
21 didn't know, then I wouldn't have to lead him into this.
22 And the question of me leading him and giving him
23 information is slim and none.

24 As it turns out, the information that he gave me, I
25 knew -- and if you go back to the conversation on January

1 from what information and limited information that I had,
2 is the fact that -- this is what he was telling me about.

3 Not only that, he comes up with another weapon that
4 I had no idea was even used in this case, and that was a
5 tire tool. And I found that out after the statement was
6 given.

7 Regarding the garbage bag that was used, supposedly
8 to put her in and drag her, I had no knowledge of that.
9 That information came from the defendant, Mr. Beach.

10 There's other information in this statement, if you
11 want to go back through it, that I had no knowledge of.
12 And even up until now, I'm still learning things about
13 this case that I never knew as far as the details of the
14 crime.

15 Q. Let me show you a report, Mr. Via. It's a
16 report that Sheriff Mahlum prepared January 7, 1983,
17 outlining the information that he gave you.

18 A. (Perusing document) -- okay.

19 Q. At the top of that report, he actually
20 describes two phone conversations with you, one at 9:00
21 and one at 10:30.

22 A. That's very possible.

23 Q. Okay.

24 A. Now, let me stop you right here. If you
25 remember in the report -- and as I read this and put this

1 the 5th of where Dean and I were talking - and this is the
2 one you brought up - was I was trying to find out as much
3 information as I could-- let me see what we're talking
4 about here -- (perusing document.)

5 It says that the body was dragged down through -- or
6 in a small river. The body was dumped in that. Her
7 vehicle was found at the scene. Whoever killed her
8 apparently had driven out with her to the scene. *in car fascid*

9 These are the details that I acquired on the 5th
10 during this conversation.

11 It goes in further (quoted as read): "Barry became
12 one of several suspects."

13 It also says that there was a crescent wrench that
14 was used to beat her to death. Her vehicle keys were
15 never found.

16 So when you had asked me did I know that they hadn't
17 been located, the answer is "yes". Here it is in the
18 transcript, as I'm actually going through reading it. Who
19 -- somebody had taken those.

20 Q. Well --

21 A. Let me -- you asked me the question, and
22 that's about -- what I'm talking about. The details that
23 Barry gave were the details that he gave me of the scene.
24 This is what I'm talking about. What you have is this
25 transcript here. And the details that he gave, you know,

1 in context (quoted as read):

2 "At approximately 1030 hours, I supplied
3 Sergeant Via with the following information regarding the
4 Kimberly Ann Nees case."

5 At 1030 hours when he provided this
6 information to me, the statement had already been received
7 from Barry Alan Beach.

8 Q. So, now, the statement on January 7th
9 wasn't --

10 A. Well --

11 Q. The statement on January 7th from Barry Beach
12 -- you didn't start recording until 7:08 p.m.

13 A. And I quote (quoted as read): "At
14 approximately 1030 hours" -- and I'm assuming 1030 hours
15 is 10:30 p.m. Now, that may be a typo meaning 2230 hours.
16 But at 10 p.m. on this date is the information that I gave
17 to Sheriff Dean Mahlum.

18 Q. You're aware that --

19 A. Now, this information -- he did not -- this
20 information he's saying he gave to me, the information
21 which I had regarding to this crime scene is right here on
22 this transcript which you provided me on January 5th.

23 Q. So if Sheriff Mahlum was in here yesterday and
24 today and testified that on the morning of January 7th at
25 9:00 a.m., 0900; and at 10:30 --

Twisting facts

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1 A. No, sir. Now, wait a minute.
2 **Q. Now, let me finish the question before you**
3 **answer it.**

4 A. You've asked me, and we've gone over this once
5 before, too. I told you -- and you said I had several
6 phone calls.

7 **Q. That's what you testified to at trial.**

8 A. Exactly. And I said I had one conversation in
9 the morning with Sheriff Dean Mahlum and one conversation
10 in the evening with Dean Mahlum. And the morning would
11 have been around nine o'clock, and that's no doubt. The
12 other one would have been around 10:30 p.m. that night.

13 Now, if Dean's saying that he talked to me at 10:30
14 in the morning, I don't remember that conversation. I
15 remember two specifics: One at 9:00, around 9:00 in the
16 morning; and one at 10:30 at night. And that's also
17 reflected in my report of January the 9th, as you have
18 also.

19 **Q. Well, so you would, you would dispute that**
20 **Sheriff Mahlum talked to you at 10:30 in the morning on**
21 **January 7, 1983, and gave you the information that's**
22 **listed in his report.**

23 A. What I'm saying is that on the morning of
24 January the 7th, 2003 (sic), I had two conversations with
25 Sheriff Mahlum: One in the morning time, and I want to

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1 **this room. We get what's in the report. We don't have to**
2 **emphasize as if we have a jury here we're trying to**
3 **educate as to what's in the report.**

4 **Q. (By Mr. Camiel) When you had your phone**
5 **conversation with Sheriff Mahlum after the statement that**
6 **you obtained from Mr. Beach, you told Sheriff Mahlum**
7 **(quoted as read): "And here's what he says about the**
8 **garbage bag."**

9 **Do you recall that?**

10 A. I remember saying something about a garbage
11 bag, yes, sir.

12 **Q. Okay. It's on --**

13 A. And it's in my report, I'm sure.

14 **Q. Well, it's in the transcript of your call**
15 **with, with --**

16 A. Do I have that transcript?

17 **Q. I believe I put it in front of you, but if I**
18 **didn't, I will right now.**

19 A. I believe you've handed me the report, and
20 I've got the transcript of the 5th, and I've got another
21 here -- you didn't give me the other one.

22 **Q. All right. Well, here's the other one.**
23 **It's on the first page, about halfway down the page.**

24 **You say (quoted as read): "And here's what he says about**
25 **the garbage bag."**

Twisting Facts

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1 A. Hm-hmm.

2 **Q. Nowhere earlier in the conversation is there**
3 **any mention of a garbage bag. So when did you and Sheriff**
4 **Mahlum previously talk about a garbage bag?**

5 A. I'm misunderstanding what you're trying to get
6 to. And this --

7 **Q. I'm just asking the question.**

8 A. Oh, I'm sorry. I didn't mean to interrupt
9 you. Go ahead.

10 **Q. Well, you mentioned (quoted as read): "And**
11 **here's what he says about the garbage bag."**

12 A. Okay.

13 **Q. All right?**

14 A. Now --

15 **Q. Where did you talk about -- when did you talk**
16 **about a garbage bag?**

17 A. With who?

18 **Q. With Sergeant Mahlum -- or, excuse me, with**
19 **Sheriff Mahlum.**

20 A. (Quoted as read): "Here is what he says about
21 the garbage bag," relates to: Here is what Barry Alan
22 Beach said in his recorded confession about the garbage
23 bag. I'm relating to Sheriff Mahlum what Barry Beach has
24 told me in the recorded confession; not what Sheriff Dean
25 Mahlum told me before. This is a reflection of what Barry

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1 say it was around 9:00 a.m.; the second one was on --
2 around 10:30 p.m. of that evening.

3 The information which I obtained from Sheriff Mahlum
4 on that time would have been to -- regarding to the
5 clothing that we used in regards this PSE peak of tension
6 test. It's very possible when Dean did this, the
7 information which he's saying that we've got here -- and,
8 again, when I'm looking at this, this is what, this is
9 what I was relating back to him, which brought up this
10 question when you said I matched the details. I was
11 referring to Sheriff Mahlum regarding to this on the 5th
12 the details that the defendant gave me on his own volition
13 about the crime scene.

14 **Q. About the --**

15 A. Now, if that's what this is -- and you're
16 going to have to ask Sheriff Mahlum this. And if he said
17 that and he said we had two conversations -- I remember
18 one, one in the morning and one in the evening. That's my
19 recollection, sir.

20 **Q. Mr. Via, what I would ask you to do is read**
21 **out loud the first paragraph of Mr. Mahlum's report that I**
22 **just handed --**

23 **CHAIRWOMAN O'CONNOR: Counsel, I don't think**
24 **it's necessary for him to read out loud. We've seen it,**
25 **we've heard it, we've read it before you ever walked in**

1 told me in his statement.

2 That's why I was confused when -- you were missing
3 who was talking about what. (Quoted as read): "Here is
4 what he says about the garbage bag."

5 To put it another way, "Here's what Barry Beach said
6 in his recorded confession about the garbage bag."
7 (Quoted as read):

8 "He says that he found the garbage in the
9 truck, tried to put her all the way in it and couldn't do
10 so, so he pulled her to her shoulders and drug her down
11 and dumped her off. And the garbage bag came off of her.
12 Now, he does not remember putting the purse or anything
13 else by the truck. He says he remembers seeing it on the
14 ground outside. He also remembers that afterwards, he
15 went back to his house at the bottom of the hill where he
16 was, and there was a boxcar there."

17 This is what he's telling me, not what Dean
18 told me.

19 **Q. I understand, I understand.**

20 A. Okay. Well, what was your question? I'm
21 sorry. You're asking me about the garbage bag, who was
22 saying what. So what was your question?

23 **Q. My next question is: So your, your indication**
24 **is that when you told Sheriff Mahlum, "You said she had on**
25 **a brown plaid shirt," you're not referring to what Sheriff**

1 **Mahlum told you?**

2 A. Mr. Camiel, it's very possible I made that
3 comment about the blue -- brown plaid shirt. That's what
4 Barry told us in the confession, and that's --

5 **Q. I understand that. No, I --**

6 A. It's --

7 **Q. -- understand that.**

8 A. Oh, I'm sorry. I interrupted you, and I know
9 you interrupted me. So I'll wait.

10 What I'm trying to make a comment on is that when I
11 took the statement from Barry Alan Beach regarding this
12 homicide, he provided me specific details. He provided
13 details to the extent -- and I asked the question, "What
14 was she wearing at the time of the murder?"

15 And you have a transcript of that statement, I'm
16 sure. And he comes back and gives a description.

17 **Q. Did he get the description of the clothing**
18 **right or wrong?**

19 A. To be perfectly honest with you, I don't know.

20 **Q. You knew that he got it wrong because you**
21 **told --**

22 A. Did I tell him he got it --

23 **Q. -- the sheriff --**

24 A. He got it wrong if he's saying she was wearing
25 a plaid brown shirt. And this is why I'm saying this is

1 what -- if you're saying that I told Dean that Dean told
2 me that she was wearing a brown plaid shirt, then that
3 would be correct, in my mind, because that's what Barry
4 told us in his statement.

5 What Dean told me she was wearing was a blue
6 pullover V-neck sweater. And that's what was wrong in the
7 statement because he did not mention that.

8 Now, what he mentioned was a brown plaid shirt. And
9 that is in the transcript of the statement that he gave,
10 and that's what I'm referring to in this conversation.

11 **Q. And are you aware that she wasn't wearing a**
12 **brown plaid shirt?**

13 A. I told you, I don't know.

14 **Q. Okay. Now, let me ask you this: If you had**
15 **made a mistake, if you had made a mistake --**

16 A. I would say, "I made a mistake."

17 **Q. Okay. And if you had made a mistake about**
18 **what you thought Sheriff Mahlum told you the victim was**
19 **wearing -- so you, you were thinking she's wearing**
20 **something that --**

21 A. There is no doubt in my mind, Mr. Camiel, that
22 Sheriff Dean Mahlum told me that Kimberly Nees at the time
23 that she was killed was wearing a blue pullover shirt,
24 V-neck. Okay?

25 And it's possible he went further to describe a

1 blouse underneath it; I do not remember that specifically,
2 though. I remember the blue sweater because that's what
3 was used in my peak of tension test.

4 **Q. Do you know what a "false fact" is in an**
5 **interrogation?**

6 A. Hm-hmm.

7 **Q. When a police officer gives a false fact, and**
8 **that false fact ends up in the suspect's confession or**
9 **statement?**

10 A. Okay.

11 **Q. All right. So --**

12 A. Now, where are you saying I gave Mr. Beach a
13 false fact, Mr. Camiel?

14 **Q. Well, stay with me for a minute.**

15 A. Well, you brought it up.

16 **Q. I'm not --**

17 A. And I, I know where --

18 **Q. I'm going to --**

19 A. -- you're going with this. And I'm also
20 trying to save you and this Board a lot of time and
21 trouble.

22 **Q. Well --**

23 A. During the PSE test, if you look at the POT,
24 there is a brown plaid shirt mentioned there, and there's
25 also a blazer in there.

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1 **Q. Okay. And you --**

2 A. And that was actually brought out in the
3 statement, that he said that she was wearing a blazer and
4 the brown plaid shirt. Is that what you're referring to?

5 **Q. Well, if you incorrectly thought that Kim Nees
6 was wearing --**

7 A. Oh, it was not incorrect, sir.

8 **Q. I'm just --**

9 A. No, no, no.

10 **Q. You've got to listen to the question, please.**

11 A. That's what I want to clarify. First of all,
12 that was not incorrect. In the peak of tension test, as I
13 mentioned, a -- I want to say a jacket and a brown plaid
14 shirt was buffered in between a blue sweater. Those were
15 control questions. That is not a mistake.

16 **Q. I'd like you to listen to my question,**

17 **Mr. Via --**

18 A. Well --

19 **Q. -- okay, because you're not listening.**

20 A. Oh, I'm sorry. I'm sorry. I didn't listen to
21 you.

22 **Q. Okay, all right. If you thought that Kim Nees
23 was wearing a brown plaid shirt and if you were incorrect
24 about that understanding, and if --**

25 A. I'm sorry, did you say if I were correct or

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1 **Ms. Nees was wearing a brown plaid shirt, your inaccuracy
2 ends up in his statement. That's a false fact. That's an
3 indication of a false fact contaminating a confession,
4 isn't it?**

5 A. Are you asking me is that what happened in
6 this case? Now, I've answered this question.

7 I knew for a fact she was wearing a blue sweater.

8 That was a key point in the PSE. When we get to the
9 confession stage, it would have been very possible she
10 would have been wearing a brown plaid shirt because I
11 didn't know. And that's what I'm saying. The brown plaid
12 shirt and jacket were used as part of a lie detector test.
13 I was not incorrect in putting that there. It was done as
14 a buffer.

15 Did I know she was wearing one or thought she was
16 wearing one? No, sir. Okay?

17 And the statement that you have here, that's what
18 I'm relating to Sheriff Dean Mahlum as to what the
19 defendant related to me.

20 **Q. Let me ask you: In the confession, Mr. Beach
21 indicated that after the initial assault on Ms. Nees
22 inside the pickup truck, she got out the driver's side?**

23 A. Do you have a copy of that transcript?

24 Because I don't, and I would like to refer to it since
25 there's been some discrepancy between you and I. I want

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1 incorrect?

2 **Q. Incorrect, incorrect.**

3 A. Incorrect.

4 **Q. If you thought she was wearing a brown plaid
5 shirt --**

6 A. Okay.

7 **Q. -- and if you were incorrect in that
8 understanding --**

9 A. But I wasn't. I didn't.

10 **Q. Okay. Well, let me finish the question.**

11 A. Okay. Is this a "hypothet", or is this --

12 CHAIRWOMAN O'CONNOR: Okay, just a minute.

13 I'm going to make you stop and listen to his question.

14 THE WITNESS: Okay.

15 CHAIRWOMAN O'CONNOR: And when you make this
16 question, this is now the sixth time you've asked this
17 question. We're way past asked and answered. This is the
18 last time you're going to ask this question. You have his
19 explanation; you don't like it, but you have it, and you
20 have it multiple times.

21 So ask your question one sixth time, and then
22 we're done.

23 **Q. (By Mr. Camiel) If you believed that Kim Nees
24 was wearing a brown plaid shirt and you were incorrect in
25 that belief, and Mr. Beach's statement indicates that**

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1 to be accurate.

2 **Q. Look at the bottom of page 8.**

3 A. Yeah.

4 **Q. Okay. Do you see where he indicated (quoted
5 as read): "She started -- she slid back over to the
6 driver's side and started to get out the door. And I" --**

7 A. Is that up where it says (quoted as read):

8 "And I tried to grab her again, and she pushed me away.

9 And, I don't know, I just flew off the handle," or is that
10 down below that?

11 **Q. Down below, down below --**

12 A. Okay.

13 **Q. -- toward the bottom of the page.**

14 A. Towards the bottom. I just remember her --
15 oh, yes, sir (quoted as read):

16 "She started backing away from me and trying
17 to get out of the pickup truck. She slid over to the
18 driver's side and started to get out the door. And I
19 jumped out and run around the pickup and caught her as she
20 was coming out the door." *Not possible to run*

21 **Q. Okay.** *forward before she got out!*

22 A. Okay.

23 **Q. Would you be concerned if all of the physical
24 evidence at the crime scene indicated that Ms. Nees didn't
25 get out the driver's door, that she was pulled out the**

1 passenger door?

2 A. Would I be concerned?

3 Q. Yeah, if this was your case and you get a
4 confession where somebody's saying that the victim got out
5 the driver's door when all the evidence indicates she got
6 out of the passenger door.

7 A. Not necessarily, sir. And could I explain
8 that?

9 Q. Well, that was my question, and you've
10 answered it.

11 A. Oh, okay.

12 Q. Okay? Would you be concerned if Mr. Beach
13 said that the victim, Kim Nees, was choked and there was
14 no evidence that she was choked?

15 A. Oh, in regards to different crimes like this,
16 there's very -- sometimes very little evidence of choking
17 when it's a manual choking. So, no, that wouldn't cause
18 me any concern at all. If it's ligature choking or
19 ligature strangulation, yes, sir, I would be very
20 concerned if there were no marks.

21 Q. Okay. Would you be concerned if Ms. Nees was
22 -- she was initially attacked inside the truck and she's
23 bleeding heavily; and then in the confession, Mr. Beach
24 says she's pushed up against the driver's side of the
25 truck, and there's no blood at all anywhere on the

1 degree because I saw the questions, I saw the testing, and
2 I saw the charting, and I heard the recording later of the
3 test itself being given by Mr. Calhoun. That's what I'm
4 saying. The TVL and everything else was recorded, it was
5 submitted into evidence. So I do have a good idea of what
6 took place during the test.

7 Posttest? No, sir, I don't have a clue as to what
8 was said other than what Mr. Calhoun has testified to.

9 Q. All right. And so you don't have any way of
10 knowing whether Mr. Calhoun became aggressive in his
11 questioning Mr. Beach posttest?

12 A. Now, when you're saying "aggressive", what are
13 you meaning "aggressive"? Threatening aggressive, or
14 being aggressive to the point if he felt he was lying,
15 pointing out the fact that the test was showing that he
16 was being deceptive?

17 Q. You don't have any way of knowing either
18 because there's no recording of it; isn't that right?

19 A. Well, there was.

20 Q. Well, you said there's no recording of the
21 posttest.

22 A. There's no recording of the posttest. But you
23 asked me a questioning about Commander Calhoun getting
24 aggressive, and I asked you to define what you meant by
25 "aggressive". Because I know how Commander Calhoun

1 driver's side of the truck or on the ground on the
2 driver's side?

3 A. And not necessarily that point, either,
4 because when you're talking a relative time, particular
5 space, or whatever, during the commission of a crime, at
6 the time he pushes her against the door, she may not have
7 been bleeding at that point. That may have come at some
8 other point in time during the attack itself.

9 He is relating an account of what took place in his
10 mind, in his view, as he remembers committing this crime.
11 And that is no different than a witness or a victim
12 relating to anyone else their account of what happened to
13 them during, let's say, a robbery, a rape, an aggravated
14 assault, or anything else. You will always have
15 information that is consistent with everything you have,
16 but there will also be information that is not consistent
17 because of a process known as a "filtering process".

18 Q. Now, you weren't in the room when -- you left
19 the room while Mr. Calhoun did his test with Mr. Beach.

20 A. That's correct, yes.

21 Q. So you don't know what went on in that room.

22 A. I know what went on to a vast degree, yes.

23 Q. Well, you weren't in there, so you didn't hear
24 what --

25 A. No, sir, but I do know what went on to a vast

1 administers his examinations, and I know he will -- in a
2 TVL, which this is done, it will be in your face; "You
3 tell me the truth," because -- that is something that the
4 defendant believes, not necessarily the examiner.

5 Now, to that extent, I can say "yes". And when I
6 say "aggressive", I don't want you to misconstrue that he
7 was grabbing him by the collar and becoming aggressive,
8 but aggressively pointing out to the defendant that, "Yes,
9 here's the truth, here's a lie. You tell me what's what."

10 Now, if that's being aggressive, then, yes, he
11 probably did that. If he was aggressively threatening,
12 I've never known Alfred Calhoun to do that. But, you're
13 right, I was not there when that happened.

14 Q. You have known Alfred Calhoun to get into
15 people's faces when he's questioning them?

16 A. Sure.

17 Q. Raise his voice?

18 A. On occasion.

19 Q. You also have known him to, on occasion, try
20 to get a suspect to pray with him?

21 A. Sure.

22 Q. Now, you tried to get Mr. Beach during the
23 interview to change his description of the clothing,
24 didn't you?

25 A. What are you referring to? I asked him if he

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1 was absolutely certain if that's what she was wearing.
 2 **Q. Do you recall telling Sergeant -- excuse me,**
 3 **Sheriff Mahlum, with regard to Mr. Beach's description of**
 4 **the clothing, that he wouldn't come off that?**

5 A. Yeah. And that's what I'm saying. If you go
 6 back to the transcript that you provided me of the
 7 statement -- and I'm trying to find that for you real
 8 quick -- (perusing documents.) Let's see, we talked about
 9 the jacket when Calhoun came in there, asked him how he
 10 put the body in the bag. He describes pretty much of it
 11 -- but in the statement, I remember the fact that, you
 12 know, "Are you absolutely sure that she was wearing what
 13 you told me she was wearing?"

14 And he says, "Yes, I was" -- or, "Yes, I am."

15 And that's what I was referring to with Sheriff
 16 Mahlum. It was not only what Sheriff Mahlum told me, but
 17 what Mr. Beach is telling me in this statement right here.

18 **Q. Now, you were concerned that there were some**
 19 **discrepancies between, between what Sheriff Mahlum had**
 20 **told you about the crime details and about the information**
 21 **you got from Mr. Beach?**

22 A. I'm sorry, sir. I was reading, and I
 23 apologize, I wasn't listening. Could you repeat that,
 24 please?

25 **Q. You were concerned about discrepancies between**

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1 wanted to ensure that Mr. Beach's constitutional rights
 2 were protected and remained intact. And I was very
 3 concerned about even going further with our cases because
 4 we didn't want to push that limit of time that we had
 5 already spent, and that I did not want to have any
 6 intimidation come into play nor did I want any perception
 7 of any kind of coercion. And that's in the transcript,
 8 also, if I'm not mistaken.

9 **Q. Now, you had -- sometime after January 7th,**
 10 **you had Mr. Beach do this psychological stress test as to**
 11 **one of your Louisiana homicides?**

12 A. Yes.

13 **Q. The Kathy Whorton case.**

14 A. Yes.

15 **Q. And you indicated that he failed that test?**

16 A. No, sir. What I indicated is that there were
 17 some of the behavioristic characteristics that he
 18 exhibited in the Montana case. And I also went further in
 19 there to state that there was deception indicated as it
 20 related to the Whorton case. That was one of the reasons
 21 that we all agreed to have Hoyt Moncrief run a separate
 22 test. And in this case, Mr. Moncrief was the individual
 23 who ran the polygraph test."

24 And while we're there, let's clarify this: Your
 25 client is the one that has come up with the fabrication

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1 **the information you got from Sheriff Mahlum and the**
 2 **information you got from Mr. Beach?**

3 A. In regard to what extent was I concerned?

4 **Q. Well, didn't you tell Sheriff Mahlum (quoted**
 5 **as read): "In my report, I'll summarize this confession**
 6 **to make sure there is no discrepancies"? See Page 691: LW**

7 A. You misinterpreted what I was saying,
 8 Mr. Camiel. What I'm saying is, is in order -- here we
 9 are talking on the phone right here. I'm going to, in my
 10 report, give a narrative of the confession itself, or the
 11 statement given itself. This - (indicating) - is a
 12 certified -- or copy of a certified transcript of the
 13 confession Barry Alan Beach gave me; this - (indicating) -
 14 is my report generated from all the notes that I had
 15 taken, which were transposed into this report, by the way.

16 When I say that, to make sure there are no
 17 discrepancies, I didn't want to put something in the
 18 report that if you read here - (indicating) - was
 19 inaccurate; not that he was giving me discrepancies.

20 I just wanted to make sure that this is accurate -
 21 (indicating) - and correct, that this is accurate and
 22 correct - (indicating) - and that they coincide with each
 23 other.

24 In addition, I was also concerned - if you also go
 25 back to the phone conversations - about the fact that we

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1 that Alfred Calhoun ran him on a polygraph test, which is
 2 a total boldfaced lie. We didn't own one, we don't run
 3 one.

4 Now, you brought this up, and I'm going to tell you
 5 here: There were things that were done in our case that
 6 put him in a hot seat, I'll be honest with you. It would
 7 have been very easy for us if he confessed to his attorney
 8 - which his attorney told us that he did - to arrest him,
 9 charge him, and clear our cases. But we didn't do that;
 10 we actually cleared Mr. Beach out of our cases.

11 **Q. Well, my question --**

12 A. What?

13 **Q. Mr. Via, my question was simply about the**
 14 **psychological stress test that you gave Mr. Beach about**
 15 **the --**

16 A. And that he --

17 **Q. -- Louisiana --**

18 A. That he --

19 **Q. -- homicide involving --**

20 A. And he failed that test.

21 **Q. -- Kathy Whorton.**

22 A. And I want to clarify what I'm saying when I
 23 say that there was deception indicated in that test.

24 **Q. This is the same kind of test, the same format**
 25 **that you gave Mr. Beach with regard to the Kimberly Nees**

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1 homicide.

2 A. In a completely different set of circumstances
3 and facts surrounding that test.

4 **Q. The same test, right?**

5 A. Same test; different set of circumstances,
6 different set of facts, different set of surroundings.

7 **Q. You also indicated that he exhibited the same
8 demeanor when he was being questioned about the Kathy
9 Whorton homicide as he exhibited about the Kim Nees
10 homicide.**

11 A. Absolutely.

12 **Q. And you've testified that Mr. Beach has been
13 absolutely cleared with regard to the Kathy Whorton
14 homicide.**

15 A. Absolutely.

16 **Q. Okay. And the reason he was cleared is
17 because --**

18 A. He didn't do it.

19 **Q. Okay. And the details that you say you
20 received from his attorney didn't match any of the crime
21 scene facts?**

22 A. Among other things that we were able to
23 establish as well.

24 **Q. Now, you testified that you did obtain
25 confessions from Mr. Lucas in June of 1983 and Mr. Toole**

1 in --

2 **CHAIRWOMAN O'CONNOR: I'm going to, I'm going
3 to tell you that I've had enough of Toole and Lucas. I
4 mean we've heard all about it, and we don't need to go
5 there 80 more times, so, no.**

6 **As a matter of fact, what we're going to do is
7 take a 10-minute recess. When we come back, I expect you
8 to wrap up pretty darn quickly.**

9 **We'll start at 25-after-3.**

10 **(A brief recess was taken.)**

11 **CHAIRWOMAN O'CONNOR: The attorneys are
12 present, Mr. Via is on the stand.**

13 **You may resume.**

14 **BY MR. CAMIEL:**

15 **Q. Mr. Via, after the interview with Mr. Beach on
16 January 7th when you went in to see him again on January
17 8th, he indicated he had an attorney and didn't want to
18 talk to you without his attorney present.**

19 A. That's correct.

20 **Q. Subsequently, you've indicated that you met
21 with Mr. Beach with his attorney, Paul Kidd?**

22 A. Yes, sir.

23 **Q. And you described your relationship with Paul
24 Kidd. You said there was some personal animosity?**

25 A. On Mr. Kidd's part, yes.

1 **Q. Not on your part?**

2 A. No, sir. I respected Mr. Kidd as an attorney
3 and as an officer of the court.

4 **Q. So any of the, any of the bad feelings just
5 come one way, from him toward you?**

6 A. Apparently so, yes.

7 **Q. Okay. Would that be --**

8 A. With that said, let me clarify something, too:
9 Mr. Kidd always has always had questionable ethics when it
10 came to certain things, going into trials and everything
11 else, which was a reputation among him and a lot of the
12 different attorneys and prosecutors.

13 As far as trusting Mr. Kidd in a criminal case to
14 freely, openly -- and talk to him and discuss and exchange
15 matters, I learned a long time ago with Mr. Kidd - and,
16 particularly, this is evidence of it - that we would just
17 take the issues to cross -- or to talk to me or
18 cross-examine me in court.

19 And I will tell you the truth, because Mr. Kidd had
20 a bad habit expounding on the truth, not representing it
21 accurately and fairly. And I had a problem with that as I
22 have a problem with it here today. With him personally,
23 no; with his practice and ethics, yes, sir, I do.

24 **Q. And you wouldn't -- on the subsequent
25 occasions when you met with -- when you say you met with**

1 **Mr. Kidd and Mr. Beach, were any of those recorded?**

2 A. No, sir, except for the examination. The
3 interviews weren't.

4 **Q. And the examination that you talked about,
5 that was the stress evaluation --**

6 A. Yes, sir.

7 **Q. -- involving Kathy Whorton?**

8 A. Yes, sir.

9 **Q. Okay. But in these, in these interviews where
10 you say that Mr. Beach confessed or reaffirmed his
11 confession about Kim Nees being responsible, there's no
12 recording of that anywhere.**

13 A. No, sir. And I wouldn't necessarily call it a
14 "confession" more than an "admission". And I do make a
15 distinction. And I explained this to Mr. Kidd at one time
16 also, is that: An admission is saying, "Yes, I did it"; a
17 confession is providing specific information and details
18 regarding that admission.

19 So in these instances, it was more like, "The only
20 thing I did was this: Killed a girl in Montana," but
21 there were no specific details.

22 We even had conversations after this between Alfred
23 Calhoun, Richard Medaries, Joe Cummings, and I that I
24 could not believe that Mr. Kidd would have put him in that
25 position, to basically do away with attorney-client

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1 privilege and be present on an admission, because he
2 becomes a witness in a criminal case at that point in
3 time.

4 **Q. And is it your testimony that Mr. Beach's**
5 **statement that he gave to you was not a detailed**
6 **statement?**

7 A. Whoa, now, here we go, don't go off on a
8 tangent on me. In the interview that we did with Mr. Kidd
9 present, the statement which Mr. Beach gave was to the
10 extent -- I remember asking him a question about the
11 murders here in Ouachita Parish, and what he said was, "I
12 didn't do anything here. The only one I did was the girl
13 in Montana," talking about killing Kimberly Nees here in
14 Montana. The recorded confession which he gave me, the
15 detailed confession, Mr. Kidd was not present. He had not
16 invoked his right to an attorney at that point.

17 So when you ask me "detailed confession", are you
18 talking about the admissions he made in the presence of
19 his attorney or the recorded confession which he gave us
20 on January the 7th?

21 **Q. Well, in the recorded conversation on January**
22 **7th, there were a lot of details in there, right?**

23 A. That he provided, yes, sir.

24 **Q. Okay. You have -- if I understand what you're**
25 **saying today, you had no way of knowing which of those**

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1 **Q. Well --**

2 A. So when you asked me that, if there's not
3 specific details, then I would take opposition to that,
4 saying, "Yes, sir, there is, because if you look at the
5 facts the way he described them and for what I knew at the
6 time, there's a lot of corroboration."

7 **Q. Okay. Did you think that, did you think that**
8 **his description of the location of the truck was**
9 **corroborated where she, where she was parked at the time**
10 **she was attacked?**

11 A. You know, I really don't know. I don't even
12 think I got into that point of thinking, Well, he says the
13 truck was here, and it was actually there.

14 That wasn't a major concern to me, no, sir.

15 **Q. When Mr. Beach described in the confession**
16 **making four trips back and forth from the truck to the**
17 **river, did you think that that was consistent with the**
18 **information you had?**

19 A. Did he say he made four trips?

20 **Q. He did.**

21 A. Can you show me in here where he said that?

22 **Q. Do you recall him saying he made one trip to**
23 **throw the --**

24 A. I remember him saying that he took the body
25 down to the river, that he came back up; and I also

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1 **details were correct and which might be wrong.**

2 A. Oh, I knew that some were correct. For
3 instance, when he talked about dragging the body down to
4 the river, I knew that the body was found at the river.
5 Taking the body from here and dragging it down is
6 consistent with what Sheriff Mahlum says, that the body
7 was not found here; it was found at the river.

8 The fact that a crescent wrench and a tire iron was
9 used and a girl was beaten about the head numerous times,
10 that's consistent with what he said.

11 **Q. All right.**

12 A. Not only that, when he talks about what took
13 place and transpired in the truck itself that led up to
14 this, and that, quote, he would fly off the handle,
15 meaning go into a fit of rage - this coming from him, not
16 anybody else - and that this happened, and you could see
17 that -- him going into a rage when his truck got stuck at
18 another part, him beating the truck, coming back, trying
19 to get a ride from Kimberly Nees, according to him --
20 didn't happen. He goes home; he comes back out, according
21 to him; he goes down; he finds her; they ride; then he
22 makes a hit on her; and he blows the handle.

23 That is very consistent with what he told us about
24 himself. It's very consistent with what Bob and Carolyn
25 Beach told us about his violent personality.

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1 remember to the extent that he went down to the river and,
2 according to him, threw the tire iron and the crescent
3 wrench along with the truck keys into the river. Now, if
4 that was done on separate trips or done one trip, I don't
5 know. But if he actually said -- and I'm not disputing
6 what -- I'm just saying I don't remember him saying he
7 specifically went down there four times. And that's very
8 possible he did.

9 **Q. Okay. As you sit here today, you have no idea**
10 **whether any of the facts that he gave you were public**
11 **knowledge or not?**

12 A. Personally? No, sir, I don't.

13 **Q. Okay. Were you aware that there was a public**
14 **display of crime scene photos in downtown Poplar? Did**
15 **Sheriff Mahlum tell you about that?**

16 A. This is the first I've ever heard of it.

17 **Q. All right. Or a public display of the**
18 **crescent wrench?**

19 A. I was not aware of it, no, sir. Was there a
20 public display of the tire iron?

21 **Q. Would that be something you would have done,**
22 **put up a --**

23 A. I wouldn't have displayed --

24 **Q. -- public display of --**

25 A. I would have not displayed any evidence of my

1 case, sir.

2 But I'm just asking you -- he also mentioned one of
3 the weapons being a tire iron. You said there was a
4 public display. And I was just curious if it was
5 introduced there also.

6 **Q. But my question -- you mentioned you wouldn't**
7 **have done that. You wouldn't have done that because you**
8 **didn't want all the details --**

9 A. No, sir, I personally would not have done
10 that.

11 **Q. And one of the reasons you wouldn't have done**
12 **it is because then a lot of the details of the crime are**
13 **out there in the public view?**

14 A. Oh, yes, sir. And I've actually had my boss,
15 who was the sheriff at the time, release specific
16 information about -- peak information regarding a certain
17 type of latent glove prints on a homicide case, which we
18 didn't want to get out but he released inadvertently. And
19 you just have to live with that kind of stuff. That was
20 the only information in the case that nobody knew that we
21 retained and kept onto.

22 And that's why I asked about the tire iron, because
23 if that was one of the weapons and it wasn't released,
24 that's one piece of peak information that was not
25 available to the public that only the killer would have

1 known and the investigating officer.

2 MR. CAMIEL: No other questions.

3 MS. PLUBELL: I have absolutely no questions.

4 CHAIRWOMAN O'CONNOR: Thank you very much.
5 You're released.

6 THE WITNESS: Thank you very much.

7 CHAIRWOMAN O'CONNOR: I'm sorry, just a
8 moment.

9 MR. CURTISS: I have just one question.

10 THE WITNESS: Oh, I'm sorry.

11 MR. CURTISS: I have just one question.

12 THE WITNESS: Yes.

13 MR. CURTISS: And it can be a yes-or-no
14 answer.

15 THE WITNESS: Yes, sir.

16 MR. CURTISS: Were you present and -- at any
17 time when you and Mr. Kidd were present, did Mr. Beach
18 ever make the statement that Mr. Kidd could hear that he
19 had killed a young lady --

20 THE WITNESS: Yes, sir.

21 MR. CURTISS: -- in Poplar, Montana?

22 THE WITNESS: Yes, sir.

23 MR. CURTISS: And you can verify that?

24 THE WITNESS: I was there.

25 MR. CURTISS: Okay. Thank you, sir. That's

1 all I have.

2 CHAIRWOMAN O'CONNOR: Do you have a question?

3 MS. BOWMAN: I want to know the difference
4 between a lie detector test and a polygraph test.

5 THE WITNESS: All right. First of all,
6 there's no difference. A polygraph is an instrument which
7 is used to administer a lie detector test.

8 A voice stress analyst, PSE, is an instrument
9 used to administer a lie detector test.

10 A lie detector test is an electronic means to
11 determine if a person is being honest or deceptive.

12 MS. BOWMAN: And was your psychological stress
13 evaluation, was that some sort of machinery that was used,
14 or was that something that you did verbally?

15 THE WITNESS: No, it's machinery. We never
16 use the word "machine". It's an "instrument".

17 MS. BOWMAN: An instrument, okay.

18 THE WITNESS: Just like a polygraph is an
19 instrument.

20 MS. BOWMAN: So they weren't like wired to
21 anything, but there was some sort of machine that
22 measured --

23 THE WITNESS: It measured --

24 MS. BOWMAN: -- their responses, and stuff?

25 THE WITNESS: Exactly. You take a voice

1 recording and then feed the voice recording through the
2 instrument which measures changes in the basal tone,
3 changes in the vocal patterns itself, which are fed and
4 worked off the autonomic nervous system and the central
5 nervous system.

6 MS. BOWMAN: So when somebody says that they
7 took a lie detector test, it could, in their mind, mean it
8 was a polygraph, or it could mean it was a psychological
9 stress evaluator?

10 THE WITNESS: Well, no, there's a, there's a
11 big --

12 MS. BOWMAN: I mean if it's a layperson like
13 myself. And I know nothing.

14 THE WITNESS: Oh, there's a big difference.
15 And in this case, to give you an example, where Mr. Beach
16 -- let's say he would say that he had a polygraph test
17 where things were attached to his body. That is a
18 polygraph test. If he said that he had a stress test or a
19 voice stress test, nothing is attached to the body. So
20 there is a difference, and you do know the difference even
21 in lay terms.

22 MS. BOWMAN: Okay.

23 MR. CURTISS: Mr. Via, thank you very much.

24 THE WITNESS: Thank you very much, sir.

25 CHAIRWOMAN O'CONNOR: Thank you. You really

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1 are released now.

2 All right. Are you calling Mr. Racicot as
3 your witness? I believe you've listed him.

4 MR. CAMIEL: I didn't know if you wanted to
5 call the other Louisiana deputy. I think they're on the
6 same flight.

7 MS. PLUBELL: I can make it real simple. I'll
8 ask the other deputy about three questions.

9 CHAIRWOMAN O'CONNOR: Well, I think we'd
10 better have Mr. Racicot.

11 MS. PLUBELL: Okay.

12 CHAIRWOMAN O'CONNOR: So you may call him.

13 MARC RACICOT, WITNESS, SWORN

14 CHAIRWOMAN O'CONNOR: Mr. Camiel, you may
15 proceed.

16 MR. CAMIEL: Thank you.

17 DIRECT EXAMINATION

18 BY MR. CAMIEL:

19 **Q. Good afternoon, Mr. Racicot.**

20 A. Good afternoon.

21 **Q. You, back in 1984, worked for the attorney
22 general's office in the state of Montana?**

23 A. I did.

24 **Q. And you were the lead prosecuting attorney in
25 the prosecution of Mr. Beach?**

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1 **Q. You didn't have any witnesses that saw
2 Mr. Beach outside walking around or driving around that
3 evening?**

4 A. Well, when you say I didn't have any
5 witnesses, the fact of the matter is: There were no
6 witnesses discovered as a part of the investigation.

7 **Q. All right, and that's what I meant.**

8 **In fact, the investigation, as you understand it,
9 there was — there were no witnesses who saw Barry Beach
10 after he left Sandy Beach sometime in the earlier evening.**

11 A. That would be my understanding, yes.

12 **Q. You also had no forensic evidence of any type
13 that actually was admitted at trial connecting Mr. Beach
14 to the crime scene?**

15 A. That was admitted at trial?

16 **Q. Yes.**

17 A. That would be correct.

18 **Q. And that would include no fingerprints, no
19 clothing left behind, footprints, anything at all?**

20 A. There was no forensic evidence that tied
21 Mr. Beach to the crime scene.

22 **Q. So in terms of the trial itself, all you had
23 was the confession.**

24 A. All we had, quite frankly, was an exhaustive
25 confession?

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1 A. I was.

2 **Q. I want to ask you some questions about things
3 that occurred during and around the time of the trial.**

4 I previously sent you — to assist you to recollect,
5 I sent you a copy of your opening statement and your
6 closing argument. Do you recall that?

7 A. I do.

8 **Q. And I think I also sent you a copy of a
9 chambers conference with the trial judge.**

10 A. You've sent me a portion of that, yes.

11 **Q. Okay. Did you get a chance to review those?**

12 A. I did.

13 **Q. With regard to the prosecution of Mr. Beach,
14 would it be fair to say you had absolutely no witnesses
15 who saw Mr. Beach with the victim, Kimberly Nees, on the
16 night she was killed?**

17 A. The only two witnesses, obviously, were Kim
18 Nees and Barry Beach.

19 **Q. But no other witnesses that you knew of saw
20 the two together?**

21 A. No.

22 **Q. And you also had no witnesses that saw
23 Mr. Beach outside, out and about anywhere in Poplar on the
24 evening of June 15, 1979?**

25 A. I'm sorry?

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1 **Q. I understand your interpretation of it. But
2 that was it, okay.**

3 **So if there's a problem with the reliability of the
4 confession, the entire, the entire conviction of Mr. Beach
5 would be, would be unreliable, wouldn't it?**

6 A. I think I made that point very clear. As you
7 pointed out, in my final argument to the jury, I told them
8 there were two questions to be focused upon: The first
9 question was whether or not the confession was voluntarily
10 given, and the second question was whether or not it was
11 true; two very simple but profound questions.

12 The answers to those questions were: Yes, it was
13 inescapable that Mr. Beach was guilty.

14 **Q. That's what you told the jury?**

15 A. In words similar to that, yes.

16 **Q. Now, in your opening statement, you told the
17 jury that you did have physical evidence connecting
18 Mr. Beach to the crime?**

19 A. That is a true statement, and that's what I
20 said.

21 **Q. In fact, you told the jury that there was a
22 pubic hair belonging to the defendant. That's what you
23 told the jury?**

24 A. That is correct.

25 **Q. You also told the jury that this hair located**

1 on the sweater of Kim Nees was, in fact, the defendant's?)

2 A. I don't recall if those were the exact words,
3 but that's certainly what I meant to communicate.

4 And I had an expert analysis and a forensic report
5 that revealed that to be the case. And I anticipated
6 introducing that into trial, until such time, as you know,
7 during the middle of the trial, it was discovered that
8 there may be a problem with the chain of custody on that
9 piece of evidence.

10 Q. Well, I want to ask you about what you told
11 the jury in your opening statement. Now, you indicated
12 that you had a, you had a forensic report. And that was a
13 report prepared by Arnold Melnikoff?

14 A. That would be correct.

15 Q. Okay. That same Mr. Melnikoff who's recently
16 had some problems in terms of his competence?

17 A. I couldn't offer you any insight in that
18 regard.

19 Q. Isn't it a fact --

20 A. I might add, Mr. Camiel, that I worked with
21 Arnold Melnikoff from 1976 until this point in time and
22 for some period of time thereafter, and probably examined
23 him on the stand in excess of 30 or 40 different times,
24 and reviewed his forensic reports at least that many times
25 and probably an exponentially larger number of times than

1 characteristics common to the defendant's hair?

2 A. That would be correct.

3 Q. You exaggerated in your opening statement what
4 Mr. Melnikoff would have been able to testify to in front
5 of the jury.

6 A. No.

7 Q. You believed that Mr. Melnikoff would have
8 been able to say that the hair belonged to the defendant?

9 A. I believe Mr. Melnikoff would have said on the
10 stand that he had discovered a hair, examined it
11 carefully, and found that it, in fact, was characteristic
12 of the defendant's hair. That's what I expect he would
13 have testified.

14 And my argument to the jury would have been, "This
15 hair obviously -- think of the infinitesimal possibilities
16 that this hair characteristic of Mr. Beach's would have
17 shown up on the clothing of the victim if it didn't belong
18 to the defendant."

19 So my argument to the jury would have clearly been
20 based upon a causal link that was established by forensic
21 evidence, clearly within the bounds of propriety and
22 within the legal rules that applied.

23 Q. But there's a difference between "opening
24 statement" and "closing argument", isn't there,
25 Mr. Racicot?

1 that. I found him to be a very competent forensic
2 scientist and to offer testimony that was clearly within
3 the confines of his expertise and his capacity.

4 I had a report from him pertaining to a hair that,
5 as he described it, was characteristic of the defendant's,
6 that came from the victim's clothing. I intended to --
7 that was provided to the defendant and to his counsel
8 prior to trial. I intended to introduce that in trial.
9 And in my opening statement, I informed the jury that I
10 intended to introduce that information during the course
11 of the trial.

12 Q. What Mr. Melnikoff's report stated was that he
13 examined a hair and concluded that there was one pubic
14 hair characteristic of the suspect Barry Alan Beach's
15 pubic hair.

16 A. And that equates to, at the time, before there
17 was DNA capacity, to a match or to the linking of the
18 defendant to the crime scene. So that's precisely what I
19 told the jury.

20 Q. Well, what you told the -- you didn't tell the
21 jury that there was a hair that was characteristic of the
22 suspect; you told the jury there was a hair belonging to
23 the defendant. Mr. Melnikoff could not have testified in
24 that manner; isn't that true?

25 All he could have testified to is that the hair had

1 A. You're to advise the jury -- the rules call
2 for the advice of the jury during the opening statement to
3 reflect what you believe the evidence will reveal, and
4 that's precisely what I did.

5 Q. Now, this jury never actually received
6 Mr. Melnikoff's testimony?

7 A. No.

8 Q. And they never received any hair in evidence?

9 A. No, they did not.

10 Q. And so although you told the jury that you had
11 forensic evidence that you told the jury linked Mr. Beach
12 to Kim Nees's murder, in fact, that evidence wasn't
13 introduced?

14 A. Well, you know the facts as well as I do. And
15 the bottom line is that in the preparation of one of the
16 witnesses the night before, or in discussing with law
17 enforcement what had occurred during the course of the
18 trial, the night before that evidence was to be
19 introduced, we discovered that the evidence room door had
20 been breached at some point in time. That was previously
21 unknown to us.

22 So I immediately informed the Court, and I informed
23 defense counsel, and I requested a stipulation from
24 defense counsel testifying to -- or, in essence,
25 authenticating the chain of custody, because there did not

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1 appear to be any visible signs of tampering with the
2 evidence. And it was revealed to me by defense counsel
3 that he did not want to stipulate to allow for that
4 evidence even though there was evidence in that same area
5 that he wanted to be introduced. So as a consequence of
6 that, the evidence was not introduced.

7 **Q. Mr. Racicot, when did you -- in relation to**
8 **the trial -- and I don't expect you to have a precise**
9 **date, but how long before the trial did you take over the**
10 **prosecution of Mr. Beach?**

11 A. I don't know that I could tell you. My job
12 during those days typically was to respond to a request
13 from the local prosecutor, and it was very unusual for me
14 to become associated with a case at the beginning.
15 Usually, I became involved in a case at some later moment
16 in time after charges had been filed.

17 And in this particular case, I just can't recall
18 when I was asked to perform special prosecution duties and
19 responsibilities, but it's my belief that because of the
20 way this case unfolded and because of the nature of my
21 work in Wolf Point at that time -- quite frankly, this was
22 a very busy time in Wolf Point. And my memory is that we
23 had about 11 different defendants charged with deliberate
24 homicide over the course of a year that resulted in about
25 -- that involved 6 different victims and, I believe, 5 or

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1 involved, and until you determine whether the victim is
2 Native American or not or the defendant is Native American
3 or not, it is not altogether certain which agency will
4 have jurisdiction.

5 So in this particular case, you had tribal police,
6 you had the Bureau of Indian Affairs police, you had the
7 FBI, you had the local city police, and you had the
8 Roosevelt County Sheriff's Office, all of whom could
9 potentially, when the crime was first discovered, have
10 jurisdiction.

11 What occurs as a result of not knowing whether the
12 defendant or potential defendant or perpetrator was Indian
13 or non-Indian was that virtually everyone investigated
14 everything. And as a consequence of that, everything from
15 the crime scene to the processing of evidence was
16 problematic; and, frankly, it was a mess.

17 A lot of things had been done by some officers,
18 redone by others, some statements taken by the FBI. And
19 until such time in those days that the FBI had a suspect
20 that was arrested, they didn't release the documents they
21 prepared or not all of the documents that they prepared or
22 share the documents on every occasion.

23 So this was a, this was a very difficult law
24 enforcement challenge because of the problems I just
25 described and because, in essence, you had a number of

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1 6 different trials.

2 And my memory is that in this particular case, that
3 I was involved with it almost from the beginning, but I
4 can't be certain of that from the charging document
5 forward.

6 **Q. And being involved with a case almost from the**
7 **beginning or sometime shortly after the charges were**
8 **filed, did you have meetings and conferences with Sheriff**
9 **"Mahlum" -- or "Mahlum"?**

10 A. Yes.

11 **Q. And with the deputies that were involved in**
12 **the investigation?**

13 A. Certainly, yes.

14 **Q. And you learned during the trial -- that's the**
15 **first time you learned that, that the evidence room had**
16 **been, as you said, "breached"?**

17 A. The evidence room door. Because that's where
18 the bathroom was -- or a bathroom was; and, apparently,
19 someone had breached the door and had gone into where the
20 evidence had been secured.

21 You have to understand, Mr. Camiel, that
22 investigating a criminal offense on an Indian reservation
23 that borders a non-Indian community is incredibly
24 difficult and confusing. And I say that because there are
25 typically a number of different law enforcement agencies

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1 different agencies all trying to do the right thing but,
2 in some instances, compromising each other's capacity and
3 capability of their own kind.

4 **Q. Mr. Racicot, my question had to do with the**
5 **breaking into the evidence room. The breaking into the**
6 **evidence room had nothing to do with the number of law**
7 **enforcement agencies --**

8 A. I wouldn't call it "breaking into the evidence
9 room", Mr. Camiel, in my understanding, at least. And my
10 understanding is the door was breached so someone could
11 use the bathroom.

12 **Q. So you didn't hear that an Officer Grayhawk**
13 **kicked in the door, breaking the hasp?**

14 A. I was informed, in my memory, by Mr. Atkinson,
15 I believe, if I'm not mistaken, the night before I
16 reported it to the Court. I learned that evening. The
17 next morning, I reported it to the Court and to defense
18 counsel that the evidence room door where the evidence had
19 been stored -- you have to remember that the tribal police
20 headquarters on -- in Poplar is not exactly outfitted with
21 every modern convenience or capability that law
22 enforcement might typically be used to or hope for.

23 And in this case, my understanding was that somebody
24 needed to use the restroom; and as a consequence of that,
25 the door was breached; and as a consequence of that, we

1 could not ascertain who had been in the room and we also
2 could not ascertain that the evidence had been tampered
3 with any way whatsoever.

4 But I learned of that - because it was so
5 inconsequential, would be my suspicion - the night before
6 I was going to present that testimony.

7 **Q. Now, let me break down what you said. Okay?**
8 **First of all, if I understand what you're saying, you**
9 **weren't told that the door was kicked in; you were just**
10 **told "breached", meaning somebody entered the room?**

11 A. I don't recall the exact words. But I mean
12 these are officers. Obviously, people could describe it
13 in a number of different ways. If someone described it as
14 "kicked in" because they used their foot to breach the
15 door, I couldn't argue with that. I don't recall the
16 exact words. I just know that the event was not some
17 surreptitious, mysterious occurrence; it just simply was
18 because someone needed to use the bathroom.

19 **Q. So you weren't aware of the fact that Bobby**
20 **Atkinson, who was the acting Poplar police chief, had**
21 **placed locks on the door and signs on the door indicating**
22 **people should be --**

23 A. My recollection is, now that you say it, that
24 there was a sign on the door. And it was a great
25 disappointment that something so foolish had happened to

1 **Q. And so if it was just a foolish mistake, it**
2 **should have been reported to you at an earlier time?**

3 A. Mr. Camiel, I think I made it perfectly clear
4 what happened.

5 **Q. Now, the sweater that Mr. Melnikoff examined**
6 **was in that room, wasn't it?**

7 A. My understanding or belief is that the
8 evidence was in the room that we were going to be relying
9 upon. Obviously, the sweater is the garment -- or --
10 whatever garment Kim had that was forwarded to the crime
11 lab is the garment from which the hair was retrieved. So
12 my understanding and belief is that that is where the
13 evidence was.

14 See, as you know, we were responsible under Montana
15 law for any forensic evidence that we wished to introduce
16 to account for its whereabouts and for its sanctity from
17 the moment it was seized by law enforcement until the
18 moment it was presented to the jury.

19 **Q. Mr. Racicot, what impact do you think it had**
20 **for the jury to be told by you that there was a hair that**
21 **matched the defendant found on the sweater when, in fact,**
22 **you didn't introduce the hair and you didn't call**
23 **Mr. Melnikoff?**

24 A. I don't think it had any impact, because we
25 advised the jury - not only did I advise the jury; the

1 cause this kind of a problem with the forensic evidence.
2 But it was not a purposeful, conspiratorial, surreptitious
3 action in my view or understanding.

4 **Q. Well, my question, just to be clear, is: Was**
5 **it your understanding that somebody simply opened the door**
6 **and went in, or was it your understanding that --**

7 A. My understanding is the door was breached
8 somehow. Now, whether or not somebody used a shoulder or
9 a foot, I couldn't tell you.

10 I was more than disappointed. I think the
11 information you prepared and submitted reveals, through
12 Mr. Atkinson's statement, that, in fact, I let them know
13 that it caused me great, great dismay and great
14 disappointment not to have known that before. But they
15 didn't think it consequential, and as a result of that,
16 had not previously informed me.

17 **Q. Were you advised as to who the officer was who**
18 **kicked in the door?**

19 A. I don't recall if I was or was not. I
20 wouldn't argue with someone who said that I was advised.
21 But this was not a criminal offense in my judgment; it was
22 a foolish act, a precipitous thing that someone had done
23 that shouldn't have done. But it was -- all of the
24 evidence at the time revealed it was just a foolish
25 mistake.

1 defense counsel advised the jury, the Court advised the
2 jury - that they could draw a conclusion or make a
3 judgment based only on the evidence presented by witnesses
4 on the witness stand; nothing more, nothing less.

5 **Q. So it's your belief that the jury could**
6 **totally disregard what you said about --**

7 A. And how could I ever, how could I ever divine
8 that out of thin air anyway?

9 But my belief is, this is something that frequently
10 occurs in criminal trials: You provide an honest,
11 good-faith analysis and statement about the evidence you
12 anticipate introducing; you make arguments and final
13 argument that you believe in good faith and based upon the
14 evidence that's been produced; and there are sometimes
15 questions that are asked by counsel, whether defense
16 counsel or prosecutor, that are disallowed, and the
17 suggestion or the facts that are a part of that foundation
18 the Court will advise the jury to disregard. It's a
19 common practice.

20 People are entirely -- they're not morons. They're
21 entirely capable of being instructed and following
22 instructions in good faith. After 20 years of trying
23 criminal cases, I have found that jurors are highly
24 capable of doing precisely what it is that the Court
25 advises them to do. And that's what the Court advised

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1 here.

2 **Q. One of the, one of the things that you**
3 **addressed in front of the jury was a bloody palm print**
4 **that was found on the outside of the truck?**

5 A. One of the things that virtually everyone
6 addressed at the trial -- not "everyone", but certainly
7 defense counsel and myself and other witnesses, yes, was
8 one of the, one of the palm prints on the pickup truck.

9 **Q. You told the jury that Kim Nees's palm prints**
10 **were not properly taken during the autopsy?**

11 A. That's reflected in the FBI reports, in my
12 judgment.

13 **Q. Were you aware that there's a July 12, 1979**
14 **FBI report demonstrating --**

15 A. That one, the one from August --

16 **Q. -- if I can finish my question--**

17 A. Yes, sir.

18 **Q. -- a July 12, 1979 FBI fingerprint report**
19 **indicating that Kim Nees's palm prints were found in at**
20 **least three different locations on the truck?**

21 A. I'm aware of the July '79 report, and I'm also
22 aware of the fact that they found palm prints on the
23 exterior of the truck.

24 **Q. And you're aware that Kim Nees's left palm**
25 **print was found on the truck and identified --**

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1 was: Not a complete impression, in my memory and
2 understanding, was taken of Kim Nees's palm print. And as
3 a consequence of that, there were portions of the latent
4 print taken off of the truck that could not be matched
5 because the ink print was not properly taken. And I
6 believe that that's reflected in the July report. It's
7 also reflected in the August report of '79.

8 And I think this particular phrase, without me
9 having the opportunity to more closely examine it, the
10 person who performed the examination doesn't say that Kim
11 Nees was eliminated as a potential, as a potential person
12 who placed that palm print on the truck. What it says is
13 it couldn't be identified as belonging to Kim Nees.

14 **Q. Couldn't be identified as belonging to Kim**
15 **Nees. And you don't interpret that as meaning Kim Nees**
16 **didn't leave that print?**

17 A. What I asked Dean Mahlum was, "You don't know
18 whose print that is, do you?"

19 And he said, "No."

20 And I said, "You can't even exclude Kim Nees, can
21 you, because the prints weren't properly taken?"

22 **Q. I'm asking about this 1988 report.**

23 A. I'm saying that's exactly what this report
24 says. You can call the FBI, Mr. Camiel, and find out if
25 I'm wrong, but the language, in my experience with the FBI

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1 A. Yes.

2 **Q. -- and identified based on the palm prints**
3 **that were taken at the time of the autopsy?**

4 A. Yes.

5 **Q. And that was indicated in the July 12, 1979**
6 **report?**

7 A. That is part of what was indicated in the July
8 report. It's also revealed in the July report that the --
9 Kim Nees could not be excluded from having left the palm
10 print, unidentified. And Dean Mahlum testified to that at
11 trial.

12 **Q. Are you aware of a 1988 FBI report that**
13 **indicates that Kim Nees was eliminated?**

14 A. I have not seen a 1988 report.

15 **Q. Once you've had a chance to look it over, I'd**
16 **ask you to take a look at the second page where I've**
17 **highlighted a section.**

18 A. (Perusing document) -- well, I'm not certain
19 it says what you claim that it says, Mr. Camiel. What it
20 says is that (quoted as read):

21 "The bloody palm print on the passenger side
22 of the victim's vehicle was not identified as belonging to
23 either Kim Nees or Barry Beach."

24 That doesn't mean that it could not be Kim Nees's
25 fingerprint or palm print. See, the fact of the matter

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1 over 15 or 20 years, is such that these are words of art
2 here. And what they mean is -- that they could not be
3 identified as Kim Nees or Barry Beach doesn't mean that
4 they are automatically excluding Kim Nees.

5 **Q. When you say "compared Kim Nees's palm**
6 **print" --**

7 A. It means they compared Kim Nees's palm print,
8 and with what they have from Kim Nees's ink print, they
9 couldn't say it was Kim Nees's print. That's what it
10 means. You're playing games with words.

11 **Q. Did you -- now, you also told the jury about a**
12 **towel that was found at some point in time, didn't you?**

13 A. I recall mentioning the towel being
14 irrelevant.

15 **Q. Okay. Did you also tell the jury that you**
16 **didn't know where that towel was found or if it was even**
17 **found in Poplar?**

18 A. I don't have a recollection of that. I do
19 know now after having read the record that the towel, I
20 believe, was found somewhere close to Kim Nees's house,
21 some distance away from Kim Nees's house; and that the
22 blood was analyzed and found not to belong to anybody who
23 was identified as being associated with the case.

24 **Q. Well, let's start with what you told the jury.**
25 **You agree that you told the jury you didn't know where**

1 **that bloody towel was found or even if it was found in**
2 **Poplar?**

3 A. Now, what are you referring to? My opening
4 statement?

5 **Q. In your closing argument.**

6 A. If that's what it says in the record, then
7 that's what it says.

8 **Q. Would you like to look at it?**

9 A. No. If you say that's what it says, I will
10 take your word.

11 **Q. All right. And there was a June 19, 1979 FBI**
12 **report - so that's years before the trial - that indicates**
13 **(quoted as read): "To be noted, an extremely bloody towel**
14 **was found on a fence one block away from the victim's**
15 **home."**

16 A. Well, whatever I stated in my final argument
17 or my opening statement was true as far as I knew.

18 **Q. So you weren't aware of this report?**

19 A. I don't know if I was aware of the report, but
20 what I stated at the time I believed to be true. (That's
21 how I tried cases.)

22 **Q. Would you have wanted to see the June 19, 1979**
23 **FBI report prior to trial?**

24 A. If you say that's precisely what it says and
25 if that's a word-for-word resuscitation -- or recitation,

1 How would anybody know the sequence of everything
2 that had occurred with such intimate --

3 **Q. Well, let's take it one step at a time. You**
4 **mentioned the purse. Were you aware that there was a**
5 **picture in Beck's Sporting Goods store where two crime**
6 **scene photos were displayed to the public?**

7 A. I was not aware of that.

8 **Q. Were you aware that one --**

9 **CHAIRWOMAN O'CONNOR: And, Mr. Camiel, I will**
10 **interject here. Now, I've allowed you to paint this whole**
11 **question about your report there after you have elicited**
12 **testimony even from your own witness that your FBI report**
13 **didn't say that about excluding the palm print. But here,**
14 **you showed pictures all around yesterday about the purse;**
15 **and, in fact, the testimony was that the picture you**
16 **showed showing the purse was not the picture that was in**
17 **Beck's window, I believe. So I would suggest that you**
18 **please be very carefully factual as you elicit testimony**
19 **from the witnesses.**

20 **MR. CAMIEL: There was a witness who testified**
21 **yesterday that she recalled a picture that showed the**
22 **purse in Beck's department store.**

23 **THE WITNESS: Well, if that's the case, I was**
24 **never advised of that, and it's never been known to me**
25 **before today.**

1 then I wouldn't argue with you.

2 But I'm just telling you, Mr. Camiel, that I tried
3 cases for a very long time, and I did so ethically. And
4 there's every reflection in that record that, in fact, I
5 proceeded in that fashion.

6 I'm the one that informed defense counsel about the
7 problem with the chain of custody, I advised the jury over
8 and over and over again to pay attention only to evidence
9 or information that came from the witnesses on the stand,
10 and that's how I conducted my responsibilities. So if I
11 reflected to the jury that I did not know where the towel
12 came from, that would be precisely what I knew at the
13 time.

14 **Q. Now, one of the premises of your argument to**
15 **the jury was that Mr. Beach had revealed things that were**
16 **not known publicly?**

17 A. It wasn't a premise; it was absolutely a fact.

18 **Q. Were you aware that there was a public display**
19 **with regard to the Nees murder in downtown Poplar?**

20 A. I remember that there was certainly some
21 disclosure of some information.

22 But you want to go over it fact by fact, Mr. Camiel?

23 Let's talk about the fact: How would anybody know
24 precisely where Kim Nees's purse was, for instance, if you
25 weren't at the crime scene?

1 But let's, let's -- you could talk about
2 probably 25 or 30 different areas of Mr. Beach's statement
3 that reflected intimate, detailed knowledge and
4 information in precisely the right sequence and order as
5 the crime unfolded. And it corroborated exactly what he
6 had said after he had been advised of his rights 10 or 11
7 different times.

8 And so in my judgment, it's not a theory or a
9 premise; it's overwhelmingly, powerfully true and accurate
10 and plain that Mr. Beach's confession is true and accurate
11 because he was so intimately correct.

12 **Q. (By Mr. Camiel) Well, let me ask you -- okay,**
13 **because I understand what you believe. And I want to ask**
14 **you about the facts.**

15 A. I'm not saying what I believe; I'm saying what
16 the facts proved.

17 **Q. I understand, I understand your position.**
18 **Mr. Beach was wrong about the clothing that Kim Nees wore.**

19 A. That's the only thing that I can recall at
20 this very moment that he was incorrect about.

21 **Q. In Mr. Beach's confession, he indicated that**
22 **Kim Nees was choked. Dr. Pfaff didn't find any evidence**
23 **of choking.**

24 A. He didn't find any evidence of choking, but
25 that doesn't mean that she wasn't choked.

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1 **Q. Mr. Beach indicated that the truck was parked**
2 **by the train bridge. It was parked 250 feet from --**

3 A. Now, Mr. Camiel, you're quarreling -- you're
4 trifling over words. The description was that the area --
5 everyone knew this area down by the trestle. It refers to
6 an area, not to a specific square footage down by the
7 railroad trestle.

8 But let's talk about when Jay Via -- first of all,
9 it was Barry Beach that brought up the fact that he was
10 suspected of a homicide to Jay Via in Louisiana; it wasn't
11 Jay Via.

12 Secondly, when Jay Via asked the first question, "Do
13 you know about the homicide?" he started talking about the
14 day as it began with his drinking down at Sandy Beach, and
15 then he went from there.

16 I mean time after time after time, a reflection of
17 very intimate connection with this crime scene: He knew
18 when he hit her with his fist, the sequence of that; he
19 knew from what angle, he knew what weapon; he knew where
20 they were; he knew where the purse was; he knew where her
21 garments were; he knew -- he explained for the first time
22 why there was no blood trail, why there was only one drag
23 mark.

24 We could go on and on and on here, as Mr. -- as
25 Michael has gone -- Wellenstein has gone on in his brief,

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1 matter is --

2 **Q. Are you aware -- Mr. Racicot, are you aware**
3 **that within 30 days of the Kim Nees homicide, a hammer was**
4 **found about 30 feet from where her body was located in the**
5 **Poplar River?**

6 A. You know, Mr. Camiel, this process has never
7 ended for 28 years, this process of discovering some *whats*
8 unrelated item or issue or statement or observation or *This*
9 rumor or piece of speculation or gossip somehow trying to
10 merge -- be merged by people who are conspiracy buffs or
11 simply want to ignore the facts into something more
12 mysterious and superstitious and mystical than what
13 happened. We shouldn't dispense with our common sense

14 here. The fact is, Kim Nees was brutally murdered; the
15 fact is, this defendant gave a very detailed confession
16 that was overwhelmingly corroborated.

17 **Q. Now, Mr. Racicot, that's what you told the**
18 **jury. You told the jury there were 25 points of**
19 **corroboration, but you never told the jury what any of the**
20 **points of those corroboration were.**

21 A. Yeah, I did. You can go through my statement.
22 Go ahead and read it. I would be glad to go through it
23 with you. I would be glad to go through it with you piece
24 by piece and point that out. And not only did I do that,
25 but Michael Wellenstein has recapped it as well. I went

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1 the pointing out that time after time, after time -- this
2 is one of the most detailed confessions with the most
3 exhaustive amount of corroboration that I ever saw; in
4 fact, it may be the most exhaustive I ever saw in 20 years
5 prosecuting criminal cases.

6 **Q. Mr. Racicot, you indicated that Mr. Beach knew**
7 **where the clothing was. And he indicated that there was a**
8 **brown sports coat that Kim Nees was wearing that was**
9 **thrown down by the body. Are you aware of the fact that**
10 **there was no brown sports coat ever found?**

11 A. There was a plaid, a plaid coat, a plaid outer
12 wrap, a plaid shirt that Kim had on. So I am aware of the
13 fact -- in fact, I think I pointed out to the jury in my
14 final argument that that actually brought more credibility
15 to his story because he obviously didn't remember
16 virtually every single fact that pertained to the event
17 that night. There was a lot of, a lot of -- going on in a
18 very short period of time, so --

19 **Q. Did Mr. Beach -- now, did Mr. Beach accurately**
20 **indicate where the keys were?**

21 A. He said he threw them in the river.

22 **Q. Were they ever found?**

23 A. He accurately reflected -- have you ever seen
24 the Poplar River? What's ever been found in the Poplar
25 River that has the capacity to sink? The fact of the

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1 over and over and over with the jury exactly where the
2 pieces of corroboration -- do you understand what
3 "corroboration" is?

4 "Corroboration" means that by some external source,
5 you prove one of the defendant's statements to be true.
6 For instance, when he says, "I was with Caleb and Shannon
7 O'Brien on that afternoon drinking beer," the testimony of
8 Shannon and Caleb corroborated Mr. Beach.

9 **Q. Several hours before the homicide.**

10 A. Well, I'm just saying, that's corroboration.
11 So if you go through that statement, his sequence is
12 exactly perfect with everyone else who had an opportunity
13 to observe and with the murder scene but for, but for he
14 didn't get the color of her clothing right.

15 **Q. All right. Were you able to corroborate the**
16 **statement by Mr. Beach that he burned the clothes in a**
17 **railroad car?**

18 A. How would a person corroborate the burning of,
19 of clothing?

20 **Q. Okay. Was any garbage bag ever found --**

21 A. No.

22 **Q. -- to corroborate the statement that she was**
23 **moved in a garbage bag?**

24 A. No, there was not a garbage found, in my
25 understanding.

1 Q. Now, Mr. Beach in his statement indicated that
2 when the body was brought to the ledge --

3 A. Now, Mr. Camiel, would it be reasonable to
4 infer, based upon the defendant's statement and the fact
5 that he knew precisely where the attack had taken place
6 and where Kim Nees had bled excessively, that he would
7 know that there would be no blood trail from there down to
8 the river?

9 Would law enforcement have ever known that had Barry
10 Beach not told them that he had put her in a garbage bag
11 and drug her down to the river? That's 257 feet, in my
12 memory. That's a long ways.

13 So the fact of the matter is: Not every fact that
14 Barry Beach provided or talked about could be corroborated
15 by an external source, but when you have 25 or 30 critical
16 pieces of information in the right sequence corroborating
17 his statement, which was obviously voluntarily given, how
18 could anyone, anyone reasonably conclude that that
19 confession was not true?

20 Q. Mr. Racicot, in Mr. Beach's confession, he
21 indicates that Kim Nees escaped out the driver's door of
22 the truck.

23 A. He did say that.

24 Q. Okay. Are you aware of any forensic evidence
25 that indicates that she escaped out the driver's door of

1 So, yeah, I remember that that is where all the
2 evidence was indicating that there was a presence of blood
3 or where the attack began; where she was sitting when the
4 defendant was striking blows starting with his fist, which
5 he had in the right sequence; and moving on to the wrench
6 from the right; and that he was in a confined space,
7 according to Dr. Pfaff.

8 Q. Right. Well, you keep indicating that
9 Mr. Beach got the sequence of events right. Now, one of
10 the things Mr. Beach said in his confession was that Kim
11 Nees exited the driver's side; that he exited the
12 passenger side, ran around the truck, caught her on the
13 driver's side, and had her up against the driver's side of
14 the vehicle after she had been attacked inside the
15 vehicle.

16 A. Yes.

17 Q. You're aware of that?

18 A. I remember him saying that in his confession,
19 yes.

20 Q. You're also aware of the fact that no blood
21 was found on the exterior driver's side of the vehicle?

22 A. What does that mean, Mr. Camiel?

23 Q. If Mr. Beach's confession is to be
24 corroborated by some type of external evidence and she's
25 attacked inside the truck and she's bleeding and then

1 the truck as opposed to being dragged out the passenger
2 side of the truck?

3 A. Well, there's all kinds of forensic evidence
4 indicating that she was sitting in the driver's side seat
5 when that attack began. That's where most of the blood
6 was; that's where the attack took place; that the blows
7 came from the right, obviously, him sitting in the
8 right-hand side of the vehicle, on the passenger side.

9 So there's all kinds of evidence that she was
10 sitting behind the wheel in the driver's side of the
11 pickup.

12 Q. Now, the evidence indicated she was initially
13 attacked inside the truck; isn't that right?

14 A. Yes.

15 Q. And she was bleeding heavily inside the truck?

16 A. She was bleeding.

17 Q. There was extensive bloodstaining on the
18 windows and on the seat?

19 A. There was bloodstaining. I don't recall the
20 word "excessive" having been in the report. I do remember
21 that there were blood splatters, there were dents in the
22 roof of the pickup truck, there were gouge marks on the
23 steering wheel, there was hair and blood embedded into the
24 ceiling or into the roof of the truck, there were blood
25 splatters on the back of the seat.

1 she's shoved up against the driver's side of the truck,
2 one would expect to find some blood on the driver's side
3 of the truck, wouldn't they?

4 A. I don't think that anybody could say what
5 happens with this kind of violence and what is occurring
6 with all of the actions that are taking place. I mean I'm
7 not a fortune-teller. I don't read palms and try to
8 discern what it is that happened. I paid attention to the
9 evidence, the physical evidence and Mr. Beach's
10 statements, and corroborated it in 25 or 30 different
11 places. *(all Calab/Shannon)*

12 Q. Tell me, what physical evidence did you have
13 to corroborate Mr. Beach's statement?

14 A. Well, you had the -- you could go all the way
15 from the blows being struck. You had physical evidence of
16 the -- of Kim having being hit around the eye with a fist,
17 which Mr. Beach described; you had her sitting on the
18 passenger side, which -- or on the driver's side, which he
19 described; you had the wounds to the head created by a
20 crescent wrench, which Mr. Beach described; you had the
21 gouges in the steering wheel; you had dents in the
22 ceiling; you had hair imbedded in the ceiling of the
23 pickup truck; you had blood.

24 I mean we could go on and on. Each one of those is
25 a piece of physical evidence found at the scene

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1 corroborating Mr. Beach's testimony, all the way down to
2 the fact that he knew exactly where the blood was located
3 outside the vehicle, what he did to drag her to the edge
4 of the bank of the river, the fact that he knew she was
5 dead before he put her in the bag and drug her over there,
6 the postmortem injuries.

7 Obviously, each single -- every single one of those
8 circumstances reveals a piece of physical evidence that
9 corroborates Mr. Beach's confession to a heinous murder
10 and the sequence with which it happened, almost
11 unimpeachably.

12 **Q. And which one of those details was not public?**

13 A. Well, in my memory, we had no explanation --
14 one of the facts that I remember: We had no explanation
15 for the fact that there was no blood trail, no steady
16 blood trail from this massive amount of blood deposited up
17 above by the vehicle all the way down to the river. And
18 that is one of the issues that I can remember very plainly
19 not having previously been disclosed.

20 But I mean even the marijuana smoking. I mean until
21 Mr. Beach confessed, we had no idea why there was
22 marijuana on Kim's purse. Until he confessed that that's
23 what he tried to utilize to take advantage of her
24 sexually, we had no idea why that appeared there. So he
25 gave us revelations that obviously only the killer could

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1 have known.

2 I mean even the hair that was -- you know,
3 Mr. Camiel, I don't know whether this is a trial where
4 we're just confined to the record. You know, the fact of
5 the matter is, there was hair analysis done; and the fact
6 of the matter is, there was a forensic report that said
7 the hair is characteristic of the defendant's; and the
8 fact of the matter is, it was found on the garment of Kim
9 Nees. Those are facts.

10 **Q. Well, let me ask you about that hair,**
11 **Mr. Racicot. Mr. Melnikoff came to Glasgow to testify,**
12 **didn't he?**

13 A. Yes.

14 **Q. And he brought the hair with him?**

15 A. I wouldn't argue with that. That would be not
16 atypical.

17 **Q. Right. Because you planned on having him**
18 **testify to introduce the hair into evidence?**

19 A. I don't typically -- you know, it happened one
20 of two ways. If it was done on a short time frame, they
21 may have returned the evidence with them to keep it in
22 their possession to account for the chain of custody; but,
23 typically, if there was time in the investigation, the
24 evidence would be forwarded back by registered mail to the
25 law enforcement agency.

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1 **Q. Okay. You indicated no awareness of the fact**
2 **that Mr. Melnikoff has been under investigation because of**
3 **his work as a forensic scientist in --**

4 A. Have I heard stories, rumors, or gossip? I
5 don't rely upon stories, rumors, or gossip, Mr. Camiel.

6 **Q. Is the Bromgard exoneration stories, rumors,**
7 **or gossip?**

8 A. I have no idea what case -- I don't even know
9 what you're talking about. I don't know about specific
10 cases. I've known Arnold since 1976, and I don't know
11 what it is in terms of specifics. I know that there's
12 been generally some critique. I'm just telling you my
13 experience with a forensic scientist that I worked with
14 from 1976 until I quit prosecuting cases in 1989. And in
15 that 13 years of experience, Arnold was a very competent
16 forensic scientist.

17 **Q. So the fact that DNA has led to exoneration**
18 **in at least two of those cases --**

19 A. I can't answer those questions. I'm telling
20 you my opinion based upon my experience. And Arnold was
21 never impeached any time that I ever put him on the stand,
22 nor was there any fault found with any of his processes,
23 procedures, or his scientific evaluation capabilities.

24 **Q. Okay. Where is the hair that Mr. Melnikoff**
25 **was going to testify about?**

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1 A. I don't know. I don't know where any of the
2 evidence is. Do you?

3 **Q. I wish we did.**

4 A. It's 25 years later, 28 years since the crime,
5 Mr. Camiel.

6 MR. CAMIEL: That's all I have.

7 CROSS-EXAMINATION

8 BY MR. WELLENSTEIN:

9 **Q. Good afternoon. Timer Moses -- isn't it true**
10 **that Timer Moses was an experienced defense attorney?**

11 A. Timer Moses had a national reputation of being
12 a very effective criminal defense attorney.

13 **Q. Now, if Timer Moses had an alibi witness in**
14 **this case, would it make any sense to you that Timer Moses**
15 **didn't put that alibi witness on the stand?**

16 A. I can't imagine that he wouldn't have embraced
17 that opportunity and chance to do that instantaneously.

18 **Q. Because Beach had no alibi in this case.**

19 A. There was no alibi that could be discovered
20 through all of the different interviews by the FBI or by
21 the Roosevelt County Sheriff's Office.

22 And, frankly, if Timer - having prosecuted a lot of
23 cases against him representing defendants - if he had the
24 slightest opportunity to present evidence -- I mean just
25 take a look at this record. He tried to divine things in

1 this particular case and asked a lot of questions because
2 the confession was so convincing that he wouldn't have had
3 to proceed with had he had the possibility of presenting
4 the alibi itself.

5 **Q. These facts you just testified to that**
6 **corroborate the confession, you went through those facts**
7 **with the jury in your closing arguments?**

8 A. I told them what I anticipated proving in my
9 opening statement; and in addition to that, went through
10 them more exhaustively in the final argument.

11 That's precisely -- I mean we didn't try to for one
12 moment gloss over the fact that this investigation,
13 because so many agencies had been involved, had been
14 compromised in some respects. And, frankly, had the
15 defendant not confessed with such intimate detail with the
16 right sequence and revealing things we never knew before,
17 this crime never would have been solved.

18 MR. WELLENSTEIN: No more questions. Thank
19 you.

20 MR. CURTISS: One question, sir; one only,
21 Mr. Racicot, sir: Is there even an inkling of a doubt --
22 you trying this case, is there any question in your mind
23 with all of the information that you have available to you
24 that Mr. Beach is guilty as the jury found him?

25 THE WITNESS: You know, Mr. Curtiss, it is a

1 grave and very serious responsibility the prosecutor
2 performs. And I, every single day I ever worked on behalf
3 of the people of this state or for the United States of
4 America, took that responsibility to be something that was
5 a sacred trust; and that they were placing within me a
6 fiduciary duty to make certain that at every moment in
7 time I performed to the highest standards and within
8 ethical guidelines, and that I believed absolutely and
9 knew as a product of hard work and diligence that what I
10 was doing was correct and accurate and true.

11 There is not one moment of doubt ever in my
12 mind since I have looked at this confession and been a
13 part of this case that, in fact, Barry Beach is guilty as
14 charged.

15 MR. CURTISS: Thank you, sir.

16 CHAIRWOMAN O'CONNOR: Thank you very much.

17 THE WITNESS: Thank you.

18 CHAIRWOMAN O'CONNOR: Hello, sir. I will
19 swear you in, and then we'll wait for Mr. Curtiss.

20 RICHARD MEDARIES, WITNESS, SWORN

21 CHAIRWOMAN O'CONNOR: Have a seat, please.

22 I'm going to wait just a moment.

23 (Pause in proceedings.)

24 CHAIRWOMAN O'CONNOR: You may proceed.

25 MS. PLUBELL: Thank you.

DIRECT EXAMINATION

1 BY MS. PLUBELL:

2 **Q. Will you please state your name for the**
3 **record?**

4 A. Richard Medaries.

5 **Q. Would you please spell that?**

6 A. Yes, M-E-D-A-R-I-E-S.

7 **Q. And, Richard, what is your current occupation?**

8 A. I'm a deputy sheriff with the Ouachita Parish
9 Sheriff's Office.

10 **Q. Was that your occupation back in January of**
11 **1983?**

12 A. It was.

13 **Q. Do you know Barry Beach?**

14 A. Yes.

15 **Q. Were you involved in an interview of Barry**
16 **Beach on January 6th of 1983 with Jay Via?**

17 A. I was.

18 **Q. And were you involved in an interview with Jay**
19 **Via of Carolyn and Bob Beach on January 5th of 1983?**

20 A. I was.

21 **Q. Were you involved in any way in questioning,**
22 **interrogating, however you want to phrase it, Mr. Beach**
23 **about the Montana homicide on January 7th of 1983?**

24 A. I was not.

1 **Q. Did you make any threats to him?**

2 A. No.

3 **Q. Did you yell at him?**

4 A. No.

5 **Q. Did you lace his milkshake with some sort of**
6 **drug in an effort to get him to confess?**

7 A. No.

8 **Q. Do you know Paul Kidd?**

9 A. Yes.

10 **Q. And were you a party to a conversation with**
11 **Paul Kidd and some other officers with respect to Barry**
12 **Beach?**

13 A. I was.

14 **Q. And what was that conversation?**

15 A. Paul Kidd -- Jay contacted Paul Kidd after
16 Barry had taken a polygraph test that was administered by
17 Hoyt Moncrief. And after Hoyt informed Jay of the results
18 of the, of the polygraph, Jay called Paul. Paul Kidd came
19 to our offices and spoke alone with Barry Beach for awhile
20 and then came out and told us that he had admitted to
21 committing the three murders that we were investigating in
22 our jurisdiction.

23 **Q. And who made that statement?**

24 A. Paul Kidd did.

25 **Q. All right.**

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1 A. As well as the -- committing the murder in
2 Montana.

3 **Q. Was there any subsequent conversation when --
4 where there was some motive or some defense discussed?**

5 A. He told us that he was told by Beach that
6 Beach had another personality within him, Ray Woods, and
7 Ray Woods was actually responsible for the murder. And
8 Mr. Kidd intended to use insanity as a defense for Beach.

9 **Q. Were you involved in any sort of conspiracy to
10 trick Mr. Beach into confessing to the Montana homicide?**

11 A. No.

12 **Q. Are you aware that Mr. Beach has made specific
13 allegations against you?**

14 A. I am.

15 **Q. Do you deny those allegations?**

16 A. I do.

17 **Q. And did you ever talk with anyone from
18 Centurion Ministries?**

19 A. I did. And I don't recall the person's name
20 who I spoke to.

21 **Q. Do you recall about when that may have been?**

22 A. I don't remember. It's been a few years ago,
23 and I don't remember exactly how long ago.

24 **Q. And was that prearranged, or did that happen
25 out of the blue?**

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1 **Q. And were you present during any part of the
2 day when Mr. Beach was interrogated?**

3 A. No.

4 **Q. Were you aware of the fact that Sergeant Via
5 was in touch with Sheriff Mahlum in Roosevelt County,
6 Montana?**

7 A. On that date?

8 **Q. Yes.**

9 A. I know he called Sheriff Mahlum. I don't
10 recall if he -- he may have called that day. I don't
11 really remember.

12 **Q. You are aware that he called Sheriff Mahlum?**

13 A. Yeah.

14 **Q. All right. At some point before the
15 questioning of Mr. Beach with regard to the Montana
16 homicide?**

17 A. As I said, I don't -- I know he talked to him,
18 and I feel certain he probably talked to him beforehand,
19 but I couldn't say that.

20 **Q. In fact, he'd need to talk to him beforehand
21 to get some details of the Montana homicide; is that
22 right?**

23 **It would be difficult to question Mr. Beach if you
24 didn't have some details to work with?**

25 A. That's correct, yes.

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1 A. I was notified just a few minutes before then
2 that he was going to be in our offices to speak with me
3 about that.

4 **Q. And so prior to you having that conversation,
5 did you review your reports or trial testimony, or --**

6 A. I didn't review anything, no.

7 MS. PLUBELL: I think that's all the questions
8 I have.

9 CROSS-EXAMINATION

10 BY MR. CAMIEL:

11 **Q. Mr. Medaries, I'm Peter Camiel. I'm
12 Mr. Beach's attorney.**

13 **You indicated that you were involved in the
14 interview of Mr. Beach on January 6th --**

15 A. That's correct.

16 **Q. -- of 1983.**

17 **And at that time, there were no questions asked
18 about the Louisiana homicides --**

19 A. No.

20 **Q. -- or about the Montana homicide?**

21 A. No.

22 **Q. Okay. And then on January 7th, you're aware
23 that Mr. Beach was interviewed with regard to the Montana
24 homicide?**

25 A. I am.

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1 **Q. Okay. You have to know the basic facts of the
2 crime in order to do the interrogation?**

3 MS. PLUBELL: Objection; asked and answered.

4 CHAIRWOMAN O'CONNOR: I think she has a point.

5 **Q. (By Mr. Camiel) Did Sergeant Via provide you
6 with any information about the Montana homicide?**

7 A. I don't recall him giving me any specific
8 information about it other than saying that he -- that
9 Mr. Beach had been accused -- or had fallen as a suspect
10 in the murder in Montana.

11 **Q. Were you involved in an interview with
12 Mr. Beach later in the day on January 7th involving the
13 Louisiana homicides?**

14 A. I want to tell you, just like I said awhile
15 ago, the only interview I was ever involved with with
16 Mr. Beach occurred on January the 6th. I was never
17 involved in any interview or conversations with him on any
18 other date. *Supposedly there or 20th*

19 **Q. That's the one and only time that you were
20 present when Mr. Beach was answering any questions?**

21 A. January 6th is the only time I ever spoke with
22 or was involved in an interview with Mr. Beach.

23 **Q. So you were never present at any time when
24 Mr. Beach allegedly confessed regarding the Kim Nees
25 homicide in front of his attorney and in front of Sergeant**

1 Via?
 2 A. No.
 3 MR. CAMIEL: That's all I have.
 4 MS. PLUBELL: I have no further questions.
 5 CHAIRWOMAN O'CONNOR: You may be excused.
 6 Thank you for your testimony.
 7 MS. PLUBELL: May I make a small request?
 8 Because these officers are leaving, and I'd just like to
 9 be able to talk to them briefly before they go. If we
 10 could take a short break.
 11 CHAIRWOMAN O'CONNOR: Well, we're going to
 12 take a bigger break than that.
 13 MS. PLUBELL: Okay.
 14 CHAIRWOMAN O'CONNOR: Just wait one moment.
 15 Your only remaining witness is Mr. Beach; is
 16 that correct?
 17 MR. CAMIEL: That's right.
 18 CHAIRWOMAN O'CONNOR: I would like to allow
 19 you to question Mr. Beach -- have your questioning of him
 20 in its entirety; and you to have your questioning of him
 21 immediately following, if that is possible still to then
 22 finish tomorrow.
 23 Now, by my count of the trial brief, you have
 24 remaining witnesses; is that right?
 25 MS. PLUBELL: Can I look at it?

1 CHAIRWOMAN O'CONNOR: I should think not,
 2 okay.
 3 Then I think we will close business for today.
 4 And we will reconvene tomorrow morning at 8 o'clock so
 5 that that can be done in its entirety. I think it's best
 6 for everyone.
 7 Very well. Thank you all.
 8 (The hearing adjourned at
 9 approximately 4:30 p.m.)

1 CHAIRWOMAN O'CONNOR: Yeah. I'm not quizzing
 2 you, but that's my thought.
 3 MS. PLUBELL: My brain is not working that
 4 well right now.
 5 CHAIRWOMAN O'CONNOR: Would you look at that
 6 and see?
 7 If we close a bit early tonight, I just want
 8 to be sure that we're not going to be going Saturday
 9 morning.
 10 MS. PLUBELL: Okay. Stacy gave a deposition.
 11 CHAIRWOMAN O'CONNOR: So she will not testify?
 12 So only four?
 13 MR. CAMIEL: And Lawrence Red Eagle has -- he
 14 gave a taped statement.
 15 CHAIRWOMAN O'CONNOR: So only three?
 16 MS. PLUBELL: John Grainger and Richie
 17 McDonald should be fairly quick, and perhaps Ward McKay.
 18 All of those witnesses, from our perspective, will be very
 19 quick.
 20 CHAIRWOMAN O'CONNOR: Okay. And do you
 21 anticipate your cross-examination of those three witnesses
 22 to take more than -- after Mr. Beach's direct and cross
 23 tomorrow?
 24 MR. CAMIEL: No, it's not going to take that
 25 long.

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 three hundred sixty-two (362) 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 (NOTARIAL SEAL) Montana residing at Butte,
 expires May 8, 2010. Montana. My commission

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