

# **Exhibit 12**

United States District Court  
Eastern District of Wisconsin

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**Avery v. Manitowoc County**

04 C 986



Video Deposition of

**Mark Rohrer - part 2**

Recorded 09/22/2005 in Manitowoc, WI  
9:38 am - 11:11 am, 89 mins. elapsed

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**Magne-Script**

(414) 352-5450

*15746 Condensed transcript with index*

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Witness  
Mark Rohrer - part 2

Thursday 09/22/2005 at 08:30 by: Barbara Cohen Joseph

Nash, Spindler, Grimstad & McCracken  
201 East Waldo Boulevard  
Manitowoc, WI

Caption: Avery v. Manitowoc County  
Case No.: 04 C 986  
Venue: United States District Court  
Eastern District of Wisconsin

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1 John F. Mayer  
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5 On behalf of Tom Kocourek  
6  
7 James E. McCambridge  
8 Wisconsin Department of Justice  
9 17 W. Main St., PO Box 7857  
10 Madison, WI 53707-7857  
11 On behalf of Mark Rohrer  
12  
13 Also Present: Steven Avery  
14  
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16  
17  
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19  
20  
21  
22  
23  
24  
25

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1 APPEARANCES  
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25

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3 Mr. Kelly . . . . . 66  
4 EXHIBIT NO. PAGE NO.  
5 123 - 9/4/03 memo Griesbach To File: State v. Avery 77  
6 124 - 9/18/03 memo from Jones to Rohrer . . . . . 108  
7 (The exhibits were retained by Mr. Kelly)  
8 (The sealed original transcript was sent to Mr. Kelly)  
9  
10 EXAMINATION  
11 BY MR. KELLY:  
12 Q Good morning, Mr. Rohrer.  
13 A Good morning.  
14 Q Would you tell me your age, please?  
15 A I'm 40 years old.  
16 Q And when did you finish law school?  
17 A I apologize to being -- for being accurate [sic], but  
18 I believe it was in 2002 I graduated, in January.  
19 Q All right.  
20 A I mean, not -- I'm sorry. 1992.  
21 Q What law school did you attend?  
22 A Thomas Cooley Law School in Lansing, Michigan.  
23 Q And you took office in March of 2003 as the district  
24 attorney of Manitowoc County; is that right?  
25 A Yes, I did.

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2 (Pages 67 to 70)

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1 Q And you were appointed by Governor Doyle to that  
2 position?  
3 A Yes, I was.  
4 Q Would you tell me the positions that you held between  
5 the time you graduated from law school and March of  
6 2003, as a lawyer. And if you can do it, just put  
7 them in order from '92 up through March of '03.  
8 A I was an associate attorney for the law firm of  
9 Winter, Fox & Stangel. The name of the law firm prior  
10 to that was Olson, Winter & Fox. And that's in Two  
11 Rivers, Wisconsin.  
12 Q And that was throughout the period, is that the only  
13 employment?  
14 A Yes.  
15 Q Okay. And during that period of employment as an  
16 associate attorney, did you specialize in any  
17 particular areas of the law?  
18 A No.  
19 Q Did you practice criminal law at all?  
20 A Yes.  
21 Q What kind of work did you do in criminal law?  
22 A Any type of criminal law that came into the office  
23 generally was assigned to me. I took public defender  
24 appointments. I did felonies and misdemeanors and  
25 traffic.

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1 Q Do you know who your immediate predecessor in office  
2 was as the district attorney in Manitowoc County?  
3 A Yes.  
4 Q Who was that?  
5 A Jim Fitzgerald.  
6 Q And do you know about how long he had served in that  
7 position?  
8 A Not the precise time, no.  
9 Q Approximately?  
10 A Rough estimate, at least 15 years.  
11 Q And do you know who his predecessor was?  
12 A I believe it was Elma Anderson.  
13 Q And do you know how long Elma Anderson served as the  
14 district attorney?  
15 A No.  
16 Q And Elma Anderson's predecessor was who?  
17 A I'm not certain, but I believe it was Denis Vogel.  
18 Q Okay. In the course of your practice as an associate  
19 attorney at your law firm, did you have occasion to be  
20 on the other side from the district attorney's office  
21 in Manitowoc County on various cases?  
22 A Can you please -- what do you mean by other side?  
23 Q You were defending somebody that they were  
24 prosecuting.  
25 A Yes.

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1 Q Okay. Can you approximate the number of times that  
2 that occurred?  
3 A I cannot.  
4 Q Okay. Can you fix a range?  
5 A I cannot.  
6 Q Would you say it was more than a hundred cases?  
7 A Yes.  
8 Q Were you ever involved in cases in which Jim  
9 Fitzgerald himself personally was on the other side  
10 from you?  
11 A Yes.  
12 Q Prior to taking office as the district attorney of  
13 Manitowoc County, did you ever have any discussions  
14 with Jim Fitzgerald about the Steven Avery case?  
15 A No.  
16 Q Ever have any discussions of any kind with Jim  
17 Fitzgerald prior to your taking office in March of '03  
18 about Gregory Allen?  
19 A No.  
20 Q How did you first become aware of the DNA results that  
21 exonerated Steven Avery with respect to the sexual  
22 assault of Penny Beerntsen and inculpated Gregory  
23 Allen?  
24 A I found out about the results from a phone call.  
25 Q From whom?

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1 A The crime lab in Madison.  
2 Q Do you remember who the person was who called you?  
3 A No, I do not.  
4 Q What were you told, as best you recall it?  
5 A The conversation basically -- I don't recall all the  
6 details, but she informed me that the DNA results came  
7 back to Gregory Allen on the samples that they had  
8 tested.  
9 Q And not to Steven Avery?  
10 A That was not discussed at that time, from my  
11 recollection.  
12 Q At the time that you were contacted by the crime lab,  
13 did you have an awareness that this testing was  
14 pending, or was that a new subject to you?  
15 A I was aware of it.  
16 Q How were you aware of it?  
17 A Jim Fitzgerald told me about that before he left the  
18 office.  
19 Q On one occasion or more than one occasion?  
20 A I believe it was one occasion, from my recollection.  
21 Q And was it a discussion that took place between the  
22 two of you?  
23 A Yes.  
24 Q Was it part of a briefing where he was bringing you up  
25 to speed on various cases, or was it just relating to

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3 (Pages 71 to 74)

Page 71	Page 73
<p>1 this particular case? 2 A I don't recall. It was just one of the things he 3 mentioned during a conversation we had. 4 Q Okay. Was anyone else present for the conversation? 5 A No. 6 Q Prior to that conversation, had you ever discussed the 7 Steven Avery case with Jim Fitzgerald? 8 A No. 9 Q Tell me everything you can remember about what 10 Fitzgerald told you. 11 A He just told me that there -- from my recollection, 12 that there was testing being done. He pointed where 13 the file was in the office and that was it. 14 Q What was the file to which he pointed? 15 A The Steven Avery file. 16 Q In prior testimony you marked and identified in dialog 17 with my colleague, Steve Glynn, five boxes of 18 materials, Exhibits 95 through 99. Do you recall 19 that? 20 A Yes, I do. 21 Q The file that you just referred to, the Steven Avery 22 file, is that part of those exhibits as far as you 23 know? 24 A Yes, to the best of my knowledge. 25 Q Okay. At the time that you had the discussion with</p>	<p>1 Q When did you hear about it? 2 A I don't recall. 3 Q Since the time of your last deposition, have you made 4 any further search for any documents concerning 5 Gregory Allen or Steven Avery? 6 A I have not. 7 Q To your knowledge, has anybody at your behest done so? 8 A At my request? 9 Q At your behest. 10 A I'm sorry, I don't know what you mean by behest. 11 Forgive me. 12 Q At your request, at your inquiry. 13 A All right. 14 Q At your direction. 15 A No. 16 Q After you received the phone call from the crime lab 17 telling you that the results had come back that 18 Gregory Allen was inculpated in the sexual assault of 19 Mrs. Beerntsen, who was the first person that you then 20 spoke with? 21 A Well, to be precise, what the phone call was was that 22 the hair samples were Gregory Allen's. That's what I 23 was told on the phone. 24 Q Okay. What did you do? Who's the first person you 25 talked to?</p>
Page 72	Page 74
<p>1 Jim Fitzgerald, it was known to you as the Steven 2 Avery file and it was segregated as such; is that 3 right? 4 A In my office, yes, which was his former office. 5 Q So the file itself was in Fitzgerald's former office, 6 your office after you took office? 7 A Correct. 8 Q Where did Fitzgerald go? Did he leave the office at 9 the time? 10 A He lost the election. 11 Q And where did he go from there, do you know? 12 A I do not know precisely where he went after that. 13 Q Do you know generally? 14 A Not precisely, no. I know he went to various other 15 ADA -- D.A.'s offices, but I don't know where he went. 16 Q What D.A.'s offices did he go to, as best you can 17 recall? 18 A The only one I know if is the most recent one was 19 Vilas. I don't recall the county before that. 20 Q As far as you know, he's practicing in Vilas County 21 now? 22 A I don't know what he's doing right now. 23 Q When did you know that he was practicing in Vilas 24 County? 25 A I don't recall. I just heard about it.</p>	<p>1 A Mike Griesbach. 2 Q Where? 3 A In my office. 4 Q Anybody else there? 5 A At that time, no. 6 Q How long did the conversation last? 7 A I don't recall. 8 Q What did you tell Mike Griesbach? 9 A I told him about the phone call and we had to decide, 10 you know, what we were going to do on the basis of the 11 phone call. 12 Q Let me just back up a little bit. As I understand it, 13 the conversation that you had with Fitzgerald about 14 the pendency of the crime lab's examination of the 15 samples in the Steven Avery case took place shortly 16 after you won and he lost the election. Is that 17 right? 18 A I didn't win the election. 19 Q Who won the election? 20 A Mike Griesbach. 21 Q How did it come to pass that you became the district 22 attorney? 23 A Mike Griesbach did not take office, he declined it. 24 And then an appointment process took place. I applied 25 for it and I was appointed by Governor Doyle, March</p>

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4 (Pages 75 to 78)

Page 75	Page 77
1 17, 2003.	1 MR. COVELLI: Is this the September 18th?
2 Q The conversation that you testified to earlier with	2 MR. KELLY: No, this is September 4th.
3 Jim Fitzgerald took place shortly after you took	3 MR. MCCAMBRIDGE: Off the record, why don't
4 office?	4 you give me --
5 A It took place after I was in office and before he left	5 REPORTER: Off the record.
6 the office.	6 (Off the record 9:52 - 9:53)
7 Q And about how soon after you took office did he leave	7 REPORTER: We're back on the record.
8 the office, approximately?	8 BY MR. KELLY:
9 A At most a couple months.	9 Q Mr. Rohrer, have you finished examining the document?
10 Q Okay.	10 A Exhibit 123?
11 A Maybe less.	11 Q Yes.
12 Q So let me ask you this. From the time of that	12 A Yes, I have.
13 conversation with Jim Fitzgerald until you received	13 Q All right. Have you seen it before today?
14 the information that you've told us about that you	14 A Yes, I have.
15 received from the crime lab, did you have any	15 Q What do you understand it to be?
16 discussions about the Steven Avery case with anyone in	16 (Exhibit 123 identified)
17 your office?	17 A It is a memo from Mike to me -- or, not to me. It's a
18 A No, I did not. From my recollection, no.	18 memo that Mike prepared in regard to this case from
19 Q Did you take responsibility for the then-pending case	19 the conversation that took place on September 3rd.
20 file and crime lab inquiry during the period of time	20 Q All right. And is this the convers-- this is Mike
21 between when you took office and when the information	21 Griesbach's recording in writing of the conversation
22 that you've told us about came back from the crime	22 he had with you after you received the call from the
23 lab, or was that file assigned primarily to someone	23 crime lab.
24 else?	24 A Yes.
25 A The file was left in the office. Nothing was done	25 Q Is there anything in there that you think is
Page 76	Page 78
1 with it.	1 inaccurate?
2 Q Did you consider that it was assigned to anybody?	2 A The only thing is I'm not for sure if it's in Box 1 of
3 A At that time, no.	3 2. But the rest of the document is accurate.
4 Q Okay. Again, for the same period of time, the period	4 Q Is there anything that you recall of the conversation
5 of time between when you were informed by Fitzgerald	5 between you and Mike Griesbach on that occasion that
6 up to when you received the phone call from the crime	6 you want to add to what is recorded in Exhibit 123?
7 lab personnel, did you have conversation with any	7 A We may have discussed, like I said, other things, but
8 other person outside the district attorney's office	8 I don't recall exactly verbatim what was said.
9 about the Steven Avery case?	9 Q Okay. He refers here to the fact that you were on
10 A No, I did not, from my recollection.	10 CCAP. Do you see that?
11 Q When you took office, were you in any fashion of your	11 A Yes.
12 own knowledge aware of the Steven Avery case?	12 Q For the record, what's CCAP?
13 A No, I was not.	13 A It's basically a circuit court access program that we
14 Q So the first you knew of it was when Fitzgerald	14 can do for criminal background checks for people who
15 briefed you to the extent that he did on the case.	15 have been charged with and convicted with crimes
16 A That's correct.	16 throughout the state.
17 Q At the time that you received the phone call from the	17 Q When on the occasion referred to in Exhibit 123 you
18 crime lab, was Gregory Allen known to you at all?	18 were on CCAP, were you looking for information about
19 A No, he was not.	19 Gregory Allen?
20 Q So it was a completely new name to you when you got	20 A Yes.
21 the call from the crime lab?	21 Q Do you recall what you found?
22 A Yes.	22 A His date of birth. May have found other things I
23 Q I'm going to show you what's been marked as Exhibit	23 can't recall about his record. But that's all I can
24 123 and ask you to take a moment and examine that, if	24 recall at this time.
25 you would.	25 Q All right. At the time on this occasion September 3rd



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5 (Pages 79 to 82)

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1 when you and Mike talked, did you talk at all about	1 Q So what did you direct Gail to do?
2 wanting to find any further information that might be	2 A To start doing some potential legal research if we
3 in the district attorney's files about Gregory Allen?	3 could charge Mr. Allen.
4 A No, we did not.	4 Q Did you ask her to seek out any further
5 Q At any occasion after that, did you have any such	5 information that might be available concerning
6 conversation with Mike?	6 Mr. Allen?
7 A No. You're saying to look for other information	7 A I did not.
8 regarding Gregory Allen in the file?	8 Q Did you have any knowledge at the time whether Mr.
9 Q In any file anywhere in the D.A.'s office.	9 Allen was incarcerated?
10 A No.	10 A I looked at CCAP. That was my only basis that made my
11 Q To your knowledge, did Mike Griesbach make any effort	11 determination that he was incarcerated at that time.
12 to find any further information concerning Gregory	12 Q So based on what you saw in CCAP, you thought he was
13 Allen in the files of the district attorney's office	13 in jail at the time?
14 than the document that's identified in Exhibit 123?	14 A At the time of our conversation?
15 A I can't say what he did on his own.	15 Q At the time of your conversation with Gail.
16 Q You don't know.	16 A Yes.
17 A None at my direction.	17 Q Where was he incarcerated as you reviewed CCAP?
18 Q Do you know whether or not it was at your direction if	18 A I didn't know where he was incarcerated, I just knew
19 he made any such effort?	19 from the CCAP he had a sentence he was serving.
20 A He did not make such an effort at my direction.	20 Q Did you know what the sentence was?
21 Q Okay. But what I'm asking you is, whether or not he	21 A I don't recall the precise sentence, no.
22 made it at your direction do you have any knowledge	22 Q Well, what's your best recollection of what you
23 that he made it?	23 discovered about Mr. Allen when you looked at CCAP and
24 A No.	24 talked to Gail Prost about it?
25 Q Okay. After this conversation with you and Mike	25 A There was a prison -- well, I didn't talk to her about
Page 80	Page 82
1 Griesbach, to whom did you next speak about what you	1 the prison sentence. There was a prison sentence on
2 had found out from the crime lab?	2 CCAP that Mr. Allen was serving.
3 A My recollection is Gail Prost was then brought to the	3 Q Do you recall what the length was?
4 office.	4 A Not off the top of my head, no.
5 Q And who is Gail Prost?	5 Q Do you recall what the crimes were?
6 A The assistant district attorney in the office as well.	6 A Not precisely, no. I'd have to look at it.
7 Q And was she brought to the office at your direction?	7 Q Well, generally what's your best recollection?
8 A Yes.	8 A I don't want to guess. I'd have to look at the CCAP
9 Q And why did you ask to see her?	9 record to be sure.
10 A I wanted to discuss with her about doing some legal	10 Q I know you don't want to guess. I'm just asking you
11 research in regard to Mr. Allen.	11 what your best recollection is.
12 Q Tell me what you recall of those conver-- Was Mr.	12 A It may have been sexually related.
13 Griesbach present when you spoke to Gail Prost?	13 Q Okay. Did Mr. Griesbach have any conversation with
14 A I believe so. From my recollection, yes.	14 Ms. Prost at that time?
15 Q Tell me what you recall of the discussion on that	15 A I don't recall.
16 occasion that you had with Gail.	16 Q After you and Mr. Griesbach spoke with Ms. Prost --
17 A I was going to have her check out the statute of	17 well, strike that. Let me ask you, what did you tell
18 limitations issue of whether or not Mr. Allen could be	18 Ms. Prost when she came in to see you about what you
19 prosecuted potentially if the case would arise after	19 had heard?
20 doing research through the file.	20 A Heard from what?
21 Q When you say "after doing research through the file,"	21 Q From the crime lab.
22 tell me what you meant by that at the time.	22 A I don't recall precisely what I said to her. My only
23 A It was after Mr. Griesbach and I were going to review	23 recollection is about the researching the statute of
24 the file to determine whether or not we should have	24 limitations issue on Mr. Allen.
25 the case dismissed against Mr. Avery.	25 Q Did you tell her what you had been told by the person

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6 (Pages 83 to 86)

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<p>1 from the crime lab?</p> <p>2 A Again, as I said, I don't recall precisely what I said</p> <p>3 to her.</p> <p>4 Q I'm not asking for precise recollection. All I'm</p> <p>5 asking for is your best recollection.</p> <p>6 A And I don't know for sure what I said.</p> <p>7 Q You don't have to know it for sure. Just tell me what</p> <p>8 your best recollection is.</p> <p>9 A The only thing I recall what I talked to her about is</p> <p>10 the statute of limitations issue. I don't know what</p> <p>11 else I talked to her about.</p> <p>12 Q Okay.</p> <p>13 A It may have come up, but I don't know.</p> <p>14 Q All right. After that conversation with her and Mr.</p> <p>15 Griesbach, with whom did you next speak about what you</p> <p>16 had been informed of by the woman from the crime lab?</p> <p>17 A I don't recall.</p> <p>18 Q Did you at some point decide to call Mr. Tinker at the</p> <p>19 Attorney General's office?</p> <p>20 A I did.</p> <p>21 Q At the time you decided to call Mr. Tinker, had you</p> <p>22 made any further announcement in your office</p> <p>23 concerning what you had been told by the person at the</p> <p>24 crime lab than what you've already told us about your</p> <p>25 conversation with Mr. Griesbach and Ms. Prost?</p>	<p>1 Q Meaning that you said something about the situation?</p> <p>2 A Yes.</p> <p>3 Q Do you recall whether you told the office the</p> <p>4 substance of what you had been told by the woman from</p> <p>5 the crime lab?</p> <p>6 A I don't recall if I mentioned specifically about the</p> <p>7 crime lab.</p> <p>8 Q Do you recall what you told them about Steven Avery?</p> <p>9 A No, I don't recall precise-- I don't recall.</p> <p>10 Q Did you use Steven Avery's name?</p> <p>11 A Yes.</p> <p>12 Q Do you recall what you told them about Gregory Allen?</p> <p>13 A No.</p> <p>14 Q Did you use Gregory Allen's name?</p> <p>15 A Yes.</p> <p>16 Q Do you remember who was present?</p> <p>17 A No.</p> <p>18 Q Do you recall whether Brenda Petersen was present?</p> <p>19 A I don't recall. But she would have been notified.</p> <p>20 Q Would have been?</p> <p>21 A Yes.</p> <p>22 Q By you?</p> <p>23 A Yes.</p> <p>24 Q Notified on the occasion of you making an announcement</p> <p>25 to a group of people or notified separately?</p>
Page 84	Page 86
<p>1 A Could you repeat the question? I apologize.</p> <p>2 Q Let's read it back.</p> <p>3 (Question played back 10:00 - 10:01)</p> <p>4 A I don't recall.</p> <p>5 Q Do you have any recollection of announcing to other</p> <p>6 members of your staff and office that the crime lab</p> <p>7 had made a determination that Steven Avery was</p> <p>8 exculpated and Gregory Allen was inculpated in the</p> <p>9 matter of the sexual assault on Penny Beerntsen?</p> <p>10 A Yes, I do.</p> <p>11 Q What's your recollection of that?</p> <p>12 A I probably told the office about the situation and</p> <p>13 that we were not to discuss it outside the office and</p> <p>14 to keep it within the office.</p> <p>15 Q Tell me your best recollection, precise or not, about</p> <p>16 the words that you used when you told the office, as</p> <p>17 you put it, about the situation. How did you describe</p> <p>18 the situation?</p> <p>19 A I don't recall.</p> <p>20 Q You have no recollection of that?</p> <p>21 A I don't recall what I said.</p> <p>22 Q Do you recall generally what you said about it?</p> <p>23 A I just, like I said, I made the announcement and I</p> <p>24 don't recall the words I used other than what I've</p> <p>25 already told you.</p>	<p>1 A I don't recall if I did it individually or as a group.</p> <p>2 Q All right. Do you recall whether Beverly Badker was</p> <p>3 present?</p> <p>4 A She was made aware of it.</p> <p>5 Q Do you recall whether she was made -- was she made</p> <p>6 aware of it by you?</p> <p>7 A Yes.</p> <p>8 Q Do you recall whether it was in a group of people or</p> <p>9 separately?</p> <p>10 A I don't recall.</p> <p>11 Q Do you recall whether a Ms. Mertens was made aware of</p> <p>12 it?</p> <p>13 A No, not from me.</p> <p>14 Q Do you recall whether independently of you Mr.</p> <p>15 Griesbach made anybody in the office aware of it?</p> <p>16 A Not that I am aware of, no.</p> <p>17 Q Okay.</p> <p>18 A Other than he was present for the conversation with</p> <p>19 Mr. Prost.</p> <p>20 Q All right. At the time that you made Ms. Petersen and</p> <p>21 Ms. Badker aware of it, had you already spoken with</p> <p>22 Mr. Tinker?</p> <p>23 A I don't recall.</p> <p>24 Q How many conversations did you have with Mr. Tinker</p> <p>25 about the Steven Avery matter?</p>



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7 (Pages 87 to 90)

Page 87	Page 89
<p>1 A I don't recall. 2 Q Can you estimate them? 3 A I talked to him about it on a couple of occasions. I 4 do not know the number. 5 Q You talked to him on the phone or in person? 6 A Both. 7 Q In person you talked to him in Madison; is that right? 8 A Yes. 9 Q But not in Manitowoc. 10 A Correct. 11 Q When you were in Manitowoc, you talked to him by 12 phone. 13 A Correct. 14 Q Meaning he didn't come to Manitowoc. 15 A Correct. 16 Q When you went to Madison, you were accompanied by Mr. 17 Griesbach? 18 A Yes, I was. 19 Q And you brought with you the Steven Avery file from 20 the district attorney's office. 21 A We did. 22 Q Did you bring anything further? 23 A We just brought the file. 24 Q All right. Can you tell me how many times you spoke 25 with Mr. Tinker before you went to Madison and brought</p>	<p>1 A Again, she may have been present, but I don't recall 2 the name. 3 Q All right. Robbie Lowery? 4 A She may have been present, but I don't recall the 5 name. 6 Q Do you remember the identity of any of the DCI 7 investigators? 8 A No. Not... 9 Q Does Deb Strauss ring a bell at all? Do you remember 10 whether she was present on that occasion? 11 A She may have been present, but I don't recall the 12 name. 13 Q All right. By that time, that is, to say by the time 14 you met in Madison at the attorney general's office, 15 you had received information from people in the 16 district attorney's office about Gregory Allen; is 17 that right? 18 A Yes. 19 Q Who were the people from whom you had received that 20 information? 21 A I don't recall precisely. 22 Q Give me your best recollection. 23 A It may have been Bev Badker and Brenda Petersen. 24 Q Anybody else that you recall? 25 A No.</p>
Page 88	Page 90
<p>1 the file? 2 A I do not know. 3 Q When you got to Madison, did you speak to Mr. Tinker? 4 A Yes. 5 Q Did you speak to anybody else? 6 A Yes. 7 Q Who? 8 A We were -- met with during the meeting the Attorney 9 General Peg Lautenschlager. Various other assistant 10 attorney generals were present, don't know all their 11 names. DCI investigators were present. 12 Q Let's start with the assistant attorneys' general. 13 Did you talk to Mike Bauer? 14 A I don't recall the names, as I said, of all the 15 assistants that were there. But he may have been 16 present. 17 Q How about Tom Falon? Do you recall whether he was 18 there? 19 A Tom Falon? 20 Q Falon. 21 A Yeah, he was present. 22 Q All right. Jennifer Nashold, was she present? 23 A I don't recall that name, but she may have been 24 present also. 25 Q Monica Burkert-Brist, was she present?</p>	<p>1 Q By the time that you went to Madison to meet in the 2 attorney general's office, had you had further 3 discussions with Mike Griesbach about Gregory Allen? 4 A Yes. 5 Q How many? 6 A I don't know. 7 Q Tell me what you recall of the contents of those 8 discussions. 9 A I don't recall those contents of the discussions. 10 Q At all? 11 A No. 12 Q To your knowledge, at that time had Mr. Griesbach been 13 conducting any further inquiries about who Gregory 14 Allen was, what his record was and so forth? 15 A He or I may have done that. 16 Q Well, let's start with you. What did you do? 17 A I'm not sure who did what, but we did do a criminal 18 history check on Mr. Allen at the sheriff's 19 department. 20 Q Anything further that you recall? 21 A We had done the CCAP check before that. 22 Q Right. 23 A He or I may have gotten ahold of the prior complaint 24 out of the clerk's office. I forget who got it, it 25 was either he or I.</p>

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8 (Pages 91 to 94)

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<p>1 Q Had the two of you, in respect to this search, made a 2 decision to try and find out within the confines of 3 the County of Manitowoc government whatever you could 4 about Gregory Allen? 5 A That was not what we were doing, no. 6 Q What did you consider that you were doing? 7 A Just as I told you. We got a criminal history check 8 on Mr. Allen from the sheriff's department, and I 9 believe Mike or I obtained that complaint. 10 Q All right. With whom did you do the criminal history 11 check in the sheriff's department? 12 A I don't recall. 13 Q Was it sheriff's department personnel? 14 A Yes. 15 Q Was it Mr. Beck? 16 A I don't recall. 17 Q To your knowledge, what did they examine to respond to 18 your inquiry? 19 A They printed out a criminal history for us and that 20 was it. 21 Q Was it an extensive history, in your opinion? 22 A I don't recall the history. 23 Q Tell me everything you recall that Brenda 24 Petersen told you after she heard this 25 information about Gregory Allen from you.</p>	<p>1 Q I'm not asking you verbatim. I'm asking you your best 2 recollection of what she said. Come on, you're a 3 lawyer, you know the difference that I'm talking 4 about. Just give me your best recollection. 5 MR. BASCOM: Objection. Argumentative. 6 MR. MCCAMBRIDGE: Object -- 7 MR. COVELLI: If he has one. 8 MR. MCCAMBRIDGE: Yeah, I think -- well, why 9 don't we establish that, Walt. 10 BY MR. KELLY: 11 Q You can answer. 12 MR. MCCAMBRIDGE: As a foundation. 13 BY MR. KELLY: 14 Q You can answer. 15 A If I may, which one am I answering? 16 BY MR. KELLY: 17 Q Your best recollection, whatever it may be, 18 general, precise, exact, specific, whatever -- 19 your best recollection of what Brenda Petersen 20 told you after you told her about Gregory Allen. 21 MR. COVELLI: Objection to the form of the 22 question. 23 A Again, she knew about Gregory Allen. And that's -- 24 again, I don't recall what she said. 25 BY MR. KELLY:</p>
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<p>1 A She may have, at a time, mentioned Mr. Allen. I don't 2 recall what she said precisely. 3 Q Tell me your best recollection. I don't care whether 4 it's precise or not. I want to know your best 5 recollection of what she told you. 6 A I don't recall exactly what she said. 7 Q I'm not asking you exactly. I'm asking you your 8 best general recollection of what Brenda Petersen 9 told you about Gregory Allen after you told her 10 what you had been informed by the crime lab. 11 MR. COVELLI: Objection. Asked and 12 answered. 13 MR. MCCAMBRIDGE: And I'll object to 14 foundation beyond does he have a recollection, 15 you know, and what he's already testified. 16 BY MR. KELLY: 17 Q You can answer. 18 A And I don't recall what she said precisely. 19 Q Do you understand that I'm asking you not what you 20 recall precisely, but what your best recollection is, 21 whatever it may be? 22 A I understand your question. 23 Q Okay. What is your best recollection of what Brenda 24 Petersen told you? 25 A I don't recall what she said verbatim.</p>	<p>1 Q Okay. Well, let's try it this way, then. Did she 2 tell you that she had always believed from the 3 beginning that Gregory Allen had been the person who 4 assaulted Penny Beerntsen? 5 MR. COVELLI: Objection to form. 6 BY MR. KELLY: 7 Q You can answer. 8 A I don't recall those exact words being used. 9 Q Okay. What do you recall were the words that she used 10 in telling you what she believe about that? 11 A There may have been mention that they believed that 12 Allen was the perpetrator. 13 Q And who was the "they" that she was referring to? 14 A She mentioned just in conversation about herself. 15 Q Well, you just said "they," right? Was she 16 referring to herself and Beverly Badker? 17 A I am not sure. I am not sure. Like I said, she -- as 18 I said, I don't recall the conversation. 19 Q You were so disturbed about what you were told 20 concerning the knowledge of Brenda Petersen and 21 Beverly Badker that you contacted the attorney 22 general's office to ask them about that, right? 23 A No. The purpose of contacting the attorney general 24 was to do an investigation about the file. That's why 25 I contacted them, to do an independent investigation,</p>

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9 (Pages 95 to 98)

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1 from my recollection.	1 Jim Lenk had information that he had received.
2 Q But what caused you to want the independent 3 investigation was what you had been told by Brenda 4 Petersen, Beverly Badker, and perhaps others; is that 5 right?	2 Q When you say the names that were mentioned, 3 mentioned to whom?
6 A No.	4 A I don't recall if they talked to me specifically or 5 someone else, and the information then came to me.
7 Q I'm going to ask you to take a moment and examine what 8 is Exhibit 5 in this proceeding. And I'm going to 9 direct your attention to the third full paragraph from 10 the bottom of the page, on Bates page 005614. Have 11 you had a chance to examine that?	6 Q And who would that someone else be?
12 A Yes.	7 A Again, I don't recall how the information got to me. 8 It's either through another source or from them 9 directly.
13 Q May I have it, please? The paragraph that I directed 14 your attention to, I'm going to read it into the 15 record. "Soon after the mistake became public 16 knowledge within the Manitowoc County Courthouse, the 17 current district attorney, Mark Rohrer, started 18 receiving information that people within the 19 courthouse never believed these crimes were committed 20 by Avery. These people all believed Allen committed 21 the crime. Some of these individuals even stated to 22 D.A. Rohrer they made these concerns known to either 23 the district attorney at the time, Denis Vogel, or the 24 Manitowoc County Sheriff, Tom Kocourek." First of 25 all, did you tell that information to the attorney	10 Q So we know, if it was from them directly to you, then 11 that's to you. But if it was through another source, 12 who would that other source be?
	13 A It may have been Ken Peterson, the sheriff.
	14 Q When did Ken Peterson speak with you, if he did, about 15 the Steven Avery case?
	16 A In September of 2003.
	17 Q On one occasion or more than one occasion?
	18 A I don't recall the amount of occasions. At least one.
	19 Q At least one. Did he initiate that contact with you 20 or did you initiate it with him?
	21 A I'm not sure.
	22 Q Okay. Where did it take place?
	23 A The sheriff's department.
	24 Q Anyone else present?
	25 A I don't recall the individuals that were there.
Page 96	Page 98
1 general's office?	1 Q But there was more than just you and Sheriff Peterson?
2 A If Mr. Tinker said I did, I did.	2 A Yes.
3 Q Well, what's your recollection of whether or not this 4 is accurately reciting what you told the attorney 5 general's office?	3 Q How many people more?
6 A I did receive that information, yes.	4 A I don't recall the individuals who were there. It was 5 just myself, Ken and others.
7 Q And you did tell it to them?	6 Q And were the others from the sheriff's department?
8 A Yes.	7 A Yes.
9 Q And the information that you received was from what 10 sources?	8 Q Were they from anywhere else, to your knowledge?
11 A As the document points, employees in the office and 12 others.	9 A Mike Griesbach may have been there.
13 Q Who were they?	10 Q What were you guys told?
14 A There were some people in the sheriff's department. 15 There was people in the office, in the D.A.'s office.	11 A I don't recall what was told at that time, in that 12 meeting.
16 Q Okay. Let's start with the D.A.'s office. Who were 17 the people in the D.A.'s office?	13 Q Tell me your best recollection of what was said 14 to you at the meeting.
18 A Bev Badker and Brenda Petersen.	15 A I don't recall.
19 REPORTER: The first name again, please?	16 Q What was the discussion about Andy Colburn?
20 A Bev Badker, Brenda Petersen.	17 A Nope, was not -- my recollection, we weren't 18 discussing Andy. May have. I don't know.
21 BY MR. KELLY:	19 Q Well, I thought your -- correct me if I'm wrong, but I 20 thought your prior testimony that led to this entire 21 dialog is that you received from some other source 22 information about Andy Colburn and Jim Lenk in respect 23 to Gregory Allen.
22 Q And any others in the D.A.'s office?	24 A In regard to this case. That's what I said. In 25 regard to the Avery case.
23 A No.	
24 Q Who were the people in the sheriff's office?	
25 A The names that were mentioned were Andy Colburn and	

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10 (Pages 99 to 102)

Page 99	Page 101
<p>1 Q Okay. So what were you told at that meeting about 2 Andy Colburn and Jim Lenk? 3 A I don't recall. 4 Q You have no recollection at all? 5 A I don't recall. 6 Q What were you told at that meeting about what some -- 7 one or more members of the sheriff's department 8 believed about Gregory Allen? 9 A I don't recall. 10 Q Was Gregory Allen brought up at the meeting? 11 A Yes. 12 Q By whom? 13 A I don't recall. 14 Q Did Ken Peterson talk about Gregory Allen? 15 A He may have. 16 Q Did Ken Peterson produce any documents? 17 A From my recollection, yes. 18 Q Did he go to the safe to get them? 19 A Not that I am aware of. I didn't -- 20 Q Did he go into his own desk to get them? 21 A I don't know. 22 Q Did he discuss with you at that meeting Tom Kocourek? 23 A Yes. 24 Q Did he tell you anything about Tom Kocourek having 25 been informed about Gregory Allen at the time of the</p>	<p>1 A No, I did not. 2 Q To your knowledge, did Mr. Griesbach? 3 A I don't know if he did or not. You'd have to ask him. 4 Q Was there a reason that you didn't keep any notes of 5 the meeting? 6 A I just didn't. 7 Q In the conversations that you had with Ms. Petersen 8 and Ms. Badker, did you keep any notes of that? 9 A No, I did not. 10 Q Do you recall whether before you went to Madison to 11 meet at the attorney general's office, Mr. Findley had 12 made a public demand that there be an investigation of 13 what had happened in the Steven Avery prosecution? 14 A He may have done that. I don't recall when he made 15 that request. 16 Q Do you have any recollection of whether, before you 17 went to Madison, the attorney general had made a 18 statement that she could not conduct such an 19 investigation because she didn't have any statutory 20 authority to do so? 21 A I don't recall that. 22 Q Do you recall anything like that having occurred? 23 A There was a thought initially that there may be a 24 potential conflict of interest that they couldn't do 25 the investigation.</p>
Page 100	Page 102
<p>1 Steven Avery prosecution? 2 A I don't recall what he said about Tom Kocourek during 3 that meeting. 4 Q You have no recollection? 5 A I do not recall what he said. 6 Q Did he talk at all about Tom Kocourek having been 7 provided information by a man named Bergren who worked 8 for the City of Manitowoc Police Department at the 9 time of the Steven Avery case? 10 A I don't recall that. 11 Q About how long did that meeting last? 12 A Less than an hour, I would say. 13 Q Was Mr. Beck present? 14 A I don't recall. 15 Q Was Mr. Colburn present? 16 A I don't recall. 17 Q Was Mr. Lenk present? 18 A I don't recall. 19 Q Other than the people that you've identified, do you 20 know anybody else who was present? 21 A As I said earlier, Mr. Griesbach may have been 22 present. 23 Q Other than him, anybody else that you recall? 24 A I don't recall. 25 Q Did you keep any notes of the meeting?</p>	<p>1 Q What was the conflict of interest that was perceived 2 at the time? 3 A The attorney general's office had done the appellate 4 work on the original case. 5 Q At a point in time, you made a formal request of the 6 attorney general's office to review the circumstances 7 of the arrest and prosecution of Steven Avery; is that 8 right? 9 A I did. 10 Q I'll show you what's been marked as Exhibit 1. Is 11 that the request? 12 A Yes. 13 Q That request was made after the meeting in Madison; is 14 that right? 15 A I don't recall. I believe we had discussed them doing 16 a review at the time of the meeting, and that it was 17 decided that they would be doing a review before we 18 went down there. The reason why is we had to give a 19 special prosecution basis for it, and I think that's 20 what that is in there, 978.06. 21 Q So when you were in Madison, you talked about 978.06 22 as a basis for the request. 23 A We had talked about them doing a review, and they 24 needed to have a written request as you have in front 25 of you.</p>

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11 (Pages 103 to 106)

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1 Q They needed more than that, though. They needed  
2 a statutory basis, didn't they?  
3 A Yep.  
4 Q And that was something that you discussed when  
5 you were in Madison.  
6 A I don't recall if that precise discussion took place.  
7 We had to do a request in writing, as I did.  
8 Q Well, in fact there had been a discussion about  
9 whether they could give you what you wanted,  
10 which is did they have the authority. There was  
11 an issue about whether or not they had the  
12 authority to conduct the kind of investigation  
13 that you wanted.  
14 A Correct. They had to be made, in essence, a special  
15 prosecution of the case.  
16 Q Right. So that was the strategy that you and they  
17 agreed upon that led to the creation of Exhibit No. 1?  
18 A I wouldn't call it strategy. It's something that had  
19 to be done.  
20 Q Well, in order to get the investigation done, the two  
21 of you had to agree that there was a statutory basis  
22 for it, right?  
23 A I had to make the request, yes.  
24 Q Well, but the suggestion that you make the request was  
25 made by the attorney general's office to you, not vice

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1 versa. They said to you, "Okay. We need a basis.  
2 Here's the basis." You then wrote the letter.  
3 A That may have taken place, yes.  
4 Q Okay. And then they responded to the letter in  
5 Exhibit 2; is that right?  
6 A May I review it, please?  
7 Q Sure.  
8 A Okay. I have reviewed Exhibit 2.  
9 Q Okay. So that was their response to your request; is  
10 that right?  
11 A Yep.  
12 Q All right.  
13 A Yes.  
14 Q Now, you are represented here today by Mr. McCambridge  
15 from the attorney general's office; is that right?  
16 A Yes, I am.  
17 Q And is the reason for that representation that you are  
18 a state employee?  
19 A Yes.  
20 Q All right. And you are not represented by any of the  
21 other lawyers who are here who represent parties in  
22 the litigation; is that right?  
23 A That is correct.  
24 Q Okay. And you're not represented by the corporation  
25 counsel for Manitowoc County; is that correct?

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1 A That is correct.  
2 Q Okay. At any time before you authored this  
3 September 18th, 2003 correspondence, did you talk  
4 with any representative of the attorney general's  
5 office about potential civil liability for  
6 Manitowoc County in connection with the  
7 prosecution and conviction of Steven Avery?  
8 A I may have.  
9 Q Did you discuss that with Mr. Tinker?  
10 A I may have. I don't recall.  
11 Q Did you discuss that with Mr. Bauer at all?  
12 A Not that I recall, no.  
13 Q Did you discuss that with Peg Lautenschlager?  
14 A I may have. I don't recall.  
15 Q All right. Before you went up to Madison with Mr.  
16 Griesbach, did you have any discussions with Mr.  
17 Rollins about potential civil liability for Manitowoc  
18 County in connection with the prosecution and  
19 conviction of Steven Avery?  
20 A I may have, yes.  
21 Q Okay. Tell me what you recall of that discussion.  
22 A I don't recall the discussion other than that was a  
23 potential thing that we saw that could potentially  
24 happen here.  
25 Q And was it a part of your discussion that in

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1 order to deal with the issue of potential civil  
2 liability you would ask to have an investigation  
3 done by the attorney general?  
4 A I don't recall if I told that to Mr. Rollins. I may  
5 have.  
6 Q Okay. In fact he may have suggested it to you.  
7 A No, that was my decision. I made that on my own.  
8 Q Okay.  
9 A No one made that suggestion but me.  
10 Q Okay.  
11 A You were fearful of the potential liability of  
12 Manitowoc County in respect to what had happened to  
13 Mr. Avery?  
14 A I was not fearful of it.  
15 Q No, you were concerned about it.  
16 A I wasn't concerned about it.  
17 Q You didn't care about it.  
18 A Not that I didn't care about it, but it wasn't my  
19 situation to worry about. My job was to preserve the  
20 integrity of the file and my office.  
21 Q Well, your job went beyond that in your own mind  
22 because you asked for this investigation to be done,  
23 right?  
24 A That's part of the integrity of my office, so I don't  
25 think it is going beyond that.



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12 (Pages 107 to 110)

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<p>1 Q So you were concerned about the integrity of your 2 office. 3 A To have an independent investigation done. 4 Q What was it about your office's integrity that you 5 were concerned about? 6 A I just wanted an independent review. 7 Q Okay. 8 A That's all. 9 Q Had Mr. Griesbach expressed any opinion to you about 10 the behavior of Mr. Vogel at the time you made the 11 request of the attorney general? 12 A He had prepared a memo about a conversation he had 13 with Mr. Vogel. I don't recall its contents. 14 Q I know he did that. But I'm asking you whether or not 15 he talked with you at all about any concerns that he 16 personally had about how Vogel had handled the case. 17 A I don't recall those conversations. 18 Q Did they take place at all? 19 MR. COVELLI: Asked and answered. 20 A I don't recall what was said. 21 BY MR. KELLY: 22 Q Was there such a conversation? 23 A There may have been, yes. 24 Q Okay. Tell me your best recollection, it doesn't have 25 to be precise or exact, of what Mike Griesbach said to</p>	<p>1 Q Okay. Let me show you what's been marked as 2 Exhibit 124. Take a moment, if you would, and 3 examine that. 4 A I'm familiar with the document. 5 Q Okay. Who's Douglass Jones? 6 A Assistant district attorney for Manitowoc County. 7 Q All right. What is this memo, to your understanding? 8 A It speaks for itself. He had a telephone conversation 9 with Gene Kusche about the case. 10 Q All right. This memo is dated the same day that your 11 letter to the attorney general is dated, September 12 18th. Do you see that? 13 A Yes, I do. 14 Q Do you recall whether or not Mr. Jones provided this 15 memo to you before or after you wrote the letter to 16 the attorney general? 17 A I don't recall. 18 Q Okay. In this memo, Mr. Jones says that in talking 19 with Gene Kusche, Kusche told Jones that in '95 or '96 20 Colburn had told Kocourek that an officer from Brown 21 County had told Colburn that Greg Allen and not Steven 22 Avery may have actually committed the Beerntsen 23 assault. Do you see that? 24 A The language that you're reading from is about "might 25 have actually committed the Beerntsen assault." Is</p>
<p>Page 108</p> <p>1 you about that. 2 MR. COVELLI: Objection. No foundation. 3 Form of question. 4 A I don't recall what Mike said during that conversation 5 other than he had a telephone conversation with Vogel. 6 That's all I remember at this time. 7 BY MR. KELLY: 8 Q He was upset about the conversation with Vogel, wasn't 9 he? 10 A I don't recall if he was upset or not. 11 Q He didn't like what Vogel was doing and he told you 12 that; is that right? 13 A I don't recall him saying that, no. 14 Q Okay. Did you ever talk to Janine Geske before you 15 went to see the attorney general's office? 16 A I believe Mike may have done that. 17 Q Did he report to you on the conversation he had had 18 with Ms. Geske? 19 A He may have. 20 Q What did he tell you? 21 A I don't recall. 22 Q Do you recall anything about what he told you 23 concerning that? 24 A No, not at this time. 25 (Exhibit 124 identified)</p>	<p>Page 110</p> <p>1 that the reference you're making? 2 Q I'm starting on the sentence -- Let's read it 3 into the record. "He then told me" -- and the 4 "he" refers to Gene Kusche. "He then told me 5 that in '95 or '96, Andy Colburn had told Tom 6 Kocourek, former Manitowoc County sheriff, that 7 an officer from Brown County had told Colburn 8 that Allen and not Avery might have actually 9 committed the Beerntsen assault. Gene stated 10 that Colburn was told by Kocourek something to 11 the effect that we already have the right guy and 12 he should not concern himself." So this is 13 information that's being provided to you on 14 September 18th by Doug Jones, right? 15 A That's correct. 16 Q Did you provide this information to the attorney 17 general's office? 18 A Yes. My recollection is I believe we did. 19 Q And who's we? 20 A Mike Griesbach and I when we went to Madison. 21 Q But this memo was drafted after you had been to 22 Madison. 23 A I'm not sure of the date we were in Madison. 24 Q Well -- 25 A I'd have to look at the record to see when we went.</p>



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13 (Pages 111 to 114)

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<p>1 Q Exhibit No. 1, September 18th is when you write the</p> <p>2 letter following the decision that's made about the</p> <p>3 statutory basis that you're going to seek for the</p> <p>4 investigation.</p> <p>5 A Again, I apologize. I do not know whether or not this</p> <p>6 was done at the same time that we met with the</p> <p>7 attorney general or before. I don't have the precise</p> <p>8 date in mind when we met with the attorney general.</p> <p>9 It was around this time.</p> <p>10 Q Okay. So you're telling me you don't remember whether</p> <p>11 or not you had the information in Exhibit 124 when you</p> <p>12 went to Madison?</p> <p>13 A My recollection is that I believe I did, but I'm not</p> <p>14 certain.</p> <p>15 Q And you're saying you told that information to the</p> <p>16 attorney general's office?</p> <p>17 A We passed everything we had obtained to the attorney</p> <p>18 general's office.</p> <p>19 Q Okay. Well, neither this memo nor anything about</p> <p>20 Colburn and Lenk is in any of the records that were</p> <p>21 provided to the attorney general's office. I can tell</p> <p>22 you that. Does that give you any concern about</p> <p>23 whether or not you provided this information, that is</p> <p>24 to say the information in Exhibit 124, to the attorney</p> <p>25 general's office?</p>	<p>1 conversation --</p> <p>2 MR. MCCAMBRIDGE: Let's -- we can be</p> <p>3 courteous.</p> <p>4 MR. KELLY: Okay. All right. You're right.</p> <p>5 A We turned over --</p> <p>6 MR. KELLY: I apologize. I withdraw that</p> <p>7 question. Let me ask it another way.</p> <p>8 Q You've told us on that day, that you met with the</p> <p>9 attorney general.</p> <p>10 A And I don't recall the date that I met with the</p> <p>11 attorney general.</p> <p>12 MR. MCCAMBRIDGE: The question is -- if you</p> <p>13 would really listen to the question.</p> <p>14 WITNESS: I'm sorry.</p> <p>15 MR. MCCAMBRIDGE: You've told us you met</p> <p>16 with the attorney general, yes or no.</p> <p>17 A Yes.</p> <p>18 BY MR. KELLY:</p> <p>19 Q Okay. Did you personally provide the information in</p> <p>20 Exhibit 124 that we're talking about here, that I've</p> <p>21 read into the record, to the attorney general?</p> <p>22 A To my recollection, I could be wrong, I believe we</p> <p>23 turned over -- this was contained within the materials</p> <p>24 we turned over to the attorney general. We turned</p> <p>25 over the entire file, as I stated earlier.</p>
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<p>1 A And, again, it's my recollection that we did do that,</p> <p>2 and I don't know for sure, but my recollection at this</p> <p>3 time.</p> <p>4 Q Well, there's only two people in the "we," it's you</p> <p>5 and Mike Griesbach, right?</p> <p>6 A In the what?</p> <p>7 Q In the "we" that you're talking about when you say</p> <p>8 "we."</p> <p>9 A Right.</p> <p>10 Q Nobody else went to Madison, right?</p> <p>11 A That's correct.</p> <p>12 Q Okay. And when you and Mike were there you met with</p> <p>13 certain people in the attorney general's office,</p> <p>14 you've told us about that, right?</p> <p>15 A Correct.</p> <p>16 Q So if this information was provided to the attorney</p> <p>17 general's office, either you did it or Mike Griesbach</p> <p>18 did it, in your best recollection.</p> <p>19 A From my recollection, I believe that's what was done.</p> <p>20 I'm not certain. But, again, I just have a vague</p> <p>21 recollection that that was done.</p> <p>22 Q Did you personally give that information to Peg</p> <p>23 Lautenschlager?</p> <p>24 A We turned over the entire Avery file to --</p> <p>25 Q I know that. I'm asking you about your</p>	<p>1 Q Okay.</p> <p>2 MR. MCCAMBRIDGE: Let me try to help. The</p> <p>3 question was did you give this information, not</p> <p>4 this document, did you give this -- if I</p> <p>5 understand your question, did you give this</p> <p>6 information to the attorney general. Yes or no</p> <p>7 or you don't know. I mean, whatever.</p> <p>8 A I don't know. I'm saying from my recollection, I</p> <p>9 believe I did.</p> <p>10 BY MR. KELLY:</p> <p>11 Q Okay. And did you give it to her in oral form or did</p> <p>12 you turn this document, Exhibit 124, over to her?</p> <p>13 A I don't --</p> <p>14 MR. COVELLI: Object to form.</p> <p>15 A I don't recall if it was oral or as the whole file,</p> <p>16 sir.</p> <p>17 BY MR. KELLY:</p> <p>18 Q Do you have any belief, as you sit here today, as to</p> <p>19 whether or not you or Mike Griesbach at any point in</p> <p>20 time turned over Exhibit 124 to any representative of</p> <p>21 the attorney general's office?</p> <p>22 A I believe we had done so, but I'm not certain.</p> <p>23 Q Okay. Apart from the document, do you have any</p> <p>24 recollection of whether you or Mike Griesbach provided</p> <p>25 to representatives of the attorney general's office</p>

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1 the information that's contained in Exhibit 124 that  
 2 we've read into the record about what Kusche found out  
 3 about Colburn and Lenk?  
 4 A Again, we may have.  
 5 Q But you don't recall.  
 6 A I don't recall. I don't recall but we may have.  
 7 Q When you received this information from Douglass Jones  
 8 on September 18th that's set forth in Exhibit 124...  
 9 A Yes?  
 10 Q ...was it disturbing to you that the information  
 11 reported that Kocourek said something to the effect  
 12 that we already have the right guy and he should not  
 13 concern himself?  
 14 A I didn't have an opinion about whether or not it was  
 15 disturbing or not to me.  
 16 Q Had you received at that time, from any other source,  
 17 information that Kocourek was taking that position  
 18 generally with regard to any other suspect in the  
 19 Steven Avery case: that he had the right guy, don't  
 20 concern yourself about anybody else? Had you received  
 21 that information from any other source than this  
 22 Exhibit 124 at the time that you received this Exhibit  
 23 124?  
 24 A I don't recall.  
 25 Q In the meeting that took place in Ken Peterson's

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1 Q Okay. And what's it do to your recollection about it  
 2 being in December?  
 3 A It's dated December of 2003.  
 4 Q Okay.  
 5 A I recognize the report.  
 6 Q All right. At any time between when you first heard  
 7 from the woman at the crime lab and when you received  
 8 Exhibit No. 6, the report, did you have any discussion  
 9 with Jim Fitzgerald about the Steven Avery matter?  
 10 A No.  
 11 Q Again during that same period of time now, we're  
 12 talking between September 3 and December 17th, did you  
 13 talk with Denis Vogel?  
 14 A No.  
 15 Q At any time during that period of time, did you talk  
 16 with Tom Kocourek?  
 17 A Yes.  
 18 Q On how many occasions?  
 19 A I do not know.  
 20 Q More than one?  
 21 A I do not know.  
 22 Q At least one?  
 23 A Yes.  
 24 Q Where was the one that you recall?  
 25 A I don't recall.

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1 office at the sheriff's department, had anybody  
 2 provided any information of that kind to you?  
 3 A Of what kind, please?  
 4 Q Of the kind that when Sheriff Kocourek was provided  
 5 information about Gregory Allen or some other suspect  
 6 in the Penny Beerntsen sexual assault, he was taking  
 7 the position don't worry about it, we've got the right  
 8 guy.  
 9 A Did anyone say that during the meeting? Is that your  
 10 question?  
 11 Q Or words to that effect.  
 12 A They may have. I don't recall.  
 13 Q Let's go off the record for a minute.  
 14 REPORTER: Off the record.  
 15 (Off the record 10:42 - 10:46)  
 16 REPORTER: We're back on the record.  
 17 BY MR. KELLY:  
 18 Q Mr. Rohrer, in response to the formal request that you  
 19 made, which you've identified to us in Exhibit No. 1,  
 20 was ultimately a report issued in December by the  
 21 attorney general's office?  
 22 A If I could see it, it may refresh my recollection when  
 23 it was issued.  
 24 Q I'll show you Exhibit 6.  
 25 A Okay. I do recognize Exhibit 6, sir.

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1 Q How long did it last?  
 2 A Less than an hour.  
 3 Q Who was present?  
 4 A I don't recall.  
 5 Q Well, it was at least you and Kocourek, right?  
 6 A Yes.  
 7 Q Okay. Was there anyone else present?  
 8 A I don't recall.  
 9 Q Was Mike Griesbach present?  
 10 A I don't recall.  
 11 Q What was the occasion for that conversation with  
 12 Kocourek? How did it come about, how did the meeting  
 13 come about?  
 14 A I don't recall.  
 15 Q Was it initiated by you?  
 16 A I don't recall.  
 17 Q Was it initiated by Mr. Kocourek?  
 18 A I don't recall.  
 19 Q Did you talk about the Steven Avery case?  
 20 A Yes.  
 21 Q Tell me everything you recall that you talked about  
 22 with him.  
 23 A I don't recall what was said.  
 24 Q You recall nothing of the meeting?  
 25 A I recall that a meeting took place, we discussed

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15 (Pages 119 to 122)

Page 119	Page 121
<p>1 Steven Avery. I don't recall. 2 Q Did you discuss Gregory Allen? 3 A May have. 4 Q Did you discuss Tom Bergner? 5 A I don't recall. 6 Q Did you discuss what you had been told at the meeting 7 with Ken Peterson? 8 A I don't recall. 9 Q Did you discuss what Brenda Petersen and Beverly 10 Badker had told you? 11 A I don't recall. 12 Q Did you make any notes of your meeting with Kocourek? 13 A I did not. 14 Q Is there a reason why you didn't? 15 A I just didn't. 16 Q All right. You knew that there was an investigation 17 going on at the time by the Department of Justice 18 concerning Mr. Kocourek's behavior, right? 19 A I don't recall when I had the meeting with Mr. 20 Kocourek as it related to the investigation. 21 Q Well, we've already discussed the fact that it 22 took place sometime between when you received the 23 information from the crime lab and when the 24 report was issued, right? 25 A Correct.</p>	<p>1 A I don't recall precisely what I said, but if Mr. 2 Tinker stated I said it, I'd have no reason to doubt 3 him. 4 Q And part of the concern about whether or not the 5 information concerning Gregory Allen was handled 6 properly in the prosecution to your knowledge at that 7 time, that is to say at the time of your meeting at 8 the attorney general's office, concerned the behavior 9 of former Sheriff Kocourek; is that right? 10 MR. MURRAY: Form. Form of the question. 11 A If you could repeat the question, please. 12 BY MR. KELLY: 13 Q Sure. Part of your concern when you went and talked 14 to the attorney general was whether or not Kocourek 15 had behaved properly with respect to the investigation 16 insofar as information concerning Gregory Allen was 17 involved. 18 MR. MURRAY: Same objection. 19 A Again, I just wanted to make sure that an independent 20 review was done on the file to make sure everything 21 was handled properly was my concern. 22 BY MR. KELLY: 23 Q By the sheriff as well as by the district attorney's 24 office, right? 25 A In the entire case as a whole, yes.</p>
Page 120	Page 122
<p>1 Q So are you saying that your conversation with Kocourek 2 took place sometime between September 3 and September 3 18th? 4 A That's possible, yes. 5 Q Okay. So that would be a period of time in which you 6 were talking with Mr. Tinker about your concerns 7 respecting the Steven Avery prosecution, right? 8 A Concerns with information I received in regard to the 9 Steven Avery prosecution. 10 Q Well -- 11 A Based on the exhibit you showed me earlier. 12 Q Exhibit No. 5 that we've already discussed, I'm going 13 to read this paragraph to you. It follows the 14 paragraph we read earlier. It says, "D.A. Rohrer 15 expressed his concerns about these allegations to the 16 attorney general's office and requested an independent 17 review. The focus of this review would be to 18 determine if Allen was ever a suspect in this 19 investigation and, if so, was this information turned 20 over to the defense attorneys as part of the discovery 21 procedure." Okay? So that is something that you told 22 the attorney general's office that you wanted. 23 MR. COVELLI: Objection to form. 24 BY MR. KELLY: 25 Q Is that right?</p>	<p>1 Q Okay. And what I'm trying to get here is, you've told 2 us you have an hour-long conversation with Sheriff 3 Kocourek. 4 A I believe I said less than an hour, if I recall my 5 answer to your question, sir. 6 Q Okay. Can you fix the approximate period of time? 7 A I cannot. 8 Q And at the time that you talked to Kocourek, you were 9 an experienced criminal lawyer, right? 10 A Yes. 11 Q Okay. Yet you made no notes of your conversation with 12 Kocourek. 13 MR. MURRAY: Object as argumentative. 14 BY MR. KELLY: 15 Q Is that right? 16 A I stated earlier I did not make notes, no. 17 Q Okay. Can you tell me why? 18 A I just didn't make notes. 19 MR. COVELLI: Asked and answered. 20 BY MR. KELLY: 21 Q Well, I know you just didn't make notes, but I'm 22 asking you what your state of mind was at the time as 23 to why you did not make notes. 24 A I just didn't make the notes. 25 Q When you went to the attorney general's office and</p>

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16 (Pages 123 to 126)

Page 123	Page 125
1 talked to them about the case, did you tell the	1 received from Thomas Bergner concerning another
2 representatives of the attorney general's office about	2 possible assailant than Steven Avery at a period of
3 the conversation that you had had with Kocourek?	3 time between when she was attacked and when the trial
4 A I don't recall.	4 began?
5 Q Did you tell the representatives of the attorney	5 A I don't recall.
6 general's office about the conversations that you had	6 Q Did she tell you anything about a phone call that she
7 had with Sheriff Peterson?	7 had received at home from a City of Manitowoc police
8 A I don't recall.	8 officer raising the question of whether or not Steven
9 Q At any time between when you first received the phone	9 Avery was the proper defendant in the case?
10 call from the representative of the crime laboratory	10 A I don't recall that.
11 and December 17th when the report was published by the	11 Q Do you have any recollection of anything she told you?
12 attorney general, did you talk to Mrs. Beerntsen?	12 A As I stated earlier, she was pleased with how I was
13 A Yes.	13 handling the case and complimented me on that.
14 Q On how many occasions?	14 Q Anything else you remember that she told you?
15 A I don't recall.	15 A Well, she was upset with the fact that Steven Avery
16 Q More than one?	16 was convicted.
17 A At least once.	17 Q Did she tell you why she was upset?
18 Q Okay. And was the once in-person or by phone?	18 A I don't recall.
19 A What were the dates again, please?	19 Q Did she tell you anything about her concerns as to how
20 Q Between September 3rd and December 17th of 2003.	20 the sheriff conducted himself?
21 A I don't recall if it was on the phone or in person.	21 A I don't recall.
22 Q Who initiated the contact?	22 Q Is there anything further you recall of the
23 A I don't recall.	23 conversation with Mrs. Beerntsen?
24 Q What was the reason for the contact?	24 A No.
25 A I don't recall.	25 Q What was it that you did that she was so pleased with?
Page 124	Page 126
1 Q What did Mrs. Beerntsen say to you?	1 MR. MURRAY: Foundation. If you know.
2 A I don't recall. She was pleased with how I was	2 BY MR. KELLY:
3 handling the case. That I do recall.	3 Q As she expressed it to you.
4 Q What did you say to her?	4 A Well, how professionally we handled the situation, how
5 A I don't recall.	5 quickly we moved on the situation, how thorough we
6 Q Did she tell you anything about how disturbed she	6 were with the situation. She was very pleased with
7 was that it turned out that it was Gregory Allen	7 that.
8 who had attacked her?	8 Q Well, you didn't do anything, did you? You just
9 MR. BASCOM: I'm going to object to the form	9 asked the attorney general to conduct an
10 of that question.	10 investigation.
11 A I don't recall that being said.	11 MR. MCCAMBRIDGE: Objection.
12 BY MR. KELLY:	12 MR. MURRAY: Argumentative.
13 Q Did she tell you anything about the contact that she	13 MR. MCCAMBRIDGE: That's a little snotty.
14 had received from Thomas Bergner at the time of the	14 MR. KELLY: Moi?
15 events in question after she had been attacked and	15 Q What was it about your behavior that she liked?
16 before the actual trial?	16 MR. COVELLI: Asked and answered.
17 MR. BASCOM: Objection to the form.	17 MR. MURRAY: Foundation. Go ahead and
18 MR. POLLEN: I object also. It assumes	18 answer.
19 facts not in evidence.	19 A I already answered that question. I said that she was
20 BY MR. KELLY:	20 pleased with how we handled ourselves with the
21 Q You can answer.	21 situation, how professional --
22 A I apologize. Because of the objections, may I have	22 BY MR. KELLY:
23 the question repeated back?	23 Q Who's we?
24 Q Sure. Did Penny Beerntsen, in her conversation with	24 A Mike and I.
25 you, tell you anything about any information she had	25 Q Did you tell her anything about what you had found out

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17 (Pages 127 to 130)

Page 127	Page 129
<p>1 in the course of your discussions with Kocourek, 2 Peterson or any other representatives of the sheriff's 3 department? 4 A I don't recall. 5 Q At any time between September 3rd when you received 6 the information that you did from the crime lab and 7 December 17th, did you have any discussions with any 8 representatives of the City of Manitowoc? 9 A Yes. 10 Q With whom? 11 A Perry Kingsbury, Tom Bergner. 12 Q Did you meet them together or separately? 13 A My recollection is they were together. 14 Q Where did the meeting take place? 15 A City of Manitowoc Police Department. 16 Q Did it take place before you went to the attorney 17 general's office or after? 18 A I don't recall. 19 Q Do you recall whether the information that you 20 received in the meeting that you had with those people 21 was information that you provided to the attorney 22 general's office? 23 A Myself or Mr. Griesbach? 24 Q Mr. Griesbach was at the meeting as well? 25 A Yes.</p>	<p>1 Kingsbury. 2 Q And did this take place after the meeting that you had 3 at Ken Peterson's office? 4 A I don't recall. 5 Q What prompted you or Mike Griesbach to call for this 6 meeting? 7 A To discuss the case. 8 Q What did Tom Bergner tell you at the meeting? 9 A He mentioned Gregory Allen's name, that they were 10 doing surveillance on him at the time that this 11 incident took place. 12 Q Anything further? 13 A That's all I recall at this time. 14 Q Did he tell you that he had talked to Tom Kocourek 15 about the surveillance that they had been doing of 16 Greg Allen? 17 A I don't recall. 18 Q Did he provide to you any of the documents from the 19 investigation of Gregory Allen that they had been 20 conducting at the time? 21 A I don't recall. 22 Q Did he tell you he had provided extensive documentary 23 information to Perry Kingsbury about the investigation 24 that was being conducted of Gregory Allen at the time 25 that Penny Beerntsen was assaulted?</p>
Page 128	Page 130
<p>1 Q Was there anyone else at the meeting? 2 A From my recollection, I don't recall other than those 3 four people. 4 Q Was Jim Wyss at the meeting? 5 A No. 6 Q What was the occasion for the meeting? How did it 7 come about? 8 A I don't recall. 9 Q Did you ask for the meeting or did they volunteer to 10 meet with you? 11 A I asked for the meeting. 12 Q And why did you ask for the meeting? 13 A To discuss the case. 14 Q Well, why discuss the case as to them? What knowledge 15 did you have that caused you to want to meet with 16 Perry Kingsbury and Tom Bergner? 17 A I don't recall. 18 Q You did have information about Tom Bergner at the 19 time that you called for that meeting? 20 A I don't recall. 21 Q Well, how did you select him to be involved in the 22 meeting? 23 A He was just there. 24 Q Whom had you contacted to have the meeting? 25 A I believe myself or Mike Griesbach contacted Perry</p>	<p>1 A I recall a file being present during the meeting. 2 That was discussed. 3 Q Did Kingsbury say anything to you at the meeting about 4 what his reaction had been when Bergner produced that 5 file and gave it to him? 6 A I don't recall. 7 Q Do you remember anything being said where Kingsbury 8 said, "Hey, I don't want it," anything like that? 9 A I don't recall. 10 Q Did you ask to see the file? 11 A I don't recall. 12 Q Did you in fact see the file? 13 A I don't recall. 14 Q Did you see any of the investigatory reports that 15 were made concerning Gregory Allen for the period 16 of time between January of 1985 and August 2nd of 17 1985 by members of the City of Manitowoc Police 18 Department? 19 A I don't recall. 20 Q Do you recall whether you looked at any documents at 21 that meeting? 22 A May have looked at some of the reports in there. 23 Q Did Bergner tell you that they had put Allen 24 specifically under surveillance for the period of time 25 between the 14th of July and the 2nd of August 1985</p>



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18 (Pages 131 to 134)

Page 131	Page 133
1 because they perceived him to be extremely dangerous	1 A In person.
2 with respect to sexual violence?	2 Q One or more than one? One or more than one?
3 MR. COVELLI: Objection. Form.	3 A More than one.
4 A I don't recall.	4 Q It took place in the judge's chambers or elsewhere?
5 BY MR. KELLY:	5 A Judge's chambers and his office.
6 Q Anything further that you recall of the conversation	6 Q Okay. More than two meetings?
7 between you, Griesbach, Kingsbury and Bergner at that	7 A I don't recall.
8 meeting?	8 Q All right. Was the information that you had received
9 A I think they may have had a code name for Allen at	9 from Bergner and Kingsbury discussed with Judge
10 that time that was brought up, but I don't recall the	10 Hazelwood?
11 code name.	11 A That I received?
12 Q The Sandman?	12 Q Well, that you and Griesbach received when you met
13 A I don't recall.	13 with him.
14 Q Does that ring a bell at all?	14 A I don't recall.
15 A All I know is there was a code name they had for him.	15 Q Was the fact that Bergner and the Manitowoc City
16 Q Okay. Did you make any memorandum concerning that	16 Department had been surveilling Gregory Allen
17 meeting?	17 information that you discussed with Judge Hazelwood?
18 A No, I did not.	18 A I don't recall.
19 Q To your knowledge, did Mr. Griesbach make any	19 Q What do you recall of the discussion between you,
20 memorandum?	20 Griesbach and Judge Hazelwood about the Steven Avery
21 A I don't know.	21 case?
22 Q Did you discuss with Mr. Griesbach about whether or	22 A We let him know about the results of the DNA. We let
23 not you should be making a memorandum?	23 him know that we reviewed the file and it was our
24 A No.	24 intention to dismiss the case. That's what I recall.
25 Q Did you provide the information from the meeting,	25 Q So this would be the first meeting with Judge
Page 132	Page 134
1 whatever it was, to the attorney general's office?	1 Hazelwood that took place before you actually filed
2 A I don't recall.	2 the formal papers concerning the dismissal?
3 Q After that meeting, did you have any discussions with	3 A Yes.
4 Jim Wyss about the Steven Avery prosecution?	4 Q And that dismissal, I can tell you, took place on the
5 A No.	5 10th of September of 2003, okay? Is that all right?
6 Q Have you to this day had any such discussions?	6 A If that's the date if I saw the document, I would have
7 A No.	7 no reason to doubt you --
8 Q To your knowledge, has Mr. Rollins?	8 Q Okay.
9 A I don't know.	9 A -- if that's what you say it is.
10 Q Mr. Rollins talk to you at all about any potential	10 Q Did you have a second meeting with Judge Hazelwood
11 liability of the City of Manitowoc in this case?	11 after the case was dismissed?
12 A No.	12 A We may have had a meeting before the -- another
13 Q After you received the information from the crime lab	13 meeting before the case was dismissed or after. I
14 on September 3rd, did you talk with Judge Hazelwood	14 don't recall.
15 about this case at all?	15 Q Did you have any meetings with Judge Hazelwood
16 A Yes.	16 concerning the case after you went to the
17 Q On how many occasions?	17 attorney general's office with Mr. Griesbach?
18 A I don't know.	18 A I don't recall. We may have.
19 Q Did you talk to him about Gregory Allen at all?	19 Q Do you recall at any time talking with Judge Hazelwood
20 A Yes.	20 about the information that you had found out from Mr.
21 Q Was Mr. Griesbach with you on any of the occasions in	21 Bergner about Gregory Allen?
22 which you talked to Judge Hazelwood about this case?	22 A I don't recall.
23 A Yes.	23 Q At any time after you received the call from the crime
24 Q Was it an in-person meeting or was it a meeting that	24 lab, did you have any discussions with Jim Bolgert
25 took place over the phone?	25 about this case?



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19 (Pages 135 to 137)

Page 135	Page 137
<p>1 A Yes.</p> <p>2 Q On how many occasions?</p> <p>3 A At least once.</p> <p>4 Q In person or by phone?</p> <p>5 A By phone.</p> <p>6 Q Who initiated the call?</p> <p>7 A I did.</p> <p>8 Q Was it --</p> <p>9 A Judge Hazelwood suggested that I do that.</p> <p>10 Q Was it before or after you got the dismissal -- or</p> <p>11 filed the papers for the dismissal in the case?</p> <p>12 A I believe it was before.</p> <p>13 Q Any further conversations after the case was</p> <p>14 dismissed with Jim Bolgert?</p> <p>15 A Not that I recall.</p> <p>16 Q What do you recall of the conversation you had with</p> <p>17 him?</p> <p>18 A I called him up to let him know what was going on,</p> <p>19 what we were intending to do. I recall him being</p> <p>20 emotional. I don't recall what he said.</p> <p>21 Q Emotional in what sense?</p> <p>22 A He was emotional.</p> <p>23 Q I know. Was he happy? Was he sad? Was he angry?</p> <p>24 What were the emotions that you experienced when</p> <p>25 you...</p>	<p>1 that you received from the crime lab, did you have any</p> <p>2 conversation with a Richard Brey, B-r-e-y, about the</p> <p>3 --</p> <p>4 A Are you referring to BRIGH [Brey]?</p> <p>5 Q Is that how it's pronounced, BRIGH?</p> <p>6 A Yes.</p> <p>7 Q ...about the Steven Avery case?</p> <p>8 A Not that I recall.</p> <p>9 Q After September 3 when you got the information you did</p> <p>10 from the crime lab, did you ever talk to Tom</p> <p>11 Beermtsen?</p> <p>12 A No. Excuse me. No.</p> <p>13 WITNESS: May I have some water?</p> <p>14 MR. MCCAMBRIDGE: Sure.</p> <p>15 MR. KELLY: That's all I have.</p> <p>16 WITNESS: Oh.</p> <p>17 MR. MCCAMBRIDGE: Okay.</p> <p>18 REPORTER: Anything further for the record,</p> <p>19 gentlemen?</p> <p>20 MR. COVELLI: Nothing further.</p> <p>21 MR. BASCOM: Nothing.</p> <p>22 REPORTER: There being nothing further, the</p> <p>23 deposition is concluded at 11:11 a.m. Off the</p> <p>24 record.</p>
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<p>1 A I can't get into his head other than he was very</p> <p>2 emotional during the phone call. I didn't sense</p> <p>3 anger.</p> <p>4 Q Was he happy?</p> <p>5 A He seemed to be happy from what I could tell from his</p> <p>6 emotion, yes.</p> <p>7 Q Did he say anything about Steven Avery?</p> <p>8 A Not that I recall.</p> <p>9 Q Did he ask you any questions about Gregory Allen?</p> <p>10 A Not that I recall.</p> <p>11 Q Did he make any statements to you about whether or not</p> <p>12 information concerning Gregory Allen had been provided</p> <p>13 to him when he was representing Steven Avery?</p> <p>14 A He did not say anything like that.</p> <p>15 Q Do you recall any further discussions you had with Jim</p> <p>16 Bolgert after that one, concerning the Steven Avery</p> <p>17 matter?</p> <p>18 A I don't recall.</p> <p>19 Q Did you know Bolgert previously as a result of</p> <p>20 having done criminal defense work?</p> <p>21 A Yes. And he married my wife and I.</p> <p>22 Q Okay. So he's a friend of yours?</p> <p>23 A He's not a friend. He's -- he married us. He's a</p> <p>24 friend of my in-laws, actually.</p> <p>25 Q Okay. At any time after you received the information</p>	

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