



Avery. While those DNA tests revealed that the material was from someone other than Mr. Avery and someone other than the victim, this was not considered sufficient for the state court trial judge to grant a new trial.

4. An appeal was taken from that decision, and review was denied by the Wisconsin Supreme Court.

5. I have handled civil rights actions brought under 42 U.S.C. §1983 et seq. on a number of occasions during my legal career. Moreover, as a consequence of having devoted the last thirty years of my professional career to defense of criminal cases in federal and state courts, I have a good understanding of the criminal justice system and its processes.

6. Mr. Kelly asked me to participate in the case in the belief that criminal law-related issues would be a major factor in the case, and my background appeared to complement Mr. Kelly's background with him having civil rights litigation knowledge and my having criminal defense litigation knowledge.

7. I graduated with honors from the University of Wisconsin Law School in 1970 and then clerked for the Honorable James E. Doyle from 1970-1971. Following that judicial clerkship, I became an associate in the law firm of Shellow & Shellow and, later, a partner in the firm of Shellow, Shellow & Glynn. I practiced law with that firm for approximately twenty-nine years, and, together with others from that firm and a lawyer from a different firm, formed the current firm of Glynn, Fitzgerald & Albee, S.C. Throughout this entire

period, my practice has been limited to the defense of criminal cases, either at the trial or post-conviction levels.

8. I have attached a copy of the Martindale-Hubbell legal directory which lists my educational background, publications and memberships. I have read that document before attaching it to this affidavit; it is accurate and true.

9. I attempted to keep hourly time records and expense records in the Avery matter. However, because my normal billing practice is to charge a flat fee, I am certain there are services which were provided by me on the Avery file but are not reflected in my statement. Thus, in going through the statements of hours of myself and Mr. Kelly, there may be occasions on which Mr. Kelly's list reflects a meeting with me and I have no corresponding entry relating to that meeting. That would simply be an example of the phenomenon I am describing in this paragraph.

10. When I do handle criminal cases on an hourly basis, my billing rate is \$400 per hour.

11. Carol Josten, an associate in our firm, has her time billed at \$200 per hour. Ms. Josten was an honors graduate of Georgetown Law School, worked on the Georgetown Law Review, and clerked for the Honorable Myron Gordon, United States District Judge in the Eastern District of Wisconsin. Ms. Josten then went to the law firm of Godfrey & Kahn where she practiced as an associate in that firm's litigation department before leaving that firm to raise her family. She works with our law firm as a part-time associate.

12. Ms. Josten, having been trained in a civil law firm, is a much better record keeper than I. Consequently, I aver the same with respect to comparisons of my hour statements with Ms. Josten's hour statements that I did with respect to Mr. Kelly's hour statements: their's are more accurate than mine.

13. Mr. Kelly and I spent many hours in the pre-filing phase of this case discussing the legal theories which we could pursue and our efforts to obtain documents. This was rendered unusually complex in this regard because the file in *State of Wisconsin v. Steven Avery*, arising in Manitowoc County, had passed through many law firms before it came back to Mr. Kelly and me. Specifically, Mr. Avery was originally represented by a staff lawyer from the Public Defender's Office; when that lawyer became ill, the state public defender appointed a private lawyer as Mr. Avery's counsel; following Mr. Avery's conviction, the state public defender undertook a lengthy factual investigation and pursued a criminal appeal which was unsuccessful; following that appeal, other lawyers were asked by the Avery family to review portions of the file, and additional investigators were involved; in the mid-1990's, Robert Henak of the Shellow, Shellow & Glynn firm conducted an exhaustive review of the prior proceedings in Mr. Avery's case in an effort to determine whether there were issues that could still be pursued (this is what led to the DNA-based post-conviction motion noted earlier).

14. After Shellow, Shellow & Glynn finished with that file, it was passed along to yet other lawyers, including the Innocence Project at the University of Wisconsin Law School.

15. It was at the Innocence Project offices that I first reviewed Mr. Avery's files which, having gone through a large number of lawyers' and investigators' offices, were now in considerable disarray.

16. Gathering records was an essential part of the preparation of this case. Not only were all the records from the criminal case and appellate proceedings required, but so were records of Mr. Avery's treatment in the prison system, and records relating to the DNA-based successful challenge to Mr. Avery's conviction which resulted in his release from prison in 2003.

17. An additional source of factual information in this case was a substantial investigation conducted by the Office of the Attorney General for the State of Wisconsin. At the request of the Manitowoc County District Attorney's Office, the Attorney General's office undertook to investigate the circumstances leading up to Mr. Avery's conviction. That office also issued a report summarizing its findings. But beyond the report, there were thousands and thousands of pages documents that had been generated in the course of the Attorney General's investigation, all of which had to be reviewed in preparation for litigating the Avery case.

18. There was also a substantial amount of legal research required in this case, and Ms. Josten performed the vast bulk of it, reporting on her results to me and to Mr. Kelly. These issues included the exculpatory evidence doctrine in Wisconsin and its applicability to law enforcement authorities not directly involved in the prosecution of a criminal case, among other issues.

19. Finally, because of the age of the case (Mr. Avery had been convicted approximately 20 years before the depositions were being taken in his case), it was difficult to prepare for depositions on the basis of documents which either no longer existed or were no longer the subject of recall by witnesses.

20. All of these factors were reflected in the billing by my law firm.

21. The records of billing and expenses are entirely accurate as far as they go; for the reasons stated earlier in this affidavit, these records are not complete. Nonetheless, what appears in these records is something to which I have no hesitation in affirming by oath.

Dated at Milwaukee, Wisconsin this 13th day of March, 2006.

S/Stephen M. Glynn  
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Subscribed and sworn to before me this

13th day of March, 2006.

s/JoLynn M. Blei  
Notary Public, State of Wisconsin  
My commission expires: 6/22/08

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*Criminal Trial and Appellate Practice in all State and Federal Courts and Complex Civil Litigation.*

**STEPHEN M. GLYNN**, born St. Louis, Missouri, September 5, 1944; admitted to bar, 1970, Wisconsin and U.S. District Court, Western District of Wisconsin; 1971, U.S. District Court, Eastern District of Wisconsin and U.S. Court of Appeals, Seventh Circuit; 1973, U.S. Supreme Court; 1974, U.S. Tax Court; 1979, U.S. Court of Appeals, Tenth Circuit; 1982, U.S. Court of Appeals, Third and Eleventh Circuits; 1985, U.S. Court of Appeals, Eighth Circuit. *Education*: University of Wisconsin (B.S., 1967; J.D., cum laude, 1970). Articles Editor, Wisconsin Law Review, 1969-1970. Law Clerk to Hon. James E. Doyle, U.S. District Court, Western District of Wisconsin, 1970-1971. Lecturer, Criminal Law, University of Wisconsin Law School, 1984-1985, 1992, 1999, 2001; Trial Advocacy Institute, University of Virginia School of Law, 1987-1994; Member, Insanity Defense Committee, 1980-1981 and Preliminary Examinations Committee, 1981-1985, Wisconsin Judicial Council; Member, Wisconsin Attorney General's Advisory Committee on DNA; Member, Special Committee on Genetic and Medical Information, Wisconsin Legislative Council. Author: "Indigent Misdemeanants' Right to Appointed Counsel," 1969 Wis. L. Rev. 297; "Criminal Law," in State Bar of Wisconsin Attorney Desk Reference; "Pretrial Motions" Chapter in Defense of Criminal Cases in Wisconsin; "Criminal Procedure," Wisconsin Criminal Defense Manual. *Member*: State Bar of Wisconsin (Member, Board of Directors, Criminal Justice Section, 1977-1985; 1994-1997; Chairperson, 1978-1979; Member: Professionalism Committee, 1987-1992; Federal Nominating Commission, 1983, 2001); National Association of Criminal Defense Lawyers; Fellow, American College of Trial Lawyers (Member, Wisconsin State Committee, 1993—). **PRACTICE AREAS**: Criminal Defense; Federal Criminal Law. **Email**: [sglynn@gfalaw.com](mailto:sglynn@gfalaw.com)