

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 III

Heard at Montana State Prison

500 Conley Lake Road

Deer Lodge, Montana

June 15, 2007

8:03 a.m.



**NORDHAGEN COURT REPORTING**

**JONNY NORDHAGEN**

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*Court Reporter  
Conference Room  
1734 Harrison Avenue*



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2

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1 WHEREUPON, the following proceedings were had:  
2 CHAIR McCANN O'CONNOR: We will come to order.  
3 We will note for the record that attorneys for both the  
4 Attorney General and Centurion Ministries are present.  
5 Mr. Camiel, you may call your witness.  
6 MR. CAMIEL: Thank you.  
7 Barry Beach.  
8 (The witness was sworn.)  
9 CHAIR McCANN O'CONNOR: You may proceed.  
10 BARRY ALAN BEACH,  
11 a witness, having been first duly sworn, testified upon  
12 his oath as follows:  
13 DIRECT EXAMINATION  
14 BY MR. CAMIEL:  
15 Q. Barry, before we get started with my direct  
16 questions, you told me that you wanted to say something to  
17 the Board as we start.  
18 A. Yes, sir.  
19 I'd like to -- you know, it's kind of hard for me to  
20 say, but not because it's not that I don't mean it. I've  
21 been in this prison for 24 years, and I understand how  
22 extraordinary this hearing is, and I want to thank the  
23 parole board members for giving me this chance to come  
24 here today and tell you face-to-face I did not kill  
25 Kim Nees.

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1 Not only that, but the family of the victim, it's the  
2 first time in 28 years as of today that they've had the  
3 chance to hear some of the truth that they've heard here  
4 this week. They've never heard some of this information  
5 before. The people from Poplar, a lot of them didn't even  
6 know me, and yet, they traveled all the way over here to  
7 see me and you people and to tell you what they have to  
8 say.

9 The attorney general's office, the prison  
10 administration, I understand how extraordinary this, and I  
11 don't take none of this lightly. I don't disrespect  
12 anything that has happened here these last couple days,  
13 and I just want to thank you for this opportunity and  
14 thank the prison administration for allowing it to take  
15 place like this.

16 CHAIR McCANN O'CONNOR: Very well.

17 You may proceed.

18 **Q. (By Mr. Camiel) Barry, how old are you?**

19 A. I'm 45 years old.

20 **Q. In 1979, where were you living?**

21 A. In 1979, I was living in Poplar, Montana.

22 **Q. And how old were you in June of 1979?**

23 A. In June of 1979, I was 17 years old.

24 **Q. Were you attending Poplar High School?**

25 A. Actually, I was a junior in Poplar High School.

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1 **Q. And -- and back then, where did you and your  
2 family live in Poplar?**

3 A. We actually lived on what they called The Hill.  
4 And in Poplar, Montana, if you were going down Highway  
5 No. 2 headed east from the high school and took a right,  
6 you'd go all the way to the end of that street, and there  
7 was a hill that was actually a cliff. We lived right up  
8 on the top of that hill in a corner house on that main  
9 street.

10 **Q. Did you live near Kim Nees and her family?**

11 A. Yes. We actually lived about -- I would say  
12 there was probably six houses between us and Kim Nees.  
13 Directly next to our house was Kim Nees's uncle and aunt  
14 and cousins, then there were a couple houses, including  
15 the Norgaard house, and then on the other side of the  
16 Norgaard house was the Nees house.

17 **Q. And did you know Kim and her family members as  
18 you were growing up as a boy?**

19 A. Yes. We all grew up together playing on the same  
20 block, playing kick-the-can and other, you know, child  
21 games as we were kids. We all grew up together.

22 **Q. Barry, in 1979, you're 17 years old. What -- how  
23 big were you then? What was your height and weight?**

24 A. At that time, I believe I was about 5'8", and if  
25 I'm not mistaken, I weighed probably about 155 pounds,

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1 145 pounds.

2 **Q. Who lived in your house with you?**

3 A. There was my mother, my stepfather, Silas  
4 Clincher, myself, my sister Barb, and my brother Brad.

5 **Q. Now, in June of '79, school had just let out.**

6 **Did you have any plans for the summer?**

7 A. Yes. In fact, not only did I have plans for the  
8 summer, but just before school got out, I made  
9 arrangements with a local farmer by the name of  
10 Jim Wolaconis (phonetic) to actually go to work for him to  
11 earn some money in preparation for my trip to Louisiana.  
12 And my plans were to return to Louisiana and actually live  
13 with my father, Bob Beach, which was the first time in my  
14 entire life that I actually would have lived with my  
15 father, and that was at the age of 17.

16 **Q. Did you -- did you own a vehicle then?**

17 A. At that time, I owned a 1970 Ford Ranchero. It  
18 was a blue Ford Ranchero.

19 **Q. How did you plan to get down to Louisiana to stay  
20 with your father?**

21 A. I actually was going to trade the Ford Ranchero  
22 in, and I'd already been to the Ford garage in Poplar,  
23 Montana, and made arrangements to purchase a car from them  
24 with that Ford Ranchero. I knew the Ranchero wouldn't  
25 make that type of a trip, so I needed a better vehicle to

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1 do that.

2 **Q. So in the days before June 15th after school let  
3 out, had you been working?**

4 A. Yes. I actually spent three weeks working for  
5 the Wolaconis family doing summer fallowing and other  
6 farming chores around their farm to earn money for this  
7 trip.

8 **Q. I want to take you back now to June 15th of 1979,  
9 and I'd like you to walk us through your day, starting in  
10 the morning, if you could.**

11 A. I'd actually come in from the Wolaconis farm  
12 about two days prior to that and had been doing a lot of  
13 partying out all night and stuff. But I still, I woke up  
14 about 9 o'clock on the morning of June 15th, I believe it  
15 was, about 9. I got up, I ate some breakfast, and I  
16 actually went swimming down at a place called Dago Bend in  
17 my Ford Ranchero. I was by myself when I went down there,  
18 but there were some other kids down there when I got down  
19 there, and we actually swam around and played for, I don't  
20 know, a couple hours, two to three hours down there at  
21 Dago Bend.

22 And then on the way back from Dago Bend, and I don't  
23 know from whom or where, but somewhere, I actually picked  
24 up some beer, some Budweiser and went back to my house.  
25 And I called a friend of mine by the name of Caleb Gorneau

2 (Pages 819 to 822)

1 to see what he was doing, and we were going to go riding  
2 around and drink that beer.

3 **Q. And did you -- did you hook up with Caleb?**

4 A. Yes. I actually went out to Caleb's house and I  
5 got Caleb from his house out of town.

6 **Q. So you and Caleb are in your car?**

7 A. Yes, sir.

8 **Q. And do you know what time of day it was that you  
9 hooked up with Caleb?**

10 A. I would say it was probably about noon or a  
11 little after noon when I got Caleb.

12 **Q. And what do you guys do?**

13 A. One of the first things that we did is we went  
14 and picked up Caleb's girlfriend, a girl by the name of  
15 Shannon O'Brien, and then we just went riding around  
16 drinking. We decided we'd actually go swimming again down  
17 at a place called Sandy Beach.

18 **Q. And is Sandy Beach on the Poplar River?**

19 A. Yes, sir. It's actually northeast of Poplar, the  
20 community of Poplar.

21 **Q. And before you went out to Sandy Beach, what did  
22 you do?**

23 A. We just rode around a little bit, cruised the  
24 main drag of Poplar and drank a little bit, tried to  
25 decide what we was going to do.

1 During that time that we were riding around, I  
2 actually ran into Pam Nees in her father's pickup at the  
3 school, over in the school parking lot. And I asked her  
4 if she wanted to go swimming with us, and she said no.  
5 Then I asked her if she was interested in going out to the  
6 movie that night, and again she said no; which at that  
7 time in my relationship with Pam Nees, we weren't actually  
8 boyfriend and girlfriend at that time, so it didn't mean  
9 nothing to me that she said no. You know, it was just  
10 something I was asking her if she wanted to go do.

11 **Q. The two of you had dated for a while?**

12 A. We had actually dated for a couple of months  
13 prior to that, yes.

14 **Q. So you end up going out to Sandy Beach with  
15 Caleb Gorneau and Shannon O'Brien?**

16 A. Yes. We actually -- about 1 o'clock or 1:30, we  
17 went out to Sandy Beach, yes.

18 **Q. And when you went out there, what did you do?**

19 A. We swam. We finished off the beer that I had  
20 found that -- located that morning. I'm not sure how I  
21 come across that. We actually -- I can't remember who had  
22 the marijuana, but we actually smoked some marijuana while  
23 we were out there swimming and just messed around for  
24 three or four hours out there at Sandy Beach, because it  
25 was just the three of us. And Sandy Beach is kind of an

1 isolated swimming hole northeast of town. It's a couple  
2 miles out of town.

3 **Q. Did there come a point in time where you decided  
4 it was time to leave?**

5 A. Yes. It's my recollection, and I don't know  
6 exact time because I didn't have a watch or anything, but  
7 somewhere about 4 or 4:30 that afternoon, we actually  
8 tried to leave. And in the process of leaving  
9 Sandy Beach -- To describe Sandy Beach, you go down over  
10 this little sandy knoll into this swimming hole, and  
11 there's a little sandy area. And I'd actually pulled too  
12 far down into the sand, and when I tried to come up out of  
13 that sandy area up over that knoll, the back tires of my  
14 Rancho actually got stuck.

15 **Q. So what happened?**

16 A. Caleb and myself spent quite a bit of time trying  
17 to get the vehicle unstuck. And finally, I asked  
18 Caleb Gorneau to get into the vehicle and drive it and  
19 rock the vehicle back and forth by going from reverse to  
20 drive while I tried to push the vehicle out. As we were  
21 doing that, Caleb started just slamming the gearshift up  
22 and down, and it actually locked up the linkage of the  
23 automatic transmission and froze the transmission to where  
24 it wouldn't go anywhere. We couldn't shift it at all from  
25 forward to reverse or anywhere.

1 **Q. How did you react when that happened?**

2 A. I was -- I was upset. You know, I was angry.  
3 Not at any person, I was angry at the fact that here was a  
4 car that I'd already been down to the Ford garage and made  
5 arrangements to trade in to get a newer car, and now I  
6 just tore the transmission out of it. And it was the  
7 situation that had happened -- I mean, because I had been  
8 planning that trip to Louisiana for a long time. I'd been  
9 to Louisiana the year before and met my dad, but this was  
10 a chance to go down there and live with him. And so I had  
11 been planning that for almost a full year, and yet, I just  
12 found myself in a situation where the vehicle I was going  
13 to trade in was destroyed.

14 **Q. In terms of how you exhibited being upset or  
15 angry, what did you do?**

16 A. I took it out on my vehicle. I kicked the door  
17 of my vehicle, I slammed my fist down on the hood of the  
18 vehicle. I can't remember if I hit the windshield or not,  
19 but -- You know, I was angry at the situation. I was  
20 angry at the vehicle and the situation that I found myself  
21 in. You know, because to me, in a lot of ways, there went  
22 my plans once again, and I'd just spent three weeks summer  
23 following and working some pretty long hours on a farm to  
24 earn the money to trade that vehicle in the next day. You  
25 know, and it was the next day that I was supposed to take

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1 that vehicle in and trade it in so that I could leave to  
2 Louisiana.

3 **Q. Did you end up leaving Sandy Beach?**

4 A. I actually left after a while. After I had an  
5 argument with Caleb Gorneau, I left Sandy Beach on my own  
6 and walked into town, which was about a two-mile walk.

7 **Q. Do you have any idea what time you left  
8 Sandy Beach?**

9 A. No, I don't. I'd say somewhere between 5 and  
10 5:30, is my best estimation.

11 **Q. On the way into town, did you run across anybody  
12 that you knew, talk to them?**

13 A. No. In fact, on the way into town, it's nothing  
14 but hay pastures and fields going from Sandy Beach up to  
15 town. And you have to come up the hill -- there's another  
16 bluff there, it's actually a cliff, and you have to go up  
17 that cliff. But there used to be a trail that came up  
18 that cliff right behind the jail, and that's the trail  
19 that I took coming up there.

20 **Q. How long did it take you to get into town?**

21 A. I would say at least five or ten minutes, because  
22 I was walking fairly slow, you know. Because I was also  
23 trying to analyze how I was going to get my vehicle fixed  
24 and how was I still going to be able to carry out my plans  
25 to go to Louisiana.

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1 **Q. Now, when you left -- when you left Sandy Beach,  
2 you were pretty angry?**

3 A. I was angry at Sandy Beach. You know --

4 **Q. Were you still angry when you got back into town?**

5 A. No, not at all.

6 **Q. Did you run into anyone in town?**

7 A. I didn't run into anybody in town until I got all  
8 the way over to the Tastee Freeze. You know, and don't --  
9 you know, there were people driving by on the streets, but  
10 the first time I seen anybody was stopped and parked and I  
11 personally stopped and talked to anybody was when I got to  
12 the Tastee Freeze, which is all the way over by the high  
13 school on the other side of town. And I stopped and  
14 talked to three people there.

15 Nancy Steele was in her mother's car. Larry Rowe and  
16 Norm Steele were in Larry Rowe's father's pickup. And I  
17 first asked Nancy Steele if she could give me a ride, and  
18 because she was in her mother's car, she said no. So I  
19 turned and I asked Larry Rowe if he could give me a ride  
20 home, the rest of the way home. Because I was tired by  
21 then and just wore out from the sun, the swimming, the  
22 heat, the drinking. And Larry Rowe told me that he would  
23 give me a ride home, but he first had to go to the  
24 baseball diamond where his father was umpiring and take  
25 him these soda pops that he'd just bought him from the

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1 Tastee Freeze. So I waited at the Tastee Freeze while  
2 Larry did that, and then he come back and got me and took  
3 me home.

4 **Q. Now, when you were at the Tastee Freeze, in terms  
5 of the time of day, it's still light out?**

6 A. It was light, but the sun was beginning to come  
7 down. You know, I don't know what time in the evening,  
8 you know, but it was still plenty of light, yes.

9 **Q. Okay. And did you end up getting a ride with  
10 Larry Rowe?**

11 A. Yes, I did. Larry Rowe is the one who took me  
12 home and dropped me off at my house.

13 **Q. When you got to your house, what did you do?**

14 A. When I got to the house, I don't remember my  
15 mother's car being there. In fact, I know I didn't see my  
16 mother's car. So I didn't assume that anybody was home,  
17 so I just went into the house and I went upstairs.

18 When you enter our house, there's a side door to the  
19 house right off of the driveway, and then you step into  
20 kind of like a little four-foot-by-four-foot area, and  
21 there's a door off to the side that actually went into the  
22 house, and the stairs were right there. So I just went in  
23 and went straight up the stairs because I assumed that  
24 nobody was home. And then right at the top of the stairs  
25 was my bedroom, so I just went straight upstairs and went

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1 home and went to bed. And at that time, I was so tired I  
2 didn't take my clothes off.

3 **Q. Okay. And when did you -- when did you next get  
4 up?**

5 A. I remember waking up the next morning because I  
6 heard a bunch of noise down in the kitchen. And the night  
7 before, I knew that I was supposed to go branding the next  
8 day out at my grandfather's farm. That was something --  
9 that was another event that we'd been planning. I mean,  
10 it's a big branding party, you know, on the ranch. So I  
11 knew that I had to go -- So when I heard the noise  
12 downstairs, I knew that I had to get up.

13 So I got up and I went downstairs. And my mom looked  
14 at me, and I was still in swimming trunks and my T-shirt,  
15 and my mom says, "What are you doing in your swimming  
16 trunks? You need to go get ready to brand. Your  
17 grandmother is here." And sure enough, my grandma was  
18 standing there, and she's the one that was there to pick  
19 me up and take me out branding. And so I went back  
20 upstairs and I put on a pair of blue jeans and a red  
21 flannel shirt that I had at that time with no sleeves in  
22 it and I went branding with my grandmother.

23 **Q. All right. Where is the ranch where you went  
24 branding?**

25 A. My grandfather's ranch is actually 18-and-a-half

4 (Pages 827 to 830)

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1 miles southeast of Poplar. And in fact, my grandfather's  
2 ranch is not on the reservation; it's on the opposite side  
3 of the Missouri River. So you had to cross the  
4 Missouri River Bridge from Roosevelt County into  
5 Richland County to get to my grandfather's ranch.

6 **Q. Now, before you went out to the ranch, did you  
7 tell your mother what happened with your -- with your  
8 vehicle?**

9 A. Yes. I not only explained to my mother what had  
10 happened with the vehicle, but I'd asked her to call a guy  
11 by the name of Keith Erickson, who worked at the Moe  
12 (phonetic) garage. He was a good mechanic down there that  
13 lived right down the street from us. And asked her if she  
14 would have him go get my vehicle, because I knew that it  
15 had to be towed. There was no way to drive it or  
16 anything.

17 **Q. When you were out branding, who else was out  
18 there?**

19 A. It was a large branding party, but when I  
20 actually got to the ranch to brand, they'd already -- I  
21 was late and they'd already had all the horses up and  
22 saddled. And there was Dennis Simons, Clint Linthicum, my  
23 uncle, Calvin Hines, a guy by the name of Tony Jacobs, and  
24 a guy by the name of Clete Leinen, who helped us round up  
25 the cattle and brand.

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1 **Q. At some point during the day while you're out at  
2 the ranch branding, do you learn that Kim Nees had been  
3 murdered?**

4 A. Yes, sir. It was at lunchtime. We'd already  
5 been out in the hills and got all the cattle out of the  
6 badlands and out of the pasture lands and down into the  
7 corral, and we'd broken to take our lunch break when my  
8 sister came into the trailer and told all of us -- we were  
9 all kind of standing there talking, you know, and she come  
10 and told all of us that Kim Nees had been killed.

11 **Q. Is that the first time that you heard that  
12 Kim Nees was killed?**

13 A. Yes, sir. That was the first time I had any  
14 knowledge of Kim Nees's death.

15 **Q. How did you react when you heard that?**

16 A. I was shocked, I mean, because Kim -- You know,  
17 even though she was of a different social class than I,  
18 Kim just wasn't the type of person that you would have  
19 expected something like this to happen to.

20 **Q. Did you stay at the ranch the rest of the day  
21 branding?**

22 A. Yeah. We actually spent the afternoon doing the  
23 branding part of the -- you know, branding the cattle and  
24 separating the calves.

25 **Q. Did you go home that evening?**

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1 A. I would say somewhere between 7 o'clock and 7:30  
2 that evening, I actually went back into town with  
3 Dennis Simons and Clint Linthicum, yes.

4 **Q. And when you went back into town, did you hear  
5 anything more about Kim Nees's death?**

6 A. Actually, when I went back into town that  
7 evening, I ate supper again at the house and I cleaned up.  
8 And I decided I'd go out to town that night. Being that I  
9 didn't have a vehicle, I actually walked. And at that  
10 time, I actually walked from our house straight up the  
11 street to the school and then down on what they called  
12 "the loop," which was down through Main Street. And when  
13 I got up to the loop, I noticed that there was absolutely  
14 nobody around, and then I got that eerie feeling and it  
15 started -- that's when it really started to dawn on me,  
16 you know, about Kim's death, is because there was nobody  
17 out and about. And at that time, nobody's parents were  
18 letting them go out, you know, et cetera. And so I just  
19 went back home and went back to -- went up to bed.

20 **Q. And so the next day would be Sunday?**

21 A. Correct.

22 **Q. Okay. What did you do that day?**

23 A. On Sunday, I spent most of Sunday trying to  
24 locate a transmission for my Rancho. It had a 302 in  
25 it, and it was a 1970, and I was having a hard time

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1 finding a transmission. But I knew that in order to trade  
2 this in and get the car that I needed to go to Louisiana,  
3 I would have to fix that transmission. So I spent most of  
4 Sunday going to different places that I thought I could  
5 get a transmission. I went to Sabey's (phonetic)  
6 junkyard, et cetera, and I finally -- there was a guy by  
7 the name of Raymond Yellow Owl, who was what we called a  
8 backyard mechanic, and I got a transmission from him out  
9 of a 1968 Falcon, I believe it was.

10 **Q. Now, during that weekend, particularly that  
11 Sunday, were people talking about Kim Nees's death?**

12 A. Yes. Everybody around town was already talking  
13 about different rumors. There was -- at that point, even  
14 on Sunday, there were already different stories going  
15 around town about the crime, as well as different  
16 information about the crime scene. I never did this  
17 myself, but many, many citizens of Poplar actually went  
18 down to the crime scene and looked at different things  
19 from the crime scene. I never went down there myself, but  
20 a lot of people did.

21 **Q. Did some of your friends go down there?**

22 A. Yes. Almost all of my friends, as far as  
23 Caleb Gorneau and Shannon O'Brien, went down to the crime  
24 scene at different times.

25 **Q. Now, at some point, were you with Shannon and**

5 (Pages 831 to 834)

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1 **Caleb and Joanne Jackson when something happened?**

2 A. That actually was on Monday evening. I spent  
3 most of my day on Monday installing the transmission into  
4 my 1970 Ranchero. On Monday night, after I got the  
5 transmission fixed, I went out riding around and I went  
6 and picked up Shannon O'Brien and Caleb Gorneau, and we  
7 were out riding around. But Shannon had to go home early  
8 because her mom didn't want her out and about. So we  
9 actually took her home pretty early that night. And my  
10 plan was to take Joanne Jackson and Caleb Gorneau home,  
11 but before we left, we were going to go smoke some  
12 marijuana.

13 So we went out of town, and I can't remember exactly  
14 where it was out of town, but it was out towards Sabo  
15 (phonetic) somewhere around the four-mile square. And I  
16 had kind of a rule in my car, because I smoked a lot of  
17 dope and stuff, that I didn't like people telling secrets  
18 around me. And I noticed that -- And Caleb knew that.  
19 And I noticed that Caleb and Shannon were whispering to  
20 each other, so I said something to them. I says, "Hey,"  
21 you know, "if you got something to say around me, you  
22 know, say it."

23 So they quit for a while. And then we were parked,  
24 and I think I was rolling the marijuana into joints. And  
25 when I was doing that, I noticed that they were whispering

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1 to each other again, and I seen Joanne hand something to  
2 Caleb. And I kind of got a little bit adamant about it at  
3 that point in time, that if you've got something to say or  
4 something secretive, you know -- And at that time, Caleb  
5 told me that Joanne was explaining to him that she'd been  
6 in a fight the night before, is what I was told. And in  
7 his hand, I noticed that there was a chain hanging off the  
8 side of his hand, what I thought was a beaded key chain.

9 But I didn't think nothing about it at that time  
10 because I didn't have any knowledge of the facts of the  
11 crime. And for us to get into a fight in Poplar, Montana,  
12 there was nothing unusual about that at all, you know. So  
13 to me, it didn't register at that point in time the  
14 significance of that situation. You know, it just didn't  
15 dawn on me.

16 **Q. Did you end up taking Caleb to the police  
17 station?**

18 A. Yes. The next day, I actually got a phone call  
19 from Caleb Gorneau, and he asked me if I would come get  
20 him. I said, "Why?" He says, "Well, I need to go up to  
21 the tribal police department." Well, to take Caleb up to  
22 the tribal police department was no big deal to me,  
23 because his mother was a tribal judge and, quite often, I  
24 took Caleb up there to see his mother.

25 So I went and I got him at his house and I took him up

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1 to the tribal police department, and it was only later on  
2 after he came back out of the tribal police department  
3 that he informed me that he had turned in a piece of  
4 necklace to the police department.

5 **Q. Barry, how long was it after Kim's murder that  
6 you left for Louisiana?**

7 A. In my memory, it was somewhere between ten days  
8 and two weeks after Kim's death that I actually got  
9 everything arranged with the vehicle. I had actually  
10 gotten the 1975 Cutlass Supreme and traded in my Ranchero,  
11 got it licensed, got insurance on it, got the rest of my  
12 financial situation stabilized enough. I went and took  
13 the Cutlass Supreme and got new tires on it and left for  
14 Louisiana. And in my memory, that was about ten days to  
15 two weeks after Kim's death.

16 **Q. Now, before you left for Louisiana, did any of  
17 the police officers from any of the various police  
18 agencies come to talk to you?**

19 A. No, sir. At no time during that period was I  
20 ever questioned by any authorities at all.

21 **Q. During that ten days to two weeks, did there  
22 continue to be a lot of talk about Kim's murder around  
23 town?**

24 A. Man, the talk about Kim's death was -- I mean,  
25 you couldn't go anywhere without people talking -- That's

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1 all people were talking about. And I'm not talking just  
2 general conversations of the fact that she was dead.  
3 There were -- there were stories about who may have done  
4 this. There was a lot of information about the crime  
5 scene floating around town, different bits and pieces of  
6 information, you know, from people going down there and  
7 looking at the crime scene.

8 There were a lot of people that were talking about  
9 they'd been on the train bridge and seen the body. I  
10 mean, just all kinds of information. Everybody --  
11 everywhere you went. If you went to the Tastee Freeze or  
12 to the grocery store or to the school or anywhere you may  
13 end up going in Poplar, everybody was talking about it.

14 **Q. You so left and you headed down to Louisiana to  
15 stay with your father?**

16 A. Yes, sir. That's correct.

17 **Q. And you worked down there while you were down  
18 there?**

19 A. I actually went back to work for a person -- a  
20 cousin of mine that I'd worked for previously by the name  
21 of Ron Houck (phonetic). He did construction work, which  
22 I found very fascinating. And in fact, at that particular  
23 time in 1979 when I got back to Louisiana, he had  
24 subcontracted to a guy by the name of Brad Tulles to build  
25 a Holiday Inn on Interstate 20. And I spent that summer

6 (Pages 835 to 838)

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1 working on that Holiday Inn as a construction carpenter.

2 **Q. Now, did you -- When did you come back to Poplar**  
3 **after working the summer of '79 and going down to see your**  
4 **dad?**

5 A. My intentions were to return to Poplar for the  
6 beginning of the school year. I was just going to go down  
7 there for the summer and live with my dad. But  
8 unfortunately, when I first got to Louisiana, I got  
9 two DUIs in my Cutlass Supreme when I first got down  
10 there. And as was the custom of our family, the  
11 responsibility for those DUIs fell on me to pay the fines,  
12 to do the time, or whatever it took to straighten that  
13 out. So I -- being that I had a construction job, I made  
14 the decision that I was going to drop out of school for  
15 that semester and pay off these fines. And if I remember  
16 correctly, I had to pay off almost \$1200 worth of fines in  
17 those two DUIs.

18 **Q. Now, back in that time period of your life, it**  
19 **would be fair to say you were drinking a lot and you were**  
20 **smoking a lot of dope?**

21 A. Yes, sir. I was definitely an alcoholic and drug  
22 addict.

23 **Q. When did you come back to Poplar?**

24 A. I returned to Poplar just before Christmas in  
25 December of 1979, because I -- one of the reasons I came

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1 back at that time, not just because of Christmas time, but  
2 I had to enroll in school for the next semester prior to  
3 the break.

4 **Q. You came back and stayed with your mother?**

5 A. Yes, sir. I moved back in with my mother in  
6 Montana. Yes.

7 **Q. When you came back up to Poplar, then, in**  
8 **December of '79, did you have contact with any law**  
9 **enforcement people about Kim Nees's murder?**

10 A. I had been back in Poplar for probably about a  
11 month and a half before I was ever informed that the law  
12 enforcement wanted to talk to me. I remember coming home  
13 from school sometime in early January of 1980 and being  
14 informed by my mother that Dean Mahlum of the sheriff's  
15 department wanted to talk to me. And we actually made  
16 arrangements, my mother had made arrangements for me to go  
17 and talk to him the next morning, which I did. And it was  
18 at the Poplar tribal jail that I went and seen  
19 Sheriff Dean Mahlum and undersheriff -- or Deputy Sheriff  
20 Ron Wilson.

21 **Q. Did your mother take you up there?**

22 A. Yes, sir.

23 **Q. And did you meet with Sheriff Mahlum and**  
24 **Deputy Wilson with your mother present, or was she not**  
25 **present?**

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1 A. Actually, Mom just took me up there. She was in  
2 the building, and in fact, she was in the hallway right  
3 out of the room -- outside of the room that I talked to  
4 Mr. Mahlum and Mr. Wilson in, but I talked to Mr. Mahlum  
5 and Mr. Wilson on my own.

6 **Q. How long did they talk to you?**

7 A. We probably talked for about a half an hour or  
8 better, just about my general activities on June 15th and  
9 June 16th.

10 **Q. Did they ask you whether you -- you killed Kim?**

11 A. Yes, they did.

12 **Q. What did you say?**

13 A. I told them that, no, I did not kill Kim Nees.

14 **Q. Did they ask you whether you knew anything about**  
15 **her death?**

16 A. Yes. They asked me if I knew anything, and I --  
17 I actually had repeated to them some of the rumors that  
18 I'd heard around town, but that I had no direct knowledge  
19 of Kim Nees's murder.

20 **Q. Did they ask you to do anything while you were at**  
21 **the police station?**

22 A. Yes. They asked me if I'd be willing to submit  
23 what they called major case prints, which I did. I gave  
24 them fingerprints. I gave them a palm print where they  
25 actually put ink on my palm and then they taped the paper

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1 over, I believe it was a Folger's can and had me roll my  
2 palm over this Folger's can. And then they did the same  
3 thing with my foot, where they inked the bottom of my  
4 right foot and had me roll my foot over the top of that  
5 same coffee can.

6 **Q. Did they ask you to do anything else?**

7 A. Yeah. They also asked me to submit a skin sample  
8 that they scraped off the inside of my -- my arm.

9 **Q. Okay. How about a polygraph exam?**

10 A. It was actually several days later that they  
11 asked me if I would submit to a polygraph exam. I'd like  
12 to say three or four days later, I was informed by  
13 Mr. Mahlum that none of the physical evidence had matched  
14 me, you know, or did not match the crime, but he wanted --  
15 just to completely eliminate me as a suspect, he asked me  
16 if I'd be willing to take a polygraph test, which I said  
17 yes, I would.

18 **Q. And did you go to do that?**

19 A. Yes, I did. Sometime in February of 1980, my  
20 mother and my stepfather, Silas Clincher, actually drove  
21 me to Glasgow, Montana, which is 73 miles away, and we  
22 went up to the FBI office in Glasgow, Montana, to do the  
23 polygraph test.

24 **Q. Do you remember who gave you the test?**

25 A. Yes. It was an FBI agent by the name of

7 (Pages 839 to 842)

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1 Bob West, is the one who administered the polygraph test  
2 to me in Glasgow.

3 **Q. Was Sheriff Mahlum present?**

4 A. Yes, he was. He was in the room with Mr. West  
5 prior to the taking of the polygraph test and then  
6 afterwards during the post-test interview.

7 **Q. Did they talk to you after you took the test?**

8 A. Yes, they did.

9 **Q. What did they tell you?**

10 A. I was informed -- And in fact, my mother was back  
11 in the room at that point in time. I was informed that  
12 the polygraph test showed that I did not commit the crime,  
13 but that I had hot spots or knowledge about the crime.

14 **Q. Did they interview you further about any  
15 knowledge you might have about Kim's death?**

16 A. Yes. Actually, Mr. West himself asked me if I  
17 had any direct knowledge about the Kim Nees murder, and at  
18 that point in time, I didn't think that I did. I honestly  
19 didn't think that I did. I thought the only knowledge I  
20 had was just what was public knowledge or general  
21 knowledge, because everybody in town was talking about it.  
22 There's no way that anybody living in Poplar, Montana,  
23 could not have knowledge about the Kim Nees murder. There  
24 was just too much talk about it.

25 **Q. Now, this is -- You took this test sometime in**

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1 **February of 1980.**

2 A. Yes.

3 **Q. You're back in school, then?**

4 A. Yes, sir, I was.

5 **Q. It was your senior year?**

6 A. It was my senior year in high school, yes.

7 **Q. During your senior year, at some point, did you  
8 have contact with Pam Nees?**

9 A. Yes. Actually, Pam Nees, at that point in time,  
10 had moved from Poplar, Montana, to Billings, Montana, but  
11 her and I were still in touch. Pam and I had a, kind of a  
12 strange relationship in the aspect that even though we  
13 were girlfriend and boyfriend at one time, we just didn't  
14 really fit, you know, as far as going steady and stuff,  
15 but we did stay in touch with each other quite a bit.

16 And there was a time, sometime, I would like to say  
17 March of 1980 -- and I'm not exact about that. All I can  
18 remember is it was a cold, snowy day that I was asked to  
19 go to Billings, Montana, with Caleb Gorneau. And at that  
20 time, Shannon O'Brien had also moved to Billings, and she  
21 was going to school at the university there in Billings,  
22 and she had an apartment in Billings. And so Caleb and I  
23 went to Billings and we were at Shannon O'Brien's  
24 apartment there in Billings, and Pam come over to see me.

25 **Q. Now, the trip -- the trip down to Billings, who**

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1 **asked you to go down there?**

2 A. If I'm not mistaken, it was actually Pam that  
3 asked me if I would come and talk to her.

4 **Q. And did you spend some time with Pam while you  
5 were in Billings?**

6 A. Yes, I did. We spent about three or four hours  
7 together that evening just sitting and talking, just her  
8 and I.

9 **Q. And did the subject of her sister's death come  
10 up?**

11 A. That actually was the majority of our  
12 conversation that night. Because at that point in time,  
13 Pam was really -- really having a hard time and struggling  
14 with the death of her sister. She felt like she didn't  
15 have nobody, you know, that -- that she could really talk  
16 to. And her and I spent several hours that night talking  
17 about the death of her sister, yes.

18 **Q. Did she talk to you about some of the things she  
19 knew about the death of her sister?**

20 A. Yeah. That was -- that was the first time that I  
21 can remember in my own mind piecing the whole situation  
22 with Caleb Gorneau together. Because I remember Pam  
23 telling me that night that her sister's diamond necklace  
24 had been stolen from her body and that the diamond  
25 necklace was important to the family. And that's the very

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1 first time that it clicked in my mind what -- what I  
2 actually knew, you know.

3 **Q. So you spent about, you said a few hours with  
4 Pam?**

5 A. Yes. We spent about three or four hours together  
6 that night.

7 **Q. And then you go back to -- go back to Poplar and  
8 back to school?**

9 A. Yeah. It was just an overnight trip. I actually  
10 drove back that night, I believe, because we had to get  
11 back for school.

12 **Q. At some point during the school year, did you get  
13 in some trouble again?**

14 A. I actually got a traffic ticket there in Poplar  
15 for running a stoplight. And it created a lot of problems  
16 for me because of the DUIs that I had received down in  
17 Louisiana. Receiving the two DUIs down in Louisiana added  
18 points to my driver's license in Montana, and then when I  
19 got the running-the-stoplight there in Poplar, it pushed  
20 my points into what they call an habitual traffic  
21 offender.

22 So I had to go to court in Wolf Point at  
23 Roosevelt County and was actually convicted of being a  
24 traffic offender, and I was sentenced to 22 days in jail.  
25 But the judge at that time, Judge Sorte, allowed me to

1 finish high school before I had to serve my sentence.

2 **Q. Where did you serve your sentence?**

3 A. I served my sentence in the Roosevelt County  
4 Jail. I did 22 days from -- I graduated -- or the  
5 graduation ceremony at Poplar High School was on May 18th.  
6 It was the night that Mt. St. Helens erupted. And I  
7 checked myself in to the Roosevelt County Jail about  
8 8 o'clock on the morning of May 19th.

9 **Q. During the time that you did in the jail, the  
10 22 days, did any police officers come to talk to you?**

11 A. Not during the 22-day stay in jail, no; at no  
12 time during my incarceration. However, on the morning  
13 that I was being released, Dean Mahlum, who was still an  
14 undersheriff at that time, asked me if he could talk to me  
15 further about the possible knowledge that I had of the  
16 Kim Nees murder.

17 **Q. And did you talk to him at that time?**

18 A. Yes, I agreed to talk to him once again. I had  
19 nothing to hide. And I'd been raised from the time I was  
20 a kid -- My mother has a degree in law and justice, and  
21 we'd been raised from the time that we were kids that if  
22 you do something wrong, you pay for it, and you always  
23 cooperate with the authorities.

24 **Q. Did Undersheriff Mahlum want you to do anything?**

25 A. Yes. Actually, during the questioning of that

1 day, I again informed Mr. Mahlum that I did not kill  
2 Kim Nees, because he asked me that directly. And he says,  
3 "Barry, I believe that you didn't kill her," he says, "but  
4 you're withholding information from me." He says, "And I  
5 know that you're withholding information." He says,  
6 "Would you be willing to submit to another polygraph test  
7 and let's get this cleared up once and for all?"

8 And I informed Mr. Mahlum at that time that I had  
9 already made plans, once again, to return to Louisiana,  
10 not just to see my dad at that time. Because I was going  
11 back to Louisiana at that time, not to just see my dad,  
12 but I already had a job lined up for the summer working  
13 with Tulles General Contractors again building another  
14 Holiday Inn. And I had already made all those  
15 arrangements, while I was sitting in the jail, to do that.

16 **Q. So --**

17 A. And it was my sister Barb that was going to take  
18 me down there at that time. She had a red Chevy Chevelle,  
19 and we were going to take that car down to Louisiana.

20 **Q. Did Sheriff Mahlum -- or Undersheriff Mahlum  
21 arrange for you to take another polygraph before you left?**

22 A. No, he did not.

23 **Q. Did he get in touch with you again?**

24 A. No, he did not.

25 **Q. And so then you left and you went down to**

1 Louisiana?

2 A. That is correct.

3 **Q. And you stayed with your father again?**

4 A. Yes, sir. Between my father and my Uncle Tim.

5 **Q. Now, while you're down there, staying down there,  
6 did anybody from law enforcement contact you?**

7 A. No, sir.

8 **Q. At some point, do you make a decision, while  
9 you're living down there, to enlist in the Navy?**

10 A. Yes, I did. And it actually was a little bit  
11 more than a decision. It was very calculated. Me and my  
12 father had numerous conversations about the fact he was in  
13 the Air Force during the Vietnam era. My father actually  
14 spent 16 years in the military and then he dropped out  
15 because he got stationed at Great Falls, Malmstrom Air  
16 Force Base, down in what he called a tunnel, but it was  
17 actually a missile silo. And he was in the missile silo  
18 for over nine-and-a-half years and they wouldn't move him  
19 out of the missile silo, so he so quit the military.

20 And I used to tease him about how foolish he was  
21 because he was four years shy of his retirement when he  
22 did that, and I couldn't understand, you know, why, four  
23 years shy of military retirement, you would quit. So it  
24 became my goal during these conversations with my dad to  
25 actually go into the military and retire. I wanted to do

1 what he couldn't do, I wanted to make it to retirement.

2 **Q. And so did you actually enlist in the Navy?**

3 A. Yes, I did. I enlisted in the military at the  
4 Monroe, Louisiana recruitment office.

5 **Q. When did you actually go in?**

6 A. I actually entered the military out of  
7 Shreveport, Louisiana, in October of 1981.

8 **Q. And then I take it you went through boot camp  
9 somewhere?**

10 A. I went to boot camp in Orlando, Florida.

11 **Q. And then where were you stationed?**

12 A. I was stationed in Norfolk, Virginia, on the  
13 USS Spruance DD-963. It was the first nuclear-powered  
14 destroyer of the U.S. fleet. We were an escort ship to  
15 the USS Nimitz.

16 **Q. Now, at some point after you were stationed in  
17 Norfolk, did -- did a problem come up?**

18 A. Yes. During that time period, the American  
19 military had just lost two planes to the Lebanese army,  
20 and so the Nimitz and some other DesRon 10 fleets were  
21 preparing to go over to the Mediterranean Sea. I guess  
22 they ran a background check or a security check or  
23 whatever on me or whatever, I don't know. But I was  
24 called to DesRon 10 headquarters by a master chief,  
25 Matthew Smith, I believe was his name, and informed that

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1 they had received a letter from the FBI office in Butte,  
2 Montana, that I was a possible suspect in the Kim Nees  
3 murder.

4 **Q. And as a result of that, did you have to take a**  
5 **discharge from the Navy?**

6 A. Yes. I had to take -- Well, the agreement was  
7 with Master Chief Smith that I receive an honorable  
8 discharge for the convenience of the Government and that I  
9 would voluntarily return to Roosevelt County to once again  
10 talk to Dean Mahlum. And they told me at that time that  
11 if I could get a letter from Dean Mahlum stating that I  
12 was no longer a suspect in this crime, that I could then  
13 reenlist back into the military.

14 **Q. And so after being discharged, where did you go?**

15 A. I returned to Poplar, Montana.

16 **Q. When was that?**

17 A. That was in April of 1982.

18 **Q. When you got back to Poplar, did you go see**  
19 **Mr. Mahlum? Was he sheriff by then?**

20 A. In 1982, no. He was still the undersheriff. I'm  
21 not sure, I believe it was still Don Carpenter who was the  
22 sheriff at that time.

23 **Q. Did you go see Undersheriff Mahlum?**

24 A. Yes, I did.

25 **Q. And what was --**

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1 A. In fact, my mother took me up to Wolf Point and  
2 we went to the Wolf Point Jail and met with Mr. Mahlum in  
3 his office.

4 **Q. What was the conversation at that time?**

5 A. I actually asked Mr. Mahlum at that time why  
6 would the FBI have a letter stating that I was a suspect  
7 in this crime when he in fact had informed me on several  
8 occasions that the fingerprints didn't match me, the palm  
9 prints didn't match me, the footprints didn't match me,  
10 and I was told by Bob West that the polygraph showed that  
11 I in fact did not commit the crime, and Dean Mahlum  
12 himself had informed me at one time that I was not a  
13 suspect but he was just trying to eliminate me out of the  
14 group of people. And in fact, they'd been doing that with  
15 everybody in Poplar. Almost all of us high school  
16 students got fingerprinted.

17 **Q. Were all your friends fingerprinted?**

18 A. Oh, yes.

19 **Q. And interviewed?**

20 A. Yes.

21 **Q. When you met with Undersheriff Mahlum after the**  
22 **discharge from the Navy, did he interview you again about**  
23 **Kim Nees's death?**

24 A. Not other than the conversation with me and my --  
25 he and my mom, you know, which was more about how I was a

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1 suspect. And at that point in time, Mr. Mahlum again  
2 informed me that he did not believe I committed the crime  
3 of killing Kim Nees, but at the same time, he was not  
4 willing to write a letter for me to the military.

5 **Q. Okay. Did you stay in Poplar at that point?**

6 A. I stayed around Poplar for about two-and-a-half  
7 months, yes.

8 **Q. Then where did you go?**

9 A. I returned to Louisiana for the final time.

10 **Q. And did you get a job down there?**

11 A. Yes, I did.

12 **Q. Were you back living with your father?**

13 A. Yes, I was.

14 **Q. Okay. Did that -- At some point, did living with**  
15 **your father change? Did you get your own place?**

16 A. Yes. It actually -- What had happened is on  
17 October 31st of 1982, I actually got arrested in  
18 West Monroe, Louisiana, for theft and criminal  
19 trespassing. I'd broken into a junkyard to siphon some  
20 gas for my vehicle and was arrested for that. But it was  
21 in the paper, and that was an embarrassment to the Beach  
22 family that I was arrested.

23 I was released on December 23rd of 1982, I believe is  
24 the date that I was released from jail. And when I got  
25 back to my father's house, there was actually a big

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1 argument between my stepmother, Carolyn Beach, and my dad  
2 over me living in the house any longer. And it  
3 actually -- you know, it actually extended beyond that,  
4 because the argument wasn't just about me living in the  
5 house, but she was trying to convince my dad that I wasn't  
6 his. And so Carolyn and I actually got into a pretty  
7 large argument and they kicked me out of the house over  
8 that argument.

9 **Q. Did you end up getting your own apartment as a**  
10 **result --**

11 A. Yes, I did.

12 **Q. I want to take you to January 4th of 1983.**

13 A. Yes.

14 **Q. Okay. At that time, you had your own apartment?**

15 A. Yes.

16 **Q. Okay. Did you end up getting arrested that day?**

17 A. Yes, I did. I was arrested for the contributing  
18 to the delinquency of a minor.

19 **Q. Who is the minor that was involved?**

20 A. As a result of the argument between me and my  
21 stepmother -- There was a lot of talk also at that time  
22 that my dad and my stepmother were going to get a divorce.  
23 Because of everything that was going on and them kicking  
24 me out of the house -- I had a, I think she was 13 or 14  
25 or at that time, I don't remember, a stepsister by the

10 (Pages 851 to 854)

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1 name of Melanie Allison. And she had called me at work  
2 and told me that her and a friend of hers were going to  
3 run away to the streets of Houston, Texas, and see if she  
4 couldn't find her dad, because she had information that he  
5 was living in Houston. And I told her I wasn't going to  
6 let that happen.

7 So I told her to think about it and that if she still  
8 felt she really wanted to get away, that I would come and  
9 get her and take the time to talk to Dad. And that was my  
10 plan. I went to the school and I picked my sister up at  
11 the school on January 4th. My plan was to take her to my  
12 apartment, call my dad, and see if I couldn't sit down and  
13 talk to Dad about what was going on with Melanie.

14 I called my dad's house at least six or seven times,  
15 and I couldn't get ahold of him. Next thing I know, my  
16 stepmother, Carolyn Beach, actually kicked the door of my  
17 apartment in and started screaming and yelling at me. And  
18 I just -- you know, I told her, I says, "Listen, this is  
19 my apartment. You're not going to come in here and scream  
20 and yell at me. You already kicked me out of your house,  
21 and now I'm going to kick you out of mine." And I slammed  
22 the door on her.

23 **Q. She ended up calling the police?**

24 A. And she called the police on me, yes, and I was  
25 arrested several hours later in my apartment for

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1 contributing to the delinquency of a minor.

2 **Q. Now, was your sister at your apartment?**

3 A. No, she was not. Her and her friend had actually  
4 left -- Well, actually, I dropped them off at an underpass  
5 just up on the freeway, because where Dad lived was  
6 just -- was down the freeway.

7 **Q. When you were arrested, what police agency  
8 arrested you?**

9 A. I was -- I was arrested by the Ouachita Parish  
10 Sheriff's Department by a deputy by the name of  
11 Mr. Strutz.

12 **Q. And where were you taken?**

13 A. I was taken to the Ouachita Parish Jail at that  
14 time.

15 **Q. And were you charged with a particular crime?**

16 A. Yes. I was charged with contributing to the  
17 delinquency of a minor.

18 **Q. And was bail set?**

19 A. Bail -- I was told that night when they booked me  
20 in that I had a bond of \$1500, yes.

21 **Q. You spent the night of January 4th in jail?**

22 A. Yes, I did.

23 **Q. And did anybody come question you on January 4th?**

24 A. I actually was questioned on the night of  
25 January 4th by Deputy Strutz, but that only included the

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1 contributing to the delinquency of a minor; it was about  
2 the original charge that night.

3 **Q. And were you still in custody on January 5th?**

4 A. Yes. On January 5th, they actually moved me from  
5 the Ouachita Parish Jail to a minimum security work farm  
6 outside town, outside of Monroe called the P-Farm.

7 **Q. On January 5th, did any law enforcement people  
8 come to talk to you?**

9 A. No, they did not.

10 **Q. So let's now talk about January 6th. What  
11 happened on January 6th? You're still in custody, I take  
12 it?**

13 A. Yes, I was. I was out at the Ouachita Parish  
14 P-Farm, and I had actually, that morning, been assigned to  
15 mop the barracks. Now, I call it a barracks because on  
16 the Ouachita Parish P-Farm, they were 165-man open dorms,  
17 where you walk in and there was an open section on the  
18 right-hand side, there were showers, but on the left-hand  
19 side, there was five rows across of two-story bunks that  
20 went, I mean forever, it seemed like. But there were  
21 165 of us that lived in these open dorms, and people were  
22 assigned to keep the area clean, you know, on work  
23 details.

24 **Q. Now, who came to see you that day?**

25 A. Later that day -- and I don't know what time.

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1 The only thing I can remember is it was right after  
2 breakfast, in my own mind, because I was still mopping the  
3 barracks at that time, when I was called to the front  
4 office, and there was a Deputy Jay Via and a  
5 Richard Medaries who had come to see me.

6 **Q. Did they take you anywhere?**

7 A. There was a trailer on the back side of the  
8 P-Farm, and they actually took me through the  
9 administration building to this trailer on the back side  
10 of the P-Farm. Yes.

11 **Q. Did they tell you why they wanted to talk to you?**

12 A. They informed me that they wanted to talk to me  
13 about some background information on my travels between  
14 Montana and Louisiana, because they had three unsolved  
15 homicides there in the Louisiana area.

16 **Q. And for how long a period of time that day did  
17 they talk to you?**

18 A. It's my memory that we talked for approximately  
19 two hours that day, you know, about my general activities  
20 and my general lifestyle.

21 **Q. Was anything at all brought up that day, on  
22 January 6th, about the Kim Nees murder?**

23 A. I was asked by Deputy Jay Via if it was in fact  
24 true that at one time I was a suspect in a homicide in  
25 Montana, and I told him yes.

11 (Pages 855 to 858)

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1 **Q. Did he question you about whether or not you were**  
2 **involved in Kim Nees's death?**

3 A. I don't remember him questioning me as to whether  
4 or not I was involved with the death of Kim Nees, but I do  
5 remember telling him that I did not kill Kim Nees and, in  
6 fact, that it was my understanding at that point in time  
7 that I had been cleared as a suspect in the Kim Nees  
8 murder.

9 **Q. Did he -- Was there any questioning of you about**  
10 **whether you were responsible for any of the Louisiana**  
11 **homicides?**

12 A. No. They just basically asked me my general  
13 whereabouts and the times and the dates that I had been  
14 traveling back and forth between Montana and Louisiana.  
15 They asked a lot about my general character as far as what  
16 kind of cars I liked to drive, what kind of clothes I  
17 liked to wear, my friends, what did my friends think of  
18 me, what was my social status in high school, you know,  
19 stuff like that. It was just general information about me  
20 and my life.

21 **Q. What was the demeanor of the -- of the police**  
22 **officers, Via and Medaries, when they were talking to you**  
23 **on January 6th?**

24 A. They were calm, they were -- they were very  
25 polite to me. You know, they were southern gentlemen,

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1 basically. We didn't have any riff, we didn't have any --  
2 we had a good rapport, basically, I mean, during that  
3 questioning session.

4 **Q. Now let's go to the next day, January 7th of**  
5 **1983. You're still in custody?**

6 A. Yes, sir.

7 **Q. And you're still at the same location?**

8 A. Correct. I was still at the Ouachita Parish  
9 P-Farm.

10 **Q. Tell us your best recollection of what happened**  
11 **that day, starting at the beginning of the day, as best**  
12 **you remember.**

13 A. Well, I remember getting up and going to  
14 breakfast that morning and then going back and mopping the  
15 barracks. But on the night prior to that, I had made a  
16 phone call to my mother or with my mother somehow, and I'm  
17 not sure how that came about. And it was my understanding  
18 from that phone call that I was to have a court hearing at  
19 9 o'clock the next morning at the Ouachita Parish  
20 Courthouse and they were going to drop the contributing to  
21 the delinquency of a minor charge and that my dad was  
22 going to drop charges or whatever, the State was going to  
23 drop charges, and I was going to be released to the  
24 custody of my father that day, at 9 o'clock that morning.  
25 I didn't -- you know, I didn't know how all that was going

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1 to happen because I was out at the P-Farm.

2 And it's my recollection that somewhere around 7:30,  
3 8 o'clock that morning -- I don't know, I was still, all I  
4 can really remember is that I was still mopping the  
5 barracks -- that I was called back to the front office and  
6 I was told to pack my stuff, which at that time I didn't  
7 have much stuff, everything I had belonged to the P-Farm,  
8 and bring it to the front office. And when I did, there  
9 was -- Deputy Jay Via was there to get me.

10 **Q. By himself?**

11 A. By himself, yes.

12 **Q. And when he picked you up, where did he take you?**

13 A. He took me up to the annex building of the  
14 Ouachita Parish Courthouse.

15 **Q. And once you got to the courthouse, where were**  
16 **you taken?**

17 A. I was actually taken into an interrogation room  
18 of the Ouachita Parish Annex Building.

19 **Q. Describe the room.**

20 A. The room is a -- probably a ten-foot-by-ten-foot  
21 room that was completely carpeted. The floor, the walls,  
22 the ceiling and everything had this ugly greenish-brown  
23 carpeting on it. There was a table in there with a chair  
24 on each side of the table, and then there were three  
25 chairs along the wall on the side of the room. On the

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1 table was a machine that at that time I didn't -- I didn't  
2 have a clue what that machine was, but it was basically a  
3 reel-to-reel recorder with a microphone, and attached to  
4 the machine was like a graph machine like off of a  
5 polygraph machine.

6 **Q. Now, when -- when Sergeant Via put you in that**  
7 **room, did he stay with you or did he leave?**

8 A. No. I was put in there by myself and left there  
9 for -- in my mind, it was a long time.

10 **Q. At some time -- at some point in time, did**  
11 **Sergeant Via or anyone else return?**

12 A. Yes. Actually, after I sat there for quite some  
13 time, I believe it was Joe Cummings came and actually took  
14 me to use the restroom and then returned me to that room.

15 **Q. And then did you stay there again for a while?**

16 A. Yes. I still -- I sat there after Mr. Cummings  
17 returned me. Again, in my mind, at that point, it seemed  
18 like forever. Because in mind, at that point in time, I  
19 was there to go to court and I was supposed to be released  
20 on these contributing to the delinquency of a minor.  
21 That's why I went to the courthouse. That's why I went to  
22 the annex building. I was to be taken to court on these  
23 contributing to the delinquency of a minor. I had no idea  
24 about all the rest of what was about to happen.

25 **Q. At some point in time, did Sergeant Via return?**

12 (Pages 859 to 862)

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1 A. Yes. It was later on after I used the restroom  
2 that Sergeant Via came into the room by himself and asked  
3 me if I would be willing -- before I went to court, if I  
4 would be willing to talk to him a little bit about the  
5 Louisiana homicides.

6 **Q. And so what happened?**

7 A. I agreed to talk to him, and he -- I believe at  
8 that point in time, he read me my Miranda rights and had  
9 me sign a waiver, which I would have done. I mean, I had  
10 no problem. I had absolutely nothing to hide. I knew in  
11 my heart and in my mind that I had no involvement  
12 whatsoever in any of the Louisiana homicides, nor did I  
13 have any involvement whatsoever in the death of Kim Nees.  
14 I had no problem talking to these people, I had no problem  
15 signing their waivers. You know, I was raised that way.

16 **Q. Did Sergeant Via then begin to talk to you about  
17 the Louisiana homicides?**

18 A. Yes. He actually informed me that they had the  
19 three unsolved murders, you know, on January 6th. But  
20 again on January 7th, he informed me that they had three  
21 unsolved homicides and that they'd actually formed a task  
22 force and they were investigating these homicides. And he  
23 told me that some of my activities between Montana and  
24 Louisiana were suspicious to him and he would like to  
25 clarify some of those -- that movement between Montana and

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1 Louisiana. And he began to question me about these  
2 homicides in Louisiana and where I was.

3 **Q. When he first started questioning you, what was  
4 his demeanor?**

5 A. Oh, he -- he was very polite and soft-spoken and,  
6 you know, nonaggressive, I guess is the term that, you  
7 know -- It was casual conversation to start with.

8 **Q. Did that change?**

9 A. Yes. It actually changed sometime after that.  
10 And I don't know how long Sergeant Via and I talked alone,  
11 but it's my memory that sometime after that, Deputy  
12 Richard Medaries and Joe Cummings entered the room. And  
13 at first, they just came in and sat down in the chairs  
14 that were over there and were listening to Jay Via and I's  
15 conversation. And then Richard Medaries actually left the  
16 room and he came back, and when he came back is when  
17 things really changed for me.

18 **Q. In what way?**

19 A. When Richard Medaries came back into the room, he  
20 actually had some photos of different crime scenes from  
21 there in Louisiana. And I remember him coming over and  
22 asking me -- at first, he just came over and asked me, he  
23 says, "Would you be willing to look at some of these  
24 photos and see if you can identify any of this or remember  
25 any of this?"

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1 And I can't remember all of the photos that were  
2 there, but there were two of them that really stick in my  
3 mind to this day. I'll never forget looking at those  
4 photos. One of them was of a dead body that was laying in  
5 between these trees, and it was partially covered with  
6 these leaves; and the other one was of a cream-colored  
7 vehicle, and you could see bullet holes in the driver's  
8 window, and there was blood splatters all over the window,  
9 all over the windshield.

10 And he asked me -- Richard Medaries asked me, he says,  
11 "Do you remember doing this?" And I said, "What?" You  
12 know, I mean -- He said, "You did this." He said, "Do you  
13 remember doing this?" And I said, "I never did this." I  
14 says, "I don't know what you're talking about." I says,  
15 "I have never killed anybody in my life."

16 And that's when the interrogation started going from  
17 being aggressive to calm to, you know -- and then  
18 Richard Medaries and Joe Cummings left, and I don't know  
19 how long that period was or anything, but I do remember  
20 it.

21 **Q. At some point, were you asked to take some kind  
22 of a test?**

23 A. After Joe Cummings and Richard Medaries left, I  
24 was actually left alone again for a period of time to just  
25 sit in that room. And then Jay Via came back into the

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1 room by himself, and he started asking me questions again,  
2 just general questions. And at that point in time, he  
3 asked me if I would be willing to take what he called -- I  
4 believe he called it a pre-voice-stress-test. And  
5 believe me, I don't -- to this day, I don't quite  
6 understand. But I told him yes, I would be willing to do  
7 that. And he explained to me that what this test would be  
8 made up of is a bunch of hypothetical questions dealing  
9 with different types of clothing, different types of  
10 weapons, and different types of motives that a person  
11 would use in a homicide.

12 And so I agreed to take that test, and he started  
13 giving me all this information about different types of  
14 clothing and different types of weapons and then different  
15 types of motives that would be used to commit a murder.  
16 And it was my understanding at that point in time that  
17 this voice stress test was going to be on the Louisiana  
18 murders and that this task force was only interested in  
19 the Louisiana murders.

20 **Q. Now, did that change?**

21 A. Did what change?

22 **Q. Did the questioning at some point turn -- turn to  
23 Kim Nees?**

24 A. Well, actually, the questioning changed to  
25 Kim Nees way later on in the day.

13 (Pages 863 to 866)

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1 Q. Okay.

2 A. I actually took two -- two voice stress tests  
3 with Mr. Jay Via. Each of those voice stress tests  
4 included a pre-test, where I was given a whole bunch of  
5 information. Then I would take the voice stress test, and  
6 then he would come back and do an interrogation and what  
7 he called a post stress test, where every single time I  
8 went through that process, he accused me of being  
9 deceptive and accused me of committing the murders in  
10 Louisiana or being involved, showing involvement in those  
11 murders.

12 Q. When he told you that you failed the test and he  
13 accused you of being involved, what was his demeanor?

14 A. That's the first time that Jay Via actually got  
15 aggressive with me at different points in time. I can't  
16 ever say that he actually leaned up over the table, but he  
17 leaned forward in his chair. His tone of voice changed  
18 drastically. He accused me -- adamantly accused me of  
19 lying to him about the cases in Louisiana, adamantly  
20 stated that I had showed deception in these voice stress  
21 tests and that I'd failed these tests and I had knowledge  
22 or involvement in the homicides.

23 Q. Now, did there come a time -- a point in time  
24 where another investigator, Alfred Calhoun, came in?

25 A. Well, actually before Alfred Calhoun came in,

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1 because of the way that Jay Via was talking to me, I  
2 actually asked Jay Via if I could have a lawyer. And when  
3 I asked that, Jay Via left the room, and I was actually  
4 left in the interrogation room again by myself. And I sat  
5 there again for, I would say, in my own mind -- and I  
6 didn't have a clock, I didn't have a watch, I didn't have  
7 anything, but I felt like I sat there for 15, 20 minutes,  
8 maybe longer. And then Jay Via came back in, and again --  
9 at that point, he was calm again and everything. And he  
10 asked me, "Barry," he says, "would you be willing to try  
11 and clear this up once and for all?" And I said, "Yes."  
12 He says, "Would you be willing to have another person come  
13 in and take another voice stress test?" And he explained  
14 to me at that time that this would be a truth versus lie,  
15 or something like that, and that it would be administered  
16 by Alfred Calhoun, yes.

17 Q. So that was when you were first introduced to  
18 Mr. Calhoun?

19 A. Yeah. Jay Via actually went out and got  
20 Mr. Calhoun and brought him into the room, yes.

21 Q. Okay. And then what happened?

22 A. Mr. Calhoun -- Jay Via, at that time, he went and  
23 sat down over on the chairs by the side of the wall and  
24 Alfred Calhoun actually sat in the chair across the table  
25 from me. And at that point in time, Alfred Calhoun,

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1 before he started any of his tests or anything, started to  
2 explain to me that he knew that I was guilty of these  
3 murders and that the only way that I could ever clear my  
4 conscience before God Almighty was to tell him and to  
5 confess to him that I had killed these girls. And I  
6 remember telling -- In fact, we even prayed together, he  
7 actually prayed with me and asked God in his prayer to  
8 forgive me for, you know, killing these girls.

9 And at that point in time, I remember telling  
10 Alfred Calhoun that I never killed anybody, but if it was  
11 up to God to forgive me, then God would be the one that I  
12 would talk to when I got there. And when I said that to  
13 him, he got angry, you know. But he didn't blow off the  
14 handle, but he just got angry. You could tell his  
15 demeanor changed. But then he calmed down and actually  
16 started leading me into this, what he called a pre-test of  
17 the voice stress test. And again, I was given a series of  
18 information that was supposedly related or not related to  
19 these homicides, then I was given a voice stress test, and  
20 then I was given a post test. And it was actually during  
21 the post test that things really changed. I mean, it was  
22 at that point in time during the post test that...

23 Q. What happened?

24 A. I was told by Alfred Calhoun that he knew I was  
25 guilty of those murders and that no matter what it took

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1 him, he would see me fry in the electric chair of the  
2 state of the Louisiana. And he went into pretty lengthy  
3 details of explaining to me how the process of the  
4 electric chair works and how, when the electricity goes  
5 through the human body, that the first thing that happens  
6 is their hair singes and catches on fire, and then their  
7 eyeballs pop out from the pressure of the brain cooking,  
8 and that after that, the process is that the skin begins  
9 to turn black and cook; and how he couldn't wait to be the  
10 one to push the button and watch that happen to me because  
11 he knew without question that I was the one who killed  
12 them girls and that -- that the only way that it could  
13 ever get taken care of is if I would confess to him that I  
14 killed these girls and it would be straightened out. And  
15 I had to tell him and I had to tell God.

16 And I told him again at that point in time, I says,  
17 "Alfred Calhoun," I says, "I didn't kill anyone. I did  
18 not kill any of these girls in Louisiana and I did not  
19 kill Kim Nees."

20 Now, one of the ironic things that I remember when I  
21 seen Mr. Calhoun on the video yesterday -- or day before  
22 yesterday is when he was screaming at me, when he was  
23 leaning up over and screaming at me, he has this blood  
24 vein right down the middle of his forehead, and I remember  
25 that blood vein just standing out, and his eyes would just

14 (Pages 867 to 870)

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1 grow and his face was red and he was just screaming at me  
2 and yelling at me. And I broke down, and I began to cry.  
3 I was so scared. I was so scared at that point, I would  
4 have said anything, I would have done anything to get away  
5 from him. Because I honestly believe, with everything  
6 inside of me, that at that point in time, that man would  
7 have done what he said he was going to do.

8 **Q. How old were you at the time?**

9 A. I was 20 years old.

10 **Q. Did the interrogation continue?**

11 A. Actually, when I broke down and started crying,  
12 trying to get away from him, I actually asked him to let  
13 me speak to Jay Via. Because at least with Jay Via, the  
14 mood swings were -- you know, he'd go from being nice to  
15 being mean to being angry, you know. But with Calhoun,  
16 man, I just wanted to get away from him.

17 **Q. And so did -- did Sergeant Via come back?**

18 A. Yes, he did.

19 **Q. What happened when he returned?**

20 A. It was at that point in time that I remember the  
21 interrogation process solely focusing on the death of  
22 Kim Nees. And that was the first time during that day  
23 that I can remember being questioned only about the murder  
24 of Kim Nees, and it was with Jay Via after all this other  
25 process had taken place.

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1 **Q. How did he interrogate you about Kim Nees's  
2 death?**

3 A. The interrogation about the death of Kim Nees  
4 started off with just general information and, again, him  
5 just asking me general information about my activities in  
6 Montana and this and that. Then once again, he asked me  
7 if I'd be willing to take a voice stress test concerning  
8 the Kim Nees murder, and I said that I would. At that  
9 time, I remember Jay Via once again asking me to take this  
10 pre-test analysis, where he fed me information about  
11 different items of clothing and different weapons and  
12 different motives for the murder.

13 And one thing that I forgot to say here today is that  
14 on several different occasions throughout this process,  
15 not just on the Kim Nees murder, but during that process  
16 of the pre-test to the voice stress test, on almost every  
17 single one of those voice stress tests I took, I was asked  
18 to envision or hypothetically tell Jay Via how I felt that  
19 these victims were killed or how I felt that these  
20 homicides, hypothetically speaking, were committed. And  
21 it was all tied in -- and I'm not saying it was a part of  
22 the pre-test, but it was all tied into the questioning  
23 that he was presenting to me, you know.

24 **Q. Did he ask --**

25 A. So he did the same thing with Kim Nees prior to

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1 that pre-test, you know, when he was telling me different  
2 information about clothing and weapons and motives.

3 **Q. So did you -- did you do one of these stress  
4 tests for Jay Via with regard to Kim Nees's murder?**

5 A. I don't remember that we ever got to taking a  
6 voice stress test in the Kim Nees homicide specifically.  
7 I think that I did take another voice stress test after  
8 that process took place, yes.

9 **Q. Do you have any idea what time it was by this  
10 point?**

11 A. No, I don't.

12 **Q. What do you remember happening next?**

13 A. What I actually remember happening next is  
14 Mr. Jay Via asking me to tell a hypothetical story of how  
15 I felt Kim Nees was murdered. And then as I began to tell  
16 this story of how I felt that Kim Nees -- he stopped me at  
17 one point in time and he told me, and I remember this very  
18 clearly, he told me, he says, "You know, Mr. Beach," he  
19 says, "it's been shown and believed that you have  
20 knowledge about the Kim Nees murder." He says, "The only  
21 way we're going to truthfully get to the bottom of this is  
22 if you place yourself as the perpetrator of the crime."  
23 He says, "If you do that, your subconscious memory will  
24 recall rumors, stories, and information that you have  
25 gathered or may have."

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1 And so that's what I did, is I hypothetically put  
2 myself as the perpetrator and I told Jay Via this story of  
3 how I felt or believed that Kim Nees may have been  
4 murdered.

5 **Q. Was that -- was that part of the integration  
6 recorded, do you know?**

7 A. To be honest with you, I don't know what was and  
8 was not recorded during that whole entire day. What I do  
9 know is that the voice stress machine that sat there, it  
10 sat there all day long. And that's what it was, is it was  
11 a reel-to-reel recorder with a microphone sitting in front  
12 of me, and that microphone sat in front of me all day long  
13 throughout the whole entire process. But I'm not sure,  
14 you know, what was and was not recorded throughout that  
15 whole entire process.

16 I know that all the pre -- allegedly, all the  
17 pre-tests were recorded, all the voice stress tests were  
18 recorded, all the post stress tests were recorded, and  
19 some of -- I don't know if there was any of the  
20 information in between. But I was being interrogated in  
21 the meantime of all this happening, and it was -- you  
22 know, man, it was confusing. I was tired by that time.  
23 And more importantly, I just wanted to get away from them.  
24 My belief at that time was that Louisiana would have  
25 prosecuted me for them murders. I believe that.

15 (Pages 871 to 874)

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1 **Q. Do you remember what happened next?**

2 A. I really don't remember what happened next, no.  
3 The next thing that I clearly remember is at some point in  
4 time that evening, I was given a meal. And I've always  
5 felt that the meal was administered to me prior to this  
6 so-called confession being taken, but I don't know. The  
7 next thing I remember is I was brought a meal. And  
8 Jay Via was sitting across the table from me, there was  
9 myself, and it was either -- I still believe to this day  
10 it was Richard Medaries that brought the hamburgers and  
11 stuff in. I don't know for certain whether it was Joe --  
12 Joe Cummings or Richard Medaries, but one of those two  
13 individuals is the one that actually brought the meals  
14 into the room.

15 Now, when the meals were brought into the room, one of  
16 the things that I noticed was that the milkshake that was  
17 given to me -- and they were all three strawberry  
18 milkshakes, they were all three Big Mac hamburgers, and  
19 they were all three -- I mean, all three meals were the  
20 same, so there wasn't no difference in the meals or  
21 anything like that. But I noticed that the lid off of one  
22 of the milkshakes was missing. And it didn't mean nothing  
23 to me at that time, really, even though I asked him, you  
24 know, what had happened. He said it got dropped down into  
25 his arm and he had to catch it and the lid popped off.

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1 That sounded logical. I could see that; you're carrying  
2 all this stuff. I mean, you know...

3 **Q. Now, how do you explain the fact that you say you  
4 can't recall segments or parts of the latter part of that  
5 day?**

6 A. By that time of the day, I was so tired and I  
7 was -- you know, there had been so much stuff thrown at me  
8 and so many accusations, and, you know, I just wanted to  
9 sleep. I just wanted to go home, I just wanted to go to  
10 bed, I just wanted to sleep. Wherever home was, wherever  
11 I had to go, I just wanted to get out of that  
12 interrogation room.

13 And more importantly than anything, I was never taken  
14 to court. I went in there that day under the presumption  
15 that I was going to be taken to court and that the charges  
16 of contributing to the delinquency of a minor were going  
17 to be dismissed, and at no time that day did that happen.  
18 And I was like, you know, what's going on, man? I mean,  
19 I'm a 20-year-old kid just -- And they wouldn't believe  
20 me. No matter what I said, they wouldn't believe me. I  
21 could have said anything. I could have said that Mom was  
22 Roberta Clincher and they wouldn't have believed me.

23 **Q. Do you remember actually giving a tape-recorded  
24 confession where you admitted that you killed Kim Nees and  
25 described how you did it?**

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1 A. I do not remember actually giving this so-called  
2 confession, no. I don't. I don't remember at any point  
3 in time. And when I say that I don't remember, I don't  
4 remember any point in time that that machine was turned  
5 back on and I admitted adamantly, in my own mind, decided  
6 that I was going to sit down and give this confession.  
7 That's not the way I remember it, and I don't remember  
8 that ever taking place, you know.

9 And I would like to say at that point, when I say that  
10 I don't remember, I would never -- I would never say that  
11 I didn't give this confession. That's not what I'm  
12 saying. There was so much that happened that day,  
13 anything could have happened. And I wouldn't disrespect  
14 the Nees family or the past 27 years of this whole  
15 situation by ever saying or failing to take credit for  
16 what happened. At some point in time, I broke weak and I  
17 made the biggest mistake of my life, my breaking weak.  
18 But I can't change that. It happened and I can't change  
19 it.

20 **Q. And when you say you broke weak, what are you  
21 talking about?**

22 A. They broke me. I mean, I just wanted out of  
23 there, and I didn't care what it took to get out of there.  
24 I didn't want to go through what Alfred Calhoun told me.  
25 Alfred Calhoun told me he would watch me fry in the

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1 electric chair. He told me he would watch my eyeballs pop  
2 out of my head. He told me he'd watch my skin singe. And  
3 I didn't want to go through that.

4 **Q. Barry, the recording of the confession -- in the  
5 recording of the confession, they have you saying that you  
6 killed Kim Nees. Is that true?**

7 A. In their recording of the confession, yes.

8 **Q. Okay. But did you kill her?**

9 A. I did not kill Kim Nees. And I have never once,  
10 at any time in talking with Dean Mahlum or anybody other  
11 than Jay Via have I ever failed to deny that I killed  
12 Kim Nees.

13 **Q. Were you down at the park in the early morning  
14 hours of June 16th of 1979 when Kim was killed?**

15 A. No, I wasn't. I had no involvement with  
16 Kim Nees's murder whatsoever.

17 **Q. At some point, you've -- at different points,  
18 you've given statements where you've expressed concern  
19 about whether or not something was put in your milkshake.  
20 Why did you ever say anything like?**

21 A. I would actually like to state that that's not an  
22 allegation I'm trying to make. But I wish you would put  
23 yourself in my shoes, you know, and try to explain why you  
24 can't remember events happening that evening, you know.  
25 There reached a point in time that evening where I no

16 (Pages 875 to 878)

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1 longer can remember what happened. And I've spent  
2 25 years behind bars trying to explain to myself why I  
3 can't remember certain things after a certain point in  
4 that day. It's never been -- I've never said those words  
5 intentionally as an allegation towards anybody.

6 But I've got to explain to myself, as well as anybody  
7 else around me -- I've had to try and explain to  
8 Centurion Ministries, I've had to try and explain to my  
9 family why I can't remember giving this alleged  
10 confession. And that's hard to do. You know, that's  
11 something -- Even inside of myself as I sit here before  
12 you today, I have no real, honest definitive explanation  
13 for you as to why I can't remember that tape recorder  
14 being turned back on, which it had been turned on and off  
15 and on and off all day long, and, in my own mind, making a  
16 decision, okay, I'm going to tell them this false lie. I  
17 don't remember that. And I'm sorry that I don't remember  
18 it, but I can't change it.

19 **Q. Barry, how long have you spent in prison?**

20 A. I've actually been in prison here at Montana  
21 State Prison since May 11th of 1984, which is a little bit  
22 over 24 years now -- or 23 years, I'm sorry; a little bit  
23 over 23 years.

24 **Q. And your -- your claim is that you've spent these**  
25 **24-plus years in prison and that you're innocent of the**

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1 **crime for which you have been doing this time?**

2 A. That is not only my claim today, but that's been  
3 my claim throughout this whole entire process. I have  
4 never, never claimed that I killed Kim Nees outside of  
5 this alleged recorded confession. And in fact, there's a  
6 phone conversation where I talked to Dean Mahlum right  
7 after this alleged confession took place, and even in  
8 talking to Dean Mahlum, if you'll notice, I did not tell  
9 Dean Mahlum that I killed Kim Nees.

10 **Q. Do you remember that phone conversation with**  
11 **Dean Mahlum?**

12 A. I do not actually remember that phone  
13 conversation. I remember -- What I do remember is I  
14 remember being finally taken out of this interrogation  
15 room, and I was taken into an office and put in a chair.  
16 And I remember going into that office because the lights  
17 were really bright. And more importantly, I remember it  
18 because I was finally, finally taken out of that  
19 interrogation room.

20 **Q. You were -- you were charged with the Kim Nees**  
21 **homicide while you were still in Louisiana?**

22 A. Yes, but that -- the actual charge for the murder  
23 of Kim Nees actually came a little bit later. The initial  
24 charge was a fugitive from justice.

25 **Q. At some point you're extradited back to Montana?**

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1 A. That is correct. There was a period of time that  
2 took place where I fought the extradition, but then I  
3 believe -- and I may have the date wrong, but I believe it  
4 was on September 29th of 1983 that I was returned to the  
5 state of Montana by an airplane.

6 **Q. What did you think was going to happen at the**  
7 **trial up in -- up in Montana?**

8 A. Because of what I had been told by Dean Mahlum in  
9 previous conversations with him, I actually felt that I  
10 was going to be able to go in there and, once and for all,  
11 prove that I did not kill Kim Nees; and that, once and for  
12 all, I was going to put this whole entire situation behind  
13 me and be able to go -- I actually, at that point, still  
14 wanted to reenlist into the military. That was still my  
15 goal, was to go back into the military, you know. Even  
16 though things hadn't worked out to that goal at that point  
17 in time, you know, it was still in the back of my mind.

18 **Q. Did you think you were going to be convicted?**

19 A. Absolutely not.

20 **Q. Why not?**

21 A. I had already been informed on numerous occasions  
22 by Dean Mahlum that there was no physical evidence that  
23 connected me to this crime. I had been informed by  
24 Dean Mahlum that I had passed the polygraph test, and I'd  
25 been informed by Dean Mahlum that it was his belief that I

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1 did not kill Kim Nees. So I thought that if I could get  
2 back to Montana and sit down with Dean Mahlum and talk to  
3 him, that we could straighten this out.

4 **Q. That's not what happened.**

5 A. No, sir.

6 **Q. And have you been fighting for your freedom since**  
7 **you were convicted?**

8 A. Yes, I have. I've done everything in my power to  
9 try and maintain legal counsel and do whatever my legal  
10 counsel advised me to do in order to keep an appeal  
11 process going.

12 MR. CAMIEL: I have nothing further.

13 CHAIR McCANN O'CONNOR: The time is 9:25. We'll  
14 take a 15-minute break and begin again at 20 minutes  
15 to 10.

16 (A brief recess was taken.)

17 CHAIR McCANN O'CONNOR: All right, we'll come  
18 back into session.

19 Proceed, please.

20 CROSS-EXAMINATION

21 BY MR. WELLENSTEIN:

22 **Q. Good morning, Mr. Beach. My name is**  
23 **Mike Wellenstein. You probably recognize my name from the**  
24 **post-conviction proceeding documents and habeas corpus**  
25 **documents.**

17 (Pages 879 to 882)

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1 A. Yes.

2 Q. Okay.

3 A. Yes.

4 Q. Now, isn't it true that you never mentioned in  
5 your 1994 clemency application and in your 2005 clemency  
6 application an alibi witness?7 A. That's true that it wasn't put in the application  
8 itself, correct.9 Q. And you never mentioned an alibi witness at  
10 trial? You never --

11 A. No.

12 Q. You never produced an alibi witness at trial?

13 A. The -- the trial process that took place in  
14 Glasgow, Montana, I was under the advisement of legal  
15 counsel, Timer Moses at that time. And it was  
16 Timer Moses's advice not to put the alibi witness or  
17 myself on the stand.18 Part of the reasoning behind that was at that point in  
19 the trial, it was not only my belief, but it was  
20 Timer Moses's belief that there was absolutely no way that  
21 I was going to be convicted. Because not just the defense  
22 counsel, but also Dean Mahlum had been on the stand at the  
23 trial and admitted to the fact that there was absolutely  
24 no physical evidence to connect me to this crime, and so  
25 we were under the belief that I would not be convicted,

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1 and therefore, he advised both myself and my sister not to  
2 testify at trial.3 Q. So after you were convicted and after your  
4 conviction was affirmed by the Montana Supreme Court, you  
5 had a post-conviction proceeding, and you never mentioned  
6 an alibi witness there, you never had an affidavit from an  
7 alibi witness in your post-conviction proceeding, did you?  
8 Isn't that right?9 A. It is correct that none of it went into the  
10 paperwork. That is true. Because when you're in a  
11 post-conviction proceeding, as you well know,  
12 Mr. Wellenstein, you have to address issues of law. The  
13 only thing you can present to a court on appeal is an  
14 issue of law. In other words, you have to find something  
15 within the statutes of the state of Montana that can be  
16 presented on appeal.

17 Q. Okay --

18 A. And it was the decision of my lawyers to select  
19 what information they put into those briefs.20 Q. In that post-conviction proceeding, isn't it true  
21 that you were trying to make the standard of actual  
22 innocence to get around some procedural bars, and you  
23 attached an affidavit that had nothing to do -- it wasn't  
24 a legal issue, of Paul Kidd? You could have just as  
25 easily attached an affidavit from some alibi witness;

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1 isn't that true?

2 A. If it was the decision of my lawyer, then, yes --

3 Q. So your attorney was -- was Wendy Holton?

4 A. I've had several attorneys, yes.

5 Q. In the post-conviction proceedings --

6 A. Actually, I --

7 Q. -- is that correct?

8 In your post-conviction proceeding, was Wendy Holton  
9 your attorney?10 A. During the process before the federal courts,  
11 yes.

12 Q. And in state court also?

13 A. I do believe that at one point in time,  
14 Wendy Holton tried to take this case back into the  
15 Montana Supreme Court with the affidavit from Paul Kidd.16 Q. And you're aware that the Board has all of the  
17 documents from not only the federal habeas corpus  
18 proceedings but the post-conviction proceedings?

19 A. Yes, I am aware of that.

20 Q. Okay. So you were trying to make an actual  
21 innocence standard both in federal court and in the  
22 post-conviction proceedings; is that true?

23 A. That -- that is true. Yes.

24 Q. Okay. And you never mentioned an alibi witness,  
25 you never included an affidavit from an alibi witness in

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1 any of those proceedings.

2 A. It was the decisions of my lawyers, throughout  
3 the process of the appeals, not to do that, yes.4 Q. In your interview with Richard Leo -- You  
5 remember your interview with Richard Leo?

6 A. Yes.

7 Q. In that interview, isn't it true that you stated  
8 you were satisfied with Wendy Holton as your attorney?

9 A. Oh, yes.

10 Q. Okay. So the first time there was ever mention  
11 of an alibi witness was yesterday in these proceedings.12 A. The first time that it's become public knowledge  
13 would be here in these proceedings, yes.14 Q. So you knew about -- you knew about your sister  
15 providing you an alibi before these proceedings and you  
16 never mentioned it at any legal proceeding.17 A. I believe it was the testimony of my sister  
18 yesterday that she provided that information to every one  
19 of my legal counsel during this entire process. What  
20 happens with that information was not necessarily under my  
21 control. The decisions that were being made during this  
22 appeal process were being made by my legal counsel as to  
23 what they thought was most effective to present to the  
24 courts.

25 Q. Did you ever mention an alibi witness in your DNA

18 (Pages 883 to 886)

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1 petition filed by Peter Camiel?

2 A. I believe at that time, all we were attempting to  
3 do was get DNA testing done on the towel. And again, it  
4 was under the legal advisement of my attorneys what went  
5 into that petition and what did not go into that petition.

6 Q. And your attorney there was Peter Camiel?

7 A. Yes.

8 Q. But you mentioned in that DNA petition a number  
9 of other things that showed your innocence, didn't you?

10 A. I believe we did, yes.

11 Q. Okay. You called -- During your trial, you  
12 called Joanne Jackson and Caleb Gorneau at trial, but you  
13 never questioned them regarding this fight and this  
14 necklace or the exchange of a beaded key chain, did you?

15 A. I do not believe that -- If it's my understanding  
16 correctly, Mr. Moses didn't want to open that up in a  
17 court of law because it was something that could not be  
18 fully substantiated other than the fact that Caleb Gorneau  
19 is one of the people who took a piece of the necklace to  
20 the jail.

21 Q. But Caleb Gorneau was your friend, right?

22 A. Yes.

23 Q. And you never raised -- you never raised that  
24 argument in your post-conviction proceedings?

25 A. No, but I did provide that information to my

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1 legal counsel.

2 Q. So you provided the information to --

3 A. Yes.

4 Q. -- your legal counsel.

5 And then -- So you provided that information to your  
6 legal counsel in the federal habeas proceedings?

7 A. Excuse me. Again, Mr. Wellenstein.

8 Q. So you provided that same information regarding  
9 the necklace, the fight, and the beaded key chain to  
10 Wendy Holton, your legal counsel, in the federal habeas  
11 proceedings?

12 A. It is my understanding that, yes, she had that  
13 information. Whether she chose to use it in the  
14 proceedings or not was a legal decision that she was  
15 making.

16 Q. So it's Wendy Holton's fault for not bringing  
17 that out.

18 A. No. It's -- it's not necessarily her fault. I'm  
19 saying that she was making legal decisions on what would  
20 be best to present to the courts. The best that I can do  
21 as a defendant, as you well know as an attorney, is  
22 provide the information. And once the information is  
23 provided to your legal counsel, they make decisions based  
24 on legal information, you know --

25 Q. That's fine. So it's up to your legal counsel to

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1 get that information and present that information.

2 A. Well --

3 Q. Well, that's what you just said.

4 A. If that's your interpretation of that, yes, sir.

5 Q. Okay. And now you're represented by  
6 Peter Camiel, aren't you?

7 A. Yes, I am.

8 Q. And you haven't called Joanne Jackson or  
9 Caleb Gorneau in these proceedings to question them about  
10 the necklace, the beaded key chain, and the fight.

11 A. No, we have not.

12 Q. And you subpoenaed them, didn't you?

13 A. I am not sure if they've been subpoenaed or not.  
14 I haven't seen our actual subpoena list.

15 Q. But they're not listed on your witness -- they  
16 weren't on your witness list.

17 A. To be quite honest with you, Mr. Wellenstein, I  
18 haven't even seen the actual witness list for these  
19 proceedings.

20 Q. You haven't seen it.

21 A. No, sir.

22 Q. But they're not going to be called today; that's  
23 a given, isn't it?

24 A. That is something that would be up to my legal  
25 team.

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1 Q. Okay. Now, your -- your memory regarding  
2 January 7th, I want to talk to you about January 7th. It  
3 seems to me, from listening to your testimony, you can  
4 remember everything that benefited you on January 7th, but  
5 anything that hurts you, your memory has gone hazy or you  
6 can't remember. Isn't that true?

7 A. Actually, Mr. Wellenstein, I don't know that  
8 anything on January 7th benefited me, but my memory did  
9 begin to fade later on in the evening, and there were a  
10 lot of things that supposedly took place in the evening  
11 time of January 7 --

12 Q. Well, let's --

13 A. -- that I don't recall.

14 Q. Let's talk about what would benefit you as far as  
15 attacking the voluntariness of your confession, some of  
16 the statements you made, okay? All right?

17 Richard Medaries putting pictures in front of you of  
18 the Louisiana homicide and accusing you of killing these  
19 women in Louisiana, that would benefit -- that's pretty  
20 egregious police misconduct if one believes your story.

21 A. Well, to be quite honest with you, I don't  
22 consider that being an event that took place that  
23 benefited me. That was actually a pretty traumatic  
24 experience.

25 Q. That was a traumatic experience.

19 (Pages 887 to 890)

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1 You know what I find interesting about that, too? In  
2 your statement to Richard Leo -- Do you remember when you  
3 gave your statement to Richard Leo?

4 A. Yes.

5 Q. Okay. You stated -- isn't it true that you  
6 stated it was Joe Cummings who put those pictures in front  
7 of you and now you've switched it to Richard Medaries?

8 A. Actually, I'm not sure if that's factual or not.  
9 But if you want to show it to me, I'll gladly take a look  
10 at it. And it wouldn't surprise me if I did have the  
11 two of them confused.

12 MR. WELLENSTEIN: Can I give this to Mr. Beach?

13 CHAIR McCANN O'CONNOR: Yes.

14 THE WITNESS: Mr. Wellenstein, do you have a  
15 specific page --

16 Q. (By Mr. Wellenstein) I will. Hold on a second,  
17 please.

18 I'm looking at page 22. And there's an "I" that says,  
19 "What did Joe Cummings come in with? Pictures of what?"  
20 And you say, "Joe Cummings came in with a stack of  
21 pictures of different crime scenes there in Louisiana,  
22 pictures of a body."

23 A. Yes, that's what the transcript reads.

24 Q. And today you've said it was -- today you've said  
25 it was Medaries that did that.

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1 A. Correct. But at the same time, I would like to  
2 state that in my mind, it's easy to confuse the two,  
3 because in all reality, the two of those individuals were  
4 in and out of the room inadvertently -- I mean, you know,  
5 when the main activity I was having that day was with  
6 Jay Via and Alfred Calhoun. Richard Medaries and  
7 Joe Cummings were alternately in and out of the room at  
8 different periods that, you know...

9 Q. Just so we're clear, you can remember  
10 Richard Medaries taking part in this -- in the activities  
11 on January 7th in Monroe, Louisiana?

12 A. I know that -- I know that all four members of  
13 the task force were in and out of that room during that  
14 day at different periods of time. The majority of my day  
15 that day was with Jay Via and Alfred Calhoun. The  
16 activities of the other two, like I said, were  
17 intermittent. They were in and out of the room at  
18 different times, and even when they were in the room,  
19 usually it was off to the side while I was dealing with  
20 Jay Via.

21 Q. So if Richard Medaries testified yesterday that  
22 he took no part in the activities on January 7th in the  
23 Louisiana sheriff's office regarding you, he's wrong,  
24 then?

25 A. I would say in my memory, he's wrong. And I'm

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1 not trying to -- I'm saying the way I remember the events  
2 taking place.

3 Q. So it's the way you remember the events taking  
4 place.

5 A. Yes.

6 Q. And those events were 25 years ago.

7 A. Yes, sir.

8 Q. You know, in your -- in your interview with  
9 Richard Leo, isn't it true that you said that  
10 Alfred Calhoun gave you a polygraph test and actually  
11 hooked you up to a polygraph machine?

12 A. The -- the voice stress --

13 Q. I'm not talking about a voice stress test.

14 A. If I may have a little latitude to explain my  
15 interpretation of what you asked me. The voice stress  
16 machine that was in the room all day long, it had an  
17 additional -- it was a reel-to-reel recording machine, is  
18 what it was. But attached to the reel-to-reel recording  
19 machine was another machine that made a graph or read a  
20 graph as a polygraph machine does.

21 Now, you're talking about the difference, and I'm no  
22 expert by no means at all. Trust me, I'm no expert. But  
23 from my memory of the different tests that I've taken,  
24 when you're taking a polygraph test, there's three  
25 different attachments that they -- or four different

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1 attachments that they hook to your body. There's one that  
2 goes on your finger, if I remember correctly, there's one  
3 that goes around your arm, and then there's two straps  
4 that go around your chest and belly, on a polygraph  
5 machine.

6 If I remember correctly, and I'm just going by my  
7 memory, this voice stress machine that sat there, and it  
8 had this machine that was attached, the graph. Attached  
9 to the reel-to-reel section of that machine was a  
10 microphone. Attached to the graph section of that was a  
11 single, it was only one, strap that they would put around  
12 my chest. And I don't -- you know, that's just my memory  
13 of how that machine operated. And I don't know, I'm not  
14 an expert in that by no means, even though they  
15 administered that to me on numerous occasions that day.  
16 And that was my reference there with Dr. Leo.

17 And in fact, even yesterday when Jay Via was  
18 testifying, even Jay Via had a difficult time explaining  
19 the difference between a polygraph test and this voice  
20 stress test. So...

21 Q. You're aware -- You were here yesterday when the  
22 officer said that there's no strapping in --

23 A. Yes, I was.

24 Q. -- on a voice stress test --

25 A. Yes, sir.

20 (Pages 891 to 894)

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1 Q. -- is that right?  
 2 A. Yes, sir.  
 3 Q. Could you turn to page 36 of your interview with  
 4 Richard Leo.  
 5 A. (Witness complies.)  
 6 Q. It's on the very top of the page.  
 7 A. Yes.  
 8 Q. And what's -- what is the -- After "I," and  
 9 that's the interviewer, that's Richard Leo, what does it  
 10 say there?  
 11 A. It says, "Being strapped."  
 12 Q. And then what do you say?  
 13 A. "I remember being strapped in and the things on  
 14 the finger and everything, and I had the polygraph test up  
 15 in Montana, so it was familiar."  
 16 Q. Okay. In your interview with Richard Leo, isn't  
 17 it true that you said that Jay Via made a homosexual  
 18 advance towards you?  
 19 A. I believe your interpretation of that is pretty  
 20 broad, Mr. Wellenstein, with no disrespect. At one point  
 21 during the interrogation process, when it was just Jay Via  
 22 and myself in the room, he actually reached over and  
 23 grabbed my hand. And it wasn't so much that he reached  
 24 over and grabbed my hand, it was the way that he done it.  
 25 Because he put one hand underneath and he put the other

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1 hand over the top and began to rub the top of my hand.  
 2 And I actually pulled my hand back away from him. You  
 3 know, my interpretation of that -- that act of him holding  
 4 my hand, at that point in my life, was something I was  
 5 very uncomfortable with, yes.  
 6 Q. But that's what you told your interviewer,  
 7 Richard Leo.  
 8 A. If that's what the transcripts reflect, I will --  
 9 I'm not denying anything that I've ever said at any point  
 10 in time, you know. That event actually took place, yes.  
 11 Q. And you understand that -- that Richard Leo, when  
 12 he interviewed you, he was getting background information  
 13 about your story of what occurred and he was relying on  
 14 that to form his opinion? You understood that fact,  
 15 right?  
 16 A. Yes. I understood that he was there to do a full  
 17 interview on background information, yes.  
 18 Q. I want to go through some of the things that  
 19 you -- that you can't remember, okay, after having dinner.  
 20 Is that what you told Richard Leo, after having a  
 21 milkshake and a Big Mac?  
 22 A. It was after I ate the meal that --  
 23 Q. You can't remember. So you can't remember giving  
 24 your confession.  
 25 A. Correct.

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1 Q. You can't remember the officer recording your  
 2 confession.  
 3 A. No, I do not.  
 4 Q. Even though -- even though you're not denying  
 5 that you actually gave the confession.  
 6 A. I'll never deny that this took place. Look at  
 7 what it's cost. I will never fail to take  
 8 responsibility --  
 9 Q. Well --  
 10 A. -- for what happened, no.  
 11 Q. And you can't remember them turning on the tape  
 12 recorder?  
 13 A. No. They turned that machine on and off so many  
 14 times throughout the day that I have no specific  
 15 recollection of them turning the machine on and saying  
 16 that we are -- we want you to confess, or, in my own mind,  
 17 even thinking that I was going to sit down and give a  
 18 confession, false or true or otherwise.  
 19 Q. You can't remember signing the Miranda waiver at  
 20 7:08 that was introduced at trial?  
 21 A. No. And again, I would like to say that if they  
 22 would have came to me and asked me to sign a Miranda  
 23 waiver, I would have had no problem doing so. I had  
 24 nothing to hide. At no time have I ever refused to talk  
 25 to anybody about my involvement on January -- or

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1 June 15th.  
 2 Q. And you can remember talking to Dean Mahlum after  
 3 you gave -- after you gave your confession; isn't that  
 4 right?  
 5 A. I actually don't remember talking to Dean Mahlum  
 6 on the phone. I do remember being finally taken out of  
 7 the interrogation room and placed into an office room. I  
 8 remember that, but I do not remember the actual phone  
 9 conversation, no.  
 10 Q. So you can't -- you can't remember telling  
 11 Dean that you wanted to keep it out of the Wolf Point and  
 12 Poplar area?  
 13 A. No, I do not.  
 14 Q. Okay. And that -- and that your mom is going to  
 15 take it pretty hard?  
 16 A. No, I do not.  
 17 Q. Okay. And that you just wanted to keep it away  
 18 from your mother if you got a chance to talk to her; you  
 19 don't remember that?  
 20 A. I don't remember telling Dean -- I don't remember  
 21 talking to Dean Mahlum or what I told him. I do remember  
 22 being finally taken out of the interrogation room and put  
 23 in this office room, you know.  
 24 Q. And you understand that there's a tape  
 25 recording -- there's a tape recording of that

21 (Pages 895 to 898)

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1 conversation?

2 A. Yes, I understand that.

3 I do not deny that it took place; I'm simply saying  
4 that my memory at that point in time, I was not  
5 remembering things.

6 **Q. And then you had a -- you had a suppression  
7 hearing in state district court, you would agree, and you  
8 testified at that suppression hearing?**

9 A. Yes, I did, under advisement of my lawyer.

10 **Q. Okay. And do you remember when the prosecutor  
11 asked you what was the primary reason that you gave your  
12 confession?**

13 A. I believe in my suppression testimony, I  
14 explained to the prosecutor and to the court at that time  
15 that the -- that I was afraid of Alfred Calhoun, and I  
16 explained that I had been threatened with the electric  
17 chair, yes, and that was my testimony at the suppression  
18 hearing.

19 **Q. And do you remember -- do you remember that the  
20 Louisiana officers testified, and they testified that that  
21 threat never occurred and they made -- and they stated the  
22 same thing here in the clemency hearing?**

23 A. Yes, I understand that.

24 **Q. Do you understand that you're supposed to present  
25 new evidence here at this clemency hearing?**

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1 A. I believe we have presented new evidence to this  
2 Board of Pardons. There has never, never been anybody in  
3 28 years who has heard the testimony of Carl Four Star --

4 **Q. Do you --**

5 A. -- never in 28 --

6 **Q. Hold on a minute. You can go over those things  
7 with your counsel if you want.**

8 **Do you understand when you raised the allegation of  
9 Calhoun threatening you -- I mean, the State presented  
10 evidence of Calhoun -- You presented evidence, you  
11 testified that Calhoun threatened you, and Calhoun  
12 testified at the suppression hearing that he didn't  
13 threaten you and Via testified that he didn't hear any  
14 threat. Okay? So that was in front of the state district  
15 court. And then the state district court denied your  
16 suppression hearing and specifically stated in their order  
17 that there was no police misconduct. Isn't that right?**

18 A. At this moment in time, I -- without reading the  
19 actual court order that was signed by Judge Sorte, I don't  
20 believe that I can specifically tell you that the court  
21 stated that there was no police misconduct in making their  
22 ruling. Now, if you have it with you, I would be glad to  
23 read it and agree with it.

24 CHAIR McCANN O'CONNOR: We've seen it.

25 **Q. (By Mr. Wellenstein) Well, the Board has it, and**

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1 I don't need to go over it with them.

2 **So at the suppression hearing -- I just want to  
3 make -- you never mentioned any of the events that you  
4 talked about today, about the officers questioning you  
5 about the Louisiana homicides, the officers giving you  
6 voice stress tests about the Louisiana homicides, the  
7 officers putting pictures in front of you regarding the  
8 Louisiana homicides and accusing you of committing those;  
9 isn't that true?**

10 A. Madam Chair, Mr. Wellenstein, if you'll read the  
11 transcripts of my testimony, at the suppression hearing,  
12 you'll notice that one of the very first things that  
13 Timer Moses said to me when he led me into my testimony is  
14 that he was going to ask me very limited questions.

15 My attorney, Timer Moses, had talked to me prior to  
16 that suppression hearing, and he informed me that at the  
17 suppression hearing, he didn't want to try and open up a  
18 whole can of worms, he simply wanted to ask -- and in  
19 fact, if I remember correctly, he told me very  
20 specifically before he put me on the stand that he was  
21 only going to ask me three questions. And I don't  
22 remember if that's the number that was asked, but he  
23 started, and it's in the transcript of -- he started off  
24 by saying, "I'm going to ask you very limited questions."  
25 And that was something that was previously determined by

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1 my legal counsel. I would have asked anything, I would  
2 have answered anything. But I will also follow the advice  
3 of my legal counsel.

4 **Q. And he attempted and he wanted to limit those  
5 questions in order to prevent the prosecutor from  
6 cross-examining you; isn't that right?**

7 A. As a 21-year-old kid with no legal knowledge, I  
8 cannot tell you why Timer Moses decided to make that legal  
9 decision.

10 **Q. But Timer Moses was a very experienced defense  
11 attorney at the time; isn't that right?**

12 A. It was part of the reason that we hired him.  
13 Yes.

14 **Q. So you were -- so can I go over all of the  
15 attorneys you were represented by with you?**

16 A. Yes, sir.

17 **Q. Okay. Paul Kidd.**

18 A. Yes, sir.

19 **Q. And in your statement to Richard Leo, your  
20 interview with Richard Leo, you stated that Paul Kidd  
21 never went over your confession -- never went over the  
22 confession with you.**

23 A. We didn't actually go over --

24 **Q. Excuse me.**

25 **Go ahead.**

22 (Pages 899 to 902)

1 A. Mr. Kidd and I never actually went over my  
 2 confession. When Mr. Kidd come to see me on January 8th  
 3 in the Ouachita Parish Jail, he asked me if I could  
 4 remember giving the confession. At that point in time, I  
 5 told even Mr. Kidd that I couldn't remember actually  
 6 giving the confession, but that I remembered a  
 7 hypothetical story that Jay Via asked me to tell him. I  
 8 began to tell Mr. Kidd at that time what I could remember  
 9 of this hypothetical story, and about halfway through what  
 10 I was telling Mr. Kidd, he finally stopped me and he says,  
 11 "I'm going to stop you right there and we'll save this for  
 12 trial."

13 And at that point in time, I asked Mr. Kidd if he  
 14 would tell me what was in the confession. And this is  
 15 what I'm referring to in the Dr. Leo report. I asked  
 16 Mr. Kidd if he would tell me what was in the confession,  
 17 and he says, "No." He says, "I don't want you to know  
 18 what you actually said until we're in the trial."

19 Q. But you were here when Kidd -- Mr. Kidd testified  
 20 yesterday, weren't you?

21 A. Yes.

22 Q. And he testified that he discussed the confession  
 23 with you and that it was his normal practice to do so;  
 24 isn't that true?

25 A. Mr. Wellenstein, I understand your interpretation

1 relied on them in terms of representing you?

2 A. Absolutely. As a defendant fighting for your  
 3 life, you know, you trust that who you hire as a lawyer --  
 4 You know, you're putting your life in their hands, so  
 5 whatever they tell you, you trust that what they're  
 6 telling you has a legal reason behind it.

7 Q. And you accepted their advice?

8 A. Absolutely.

9 Q. Do you blame any of your lawyers for your being  
 10 here right now?

11 A. Not at all. No.

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

13 RECROSS-EXAMINATION

14 BY MR. WELLENSTEIN:

15 Q. In some of this material that you testified --  
 16 some of the story you testified today wasn't in the  
 17 clemency application that you filed regarding this  
 18 proceeding; is that correct?

19 A. Excuse me. Now, I've -- This application --

20 Q. This application, the one you filed before the  
 21 Board.

22 A. Okay.

23 Q. Some things that you testified today weren't in  
 24 that clemency application.

25 A. Can you be more specific as to what I testified

1 of what was said in the legal report. We did discuss the  
 2 confession, but he didn't tell me what was in the  
 3 confession. Because I informed --

4 Q. I think what --

5 A. -- Mr. Kidd that I --

6 Q. I think he also said that he went over the  
 7 confession with you, that he actually went over what was  
 8 in the confession with you. And the Board can -- if I'm  
 9 mistaken, the Board can look at that testimony.

10 Isn't that true?

11 A. We did not actually go over the confession  
 12 itself, no.

13 Q. Okay. And I think you testified today, and I  
 14 know this was in the Leo report, that the first time you  
 15 knew about the confession was at trial, what was  
 16 actually -- what you actually said in the confession.

17 A. Yes. In fact, all of my legal counsel, including  
 18 Timer Moses, had kept the actual transcript of the  
 19 confession from me up until the time of trial.

20 MR. WELLENSTEIN: We have no further questions.

21 REDIRECT EXAMINATION

22 BY MR. CAMIEL:

23 Q. Barry, did you -- From the point that you were  
 24 first arrested in Louisiana, starting with Paul Kidd,  
 25 through all of the attorneys that you've had, have you

1 today that's not in that application?

2 Q. Things like -- things like the milkshake, the  
 3 threats by Richard Medaries or Joe Cummings, depending --  
 4 depending on who you take, the asking for an attorney, the  
 5 polygraph, the alibi testimony that we heard yesterday.

6 A. It's my understanding that in preparing and  
 7 presenting this application for executive clemency to this  
 8 Board of Pardons, that what we were trying to focus on in  
 9 that application is the new information and the new  
 10 witnesses that had come forward. It had been clearly  
 11 documented what my belief was about all of those events  
 12 you just named. And this is the first time that I have  
 13 ever, ever been able to give public testimony, including  
 14 at my trial, as to all these events in the combination.

15 Q. So in other words, if the -- You understand that  
 16 a hearing in front of a clemency board like this, where we  
 17 have a number of witnesses and we have cross-examination  
 18 and questioning, is an extraordinary thing?

19 A. Yes, I do understand that. Yes.

20 Q. And that the Board could -- the Board could just  
 21 deny your, deny clemency just based upon reviewing your  
 22 actual clemency application; do you understand that?

23 A. I understand that, yes.

24 Q. So the Board could have just addressed this, so  
 25 to speak, on the briefs and you would -- and none of this

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1 would have ever come before the Board.

2 A. I do believe that as a part of this application  
3 before the Parole Board, that we submitted my testimony at  
4 the suppression hearing, and in my testimony at the  
5 suppression hearing, I addressed the fact that I was  
6 threatened with the electric chair.

7 **Q. I'm not talking about that. I'm talking about  
8 the other things we discussed today.**

9 A. I believe that all of that was submitted in  
10 Dr. Leo's report, and I do believe that in that report,  
11 that I addressed all these issues.

12 MR. WELLENSTEIN: No further questions.

13 CHAIR McCANN O'CONNOR: Mr. Wellenstein, would  
14 you please mark and submit this statement. Though we have  
15 read a train carload of documents, I do not believe that  
16 we have read this. This is the statement to Dr. Leo.

17 MR. WELLENSTEIN: Yes.

18 MS. PLUBELL: We did forward it, but we can  
19 certainly --

20 CHAIR McCANN O'CONNOR: I don't -- The three of  
21 us have not read this statement.

22 MR. WELLENSTEIN: That's (indicating) a clean  
23 copy.

24 CHAIR McCANN O'CONNOR: So would you submit it  
25 and just have it marked?

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1 MR. WELLENSTEIN: Yes.

2 CHAIR McCANN O'CONNOR: Mr. Curtiss, do you have  
3 questions?

4 BOARD MEMBER CURTISS: Yes, Madam Chair, I do  
5 have questions.

6 EXAMINATION

7 BY BOARD MEMBER CURTISS:

8 **Q. Mr. Barry Beach, sir.**

9 A. Yes, Mr. Curtiss.

10 **Q. I want you to know that I'm one of them that  
11 signed your application to approve you being here.**

12 A. Yes, sir.

13 **Q. So I do have more of an invested interest than  
14 just another hearing, which we do many, many of them every  
15 month; not so much in this extent of import or  
16 seriousness, but we do a lot of them. I'm glad that all  
17 that's taken place has taken place in the last few days.**

18 **Now, I wanted to ask you this, sir: Were you -- were  
19 you on active duty in the military when all of this  
20 happened?**

21 A. Sir --

22 **Q. You said you wanted -- Excuse me. You said you  
23 wanted to stay in the military. Were you in the military  
24 when this took place?**

25 A. The only time I was in the military, I was

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1 actively in the United States Navy, stationed on board the  
2 USS Spruance, from October of 1981 until April of 1982.

3 **Q. Okay. After this --**

4 A. After the homicide. Yes, sir.

5 **Q. Okay.**

6 A. Yes, sir.

7 **Q. Now, you mentioned that -- you mentioned that you  
8 were given a bad time in Louisiana by these law  
9 enforcement officers, you felt at least.**

10 A. Oh, yes, sir.

11 **Q. You had signed a waiver that you did not want an  
12 attorney. Were you knowledgeable of the fact that when  
13 things like this started happening, that you had a right  
14 to have an attorney at any time?**

15 A. Yes. In fact, as I have already testified here  
16 today, at one point in time I asked Jay Via for an  
17 attorney; and at that point when I asked for the attorney,  
18 they all left the room and they left me sitting there for  
19 15 or 20 minutes. And then when they came back in, they  
20 were all calm and polite and everything and asked me if  
21 they could ask a few more questions. And, Mr. Curtiss, I  
22 would have signed another waiver, because I had nothing to  
23 hide. I would have answered any question they wanted to  
24 ask.

25 **Q. Okay. That answers that.**

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1 **Now, when -- when all of this was taking place, do you  
2 believe that the LA authorities were being honest with you  
3 in what you considered honesty?**

4 A. No, sir. I didn't -- I didn't -- I'd like to  
5 say -- Because I think I understand what you're asking. I  
6 knew that they weren't being honest with me when they were  
7 telling me that I was deceptive in these polygraphs.  
8 Because if the polygraph is accurate, there's no way I  
9 should have been deceptive. I didn't even know about them  
10 Louisiana homicides, and yet, they were accusing -- not  
11 only accusing me of committing them, but they were  
12 accusing me of being deceptive in these stress tests. I  
13 mean, you know...

14 **Q. Okay. And I have a very serious question on this  
15 one. Now, the LA authorities, in your judgment, were  
16 being very bad to you --**

17 A. Yes.

18 **Q. -- you were scared, and all of these other  
19 things.**

20 A. Mainly with Alfred Calhoun. Yes, sir.

21 **Q. Okay. Then why did you fight extradition back to  
22 Montana?**

23 A. The reason I fought extradition was a legal  
24 decision that was made by Mr. Kidd. The original  
25 extradition papers that were filed, it was for juvenile

24 (Pages 907 to 910)

1 delinquency. And you cannot -- This was the information  
2 that was provided to me by Mr. Kidd, is that you could not  
3 extradite a juvenile across state lines. So he used that  
4 as an opportunity to become familiar with the case.  
5 Because at that point in time, it was our intentions to  
6 have Mr. Kidd come to Montana and represent me at trial,  
7 and things just didn't work out for that to happen.

8 Q. Okay. Did you, in fact, Mr. Beach, did you  
9 discuss this with Mr. Kidd about you saying or him at  
10 least reporting that you had killed the three girls --  
11 that you told him you had killed the three girls in  
12 Louisiana?

13 A. I didn't discuss that to Mr. Kidd until it became  
14 knowledgeable at my hearings, my proceedings. We had no  
15 knowledge that some of that took -- had allegedly taken  
16 place until we got to the court proceedings, and Jay Via  
17 first testifying at my suppression hearing was the first  
18 time that we were aware that Mr. Kidd was being accused of  
19 saying that I confessed to him these Louisiana homicides.  
20 And that was kind of like, you know --

21 Q. Well, it ended up here (indicating), sir --

22 A. Yes.

23 Q. -- that Mr. Kidd did tell them that, and that was  
24 pretty much reported that it was a ploy for some type of  
25 mental incompetency for you when you got back to Montana.

1 was made at least two other times according to Paul --  
2 let's see here now, during an interview with Barry Beach.  
3 When Barry would make these statements regarding the  
4 Montana death, Commander Alfred Calhoun and Attorney  
5 Paul Kidd were present and witnessed these statements.

6 Now, something -- something is not right here.

7 A. Correct.

8 Q. You're saying you didn't do it. Here, we have  
9 two people -- Now, Mr. Kidd has denied this emphatically,  
10 and there is a couple of situations here where it has been  
11 brought out that he was present and heard you say that.  
12 Let me hear from you, sir.

13 A. Sir, I absolutely deny that. At no time, outside  
14 of this alleged confession in the presence of Jay Via,  
15 have I ever told anybody anywhere that I killed Kim Nees.  
16 I have always adamantly denied that I killed Kim Nees to  
17 anybody that I've talked to. And even with Jay Via,  
18 throughout the entire process, it was my belief that I was  
19 adamantly denying that I killed Kim Nees.

20 Q. Okay. Well, this is kind of clearing a few  
21 things up, Mr. Beach, and that's what I intend to do, if  
22 it's all right with you.

23 This milkshake thing, had you already given the  
24 statement when you were given the milkshake and the  
25 hamburger?

1 Were you aware of that?

2 A. No, I was not.

3 Q. Okay. It wasn't some kind of planned thing  
4 between you and Mr. Kidd, who was your appointed lawyer?

5 A. Not at all, sir. No.

6 Q. Okay. Now, Mr. Kidd advised that he did not hear  
7 anyone -- he did not hear you say that you -- And there is  
8 some admission here, when you are discussing the Louisiana  
9 homicide case, there was some discussion here that -- and  
10 I'm not -- The only reason I want to know this, I'm not  
11 playing lawyer here, I just want to know what is true and  
12 what is not true. Understand that, Mr. Beach?

13 A. Mr. Curtiss, I'll answer anything you ask. I  
14 have no --

15 Q. Okay. But I want you to know I'm not trying to  
16 knock you up and down --

17 A. Sir, you've given me an opportunity I've never  
18 had, so thank you.

19 Q. Okay, sir, and I appreciate that.

20 And this was an interview in the Montana area. Okay,  
21 it says here that also during the part of this interview  
22 in the Poplar, Montana area in June '79, Barry Beach  
23 stated that he knew he had in fact killed Kimberly Nees in  
24 the Montana area and that it was a big relief to him when  
25 he got that off his shoulders. This particular statement

1 A. According to the documents provided by Jay Via,  
2 the milkshake was given to me after this alleged  
3 confession took place. It is my memory, not remembering  
4 having given the recorded confession, that I had eaten  
5 before all this supposedly took place. But I'm not  
6 sure -- you know, because I don't remember -- Like I said,  
7 I don't remember the machine ever being turned on. And  
8 inside of my own mind, you know, making a conscious  
9 decision that I'm going to sit down and give this  
10 confession, I don't remember that ever taking place.

11 So it's my understanding from my memory that I was fed  
12 a meal before this alleged statement took place, but the  
13 documents show that I was given the milkshake and the meal  
14 after this alleged confession took place. And the  
15 documents, I mean by Jay Via's report that this event took  
16 place after this alleged confession.

17 Q. Mr. Barry Beach, sir, what inference or what  
18 statement are you making in regards to this milkshake?  
19 What are you saying?

20 A. The only thing I'm trying to say, Mr. Curtiss, is  
21 for 25 years, I've been incarcerated for something I  
22 didn't do. That incarceration is based on a confession  
23 that they claim I gave. I don't remember giving that  
24 confession as they claim it took place. So I have to  
25 explain to myself, as I'm having to explain to you now,

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1 why I don't remember that event. And part of the  
2 explanation, to me, in my own mind, is that that was one  
3 possibility. That's only one possibility in my own mind,  
4 you know. And the only reason I say that and the only  
5 reason that I bring that up is because for a fact, when my  
6 milkshake was delivered to me, there was no lid on it.  
7 That doesn't mean it was drugged.

8 **Q. Well, your statement, sir, then, is that you**  
9 **thought there was drugs in it. That's the point I'm**  
10 **trying to make. Is that --**

11 A. No.

12 **Q. -- what you're making inference to?**

13 A. No. I'm saying that that was just something that  
14 I can explain to myself as to why -- I'm not saying there  
15 were drugs in the milkshake. I'm not accusing anybody of  
16 putting drugs -- I'm saying that's one explanation to  
17 myself that --

18 **Q. Okay, that explains kind of what I was -- I was**  
19 **wondering if you were saying that they drugged you, and I**  
20 **was going to ask you for what reason would they drug you**  
21 **after you had already given a statement.**

22 A. Correct.

23 **Q. That wouldn't make much sense to me.**

24 A. No, sir.

25 **Q. Okay. In other words now, pretty much --**

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1 **everything that's wrong, Mr. Beach, pretty much can be**  
2 **blamed on your counsel; I mean, not introducing this, not**  
3 **introducing that. Do you feel your counsel was not fair**  
4 **with you, Mr. Moses and all of these other --**

5 A. I will never say that my counsel wasn't -- You  
6 know, you don't hire an attorney to turn around and say  
7 that they weren't fair. The only time that I -- And in  
8 fact, on appeal, I have raised the issue of ineffective  
9 assistance of counsel.

10 **Q. Uh-huh.**

11 A. During my trial process, there was one point in  
12 time when I was very upset with Mr. Moses -- actually  
13 two times that happened. The first time is I wanted him  
14 to call Mr. Kidd. I wanted Mr. Kidd to be able to  
15 testify. Mr. Moses said that we couldn't afford to bring  
16 him up here. The second time is I definitely wanted to  
17 testify at my trial. I absolutely wanted to testify at my  
18 trial, and Mr. Moses would not let me. But that's his  
19 legal advice.

20 And the reason he told me that he did not want me to  
21 testify is because at that point in the trial, first of  
22 all, we believed I was going to be found not guilty. We  
23 believed that because there was no physical evidence to  
24 connect me to the crime. So we believed I was going to be  
25 found not guilty. The second part of that is that he

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1 didn't want to put me up on the stand in case this had --  
2 just in case we did have to go into an appeal process.

3 **Q. Okay. And I just -- And this is the only comment**  
4 **that I have to make on that. I know that if I was going**  
5 **into a district court in the state of Montana for first**  
6 **degree murder, I know that I would not take it for granted**  
7 **that I could not be convicted. Really. I mean, all**  
8 **things are possible, so to speak.**

9 **So do you feel that Mr. Moses was not up to snuff as**  
10 **far as you say? Somebody has got to be blamed, if you're**  
11 **innocent, for you sitting here.**

12 A. I didn't go into that trial with any type of  
13 presumption that I would not be found guilty. I went to  
14 that trial under the belief that we would have to prove my  
15 innocence. And during the course of the trial, it came  
16 out several times that there was no physical evidence that  
17 connected me to this crime, there were no eyewitnesses who  
18 could put me at the scene of this crime, there was  
19 absolutely nothing substantiated that could place me  
20 anywhere close to this crime outside of this alleged  
21 confession.

22 When it came time for my testimony, Mr. Vance, it was  
23 on the very last day of my trial, and all this stuff that  
24 I just talked about had already been introduced to the  
25 tribunal, and it was Mr. Moses's belief and my belief at

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1 that point, knowing that this has been presented to the  
2 tribunal, that I was not going to be convicted. I mean,  
3 there was nothing to connect me to the crime. And  
4 Mr. Moses advised me not to testify, and I took that legal  
5 advice from Mr. Moses.

6 **Q. Okay. You're advising the Board, then,**  
7 **Mr. Beach, if I understand it correctly, that you have**  
8 **never, in your lifetime, ever killed anybody.**

9 A. No, sir, I have never killed anybody in my entire  
10 life.

11 BOARD MEMBER CURTISS: Okay. Thank you,  
12 Mr. Beach.

13 That's all, Madam Chair.

14 EXAMINATION

15 BY BOARD MEMBER BOWMAN:

16 **Q. The only questions I have, you've just discussed**  
17 **why you personally didn't testify, and I know that that's**  
18 **something that attorneys do at discretion, should we let**  
19 **them talk for themselves or will it be worse.**

20 **And your mother and your sister were never allowed to**  
21 **talk either; is that your understanding?**

22 A. I do believe that my mother was placed on the  
23 stand at my trial. I can't remember all of her testimony.  
24 It's been some years since I've read it. My sister asked  
25 to testify at my trial, and at that point in time,

26 (Pages 915 to 918)

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1 Mr. Moses advised my sister that it would not be  
2 beneficial to put her on the stand, because anything that  
3 she may have to say would be discredited as her being my  
4 sister and that she would then be tore up by the  
5 prosecution for just wanting to cover for me. I can't  
6 speak to that conversation. That was between my lawyer  
7 and my sister and my mother. I wasn't present when that  
8 conversation took place.

9 Q. I kind of reviewed some of that last night after  
10 hearing your sister, and I know that the basis of what  
11 your mom was asked about was the clothing that you had,  
12 whether something was missing or, you know, in her  
13 experience of doing your laundry, was there any items  
14 missing. But you say that Larry Rowe took you home that  
15 night from the Tastee Freeze --

16 A. Yes, ma'am.

17 Q. -- dropped you off at home at some time. Was he  
18 ever called to trial to talk about the fact that he  
19 dropped you off at home sometime that evening?

20 A. I do not believe that Mr. Rowe was called in to  
21 trial, but I do believe it was verified that he did take  
22 me home.

23 Q. And then you mention that -- that Joanne Jackson,  
24 Caleb Gorneau, Shannon O'Brien all had vital information.  
25 And nothing was ever done with their information either?

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1 A. By them or by myself, Ms. Bowman?

2 Q. Well, during -- during the proceedings at any of  
3 these hearings.

4 A. No --

5 Q. I mean, they weren't brought in to this hearing,  
6 none of them.

7 A. No, ma'am.

8 Q. And was there some reason that that was deemed to  
9 be not important enough? I mean, you know, what -- what  
10 would be, you know, the reason for holding -- not having  
11 them show up here and say something to that effect?

12 A. I have to be honest, Ms. Bowman, bringing them  
13 here is something that I haven't even discussed with  
14 Mr. Camiel, so I'm not sure what the reasoning of not  
15 bringing them in has been.

16 Q. You made a comment, too, that when you heard that  
17 Kim Nees had been murdered, that it shocked you that  
18 someone of her social class had been murdered. What was  
19 your -- what was your meaning by "her social class"?

20 A. There was a -- Poplar, being a small reservation  
21 community that is part Native American and part White, has  
22 many social classes; and especially in 1979, because if  
23 you'll remember, that was shortly after the days of  
24 Wounded Knee and AIM, and there was still a lot of  
25 division and friction and everything in the community.

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1 But even outside of that, Pam and Kim Nees were -- they  
2 were the elite. I mean, you know, their grandfather was a  
3 state senator, they had a huge, huge farm north of town  
4 that their dad owned, you know. In fact, most people who  
5 came from large farms in that area were considered, you  
6 know, very well to do.

7 Q. But you had dated Kim's sister --

8 A. Pam. Yes, ma'am.

9 Q. -- so did you consider that she was in a  
10 different social class than yourself?

11 A. Pam?

12 Q. Pam or Kim.

13 A. Oh, yes. I even considered Pam to be of a  
14 different social class than myself. Yes, ma'am.

15 BOARD MEMBER BOWMAN: That's all.

16 EXAMINATION

17 BY CHAIR McCANN O'CONNOR:

18 Q. Mr. Beach, I want you to think and focus  
19 carefully. You said, and I wrote an exact quotation, "I  
20 absolutely wanted to testify at my trial, and Mr. Moses  
21 would not let me," end quote.

22 Is it your testimony here today that Mr. Moses, at  
23 60 years of age and the pinnacle of his legal abilities,  
24 forbid you from testifying at your own trial?

25 A. Yes, ma'am.

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1 Q. I see. You're sure about that. I mean, I have  
2 some sense. I've given advice to testify, I've given  
3 advice not to testify at different times, and I have my  
4 reasons. I want to be sure that it's your testimony that  
5 he forbid you from testifying at your own trial.

6 A. Yes, ma'am. In fact, we had a very lengthy  
7 discussion about that that morning prior to being taken to  
8 the courthouse.

9 Q. Well, he can have a lengthy discussion in which  
10 he gives you his advice. But it's your testimony that he  
11 forbid you.

12 A. Yes, ma'am.

13 Q. Okay. I'm interested, the earlier in the day  
14 when you blew the transmission from your car time, did you  
15 say you were going to go back to Poplar to get yourself a  
16 girl or get yourself a woman, or did you make some  
17 reference to women there?

18 A. No, ma'am, I did not. The only thing that I can  
19 recall ever telling Caleb Gorneau is that I would go to  
20 town and try and send somebody back to pick them up.

21 Q. And did you do that?

22 A. No, ma'am, I did not.

23 Q. So you had a ride back, is your testimony, to  
24 your house. I mean, not from -- I mean, I was listening,  
25 so you had a ride back from one spot to another.

27 (Pages 919 to 922)

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1 A. Correct.

2 **Q. So why didn't you send them back?**

3 A. To be quite honest with you, I figured it served  
4 Caleb right to have to walk to town himself, because I  
5 did.

6 **Q. Uh-huh. And so Caleb is just wrong about this,  
7 any kind of comment about coming back to a get woman,  
8 coming back to get a girl, whatever that was?**

9 **I mean, you know the statement I'm talking about?**

10 A. Yes, ma'am, I do.

11 **Q. Okay.**

12 A. By the time I'd gotten back to town, I had  
13 completely calmed down --

14 **Q. But that isn't -- I'm not asking you whether you  
15 did get a girl. I'm asking if you made the comment that  
16 you were going to.**

17 A. No.

18 And I was simply saying that -- No, I never made that  
19 comment. Let me just leave my answer at that.

20 **Q. So he was just wrong.**

21 A. Yes, ma'am.

22 **Q. Now, we're going to have a second part of this  
23 hearing the 1st of August. But I have a question for you.**

24 **For a person who did commit this crime --**

25 A. Yes, ma'am.

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1 **Q. -- do you think yours would have been an unfair  
2 sentence?**

3 A. I have done extensive research into that  
4 question, ma'am.

5 **Q. I'm not asking about the statistics. I saw your  
6 statistics. I'm asking you if you think it's an unfair  
7 sentence for the person who did commit this, who you say  
8 wasn't you.**

9 A. For the person who committed this crime?

10 **Q. Uh-huh.**

11 A. When I look at all of the circumstances  
12 involved -- Well, for the person who committed this crime,  
13 no.

14 **Q. You think it's a fair sentence for that person?**

15 A. For whoever committed this crime. When I -- when  
16 I look at it and I look at the age that I was at that  
17 time, you know, and the fact -- I honestly felt that the  
18 no-parole stipulation was very stiff. And especially once  
19 I got here to the prison and I started running into a lot  
20 of other people of similar age, similar crimes, and  
21 similar situations who had the no-parole stipulation.

22 **Q. Uh-huh.**

23 A. But that's up to the judicial system, and that's,  
24 you know...

25 BOARD MEMBER BOWMAN: If it were your sister who

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1 had been murdered, would you feel differently about the  
2 person that was convicted?

3 THE WITNESS: Would I -- would I feel -- I've  
4 already stated to Ms. O'Connor that I believe that the  
5 sentence that I received, if I was guilty, I believe it  
6 would have been a fair assessment by the courts.

7 BOARD MEMBER BOWMAN: If it were your sister,  
8 would you have expected it to even maybe be stronger?

9 THE WITNESS: I don't know if I would have  
10 expected it to be stronger. And don't get me wrong here,  
11 because I'm not an opponent of the death penalty, but at  
12 the same time, when you go to that extremes, you need to  
13 be absolutely sure that the judicial system has properly  
14 done what it needs to do. I mean, that's extreme, you  
15 know, as is my sentence.

16 **Q. (By Chair McCann O'Connor) At some point in your  
17 discussions, you raised the possibility of a split  
18 personality and it was the other guy, the other part of  
19 your personality that did this. You've said you don't  
20 remember your confession. Do you remember that  
21 conversation?**

22 A. Actually, if I'm correct in my memory of the  
23 documents, it was actually Mr. Kidd that stated that I had  
24 told him that I had this -- and I don't remember ever  
25 telling Mr. Kidd that I had a split personality. I don't

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1 know who Ray Woods is. I've never -- you know -- And in  
2 fact, I believe that the records of the Montana State  
3 Prison will show that at no time during my incarceration  
4 at Montana State Prison have I had a mental evaluation  
5 where I was determined to have a split personality.

6 **Q. I'm not trying to make a determination that you  
7 have a split personality --**

8 A. Yes, ma'am.

9 **Q. -- I'm asking you if you remember your claim that  
10 you did.**

11 A. No, ma'am. I don't think I ever told Mr. Kidd  
12 that I had a split personality.

13 **Q. So you think Mr. Kidd just made that up?**

14 A. As was testified here, that it was allegedly one  
15 of Mr. Kidd's ploys to present to the court. I don't  
16 know -- and that was something that was never discussed by  
17 Mr. Kidd and myself. The only thing that I remember as a  
18 legal strategy ever being discussed with Mr. Kidd and  
19 myself was the aspect to fight the extradition, and that  
20 was to give him an opportunity to prepare for this case  
21 back in Montana.

22 **Q. How about the saying you committed the other  
23 three murders in Louisiana?**

24 A. Absolutely not. I never at any time told  
25 Mr. Kidd that I committed the three murders in Louisiana.

28 (Pages 923 to 926)

1 Q. Okay. When is the first time that you have  
2 testified or put in a court document that you asked  
3 Jay Via for an attorney?

4 A. I can't remember correctly or not whether that  
5 came out at the suppression hearing. But I do believe  
6 that this is actually the first time that my public  
7 testimony has been that I asked Jay Via for an attorney.  
8 I have stated that on numerous other occasions, and I  
9 think that it was even in the Dr. Leo report, but I'm not  
10 positive at this point in time.

11 Q. "The Dr. Leo report," your statement to Dr. Leo  
12 so he could render his opinion --

13 A. Yes, ma'am.

14 Q. What about your comment that you went home and  
15 told yourself it didn't happen; do you remember making  
16 that comment to law enforcement people?

17 A. I do actually remember during the hypothetical  
18 story that I relayed to Jay Via making up common sense  
19 scenarios --

20 Q. Uh-huh.

21 A. -- such as that one right there that you say.

22 Q. Uh-huh.

23 A. In that process, I do believe that had a person  
24 committed this crime, one of the first things they would  
25 try to do is somehow try to act like it didn't happen.

1 And that's just something that I feel that, you know -- In  
2 a hypothetical situation, as I was asked by Jay Via, I do  
3 remember making a statement similar to that, yes.

4 Q. So your statement was in a hypothetical  
5 situation, you hypothetically would have gone home and  
6 talked yourself out of its happening.

7 A. In a hypothetical situation. But -- And I'd like  
8 to say, Ms. Chair, at no time have I ever denied any  
9 statement that was in that alleged confession. I will  
10 always take responsibility for breaking weak and making  
11 that statement. I'm not ever trying to say that. I'm  
12 just not exactly sure how and at what point in time during  
13 that day that that alleged statement took place.

14 Q. Now, I started here and I'll end here: Besides  
15 your testimony that Timer Moses forbade you from  
16 testifying in your own defense, is it also your testimony,  
17 upon a few minutes more reflection, as it was a few  
18 minutes ago, Timer Moses told you there was absolutely no  
19 way you were going to be convicted?

20 A. Yeah. He did not believe that I was going to be  
21 convicted of this crime. That is true.

22 CHAIR McCANN O'CONNOR: I have nothing more.

23 You said you had another question?

24 BOARD MEMBER CURTISS: Yeah.

25 ///

///

1 FURTHER EXAMINATION

2 BY BOARD MEMBER CURTISS:

3 Q. Just one more, Mr. Beach. First of all, I want  
4 you to place -- You've done a lot of visualization,  
5 apparently, by Mr. Via and all the LA authorities and all  
6 of these other people. And I just want you to remember  
7 that there's three of us here that, for two-and-a-half  
8 days, have taken a lot of information under our belt.

9 A. Yes, sir.

10 Q. I have not made up my mind under any circumstance  
11 at this point in time. But I want you to understand,  
12 we're dealing with, first of all, you were convicted by a  
13 jury of 12. And we also understand that jury came by that  
14 conviction with the information presented by the  
15 prosecuting attorney and that which was not or either  
16 presented by the defense attorney. That's how convictions  
17 are made. So with that in mind, whatever comes out of  
18 this hearing, I want you to understand that we have taken  
19 a lot of information under consideration.

20 Okay. To me, there has been a lot of deception  
21 under -- I'm talking about denials by lawyers, denial  
22 by -- or at least one, and the legal counsel and LA  
23 authorities, and, you know, they've all -- they've all --  
24 it's all been pointed out that they're lying or they're  
25 wrong or they're being deceptive.

1 A. Yes, sir.

2 Q. And that's why we, the three board members, have  
3 asked you all the questions we have. We're trying to  
4 filter this out. And I can't think of any three more  
5 people in this world that could be more fair than us,  
6 regardless of what this outcome is going to be.

7 So Ms. O'Connor is going to set the deadline as to the  
8 next hearing, all of this other type of information, but  
9 you understand where we're coming from?

10 A. Mr. Curtiss, I absolutely understand the  
11 difficult position that the parole board members are in.  
12 And I once again thank you with all my heart for giving me  
13 this chance.

14 Never, never since 1984 has this offer to me been  
15 presented to anybody in this case, whether it's myself or  
16 the family of the victim or the citizens of Poplar. And  
17 it was this parole board members here that gave me that  
18 opportunity. And I gravely appreciate that with utmost  
19 respect for everything you've done for me, including even  
20 the administration going out of their way to allow this to  
21 happen as it has. And I understand that fully. In my  
22 24 years at Montana State Prison, nothing, nothing like  
23 this has ever even remotely happened. And I thank my God  
24 in Heaven for what has been given to me.

25 BOARD MEMBER CURTISS: And I want to say to the

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1 correctional authorities, thanks a million for setting  
2 this stage for us; to the Board of Pardons, some of the  
3 most qualified people I've ever met in my life; to all the  
4 people that showed up for this hearing. That's what our  
5 judicial system and our society is all about.

6 So that's all I have, Madam Chair.

7 CHAIR McCANN O'CONNOR: Do you have more  
8 questions, Mr. Camiel?

9 MR. CAMIEL: No. Thank you.

10 CHAIR McCANN O'CONNOR: Do you have questions?

11 MR. WELLENSTEIN: No.

12 CHAIR McCANN O'CONNOR: You may be excused.

13 Is that your last witness?

14 MR. CAMIEL: It is. Thank you.

15 CHAIR McCANN O'CONNOR: We'll take a ten-minute  
16 break. We'll reconvene at a few minutes before 11.

17 (A brief recess was taken.)

18 (Exhibit No. 6 was marked.)

19 CHAIR McCANN O'CONNOR: We'll come back to order.  
20 The attorneys are present, Mr. Beach is present, and it's  
21 the opportunity for the State to proceed.

22 MR. WELLENSTEIN: Yes.

23 MS. PLUBELL: We're calling John Granger. He's  
24 right out in the hall.

25 (The witness was sworn.)

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1 CHAIR McCANN O'CONNOR: Please have a seat.  
2 You may proceed.

3 JOHN GRANGER,  
4 a witness, having been first duly sworn, testified upon  
5 his oath as follows:

6 DIRECT EXAMINATION

7 BY MR. WELLENSTEIN:

8 Q. Could you state your name for the record, please.

9 A. John Granger.

10 Q. John, where did you grow up?

11 A. Poplar.

12 Q. Did you go to school with either Kim Nees or  
13 Barry Beach?

14 A. Yes. Both.

15 Q. Both.

16 What -- Were they in your class or the class below  
17 you?

18 A. I graduated with Kim Nees. I think Barry was a  
19 grade behind.

20 Q. Okay. And what's -- what's your current  
21 occupation?

22 A. The administrator of the Brands Enforcement  
23 Division for the State of Montana.

24 Q. Were you a law enforcement officer in  
25 Roosevelt County?

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1 A. Yes, I was.

2 Q. And how many years and in what capacity, please?

3 A. I started in January of 1982 as a police officer  
4 for the Poplar Police Department. I think it was in  
5 August of '83, we contracted with Roosevelt County, and so  
6 I became a deputy sheriff for Roosevelt County. Later I  
7 worked for Brockton Police Department, and then in 1987 I  
8 was elected sheriff of Roosevelt County -- or in '86. I  
9 took office in '87.

10 Q. When were you -- You said you were a deputy  
11 sheriff. Do you know the time you started?

12 A. August of 1983, I think through October of '84, I  
13 believe.

14 Q. Okay. Did you participate in the Nees homicide  
15 investigation either when you were in the Poplar Police  
16 Department or as a deputy sheriff?

17 A. No, I did not.

18 Q. Okay. Since Mr. Beach's conviction in 1984, has  
19 any of his family members asked for you to review his case  
20 or his file?

21 A. Yes. In '87 or '88, I spoke with Roberta. That  
22 was after I became sheriff. I don't recall the date, but  
23 she had contacted me. And I think on a couple of  
24 occasions I spoke with Roberta and then maybe with Roberta  
25 and Barbara.

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1 Q. Okay.

2 A. Again, probably '87, but I'm not positive.

3 Q. Okay. And when you say "Roberta," that's --

4 A. Barry's mother.

5 Q. Okay.

6 A. Okay.

7 Q. Did she ever mention anything to you about an  
8 alibi witness?

9 A. No.

10 Q. Okay. Who is (Craig Christie?)

11 A. He was an investigator out of Billings that  
12 worked, I think, for, you know, the Beaches. Roberta  
13 introduced me to him either in person or kind of set the  
14 stage for him coming to meet me.

15 Q. Did (Mr. Christie) review the Beach file or did you  
16 allow him to review the Beach file?

17 A. No.

18 Q. Okay. Did he -- did he discuss the Beach case  
19 with you, though?

20 A. Oh, yeah. I think prior to him arriving, I  
21 received a box of information from them, the Beaches, and  
22 then we discussed different aspects of the case and...

23 Q. Did he ever mention an alibi witness to you?

24 A. No.

25 Q. Have you also met with people from

30 (Pages 931 to 934)

1 Centurion Ministries?

2 A. Yes.

3 Q. Can you remember who you talked to?

4 A. Oh, several people. The ones that I remember,  
5 Jim McCloskey, Rich Hepburn, and Paul Henderson.

6 Q. Okay. Did you allow the people from  
7 Centurion Ministries to review the sheriff's file in this  
8 case?

9 A. Yes.

10 Q. Okay. Did you make copies of reports and  
11 documents from the sheriff's file?

12 A. Yes.

13 Q. For Centurion Ministries?

14 A. Yeah. They were marking what they wanted and my  
15 secretary would copy it for them.

16 Q. Okay. Did you also allow the folks from  
17 Centurion Ministries to copy tapes that were in the  
18 sheriff's file?

19 A. Yes.

20 Q. Okay. Can you remember what tapes they copied?

21 A. Yeah -- well, not necessarily all of them. I  
22 think there was three or four tapes. One -- one I  
23 remember specifically, we went and got a tape recorder,  
24 bought a tape recorder to listen to it, because it had  
25 "Beach Confession" written on it. And so we listened to

1 there as well. Nothing really ever panned out on it,  
2 though.

3 Q. Okay. Did they -- did they ever provide you with  
4 any statements that they had gathered around Poplar?

5 A. I saw a lot of things. I don't remember if it  
6 was provided. But I would receive things from  
7 Centurion Ministries, updates and -- and different  
8 theories and things as they were coming along.

9 Q. Did they ever mention any type of alibi witness  
10 for Mr. Beach?

11 A. No.

12 Q. Okay. Did they ever talk to you about  
13 Calvin Lester?

14 A. You know, I know the name, and I think -- I think  
15 it was Rich Hepburn. I don't know that he ever mentioned  
16 the name Calvin Lester, but I later learned  
17 Calvin Lester's name as part of maybe being an eyewitness.

18 Q. What would -- When they were talking about the --  
19 So you said they -- you said they talked to you about  
20 Lester?

21 A. Well, what had happened was they'd set up -- in  
22 the basement of the Sherman, they'd set up a room to  
23 interview people --

24 Q. Okay.

25 A. -- and I know Rich Hepburn had come to the office

1 that; they got a copy of that. I believe there might have  
2 been some interviews of people, I don't recall  
3 specifically. And then there was also one that Barry  
4 asked to talk to Dean Mahlum on, and they got a copy of  
5 that, as well.

6 Q. The tape that you mentioned, you just said  
7 "Beach Confession." Was that -- was there a conversation  
8 between Via and Dean Mahlum also on the tape?

9 A. You know, there could have been. I don't  
10 specifically recall. I mean, the tape's available, I  
11 believe, so...

12 Q. Okay. When you talked to the folks from  
13 Centurion Ministries, did they fill you in on their theory  
14 on how they believed Kim Nees was killed?

15 A. Oh, yeah.

16 Q. And what was their theory or what did they tell  
17 you?

18 A. Well -- And I don't remember who -- Probably  
19 Rich Hepburn I dealt with the most on it, so it probably  
20 was him, but I'm not positive. Three girls, two who  
21 stayed consistent and one that changed pretty consistently  
22 throughout the time that I dealt with Centurion  
23 Ministries, had lured Kim down to that park and had killed  
24 her. Sometimes -- at first, I think there maybe was just  
25 the three and it then turned into there was witnesses

1 pretty excited about this and was kind of telling me, but  
2 not really telling me, about this witness. Because it was  
3 progressing. It wasn't something that -- I don't think  
4 they had completed yet. And so I remember he was pretty  
5 excited about it, and I later learned that it was  
6 Calvin Lester. But I don't know if I learned that from  
7 Centurion Ministries or if I learned that from somewhere  
8 else.

9 Q. After talking to the folks at Centurion  
10 Ministries and reviewing various reports or statements  
11 that they gave you, did you feel that there was any need  
12 to reopen the Nees case?

13 A. No, I did not.

14 Q. Can you explain your reasons why.

15 A. Well, I mean, I think Jim and I had talked, and  
16 Rich and I, and, I mean, things that they looked at as  
17 suspicious or, you know, not possible, it just didn't seem  
18 to fit with the confession. I mean, it looks -- From what  
19 I can see of the confession, it made sense to me. And  
20 their idea of having multiple people there -- You know,  
21 they had people there that were witnesses to it, and I  
22 just can't comprehend somebody that's not part of the  
23 crime not coming forward. You know, they had two or three  
24 different witnesses at the scene that didn't participate  
25 and then three girls participating at varying degrees.

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1 You know, at some point, somebody is going to say  
2 something. You know, a conspiracy like that just doesn't  
3 hold together, so...

4 MR. WELLENSTEIN: No further questions.

5 CROSS-EXAMINATION

6 BY MR. CAMIEL:

7 Q. It used to be Sheriff Granger when I met you and  
8 now it's Mr. Granger.

9 A. Yes.

10 Q. Good morning.

11 A. Morning.

12 Q. You said at some point somebody is going to say  
13 something. Somebody would probably -- they might say  
14 something to a relative.

15 A. We discussed that, too.

16 Q. For example, somebody might tell their brother.

17 A. Right. But somewhere along the line, it's going  
18 to come to law enforcement.

19 Q. Sure.

20 A. Right.

21 Q. So, you know, for example, somebody might tell  
22 their sister-in-law.

23 A. Sure. We've talked about that, too.

24 Q. Or a friend.

25 A. Uh-huh.

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1 Q. Or somebody who was involved might be heard  
2 talking about it with somebody else, maybe a third party  
3 overhears somebody talking about it.

4 A. That could be.

5 Q. Were you aware that Sissy Atkinson's brother,  
6 J.D., has come forward and testified that Sissy indicated  
7 she was down in the park and witnessed the attack on  
8 Kim Nees?

9 A. Yeah, I guess I'm aware of that. I don't know,  
10 again, how -- how that came about. But I've heard that,  
11 yes.

12 Q. Okay. And did you hear that Maude Grayhawk's  
13 sister-in-law, Judy Grayhawk, came forward after receiving  
14 a phone call from Maude Grayhawk where Maude said that she  
15 had been down there and lured Kim down there and hadn't  
16 killed her but had kicked her a few times? Did you hear  
17 that?

18 A. Uh-huh, I have.

19 Q. Did you hear that a gentleman named  
20 Carl Four Star, who worked at A & S Industries nearby  
21 where Sissy Atkinson worked, came forward and indicated  
22 that he heard Sissy Atkinson conversing with  
23 William Balbinot about having been involved in Kim Nees's  
24 murder?

25 A. I've since heard that as well.

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1 Q. Have you heard that a friend of Sissy Atkinson's,  
2 Vonnie Brown, came forward after hearing Sissy Atkinson  
3 make admissions about her having been involved in  
4 Kim Nees's murder?

5 A. I believe yesterday I heard that.

6 Q. So, in fact, people have come forward, haven't  
7 they?

8 A. Not to law enforcement, that I know of.

9 Q. Well, they've come forward to this board; were  
10 you aware of that?

11 A. Yes. Yes, I was.

12 Q. Now, there have been a number of unsolved  
13 homicides in Roosevelt County that remain unsolved; isn't  
14 that right?

15 A. That's true.

16 Q. About how many, do you think?

17 A. Boy. You know, in just thinking back on this,  
18 through the years, not just my law enforcement career,  
19 but -- It would be a total guess on my part, because it's  
20 a little bit different. It's not the sheriff's office's  
21 jurisdiction totally, so some of these cases are FBI cases  
22 that we may assist in. But maybe eight, nine. I'm not  
23 sure.

24 Q. And I take it that those eight or nine homicides  
25 in that area where you were sheriff, one of the reasons

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1 they probably haven't been solved is because people  
2 haven't come forward?

3 A. Or the things that they've come forward with --  
4 That's possible, or the things that they've come forward  
5 with have been checked out and it doesn't lead us to a  
6 conclusion.

7 Q. Over a period of years, you were being contacted  
8 and consulted with by the investigators from  
9 Centurion Ministries?

10 A. That's correct.

11 Q. And they appeared to be trying to be open with  
12 you about the investigation?

13 A. No doubt.

14 Q. Telling you about people they were talking to?

15 A. Yes.

16 Q. Asking you about information.

17 And you've indicated that you've tried to be  
18 cooperative back?

19 A. That's correct.

20 Q. One of the things that Centurion Ministries'  
21 investigators talked to you about was trying to locate all  
22 of the physical evidence that had been collected from the  
23 crime scene so that perhaps DNA testing could be done?

24 A. That's correct.

25 Q. And one of the things that you assisted in

32 (Pages 939 to 942)

1 helping look for were things that had been returned to the  
2 Roosevelt County Sheriff's Office from the crime labs,  
3 things like hair?

4 A. Yeah. And, see, that's -- I think part of it was  
5 returned to the sheriff's office and part of it was  
6 returned to the county attorney's office, and so, yeah,  
7 we -- we worked with them on that.

8 Q. And there appeared to be a lot of things that  
9 couldn't be located and there was no documentation showing  
10 what happened to it?

11 A. That's correct.

12 Q. And, in fact, you were -- you were kind enough to  
13 allow an actual examination and a search of the sheriff's  
14 office's property room to try to locate anything that  
15 might have been misfiled or might be --

16 A. That's correct.

17 Q. And Mr. McCloskey and Mr. Hepburn spent hours  
18 going through that property room trying to find evidence?

19 A. Well, they were there. We went through the  
20 evidence room.

21 Q. Okay.

22 A. But they were there, yes.

23 Q. Okay. And the goal was to see if they could  
24 find, for example, the hair that allegedly came from the  
25 sweater so it could be sent off for DNA testing.

1 A. That's correct.

2 Q. You're also aware that -- I guess during part of  
3 the time that you were sheriff, Fred Hoffman was the  
4 county attorney?

5 A. Correct.

6 Q. And you were aware that Centurion Ministries'  
7 investigators met with Mr. Hoffman?

8 A. Uh-huh.

9 Q. And you were at some of those meetings?

10 A. Some of those meetings as well, yes.

11 Q. And Ron Kemp, the investigator for Mr. Hoffman,  
12 were you at those meetings?

13 A. Yes.

14 Q. And were you aware that Ron Kemp, at the request  
15 of Mr. Hoffman, conducted some interviews?

16 A. After they were conducted, yes.

17 Q. Okay. Now, you talked a little bit, you know,  
18 about people coming forward. Were you familiar with the  
19 transcript of a tape-recorded statement that was taken  
20 from a girl named Orrie Burshia by Sheriff Carpenter?

21 A. Yep. Centurion Ministries, I think we discussed  
22 that on a several occasions.

23 Q. And that was a transcript of a girl who came  
24 forward in 1979, in September of 1979?

25 A. I don't remember the specifics, but if that's

1 what it says, that's what it says.

2 Q. That was an example of somebody who did come  
3 forward with some information?

4 A. Sure. I think the file is full of people coming  
5 forward during that time with information, but I don't  
6 specifically recall and I wasn't part of it.

7 Q. You were aware of the fact that there had been  
8 talk in and around Poplar about a group of girls being  
9 involved in the homicide of Kim Nees long before  
10 Centurion Ministries ever started investigating?

11 A. Well, yeah. I think Craig Christie and I  
12 probably discussed that as well.

13 Q. And that was something that went even further  
14 back than Craig Christie; isn't that true?

15 A. You know, I don't recall. My time in law  
16 enforcement was not involved in this case, and I don't --  
17 you know, without sitting and thinking about it, I don't  
18 know if I could even begin to know when I learned some of  
19 the stuff. Specifically, Craig Christie talked about it,  
20 is my recollection of that particular series of events.

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

22 CHAIR McCANN O'CONNOR: Do you have anything  
23 further?

24 MR. WELLENSTEIN: Yes.

25 ///

///

1 REDIRECT EXAMINATION

2 BY MR. WELLENSTEIN:

3 Q. You know, in your experience as a law enforcement  
4 officer, did these people that Mr. Camiel mentioned,  
5 J.D. Atkinson, Carl Four Star, Vonnie Brown, did they have  
6 credibility problems?

7 A. You know, I know most of the people in Poplar,  
8 and, you know, I guess depending on their lifestyle and  
9 stuff, you know, yeah. I would have trouble believing  
10 some of these people, you know. It's just not all of them  
11 have a -- have, to me, a logical sense of what they know  
12 and when they know it and why they're now coming forward  
13 with this information. You know, it's just -- It seems  
14 odd to me that after all this time, now these things are  
15 coming forward.

16 MR. WELLENSTEIN: No further questions.

17 MR. CAMIEL: One further.

18 RE-CROSS-EXAMINATION

19 BY MR. CAMIEL:

20 Q. One thing I forgot to ask you about. Were you  
21 asked by Centurion Ministries' investigators to submit  
22 fingerprints for an APHIS examination?

23 A. Yes, and we did that on several occasions.

24 Q. And were you asked to see if major case prints  
25 could be located for some of the people that were

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1 potential suspects?

2 A. I was involved in that. I'm not sure if I was  
3 asked to locate those. I know we did locate one  
4 individual that was tested, and I think we were looking  
5 for another individual, but I don't know if we ever found  
6 the other record.

7 Q. And you understood that the reason you were being  
8 asked about major case prints had to do with trying to see  
9 if that bloody palm print could be identified?

10 A. Yes.

11 Q. Because to your knowledge, it's never been  
12 identified?

13 A. That's correct.

14 Q. And it's your understanding that it didn't match  
15 Mr. Beach?

16 A. That's my understanding.

17 Q. And also didn't match the victim, Kim Nees?

18 A. Yes, that's also my understanding.

19 MR. CAMIEL: Thank you.

20 CHAIR McCANN O'CONNOR: On the subject of the  
21 fingerprints, I don't believe we've made part of the  
22 record of this hearing the exhibit which the Board asked  
23 both counsel to --

24 I believe I have here a copy of this, correct?

25 MS. PLUBELL: Yes.

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1 CHAIR McCANN O'CONNOR: Let's make this a part of  
2 this hearing record now so that we know when we look back.

3 MS. PLUBELL: Mr. Camiel, I think that we -- we  
4 communicated via e-mail that that was satisfactory.

5 MR. CAMIEL: It was satisfactory. We reviewed it  
6 and went back and forth and --

7 CHAIR McCANN O'CONNOR: Right. That's my  
8 understanding, it's a stipulated exhibit. Is that  
9 correct?

10 MS. PLUBELL: Yes.

11 MR. CAMIEL: I think there's one for fingerprints  
12 and one for palm prints.

13 MS. PLUBELL: Yes, there's two; one for  
14 fingerprints and one for palm prints.

15 CHAIR McCANN O'CONNOR: You're right. So we'll  
16 make those the next two exhibits of this hearing.  
17 (Exhibits Nos. 7 and 8 were marked.)

18 CHAIR McCANN O'CONNOR: Do you have questions?

19 BOARD MEMBER CURTISS: Yes, Madam Chair.

20 EXAMINATION

21 BY BOARD MEMBER CURTISS:

22 Q. Good morning, Mr. Granger.

23 A. Good morning.

24 Q. What is your title now, sir?

25 A. I am the brands administrator for the Department

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1 of Livestock.

2 Q. Thank you.

3 Mr. Granger -- That's a common name.

4 Orville Granger --

5 A. That was my father.

6 Q. I know him well.

7 Okay, Mr. Granger, sir, there's been mention of  
8 several young ladies -- And maybe you know nothing about  
9 this, but over the years, there's been mention of several  
10 young ladies alleged to have, or be the ones that perhaps  
11 maybe destroyed Ms. Nees. Are you aware of that?

12 A. Yes.

13 Q. And to the best of your knowledge, sir, have all  
14 of these things been checked out, to the best of your  
15 knowledge, and these people eliminated, are they still  
16 considered suspect, anything along those lines?

17 A. Well, officially, I don't know where the -- I  
18 would assume that the suspect portion ended upon Barry's  
19 conviction. But after that, in looking into this,  
20 Craig Christie eliminated three individuals through a  
21 federal subpoena to get hair and major case prints. And  
22 we discussed that with Centurion Ministries, because to my  
23 knowledge, I'm not sure -- I can make assumptions on who  
24 those three were, but the only version of that subpoena  
25 that I seen was redacted with the names. So, again, it

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1 would be an assumption.

2 And some of the people that they have presented as the  
3 third -- and I think two have stayed consistent, like I  
4 said, and the third one kind of rotates through maybe as  
5 many as six or eight people. And as far as I know, I  
6 think they have been. But, again, I say that a little bit  
7 hesitant because I don't know for sure.

8 Q. Sir, the three that you would have in mind are  
9 whom?

10 A. The three that I am supposing are Sissy Atkinson,  
11 who is Dottie Atkinson, Maude Grayhawk, and I believe  
12 Joanne Jackson. But that third one has changed so many  
13 times.

14 Q. Okay. And in your opinion of these three, do you  
15 feel, as a law enforcement officer, that they have been  
16 somewhat exonerated?

17 A. Well --

18 Q. And who is to say, huh?

19 A. Exactly. I mean, they were not -- I think they  
20 were suspects and -- The most that I have to do with this  
21 case has been working with Craig Christie and with  
22 Centurion Ministries, so a lot of my information comes  
23 (from them) and so I try to go to the file to make sure,  
24 that what I'm being told is accurate. And -- but, I mean,  
25 I was doing a ton of other work besides this, so, you

34 (Pages 947 to 950)

1 know, I did what I could for them. And I felt that I did  
2 them a good job, because it was closed as far as I was  
3 concerned, but that questionable palm print was still  
4 something in my mind as well as in their mind. You know,  
5 I'd asked early on, were all the officers on the scene  
6 eliminated, learned that that was the case. You know, I  
7 mean, it could be, in my mind, a passer-by, you know. And  
8 I've discussed that with Centurion Ministries as well.  
9 BOARD MEMBER CURTISS: Thank you, Mr. Granger. I  
10 appreciate that.

## EXAMINATION

11 BY BOARD MEMBER BOWMAN:

12 Q. What was the basis of Craig Christie's  
13 investigation?

14 A. I think very similar, only he was a private  
15 investigator, not a -- not a firm like  
16 Centurion Ministries.

17 Q. And so you're saying that based on his  
18 investigation, Sissy was eliminated from that?

19 A. He -- I believe he approached the United States  
20 Attorney's Office and got a subpoena to get evidence in  
21 the form of fingerprints, major case prints, and hair  
22 samples on these three individuals. And, again, those  
23 three are an assumption on my part. All I could read in  
24 the subpoena was two Indian females and one non-Indian  
25

1 female.

2 Q. And those things were provided, to the best of  
3 your knowledge?

4 A. They were provided, yes. It was subpoenaed.  
5 They provided them, and they were tested by the FBI lab  
6 and I think were shown that it was not those three. Now,  
7 which three that is, again, is an assumption on my part.

8 Q. But Barry Beach had also been eliminated from --

9 A. I think before that, yes.

10 BOARD MEMBER BOWMAN: Okay.

11 CHAIR McCANN O'CONNOR: Anything further?

12 MR. WELLENSTEIN: Nothing, thank you.

13 CHAIR McCANN O'CONNOR: You may be excused.  
14 Thank you.

15 BOARD MEMBER CURTISS: Thank you, Mr. Granger.

16 MS. PLUBELL: Our next witness is

17 Richard McDonald. I think Mr. Connor went to get him.

18 CHAIR McCANN O'CONNOR: Very well.

19 I will announce that it is my intention to go through  
20 your witnesses even if it takes us into the noon hour so  
21 that we can rest finally.

22 MS. PLUBELL: This should be very short.

23 CHAIR McCANN O'CONNOR: Right. That's what you  
24 said yesterday, so I thought that was a very reasonable  
25 approach.

1 (The witness was sworn.)

2 CHAIR McCANN O'CONNOR: You may be seated.

3 RICHARD McDONALD,

4 a witness, having been first duly sworn, testified upon  
5 his oath as follows:

6 DIRECT EXAMINATION

7 BY MS. PLUBELL:

8 Q. Can you please state your name.

9 A. My name is Richard McDonald.

10 Q. And what is your current occupation?

11 A. I'm a sergeant with the Roosevelt County  
12 Sheriff's Office.

13 Q. And do you have -- how long have you been at the  
14 Roosevelt County Sheriff's Office?

15 A. All total, about six years.

16 Q. Have you worked for other law enforcement  
17 agencies --

18 A. I have, ma'am.

19 Q. -- as well?

20 Did you participate in the State's interview of  
21 Carl Four Star on March 21st of 2007?

22 A. I did.

23 Q. And, in fact, did you assist us in arranging  
24 interviews with other people in the Poplar/Wolf Point area  
25 as well?

1 A. I did, ma'am.

2 Q. And did any of those people have any advance  
3 knowledge that -- that the AG's office was coming?

4 A. No, ma'am. Myself, I was told, I think, the day  
5 before you people arrived that I was to help you in that  
6 manner.

7 Q. When you participated in the interview with  
8 Carl Four Star in which he was talking about a statement  
9 he claimed to have overheard by Sissy Atkinson, was there  
10 some information he provided that gave -- that you found a  
11 little bit troubling regarding A & S Industries?

12 A. I thought it was untrue.

13 Q. Did some of that have to do with -- Have you  
14 worked at A & S Industries?

15 A. I have. Prior to my law enforcement career.

16 Q. Do you recall about when that was?

17 A. About March of 1983 to about October of 1983.

18 Q. Can you describe, just for the benefit of the  
19 board members, what A & S Industries did and the kind of  
20 building it was in.

21 A. It was an actual factory, and they built medical  
22 chest containers and some other containers out of  
23 aluminum. They had gigantic machines, probably some  
24 taller than the roof here, that made those -- that formed  
25 those machines out of raw aluminum, or aluminum sheets,

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1 rather. And then there was another portion of that  
2 factory that made and sewed together camouflage nets that  
3 the military used in their operations.

4 **Q. Was there machinery involved in this process?**

5 A. A lot of machinery. Yes, ma'am.

6 **Q. And was there any type of odor as a result of  
7 what was being made and produced --**

8 A. There was -- there were -- there was an actual  
9 section of that factory where they painted, and the  
10 painters wore respiratory masks, and the people that  
11 worked near that area also wore respiratory masks. And  
12 that camouflage netting, it had a real -- a real caustic  
13 odor to it, and a lot of the people that worked in that  
14 area wore a mask or some of them wore actual  
15 respirators to -- I mean, it was a heavy odor.

16 **Q. Was there any type of ventilation?**

17 A. The ventilation was poor. It was just, you know,  
18 basically a big shell of a building that had this large  
19 machinery in it, and they had these floor fans that  
20 probably were maybe six feet tall and the radius -- the  
21 area which covers the fan would be, I would bet, at  
22 least -- you know, the span of the fan would have probably  
23 been about three or four feet. And they had those going  
24 at various spots, especially in that netting area. They  
25 had those going continuously, because the factory itself

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1 employed hundreds of people. It ran 24 hours a day.

2 And in that area, the metal part, it was paid a  
3 straight wage, but in the netting part, the more that  
4 people made correctly, the more nets they put together  
5 correctly, the more money they got paid. They made a  
6 certain quota, and if they went beyond that quota, then  
7 they got paid more. So there were people that pretty much  
8 worked -- didn't even take a lunch break, they worked  
9 their whole shift straight through in order to try to make  
10 more money.

11 **Q. Sergeant McDonald, can you describe what the  
12 noise level was like based upon the machinery and whatnot  
13 that was there.** *He worked in the other end*

14 A. It was very loud. We all wore the little  
15 Styrofoam ear protection where I worked. It was kind  
16 of -- it wasn't mandatory, but it was recommended. And  
17 throughout the factory, you know, people wore the actual,  
18 you know, earmuff type at different places. But it was  
19 loud.

20 **Q. Was there any part of it that was quiet?**

21 A. Maybe the administrative offices.

22 **Q. But any part where you were actually working that  
23 was quiet?**

24 A. No, because it was -- Like I said, it was a big  
25 factory, and it was busy, busy, busy 24 hours a day.

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1 **Q. Yesterday, Carl Four Star testified that -- Are  
2 you familiar with where he worked in the factory? I  
3 really can't remember what he said yesterday, to be  
4 honest.**

5 A. He said it was further toward the back, toward  
6 the easterly part, northeasterly part. And even where he  
7 worked, I mean, the whole thing was, you know, just busy;  
8 it was going continuously.

9 **Q. And he testified yesterday that it was so quiet  
10 in his work area that you could hear a pin drop. Would  
11 you disagree with that?**

12 A. I would say he was lying.

13 MS. PLUBELL: I have nothing -- Wait, I'm sorry,  
14 I do.

15 **Q. (By Ms. Plubell) Were you there when -- You were  
16 there when Ward McKay interviewed Carl Four Star?**

17 A. I was, ma'am.

18 **Q. Could you describe what Ward McKay's demeanor was  
19 like.**

20 **Did he act professionally?**

21 A. He did.

22 **Q. Did he do anything to intimidate Mr. Four Star?**

23 A. I wouldn't -- I wouldn't say so.

24 **Q. Okay.**

25 A. You know, I've been in law enforcement 22 years,

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1 and I've -- you know, he didn't do anything that I saw out  
2 of the ordinary.

3 BOARD MEMBER BOWMAN: Did he stand up at any  
4 time during the interview?

5 THE WITNESS: No. Not at all, ma'am.

6 MS. PLUBELL: Nothing further.

7 CROSS-EXAMINATION

8 BY MR. CAMIEL:

9 **Q. Good morning, sir.**

10 A. Morning.

11 **Q. At one point during the interview of  
12 Mr. Four Star, Mr. McKay started asking the questions  
13 first; is that right?**

14 A. Ward?

15 **Q. Yes.**

16 A. Yes.

17 **Q. And then at one point, Ms. Plubell took over,  
18 remember that?**

19 A. Toward the end, he asked them if they had  
20 anything to add, and I think she asked a couple questions.

21 **Q. Do you remember Mr. McKay being -- acting rather  
22 skeptical of Mr. Four Star's statements?**

23 A. No, I wouldn't say so.

24 **Q. Okay. Now, the year -- the time period that you  
25 worked at A & S Industries, you said March of '83 to**

36 (Pages 955 to 958)

1 October of '83?

2 A. Right.

3 Q. So for that several months.

4 You didn't work there when Carl Four Star worked  
5 there?

6 A. I don't know when he worked there, sir. No, I  
7 didn't. I see him there, so I would assume not.

8 Q. And you said there are different things  
9 manufactured in different parts of the building; is that  
10 right?

11 A. Right.

12 Q. And in one part of the building they're stamping  
13 metal and making some metal containers?

14 A. Right.

15 Q. And that's probably the noisiest part of the  
16 building; would that be correct?

17 A. Yeah, I would say so. Noisier than the other  
18 parts.

19 Q. And then the area where the netting is being  
20 worked on, that's less noisy; is that right?

21 A. Less noisy, yes.

22 Q. Because they don't need the kind of machinery to  
23 do the cutting of the nets that you'd use for stamping  
24 metal.

25 A. No. There were other kinds of machinery, but I'm

1 A. No. There were countless fans, all over the  
2 place.

3 MR. CAMEL: That's all I have.

4 MS. PLUBELL: Briefly.

5 REDIRECT EXAMINATION

6 BY MS. PLUBELL:

7 Q. I think you already indicated that you were  
8 present during every one of those interviews --

9 A. I was, ma'am.

10 Q. -- that we did?

11 And am I being accurate if I say that every interview  
12 started with Ward McKay asking the questions?

13 A. Yes.

14 Q. And did Ward give anyone in the room an  
15 opportunity to ask questions at the end when he was  
16 through asking questions?

17 A. Yes. You -- you two and then -- and he even  
18 asked -- I even asked a couple of questions, too.

19 Q. Did I have to calm Ward down or intercede in any  
20 way during the interview of Carl Four Star?

21 A. No. Not at all. I didn't see that happen.

22 MS. PLUBELL: I have no further questions.

23 BOARD MEMBER CURTISS: Madam Chair.

24 ///

///

25 ///

///

1 not -- It wasn't the same type as the metal formers.

2 Q. Where did you work in the plant?

3 A. I worked in that metal-forming part.

4 Q. And you said that -- I think you said, "We all  
5 wore these Styrofoam earplugs." When you say "we all wore  
6 them," you mean the people who were working in the area  
7 where you worked?

8 A. Right.

9 Q. People over by the netting didn't wear those?

10 A. I saw some people wearing them. Yes, sir.

11 Q. Some people?

12 A. Yeah.

13 Q. Did everybody wear them?

14 A. I'm not sure.

15 Q. And they weren't required?

16 A. They weren't absolutely required, no.

17 Q. You said that -- Let me see if you could tell us  
18 the dimensions of the building, approximately.

19 A. Oh -- I don't have any landmarks here.

20 Q. Pretty large building?

21 A. All I can relate to is like a -- you know, like a  
22 large department store, like J.C. Penney's, maybe three  
23 times that big.

24 Q. And in that large interior of that building,  
25 there were four large fans?

1 EXAMINATION

2 BY BOARD MEMBER CURTISS:

3 Q. Mr. McDonald, sir, I'm kind of looking in on  
4 noise level here. You have a pretty good, stout voice. I  
5 can understand you well, even with some hearing problems.  
6 Say from here to that camera over there (indicating), sir,  
7 under a normal voice, and when we're talking where Sissy  
8 worked and where Mr. Four Star worked, could you -- under  
9 normal conditions in a normal tone, could you communicate  
10 with that person and hear without yelling? To your  
11 judgment, now.

12 A. Absolutely not, sir.

13 Q. Could not?

14 A. No.

15 Q. The noise level was that high?

16 A. Even when there were scheduled break times -- A  
17 whistle would blow and people would be allowed to take a  
18 break, but even during the break times, the people on the  
19 netting side that wanted to make beyond their quota, they  
20 always kept working, and that noise level -- Beyond that,  
21 the fans, and then there were always forklifts moving  
22 about throughout the factory, always forklifts moving  
23 about. And so it would be impossible.

24 Again, I would say he was lying.

25 BOARD MEMBER CURTISS: Okay. Thank you, sir.

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1 EXAMINATION  
 2 BY BOARD MEMBER BOWMAN:  
 3 Q. Did you ever see a time when, rather than having  
 4 the fans on, they had a garage door open to let fresh air  
 5 in?  
 6 A. They were open, yes. The ventilation was poor  
 7 there. They did do that.  
 8 MR. CAMIEL: Madam Chair, if I could have a  
 9 couple questions.  
 10 CHAIR McCANN O'CONNOR: Yes.  
 11 RE-CROSS-EXAMINATION  
 12 BY MR. CAMIEL:  
 13 Q. Do you know Sissy Atkinson?  
 14 A. I do.  
 15 Q. Do you know the Atkinson family?  
 16 A. To some -- They're acquaintances, but not someone  
 17 that I normally talk to on a day-to-day -- I wouldn't stop  
 18 and carry a conversation out with them or anything like  
 19 that.  
 20 Q. How is it that you know Sissy Atkinson?  
 21 A. When we were younger, she was in my -- in the  
 22 same grade in school. I didn't care for her much.  
 23 Q. And so over the years, you've known her and her  
 24 family and you know that one of her brothers was in law  
 25 enforcement?

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1 A. I -- I heard about that in regards to this. At  
 2 that time when he was in law enforcement, I wasn't living  
 3 in Poplar.  
 4 MR. CAMIEL: Thank you, Madam Chair.  
 5 MS. PLUBELL: Nothing further.  
 6 CHAIR McCANN O'CONNOR: You may be excused.  
 7 BOARD MEMBER CURTISS: Thank you, Mr. McDonald.  
 8 MS. PLUBELL: We have no further witnesses.  
 9 CHAIR McCANN O'CONNOR: Very well.  
 10 We had discussed the matter of closing arguments last  
 11 night. We did hear in an earlier telephonic conference  
 12 that you would like to make some closing remarks. We're  
 13 going to receive them in writing submitted to us no later  
 14 than one week from today. That isn't five days means  
 15 ten days. That is one week from today, next Friday, they  
 16 are due. Okay? So we're very clear.  
 17 MS. PLUBELL: Do we submit those to Craig Thomas?  
 18 CHAIR McCANN O'CONNOR: You submit them to  
 19 Mr. Thomas, and he will distribute them to us.  
 20 We will put this hearing in recess. We will reconvene  
 21 the 1st of August, at which point we will hear character  
 22 witnesses and witnesses that go to the issue of  
 23 commutation, this having been the portion in which we  
 24 dealt with the issue of clemency.  
 25 MS. PLUBELL: Thank you.

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1 Before we leave, I do want to thank the Board, because  
 2 you have had an exceptional amount of information thrown  
 3 at you, and it is very obvious how well prepared you all  
 4 are.  
 5 CHAIR McCANN O'CONNOR: Thank you very much.  
 6 MR. CAMIEL: And we thank you as well.  
 7 CHAIR McCANN O'CONNOR: Thank you.  
 8 We stand in recess.  
 9 (The proceedings were recessed at 11:44 a.m.)  
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COURT REPORTER'S CERTIFICATE

STATE OF MONTANA )  
 ss.  
 COUNTY OF LEWIS AND CLARK )

I, CHERYL ROMSA, Court Reporter, Notary Public in  
 and for the County of Lewis and Clark, State of Montana,  
 do hereby certify:

That the foregoing proceedings were reported by  
 me in shorthand and later transcribed into typewriting;  
 and that the -151- pages contain a true record of the  
 proceedings to the best of my ability.

IN WITNESS WHEREOF, I have hereunto set my hand  
 and affixed my notarial seal this 27th day of December  
 2007.

CHERYL A. ROMSA  
 Court Reporter - Notary Public  
 My Commission Expires 8/4/2011

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