

1 THE COURT: You may proceed with your
2 closing argument, Mr. Moses.

3 MR. MOSES: Thank you, Your Honor.
4

5 CLOSING ARGUMENT BY MR. MOSES
6

7 BY MR. MOSES: If it please the Court, and Ladies and
8 Gentlemen of the Jury. By way of introduction, let me
9 suggest to you that the courtroom is designed for the sole
10 purpose of administering justice. We have a process that we
11 go through where lawyers have certain duties and responsibilities,
12 and this Court has certain duties and responsibilities and
13 where jurors have certain duties and responsibilities and
14 where witnesses have certain duties and responsibilities. We
15 are committed to the proposition as a superior society in the
16 world, that we will administer justice honestly, fairly,
17 truthfully and in accordance with the rules of law that have
18 been developed over two hundred years. We will do that. All
19 of us involved in that process will do that, and you were
20 particularly advised from the very beginning of the trial,
21 "will you follow the rules of law that govern the trial of a
22 criminal case so that you can reach an informed and intelligent
23 decision based upon the rules that are given to you. I hear
24 nothing from Mr. Racicot about the reliance upon rules that
25 govern a case of this kind. I hear nothing but a plea to find

1 this man guilty, based upon his confession and nothing more,
2 and it was brilliantly done by Mr. Racicot; but if we believe
3 in the fairness of justice, then we shouldn't ignore the rules
4 of law that govern in a case of this kind. We will follow
5 the instructions of the Court carefully. We will see that
6 justice is done so that whatever the verdict may be, you may
7 look back six months or one year from now and say to yourself,
8 "I followed the rules of evidence in this case and arrived
9 at a just result.". There has not been any comment in the
10 opening statement about circumstantial evidence and what the
11 rules are and what guides you in arriving at a verdict in
12 this case. Circumstantial evidence. "You are instructed
13 that you are not permitted on circumstantial evidence alone
14 to find the defendant guilty of any crime charged against
15 him unless the proved circumstances not only are consistent
16 with the hypothesis that the defendant is guilty of the
17 crime, but are inconsistent with any other rational conclu-
18 sion.". Now that simply means that if you find him guilty
19 on circumstantial evidence, you have to exceed beyond a
20 reasonable doubt any other rational explanation. That is what
21 it means, and if you don't consider that rule and not going
22 to apply that rule, and not going to consider it in this case,
23 then of course, the administration of justice simply does not
24 work. "You are instructed that the defendant comes into
25 Court protected by the presumption of law that he is innocent

1 of any crime and particularly of the crime charged against
2 him in the information. The defendant is presumed to be
3 innocent until his guilt is established to a moral certainty
4 and beyond a reasonable doubt. This presumption attends him
5 at every step and throughout the entire case and to its
6 benefits he is entitled upon every question of fact." Mr.
7 Racicot says that he is not entitled to the benefits of the
8 presumption of innocence at every stage of the proceedings
9 and that you must suspect him and he may be guilty, based
10 upon his judgment. But that doesn't happen to be the law.
11 "You are instructed that if the evidence in this case is
12 susceptible of two constructions or interpretations, each of
13 which appears to you to be reasonable, and one which points
14 to the guilt of the defendant and the other to his innocence,
15 it is your duty, under the law, to adopt the interpretation
16 which will admit of the defendant's innocence and reject
17 that which points to his guilt". Now that has been the law
18 for over two hundred years. Mr. Racicot would like to have
19 you believe, don't give him the benefit of the doubt. Don't
20 give him the presumption of innocence. " The Court
21 instructs you that your personal opinions as to facts not
22 proved cannot properly be taken into consideration by you
23 as the basis for your verdict. You may believe as an
24 individual that certain facts exist, but as jurors you can
25 only act upon the evidence introduced upon the trial". You

1 may believe that he is guilty, but the court has instructed
2 you that your personal opinion as to any facts not proved
3 cannot properly be taken into consideration as a basis for
4 your verdict. Mr. Racicot says "Believe". You must form an
5 opinion -- "believe". "You are instructed that a reasonable
6 doubt may arise not only from the evidence produced but also
7 from the lack of evidence since the burden is upon the State
8 to prove the elements of the crime charged. The defendant
9 has the right to rely upon the failure of the state to
10 establish such proof." He has that right. He has had that
11 right for over two hundred years. "The defendant may also
12 rely upon evidence brought out on cross-examination of
13 witnesses for the State. The law does not impose upon the
14 defendant the duty of producing any evidence and accordingly,
15 unless you find that the State has proved beyond a reasonable
16 doubt that the defendant is guilty of the offense charged,
17 your verdict should be not guilty"." You are instructed as
18 to the burden of proof. Who has to prove his side of this
19 case, who has to prove the evidence or facts in this case?
20 That burden is upon the State, the prosecution, to prove
21 every material element of the crime charged, beyond a
22 reasonable doubt. The defendant is presumed to be innocent
23 unless the contrary is proven, and if the state does not
24 prove their case, the elements of the crime here, then this
25 defendant is entitled to an acquittal. "You are instructed that

1 the burden of proof is upon the prosecution to establish
2 every material allegation of the information in this case to
3 your satisfaction beyond a reasonable doubt. The defendant
4 is presumed to be innocent until the contrary is proven, and
5 in case of a reasonable doubt as to whether his guilt is
6 satisfactorily shown, he is entitled to an acquittal". That
7 is the law and has been for over two hundred years. Now
8 then, I can't read all of these instructions to you, but I
9 expect you to look at them and read them and understand them.
10 "You are instructed that the guilt of the defendant may not
11 be established alone by any confession or admission made by
12 him outside of this trial. Before any person may be convicted
13 of a criminal offense, there must be proof, independent of
14 any such statement, that the crime in question was committed,
15 but it is not necessary that such independent proof include
16 proof as to identity of the person by whom such offense was
17 committed". With respect to the voluntarilness of the
18 confession or admission "the jury must always bear in mind
19 that the law never imposes upon a defendant in a criminal
20 casethe burden or duty of calling any witnesses or producing
21 any eviddnce". Now then, I spent perhaps five or ten minutes
22 discussing with the jury the question of the law that applies
23 to the administering of justice in this case. That is not a
24 statement of mind, that is not a statement of Mr. Racicot,
25 that is not an opinion of mine, that is not an opinion of Mr.

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1 Racicot, but that is what the law is. I urge you to read,
2 I urge you to understand, and I urge you to apply it according
3 to the fair administration of justice. That is very important
4 in the trial of this case. All we do as lawyers is to point
5 out to you the law that is important in the case, and if I
6 wasn't standing up here right now telling you about it, you
7 probably would not have heard of the law. The second thing
8 that is important for the jury to understand and one thing
9 that I do whether I am right or wrong in my presentation,
10 one thing that I do is I characterize that which is my
11 opinion as to what facts have been developed here at the
12 trial. I am not going to stand here and impose my opinion
13 upon you people because that is not my job. That is not my job.
14 I am not going to be persuasive and use that as an assessment
15 to try to get you to make a commitment, but will try to tell
16 you the factual circumstances here so that you can make an
17 informed and intelligent judgment as to what you ought to
18 do, to follow the rules, beyond a reasonable doubt. I told
19 you in the beginning; I said if you sat down and used your
20 common sense and you go down to a store and you find that
21 there is a cigarette hole in the dress, or a tear in the
22 sleeve and you could see through it, that big hole there,
23 that you wouldn't buy it, because it was not the type of
24 dress you wanted, and here we have a whole bunch of holes in
25 the facts, and Mr. Racicot says, well that make's no difference.

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1 Now common sense tells you that where liberty is involved
2 for someone to loose, that becomes the most important thing
3 in the world, for both sides, for both sides, then you will
4 have to agree that to apply the common sense judgment and
5 say that beyond a reasonable doubt I would not buy a dress
6 that has a cigarette burn in it, or a tear in it, and I am
7 not going to bring about a conviction when the law says
8 beyond a reasonable doubt that each item shall be perfect,
9 beyond a reasonable doubt, and if you are going to apply
10 some different standard, if you are going to attempt a second
11 guess, without second guessing the prosecution, then that
12 doesn't follow the law. That is all that concerns me, that
13 is what I am concerned with. I keep repeating to you that
14 the verdict is important, nobody knows the verdict is more
15 important than I do, but under the law, under the fair
16 administration of justice, the verdict is reflected by the
17 process that the jury goes through to follow the law in
18 accordance with the rules that were established over two
19 hundred years. If you want to short-cut it, that's fine,
20 but that is not justice, and so I am asking you to bring in
21 a verdict accordance with the law and thd facts that have
22 been developed whatever that verdict may be, and that is
23 where the difference is. Now in making an informed and
24 intelligent decision as to what your verdict should be and
25 how you should view the evidence. There are certain ways

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1 in which that can be done, if you never had any experience
2 with a prosecutor like Mr. Racicot or a defense lawyer like
3 me. I am motor-minded, and some people here may not know
4 what that means, but sometimes we think better by writing
5 things down. One thing that you may understand or appreciate
6 and something that I appreciate ---

7

8 COUNSEL now goes to the upright
9 stand that holds a large sheet
10 of paper and commences to write
11 various items on said large sheet
12 of paper

12 A long time ago and I, by some standards am an old man, I
13 am sixty years old, or will be sixty years old in about a
14 month, but a long time ago, some ten or fifteen years ago,
15 I was on a panel and I was privileged to be on a panel that
16 was at a seminar with a friend of mine by the name of Jerry
17 Spence, and a lot of you may not know who Jerry Spence is,
18 but he had a case down in Wyoming in which Hustler Magazine
19 was involved, and Jerry and I got into a discussion as to
20 whether we should appeal to the mind of a juror or to the
21 heart, appeal to the heart and Jerry said, appeal not to the
22 mind, but to the heart, because it always wins, and I said
23 you are full of stuff, Jerry, that is not true. The process
24 of justice is based upon an appeal to the mind, to the
25 ability to reason and not to the heart. He developed, shortly

1 after our discussion a process which is referred to as
2 Pyscho-Dynamics, and that is the process by which you get
3 jurors to appeal to their heart and their emotions and not
4 to their mind. It has a definite meaning and he goes around
5 the country and teaches lawyers Pyscho-Dynamics and I disagree
6 with him. These psychologists that attended the seminar
7 speak of it as rationalization, that you can rationalize
8 a result based upon an emotional cover for the facts.
9 Spence used Pyscho-Dynamics, Psychologist always use
10 rationalization and when you go to one of these seminars they
11 say to you to appeal to the heart. The emotional response
12 of the jury to say, I believe this boy is guilty, he took
13 somebody's life, there is an emotional response there and
14 that is and will enable any juror to rationalize a conclusion
15 or to use a psycho-dynamic approach or appeal not to the
16 mind, but to the heart. And, that Ladies and Gentlemen, is
17 the problem and the process on which you are going to go
18 through. It happens in every case. You have to describe
19 when you discuss this case as to whether you are going to
20 appeal to reason or whether you are going to have an emotional
21 cover to the facts. That is what you are going to have to do.
22 You are going to have to decide on which process, if you are
23 a fair and impartial juror, whether you are going to follow
24 the law or whether the emotions are going to guide you and
25 then some six months from now you can rationalize such a

1 decision. That is the process most jurors go through, that
2 is the topic that is covered. That is the way lawyers are
3 trained and I strongly disagree. That is why I am sixty
4 years old and I am too old to be able to play psycho games
5 with jurors. All I do is say, you've got the law here, you've
6 got the facts here that were presented, and I don't have to
7 explain them to you except in those areas where you might not
8 have experience and understanding why a witness testifies as
9 he does, the way he does, or did. You may not have had a
10 lot of experience with trained interviewers and how they use
11 the process by which they go through. I have had some
12 experience in that respect. When I started out and in talking
13 about this case in the opening statement I said it was a
14 circumstantial evidence case and the law will be given to you
15 with respect to how to consider a circumstantial evidence
16 case. That is true, this is a circumstantial case and I
17 think that both counsel will agree. Now we have a problem
18 with respect to establishing physical facts in connection
19 with this case. Mr. Racicot says that it doesn't mean any-
20 thing, that physical facts are irrelevant, they don't have
21 any bearing on this case, and are not supposed to be taken
22 into consideration, and that you should ignore them, and put
23 them out of your mind. That is the most unusual statement
24 that a prosecutor will ever make. If this was an accident
25 case, you would want to know times, the distances, and places,

1 and speed and all of those things; if it was a burglary or a
2 larceny case, you would want to know all of the factual
3 circumstances identified, what was done, what was said; if
4 it were a murder case, you would want a report on all of the
5 blood, all of the fingerprints for comparisons, you would
6 want to have that done, that it should be sent to the FBI
7 and you would want to see all of those things, and what is
8 the reason for doing that? To connect a defendant with
9 respect to the physical facts so that you could prove, not
10 from his mouth, but that you could prove from this stand,
11 that there is a way to connect the physical facts with the
12 defendant. Do you think that the taking of fingerprints and
13 footprints to the Federal Bureau of Investigation is something
14 that is not important? I have been back to the laboratory
15 down in Washington, D.C., and watched them do fingerprint
16 identification and all that type of work. Do you think that
17 is a useless act, that it is not important? Do you think
18 that the negative, the negative, should be disregarded and
19 that the positive should be presented? If there was a single
20 fingerprint of Barry Beach on that vehicle, it would have been
21 produced in evidence in this case, and Mr. Racicot would have
22 stood before you and say we can positively identify through
23 this expert here who is testifying from Washington, D.C., that
24 Mr. Beach had his fingerprints upon that vehicle, and that was
25 not done; so he says, ignore it. He wants you to just ignore it.

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1 The palm prints, you've got a bloody palm print and it is
2 shown not to be the palm print of Barry Beach. If it was the
3 palm print of Barry Beach, do you think he would have said
4 that it didn't mean anything, that he wouldn't have had the
5 people from the FBI to testify? The palm prints in the blood!
6 In the blood! Whose is it? Why don't we just ignore that
7 according to the prosecution. It is not important. It was
8 very important in this case because it wasn't Barry Beach's,
9 and then none of his fingerprints were there. What does he
10 offer as an excuse as an emotional cover for the facts? He
11 offers the excuse that it might have been Kim Nees's. She
12 may have had her palm print up there -- it might have been.
13 Is there a difference between a woman's palm print as to size
14 and structure as compared to a man's? Did they take photographs
15 of the palm prints so that you could see for yourself? They
16 took photographs, but they never produced them so that you
17 could see for yourself whether it was a type of a man's
18 hand, or a type of a woman's hand. What kind of a palm
19 print was it? Is the jury ever going to know? They have the
20 pictures, why isn't it fair to ask, why didn't they produce
21 them? The prosecution always comes back and says, well the
22 defense could have produced them. I am not compelled to
23 produce anything if you believe the law. They have to produce
24 that. Now where are the photographs so that you could see
25 for yourself? Was it a man's or a woman's print? He suggests

1 in his statement, not in any testimony, but in his statement,
2 that it might have been Kim Nees's. Is that evidence that
3 is supposed to satisfy you or would you like to see the
4 photographs and see the palm prints for yourself? Or, do
5 you think that that is unimportant and you don't care about
6 any palm prints? The blood typing. Did we have any expert
7 come before you and testify as to the blood typing? Would
8 you have liked to see how blood typing is done? Whether it
9 is accurate? What process they go through and whether it
10 could be determined as to blood and what other blood they
11 found? What other blood they found, yes, would you have
12 liked to know more about that? Would you like to know that,
13 in connection with this murder case? In the fingerprints.
14 The question was asked by Mr. Racicot during the course of
15 the trial as to some smudging, about them being smudged and
16 if there was not positive identification of fingerprints
17 but the record reflects that there was in fact, positive
18 identification, that there was fingerprints AND IDENTIFICATION,
19 with respect to certain people and not Mr. Beach. Now would
20 you be interested, I ask you that, its a fair question, would
21 you be interested in knowing where the fingerprints were?
22 What their location was? How they appeared? Were they up
23 like this (demonstrates) or like this (demonstrates) or
24 where these other fingerprints were for positive identification
25 to give you some idea as to the validity of the fingerprints?

1 Would you like to know that? Don't you think that you should
2 have information like that so that you could make an intell-
3 igent determination? Where was the location? How were they
4 organized? What did they do? Where is the picture of this
5 blood in this car they complained about? Its all on the
6 passenger's side? They testified about some of this blood,
7 but where is the photographs? Wouldn't you like to see the
8 photographs where they contend there was blood up above the
9 driver's seat? We looked in vain for that, but the
10 prosecution says thatit makes no difference. That it makes
11 no difference they say. Why? How many strands of hair was
12 there? Who did they take hair from? You know they took some
13 hair from the Defendant. What was done with that? Was it
14 sent to the lab? What was the findings? What was the
15 findings? What did the report say? Wouldn't it have been
16 easy for them to have proved that they took hair from this
17 boy and sent it to the lab in order to determine or make a
18 comparison with the hair that was found in the pickup area?
19 That was done. That was sent in. But where is the evidence
20 to say that any of those hairs, had any connection with Mr.
21 Barry Beach? Wouldn't you be interested in that? Is it a
22 waste of time to do that, to have done that, to see if there
23 was any connection with Mr. Beach. Don't you think that that
24 would have been important? Now down in Florida a fellow was
25 hung, or given the gas chamber injection, which occurred here

1 about six months ago, when the only evidence they had against
2 him was a hair strand that was found in the back of that van,
3 and here, evidently they felt that it didn't make any
4 difference. Footprints. What in the hell are we talking
5 about with these footprints? They took photographs of those
6 footprints. Wouldn't you have liked to have seen them and
7 then make up your own mind, rather than take someone's judgment?
8 If there were footprints, wouldn't you have liked to make up
9 your own mind as to whether there were any comparisons
10 between this man and the footprints on the scene? What have
11 they done with those photographs? They were never produced
12 here at the trial. What have they done? They've got
13 photographs which they never produced. What have they got?
14 They've got a map, a drawing so that you could see where the
15 footprints were. They've got other exhibits here --(counsel
16 checks through some exhibits) this fellow that was on the
17 stand, drew a plat, well he drew two plats and he puts the
18 footprints in and they take photographs of them, one of them
19 said that it was from a bare foot, another said it was from
20 a shoe. You would think that three witnesses who claim they
21 saw them, could state just what kind of a footprints they
22 were. One of those officers must have been able to say, well
23 I was barefoot that day as I had gone into the water and I
24 came out of the water barefoot and I walked up and left these
25 prints. Do you think that anyone would buy that story? I

1 am sorry, now I am starting to give you my opinion. If anyone
2 is going to buy that story, I would be awfully surprised.
3 Where are the photographs of those prints? Wouldn't you like
4 to see them to decide for yourself? Mr. Racicot says it
5 makes no difference. All we have to do is to have an
6 emotional cover and say, Okay, here is his statement or
7 confession, whatever, and that is sufficient, that should
8 satisfy everybody. Now then, one other thing, and that is
9 in respect to the jacket. What about this jacket. Obviously
10 there must have been a jacket because it was stated in the
11 statement of Mr. Beach. That jacket was not there. It wasn't
12 there. Now he also talks about some sort of a garbage bag.
13 What about the drag line? Is there a difference because of
14 the clothing, on the drag line? Clothing. Cordoroy, or
15 anything else. Here there was a drag line, was it done with
16 a garbage sack. What about the clothing on the drag marks?
17 You would think that you could see that somewhere on that
18 drag area of -- 257 feet, where they could have come in and
19 say: We can prove that there was an area in there that was
20 consistent with a garbage sack. Now you can speculate, you
21 can do whatever you like, but when it comes to concrete
22 physical facts. Is that what you are supposed to do and then
23 say, well, it doesn't make any difference. The bloody towel.
24 Where was that bloody towel located? Why was it taken as
25 evidence in this particular case? What significance was it

1 that this bloody towel have to this case as determined by the
2 law enforcement officers; at that time? Why was it relevant?
3 What was the circumstances with respect to the examination?
4 Why didn't that come in? Will everybody, or anybody here
5 ever know? No. So that it has no significance? Mr.
6 Racicot says that it makes no difference. Finally when you
7 consider in the jury room the physical facts presented in
8 this case, you must consider the statement made by Mr.
9 Racicot in support of his position - is that recommendation
10 enough? In my experience and I will say that I have only heard a
11 statement of this kind once -- that the law enforcement
12 officers screwed up. They screwed up the investigation!
13 He concedes I believe, as his way of rationalization that you
14 can speculate and guess, if the law enforcement officers
15 screwed up and lost it, if they hadn't done that, there would
16 have been some evidence against Barry Beach that would help
17 you convict him. That is the greatest hypothesis that I have
18 ever heard in my life. If law enforcement didn't screw up
19 they would have to present some evidence in some way to
20 convict Barry Beach. Now then, how long has the law enforce-
21 ment officers been working over in Roosevelt County? Is that
22 a disaster area for the law enforcement? Is the FBI incompetent?
23 Are the BIA people lacking in basic fundamental investigative
24 knowledge? Are the deputies for Roosevelt County absolutely
25 incompetent and they don't know how to preserve a scene or

1 preserve evidence? They collect samples. They take
2 photographs. Collect samples of evidence here and collect
3 samples there collect samples down over here, take photo-
4 graphs of the drag mark area, They took photographs, some of
5 which you have seen and have been received in evidence here,
6 but where is the evidence to show that they were competent
7 or if they could have made some error or mistake, but they
8 say that was justified, what they did, but By God they won't
9 justify these things that Mr. Barry Beach did or said. That
10 is a double standard, and when you have these rules of law
11 it states that the standard will be the same for everyone and
12 you have been so instructed. If the defendant had come into
13 court here, and got everything all screwed up, do you think
14 that the prosecution would forgive that, if we were all
15 screwed up? To use that as a justification to use that as an
16 emotional cover for the facts that are here in this case,
17 seems to me to be something that I have never heard of before.

18 (At this time, the court informed Mr. Moses that he
19 had already used up fifty minutes in his argument to
20 the Jury)

21 MR. MOSES: Thank you, Your Honor, I am about completed,
22 thank you. The focus of Mr. Racicot's remarks about the
23 witnesses that testified about this particular event is also
24 a very interesting observation. When we apply common sense --
25 and you may not have had any experience in this business, you

1 may never had been interviewed by the FBI agent, you may not
2 know the process which they go through, you may not know how
3 they record what is said by the various people they interview,
4 but I got the inference here that there was some question by
5 the prosecution that Officer Warberg, of the Federal Bureau
6 of Investigation was incompetent. He got some statements
7 a couple of days, the 18th I believe, from these people but
8 one of them says he heard "No Goose, No" down in that area
9 and another witness that testified that he heard screams for
10 help and then they get here on the stand and say "I don't
11 remember". Emotional responses now. How do you feel about
12 giving the FBI a statement under oath and then say that it
13 is not true, that I don't remember. In fact, I don't remember
14 at all. What do you think of that? Why do they say something
15 different now? Now I leave you with this thought: Is that
16 you get a proposition that it is not the white man that
17 speaks with a forked tongue, it is the Indian as well and
18 that they are not trustworthy. Now in focus of this case,
19 from the prosecutions point of view. It is obviously the
20 statement of Mr. Beach and Mr. Racicot has done a darn good
21 job on going over that statement but I would be interested in
22 knowing where that jacket is, where that garbage sack is,
23 and the speculation about the evidence that is something that
24 perhaps Mr. Racicot can tell you about, where is that evidence.
25 But the question is, with respect to a statement made is to

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1 make a determination of the circumstances under which that
2 statement was executed. I have the greatest respect for Mr.
3 Via because he knows that I know that I have been in this
4 business for a long period of time and I was a special
5 prosecutor for eight or nine years and I understand how
6 statements are taken. Nobody else may know how statements
7 are taken, but you can fool some of the people but hopefully,
8 and I may not be too smart, but I have had enough experience
9 and taken enough statements to know about it. Mr. Calhoun
10 made an important statement, when he said that for five or
11 six hours before the statement was made is irrelevant. Now
12 by using your common sense, what do you think these people
13 were talking about for five or six hours with Mr. Beach? What
14 do you think they were talking about? The weather? Girls?
15 What do you think they were doing? They were organizing and
16 is there any record of it -- is there any record of it? There
17 is no record, yousee, of this four or five or six hours. The
18 question is, where is the record of that five or six hour
19 conversation? What did they say to him, what did he say to
20 them? Well, what they were doing was organizing themselves
21 to get this statement. The evidence in this case shows that
22 it took forty minutes to read that statement and there were
23 208 questions and that means that every ten or twelve seconds
24 there was a question and an answer in this statement that Mr.
25 Racicot is referring to. Is there anyone in this whole courtroom

1 feels that it is humanly possible, to spend five or six
2 hours in a room, and be asked a question every ten or twelve
3 seconds, that you would be asked a question and you would
4 have to give an answer to that question, every ten or twelve
5 seconds? Well, I can tell you what the five or six hours
6 were. They had received information from the Roosevelt
7 County Sheriff's office as to the actual facts and circum-
8 stances and each detail with it. It was significant. Is it
9 true? Well is this true? Well, could it be true? Check
10 this out, check that out, do such and such, and get a
11 statement. Sgt. Via was there, Commander Calhoun was there.
12 It is the guts of taking this statement under those circum-
13 stances by those two Gentlemen, and they know that I know it,
14 but they may think that you don't know it. The second thing,
15 of course, is as to Mr. Via. I don't blame him, but from my
16 point of view, and my opinion, I know that when there is a
17 question raised about the mental stability of the particular
18 person to be giving a statement, it is not voluntary. That
19 it may not be voluntary, and law enforcement officers are
20 alerted to that possibility. And where was Officer Via
21 before the taking of this statement, he is explaining to
22 these people who had come to put up this bail, and of course,
23 that is another story there, he is telling Tim Beach and
24 Mrs. Clincher the circumstances under which he can get
25 psychiatric care, and that they can't provide it but they

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1 can go to court and get it, and that he had recognized from
2 his experience, a possible psychiatric problem, and that
3 would make this voluntary statement all shot to hell. He
4 knows that, and he knows that I know it, and that conversation
5 was recorded under oath, on January 24, 1984. The question
6 was "What was the mental condition or stability of this kid
7 when he made that statement?" "What was it?" "Well do you
8 know that the mental condition or stability was at that
9 particular time?" We know as a matter of fact that these
10 people were advised that he could get psychiatric treatment
11 but that they would have to make application to the court.
12 Now that alerts them to the problem, right? What was the
13 situation? What was his condition? Calm, cool, laughing.
14 Didn't know what anybody was talking about, that sort of
15 thing. What was his condition? Do you know, beyond a
16 reasonable doubt what his condition was? Do you know from
17 the testimony of Mrs. Clincher what his mental condition was?
18 What was Barry Allan Beach's mental condition? Are we able,
19 as people in this courtroom audience, or Mr. Racicot, or you
20 as jurors to know what his mental condition is, is it
21 stable or unstable? As you look at him and as I look at him,
22 and as he is sitting here in this courtroom taking notes
23 of this trial, are those notes rational, are they appropriate?
24 Are they abstract, or are they nonsense? What kind of a guy
25 is he or was he before he gave that statement to Mr. Via?

1 What do you know of this man? I will give you an example.
2 Who has testified in this case that prior to this date when
3 this event occurred, that Mr. Beach was able, that he had
4 tendencies to fly off the handle, that he handled himself
5 appropriately? What was his condition? All sorts of people
6 knew him, who would testify as to his stability and his
7 instability before this event; who could testify as to his
8 propensities -- another word, after the event? Who could
9 do that, as to what his mental state was? Somebody was
10 murdered and someone could have testified as to whether he
11 was calm, cool and stable, that could have been determined
12 right away, but nobody testified, no one. With respect to
13 the taking of the statement, who was able to say in this
14 whole courtroom what his condition was and his mental
15 condition was at that particular time? Now it may be clear
16 to you, he did return to Roosevelt County and he has been
17 here for over a year, in the jail in Wolf Point, or thereabouts,
18 for almost a year, and who can testify as to whether he was
19 a stable or unstable person? These people over there have
20 seen him for over a year now and all they had to do was get
21 on the stand and say, "Mr. Beach is a normal person, a normal
22 boy, I have watched him for over a year and he is Okay, he is
23 Okay. He is not mentally unstable, he is Okay, he is Okay,
24 and perhaps they could see some of the records that he had
25 written in the last year. "Well in fact, this boy doesn't

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1 have any problems at all and that he is a very stable man".
2 Where is that testimony? There is none. Now finally, before
3 I conclude here there is one other thing that I feel is
4 appropriate to be discussed here, and that is the matter of
5 this confession to these three Louisiana murders. You
6 remember Mr. Via talking about that. You recall Mr. Via
7 talking about his interviews with Mr. Beach, let's see, on
8 the 6th and 7th of January, and again on the 11th and also
9 on the 20th, and he testified under oath and talked about
10 getting a search warrant and that there was again in his
11 opinion, and he remember was under oath, adequate belief
12 in his opinion to go before the Court and secure a search
13 warrant in connection with Mr. Beach's participation in the
14 three murders in Louisiana. Now how does he explain that
15 away? He says that it was a ploy by this Louisiana lawyer.
16 Well now, in the first place lawyers may not be smart, but
17 they sure in hell are not dumb, to come in and make a statement
18 like that would be absolutely absurd. A lawyer would have to
19 be insane to do that, and you know that and Mr. Racicot knows
20 that and Mr. Racicot knows that I know that. Now then, if
21 Mr. Via is such a good investigator he should have had some-
22 thing about that in his notes and records and would be able
23 to talk to us about it. Now in respect to these three murders,
24 Sgt. Via said that this boy's responses and answers were given
25 with the same emotional responses and same reaction as he gave

1 when he was asked about the Nees murder. That he had exactly
2 the same emotional responses and the same reaction as he had
3 provided, when giving the specific details as to these three
4 Louisiana murders! Then he said, that they went out and
5 investigated it and he found out what he had said, that is,
6 what Mr. Beach had said, they were all false. Then they
7 finally got this statement from Mr. Beach, and I say to you
8 that there is not one centilla of evidence that has been
9 established, physical evidence or facts that is consistent
10 except what is in the mind of the prosecution. I want to
11 conclude my statement to tell you that the law is very
12 important. If I have said anything that you don't like from
13 my point of view well that is fine but remember that it is
14 your responsibility to follow the law and administer justice.
15 It is my responsibility to make sure that you understand the
16 law, how the law works, understand what the facts are and then
17 make an informed and intelligent decision, and if you can
18 make an informed and intelligent decision without having the
19 -- available to you, the physical facts, then there is
20 nothing that I can do about that, but that is, in my opinion,
21 not following the law. Now the first thing that I do in most
22 every case that I have, is that I talk to my wife about it.
23 Now my wife does not know anything about the law. We don't
24 discuss cases that I have and she doesn't usually know what
25 I am doing and she has never seen me in court, things like that.

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1 She is busy taking care of our six children and now seven
2 grand children and so she has her work to do and I have my
3 work to do, but it is always important to me to talk to her,
4 and the dialogue goes something like this: "Mr. Beach, he
5 was convicted, wasn't he?" "Yes he was convicted." "Did
6 they have a good case against him, like footprints or finger-
7 prints?" "Yes they did.". "Well, it must have been those
8 footprints to show that he was at the scene then.". "No, that
9 is not true". "Well what kind of footprints did they have?
10 What kind were they, were they that of a woman, or a man?
11 What kind were then?" "Well I don't know for sure, one of
12 them I guess was a barefoot, one I guess was a shoe, and they
13 showed four on the sketch, but I guess there were only three.".
14 "Well how did they connect those footprints to the defendant?".
15 "I don't know, but it didn't make any difference.". "Well,
16 there must have been blood of some kind there". "Yes there
17 was some blood there.". "Well, didn't they have some blood
18 typing done?". "Oh, yes, that was done". "Well did they
19 connect that up to Mr. Beach?". "No". "Well, wasn't there
20 something about a bloody towel to connect Mr. Beach to it?".
21 "No.". "Well, what about fingerprints, there was a palm print
22 imprinted in the blood, and so that really must have been
23 what convicted Mr. Beach". "No, that wasn't it". "Well was
24 it ever established whose palmprint it was?". "No.". "Well
25 whose was it then, did they say?". "No, but they said there

1 a possibility that it was Kim Nees's palm print.". "Well,
2 wasn't there something also about a jacket, where is the
3 jacket?". "I don't know.". "Well, where is the garbage sack,
4 was that ever produced?" "No. "Well, what about the other
5 physical evidence that would connect Mr. Beach to this murder?"
6 "Damm if I know". "Well he made a statement didn't he?"
7 "Yes it was a confession, and he also confessed to three
8 other murders too and so I guess one out of four, that is
9 pretty good. Three of those turned out to be false, but they
10 were just using that as a ploy". "Now what was the mental
11 state of this boy, what kind of a guy was he before and at
12 the time? Do you know what it was afterwards? Nobody has
13 testified to that?" "No, nobody testified as to that, no body.". "That is the sort of a dialogue that I have with my wife, but
14 as I close here today, I want to leave with you that it is
15 very important that you follow the law, consider the facts.
16 I ask you to do that, and I thank you.

18 THE COURT: I guess it is time for a
19 short break. (Court admonishes the
20 Jury)

21 AT THIS TIME, the Court stood in recess from the hour
22 of 11:25 o'clock A.M., until the hour of 11:40 A.M.,
23 at which time court reconvened.

24 THE COURT: Will counsel stipulate that
25 the defendant, counsel and the jury is
all present?