

STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY

STATE OF WISCONSIN,)	
)	
Plaintiff,)	
)	Case No. 05-CF-381
v.)	
)	Honorable Judge Angela Sutkiewicz,
STEVEN A. AVERY,)	Judge Presiding
)	
Defendant.)	

AFFIDAVIT OF BENNETT L. GERSHMAN

Bennett L. Gershman, being duly sworn, deposes and says:

1. I am of legal majority and can truthfully and competently testify to the matters contained herein based upon my personal knowledge. The factual statements herein are true and correct to the best of my knowledge, information, and belief. I am of sound mind and I am not taking any medication nor have I ingested any alcohol that would impair my memory of the facts stated in this affidavit.
2. I am a Professor of Law at Pace Law School in White Plains, New York and an attorney licensed to practice law in the State of New York. I have been retained by the law firm of Kathleen Zellner, Esq. to prepare this affidavit. I am submitting this affidavit in support of the defendant's motion to vacate his conviction.
3. I have reviewed the conduct of prosecutors for my entire professional career. Based on my knowledge, experience, training, study, and scholarship, it is my opinion that Kenneth Kratz engaged in professional misconduct prior to, during, and after the criminal trial of Steven Avery. Kratz was an experienced prosecutor. At the time of the Avery case Kratz had been a state prosecutor for over twenty years, had served as president of



the Wisconsin District Attorneys Association, and was chairman of the Wisconsin Crime Victim's Rights Board. Kratz was appointed by the governor as the special prosecutor to lead the 2006 investigation into the disappearance and murder of twenty-five-year-old Teresa Halbach and the 2007 prosecutions of Steven Avery and Brendan Dassey. Kratz was aware of the ethical responsibility of prosecutors as "ministers of justice" with the special duty "to see that the defendant is accorded procedural justice and that guilt is decided on the basis of sufficient evidence." Wisconsin Rules of Professional Conduct, SCR Rule 20:3.8, comment; ABA Rules of Professional Conduct, Rule 3.8, comment (1); ABA Prosecution Standards 3-1.2 (a), (b). With his broad experience, Kratz was in a position to "know and abide by the standards of professional conduct" as expressed in these codes of professional ethics. ABA Prosecution Standard 3-1.2(c).

My Background

4. I have had considerable experience as a prosecutor, defense attorney, and academic. I served as an Assistant District Attorney in the office of the New York County District Attorney from 1966-1972 where I was assigned to the homicide, rackets, appeals, and major felony bureaus. I presented hundreds of cases to grand juries and tried numerous felony cases to verdict. I served also as an Assistant Attorney General in the office of the New York State Special Prosecutor's Office from 1972-1976 which was established to investigate and prosecute official and political corruption in New York City's criminal justice system. I was Chief of the Appeals Bureau and the Bronx Anti-Corruption Bureau where I investigated cases, presented cases to special grand juries, and prosecuted many public officials including judges, prosecutors, attorneys, police officers, and other public officials charged with corrupt, fraudulent, and dishonest conduct.

5. I am currently a tenured Professor of Law at the Elizabeth Haub School of Law at Pace University, where I have taught since 1976. I teach courses in criminal law, criminal procedure, constitutional law, evidence, trial practice, and professional ethics. During my academic career I have served as a defense attorney representing many persons charged with serious felonies, including murder, rape, organized crime, and drug cases. I have represented clients before federal and state grand juries. I am frequently consulted as an expert on criminal procedure, prosecutorial misconduct, and professional ethics. I have testified as an expert witness in judicial proceedings and before the United States Congress, the New York State Legislature, and various professional and fact-finding commissions.
6. I write extensively on a prosecutor's ethical duties. I have written a treatise on the prosecutor's legal and professional obligations entitled Prosecutorial Misconduct (2d edition Thomson-West, supplemented annually). I have also written a treatise on the criminal trial entitled Criminal Trial Error and Misconduct (3d edition Lexis-Nexis, supplemented annually). This treatise discusses the kinds of errors and misconduct that are committed by the central participants in the criminal trial – the judge, prosecutor, defense attorney, and jury – and the remedies to challenge trial error misconduct. Both of these treatises are cited frequently by courts and commentators. I often lecture to judges, prosecutors, bar associations, and other professional and civic groups. A current edition of my CV is attached as **Exhibit A** to this affidavit.

Conclusions

7. The following are my opinions based upon a reasonable degree of prosecutorial certainty:
 - a. Kratz's statements at his press conferences constituted professional misconduct;

- b. Kratz's charging Steven Avery based on Brendan Dassey's confession constituted professional misconduct;
- c. Kratz's attempt to introduce in evidence allegations of Steven Avery's prior wrongful acts constituted professional misconduct;
- d. Kratz's pursuit of inconsistent and irreconcilable theories at the separate trials of Steven Avery and Brendan Dassey constituted professional misconduct;
- e. Kratz's request for an aiding and abetting instruction in the Avery trial constituted professional misconduct;
- f. Kratz's public dissemination of inflammatory information about Steven Avery constituted professional misconduct; and
- g. Kratz's jailhouse contacts with Steven Avery constituted professional misconduct.

Previous Opinions

- 8. I have provided opinions in the following proceedings:
 - a. Nomination of Senator Jeff Sessions for Attorney General of the United States (Senate Judiciary Committee, January 6, 2017);
 - b. State of Alabama v. Michael Hubbard, No. CC2014-565 (Circuit Court, Lee County)(October 27, 2015);
 - c. Bozella v. County of Dutchess, No. 10 Civ. 4917 (CS)(SDNY, January 17, 2013);
 - d. State of Missouri ex rel. Montague Simmons v. Robert McCullough, St. Louis County Prosecuting Attorney, Cause No. 15SL-CC00177 (May 4, 2015);
 - e. Robert Bertuglia v. City of New York, 11 Civ. 2141 (JGK)(SDNY, August 18, 2014);
 - f. Donald Gates v. The District of Columbia, Case 1:11-cv-0040-RWR-AK (D.D.C. March 11, 2013);
 - g. State Bar of Arizona v. Andrew Thomas, Lisa Aubuchon, and Lisa Alexander (August 30, 2011);
 - h. Oliver Jovanovic v. City of New York et al., 04-cv-8437 (SDNY June 18, 2009).
 - i. Kevin Fox v. Will County (October 18, 2007);
 - j. Harrington v. Pottawattamie County (January 22, 2007);
 - k. State of Louisiana v. Curtis Kyles (October 31, 1997);
 - l. State of Connecticut v. Valentin (March 15, 1995);
 - m. Commonwealth of Kentucky v. Davidson (April 3, 1992); and
 - n. In the Matter of Discipline of an Attorney, 2 Mass. Attorney Discipline Reports 110 (1980).

Materials Reviewed

- 9. In preparing this affidavit I have reviewed the following materials:
 - a. Criminal Complaint against Steven Avery (11/15/05);
 - b. Criminal Complaint against Brendan Dassey (3/2/06);
 - c. Amended Criminal Complaint against Steven Avery (3/2/06);
 - d. Order of Judge Patrick Willis on admissibility of "other acts evidence" (9/22/06);

- e. Kenneth Kratz press conference (March 1, 2006);
- f. Kenneth Kratz press conference (March 2, 2006);
- g. State v. Avery, trial proceedings (TT:2/12:9-19, 25-29);
- h. Kenneth Kratz opening argument in Avery trial (TT:2/12:37-110);
- i. Kenneth Kratz closing argument in Avery trial (TT:3/14:31-132);
- j. Kenneth Kratz rebuttal argument in Avery trial (TT:3/15:54-119);
- k. Selected portions of trial testimony in State of Wisconsin v. Avery;
- l. Kenneth Kratz's book, "The Case Against Steven Avery;"
- m. Kenneth Kratz's public appearances on television and in interviews;
- n. Wisconsin Department of Justice DCI Case Master Report No. 10-4013;
- o. Matter of Disciplinary Proceedings Against Kenneth Kratz, 353 Wis.2d 696 (2014);
- p. Wisconsin Rules of Professional Conduct for Attorneys;
- q. ABA Criminal Justice Standards – Prosecutor Function; and
- r. ABA Model Rules of Professional Conduct.

Kratz's Press Conferences

10. For a prosecutor, the press conference is the most powerful forum in which to communicate to the public. A press conference gives a prosecutor the opportunity to express in a dramatic way the results of an investigation, the crimes being charged, and the involvement of persons accused of committing those crimes. Because there is a risk that the press conference can prejudice the right of an accused to a fair trial, ethics rules strictly circumscribe what a prosecutor can say at a press conference. While a prosecutor is allowed to make statements that "serve a legitimate law enforcement purpose," as, for example, the substance of the charges, the circumstances of an arrest, and the identity of the defendants, a prosecutor is prohibited from making comments that would have "a substantial likelihood of materially prejudicing an adjudicative proceeding" or "that have a substantial likelihood of heightening public condemnation of the accused." ABA Model Rules, Rule 3.6, 3.8; Wisconsin Rules of Professional Conduct. SCR 20:3.6.
11. Kratz held several press conferences in connection with the Avery case, but two are notable, on March 1, 2006, and March 2, 2006. Given the sensational nature of the case

— which Kratz called the “largest criminal investigation that anybody has ever talked about” — Kratz was obviously aware that anything he said would have a powerful impact on public opinion about the case. Thus, on March 1st, several months after Avery had originally been charged with the Halbach murder, Kratz announced “significant developments” in the case. He told the large throng of media attendees that law enforcement now has “a definitive set of answers as to what happened to Teresa Halbach.” He asserted that as he was speaking, a search warrant was simultaneously being executed on the Avery premises and that “we know exactly what to look for and where to look for it.” Kratz ended the press conference by inviting the media to a second press conference the following day in which he intimated there would be a stunning announcement.

12. The next day, March 2nd, Kratz held that press conference. After warning children not to watch, Kratz related to the huge assembled media and a live television audience the horrific details in Brendan Dassey’s confession of how he was invited into Avery’s trailer, saw Teresa Halbach naked and shackled to Avery’s bed, and how he and Avery repeatedly raped, tortured, and gruesomely butchered her to death. Kratz’s sensational presentation was based exclusively on Brendan Dassey’s confession. Kratz knew that there was no evidence to corroborate Dassey’s confession and implicate Steven Avery, even though the police for the previous four months had exhaustively searched Avery’s trailer, garage, and other parts of his property. Kratz also knew that this new account of the rape-torture-murder of Teresa Halbach contradicted virtually every fact Kratz had alleged in his original criminal complaint against Avery – the place where Teresa Halbach was killed (garage), the weapon used (gun), and the cause of death (gun shots to

the head). Kratz asserted that “[w]e have now determined what occurred sometime between 3:45 p.m. and 10 or 11 p.m. on the 31st of October.” He then proceeded to recount for the media, the viewing audience, and ultimately a nationwide audience the following allegations:

- a. Avery, “partially dressed and full of sweat,” invites Dassey, his 16-year-old nephew, into the trailer;
- b. Teresa Halbach, “completely naked and shackled to the bed, screams louder and louder for help;”
- c. Avery “invites Dassey to sexually assault Halbach, telling him that he has repeatedly sexually assaulted her;”
- d. Dassey “proceeds to sexually assault Teresa Halbach who begged the 16-year-old for help;”
- e. Avery “watches as his 16-year-old nephew rape this woman;”
- f. Avery compliments Brendan on “what a good job he did;”
- g. Avery tells Brendan “of his intent to murder Teresa Halbach;”
- h. “Brendan watches as Steven Avery takes a butcher knife from the kitchen and stabs Teresa Halbach in the stomach;”
- i. Avery, “while Teresa Halbach is still begging for her life, hands the knife to the 16-year-old boy and instructs him to cut her throat;”
- j. Brendan “cuts Teresa Halbach’s throat but she still doesn’t die;” and
- k. Avery and Dassey together sadistically inflict on Teresa Halbach “additional torture, additional mutilation, additional mechanisms of death which include manual strangulation and gunshot wounds.”

13. Kratz concluded the press conference by expressing how “heartbroken [he] was to tell Teresa Halbach’s family the fate of Teresa.” Kratz ended by stating that “as we sit here today, the individuals that knew Teresa will remember this extraordinary woman and the joy that she brought.” (3/1/06 and 3/2/06 Press Conferences Videos, attached as **Exhibit B** to this affidavit).

14. Kratz’s statements at his press conferences constituted professional misconduct. Kratz, an experienced prosecutor, knew that a prosecutor is not allowed to disparage the character and reputation of an accused; disclose the existence of a confession or other physical evidence; discuss any information that is likely to be inadmissible in evidence and if

disclosed would create a substantial risk of prejudicing an impartial trial; and express an opinion on a defendant's guilt. Kratz knew that his statements would make it virtually impossible for anyone watching his press conference to keep an open mind about the case and the guilt of the defendants. Kratz knew what he had accomplished. In a subsequent interview he stated, "I was hoping the media would not choose to release all of the disturbing details." Kratz knew that his statements would have a "substantial likelihood of materially prejudicing an adjudicative proceeding" and a "substantial likelihood of heightening public condemnation of the accused." ABA Model Rules 3.6, 3.8.

15. Moreover, although a prosecutor is barred from expressing an opinion on the merits of a case and the guilt of an accused, Kratz bolstered his grisly description of the crime by representing that everything he said was a truthful and accurate account. He asserted in his March 1st press conference that law enforcement "now has a definitive set of answers as to what happened to Teresa Halbach" and that law enforcement is presently executing a search warrant on the Avery property where "we know exactly what to look for and where to look for it." Then, at his press conference the next day, Kratz assured his listeners that "we have now determined what occurred sometime between 3:45 p.m. and 10 or 11 p.m. on the 31st of October."

16. Finally, Kratz's statements were likely to be accepted by the public as the truth. More than any other government official, a prosecutor is viewed by the public with esteem and trust. The public looks to the prosecutor as the official most responsible for vindicating the rule of law and punishing wrongdoers. Given Kratz's prestige and prominence as the special prosecutor appointed by the governor to lead the investigation, Kratz's assertions that law enforcement had "solved" the case would almost certainly be greeted by the

public with both relief that the perpetrators had been apprehended and an outcry to punish them.

Charging Avery Based on Dassey's Confession

17. Kratz knew at the time of his March 2nd press conference that every statement he made accusing Avery of the horrific acts against Teresa Halbach – shackling, raping, torturing, and butchering her to death - was based exclusively on the uncorroborated confession of 16-year-old Brendan Dassey, which has recently been found by a federal court to have been coerced by the police. Kratz knew that Dassey was of borderline intelligence, attended special education classes, and was known as a mild-mannered, introverted young man who was never before in trouble with the law. As head of the investigation Kratz knew several other critical facts: the police interrogated Dassey several times without his lawyer or parent being present; there were no independent facts or circumstances to corroborate Dassey's confession; Dassey's confession presented a narrative that was totally different than the version Kratz used in filing the original murder charges against Avery; and Dassey's confession was legally inadmissible against Avery for constitutional and statutory reasons. In short, Kratz had no evidence and therefore no legal basis to support the new charges of sexual assault and torture against Avery contained in the amended complaint and announced at the press conference.
18. In addition to saturating the media and the public with an extraordinarily horrific description of Avery repeatedly raping, torturing, and sadistically butchering to death a young woman, Kratz knew when he brought the new charges against Avery that he had no legal basis to do so. Kratz knew that a four-month police investigation that had conducted at least eight separate searches of Avery's trailer, garage, and every part of the

property had yielded no forensic or physical evidence to corroborate Dassey's confession. A prosecutor engages in professional misconduct when he makes unwarranted claims and brings unwarranted criminal charges. See Wisconsin Rules of Professional Conduct, SCR 20:3.1(1) ("knowingly advancing a claim that is unwarranted under existing law"); SCR 20:31(2) ("knowingly advancing a factual position unless there is a basis for doing so that is not frivolous").

19. Moreover, in bringing charges that are not legally and factually sustainable, Kratz engaged in professional misconduct for another reason. Prosecutors are commanded "not to prosecute a charge that the prosecutor knows is not supported by probable cause." Wisconsin Rules of Professional Conduct, SCR 20:3.8 (a). See Draper v. United States, 358 U.S. 307 (1959) ("probable cause exists where the facts and circumstances within [the prosecutor's] knowledge and of which [he has] reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed."). Kratz knew that he lacked sufficient evidence to charge Avery with the acts described in Dassey's confession. Dassey's confession, as Kratz surely knew, was inadmissible against Avery under the Sixth Amendment to the U.S. Constitution. See Bruton v. United States, 391 U.S. 123 (1968). Dassey's confession was also inadmissible against Avery because it violated a fundamental rule of evidence barring use of statements that are hearsay. See Wisconsin Evidence Rule, SCR 908.02 (hearsay evidence not admissible). See also ABA Model Rules, Rule 3.8(a)(Comment [1])(prosecutor has "specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence"); ABA Prosecution Standards 3-4.3 (prosecutor allowed to file criminal charges "only if the prosecutor

reasonably believes that the charges are supported by probable cause, that admissible evidence will be sufficient to support the conviction beyond a reasonable doubt, and that the decision to charge is in the interests of justice.”).

20. Kratz’s conduct constituted professional misconduct . Kratz was an experienced prosecutor. He knew that Dassey’s confession was inadmissible against Avery and that that there was no evidence to corroborate Dassey’s account of Halbach’s murder. He lacked probable cause – indeed, any factual basis whatever – to file his amended complaint charging Avery with the additional crimes of sexual assault and torture and then publicly announced those new charges to the world. In my opinion, Kratz brought these new charges against Avery in bad faith. He knew he would not be able to present these facts against Avery to a jury, as demonstrated by his decision to drop the sexual assault and kidnapping charges on February 2, 2007. He disclosed these facts publicly knowing that they would be heard by prospective jurors and used to prejudice Avery.
21. Moreover, Kratz’s charging Avery without a proper evidentiary basis constituted professional misconduct under a separate ethics rule. As noted, prosecutors cannot file criminal charges without a sufficient legal basis to support those charges. See Wisconsin Rules of Professional Conduct SCR 20:8.4(c)(“professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation”). By charging without a proper factual basis, and then representing unofficial court documents and in his public statements that those charges were validly brought, Kratz engaged in fraudulent, dishonest, deceitful, and a misleading conduct.
22. Kratz also engaged in professional misconduct for yet another reason. Kratz’s official and public statements went so far beyond what any responsible prosecutor would believe

were appropriate judicial and public statements that he thereby violated the “attorney’s oath” by advancing facts prejudicial to the reputation of a party without any legitimate reason in law or justice to do so. See Wisconsin Rules of Professional Conduct SCR 20:8.4(g) (“professional misconduct to violate the attorney’s oath”); SCR 40:15 (lawyers commanded to “advance no fact prejudicial to the reputation of a party or witness”). It is one thing for a co-defendant like Dassey to make allegations that implicate himself and others. It is a far different thing for a prosecutor not only to repeat those statements publicly but also to endorse them as the truth, particularly when there is no factual basis to confirm their validity. All of Kratz’s references to Avery’s alleged heinous acts were gratuitous, without any legitimate basis in fact or law, without any legitimate law enforcement reason, and destroyed Avery’s character, his ability to receive a fair trial, and his constitutional right to the presumption of innocence. Collectively, Kratz’s statements were offensive to the fair and proper administration of justice and the integrity of our system of justice, and demonstrated Kratz’s unfitness as a prosecutor. See ABA Model Rule 8.4 (d) (“professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice”).

Kratz’s Attempt to Introduce Allegations of Avery’s Prior Wrongful Acts

23. Mirroring his actions in his March 2nd press conference that smeared Avery’s character, on June 15, 2006 Kratz moved to introduce at Avery’s trial allegations of Avery’s prior criminal conduct that Kratz claimed would be relevant in proving Avery’s guilt. Given the already massive media coverage of the case, Judge Willis sealed the motion.
24. At the time Kratz filed his motion, in addition to the murder and mutilation charges, Avery had also been charged with sexual assault and torture based entirely on Dassey’s

confession, which Kratz knew was not admissible against Avery. Although at this point the police investigation into Avery's involvement had lasted over eight months, Kratz lacked any proof against Avery of sexual assault and torture charges. Kratz therefore sought to bolster his case against Avery by introducing allegations ostensibly to show that Avery had a violent and sexually assaultive disposition: threats by Avery against his ex-wife many years earlier; physical violence by Avery against his girlfriend; Avery's conviction for torturing and killing a cat twenty-five years earlier; recklessly endangering the safety of an acquaintance over twenty years earlier; his prior conviction for possessing a firearm; sexual misconduct and abuse with several persons; and a phone conversation with a woman containing sexual innuendo.

25. As noted above, it is professional misconduct for lawyers to make unwarranted, non-meritorious, and frivolous legal arguments. Kratz knew when he made his motion to introduce evidence of Avery's violent and sexually assaultive character that he lacked any evidence to charge Avery with sexual assault or torture against Teresa Halbach so that the alleged conduct lacked any probative value with respect to any issue in the case. In addition, these allegations were hugely inflammatory and prejudicial.
26. Indeed, Judge Willis gave short shrift to Kratz's motion. He dismissed it in its entirety in unusually strong language. Judge Willis found that the proof Kratz offered "bore little relationship between the offered evidence and any proper purpose;" "had minimal probative value;" "was clearly inadmissible;" that "[Kratz] failed to clearly articulate a rationale for admission of the offered evidence, a shortcoming which runs through the state's argument on much of its offered other acts evidence;" that the motion "contained no serious argument for admissibility;" that the "court is at a loss to understand how the

requested evidence would be offered for a proper purpose,” that it was “difficult for the court to analyze and evaluate the State’s argument because the court simply does not understand it;” and that “the evidence has zero probative value and would be highly prejudicial.”

27. Clearly, the only apparent reason Kratz sought to admit these clearly inadmissible and blatantly inflammatory charges was to destroy Avery’s character – as he had done at the press conference - and thereby help persuade the jury to convict him. As Judge Willis found, the only reason Kratz offered this incendiary proof was to show that Avery had a “propensity to commit sexual assaults.” In fact, Kratz even disclosed his true purpose when he argued that the proof was admissible to prove that Avery has a “sadistic personality.” But as Judge Willis noted, and which every trial lawyer recognizes, “that is specifically the type of character evidence which is prohibited.” Thus, by seeking to introduce these incendiary bad acts allegedly committed by Avery knowing that there was no valid basis to admit them, Kratz knew he was making a claim and advancing a position that was unwarranted under existing law. His conduct constituted professional misconduct. See Wisconsin Rules of Professional Conduct, SCR 20:3.1(1)(2).

Kratz’s Pursuit of Inconsistent and Irreconcilable Theories at the Separate Trials of Steven Avery and Brendan Dassey

28. A prosecutor’s fundamental interest in criminal prosecutions is “not that it shall win a case, but that justice shall be done.” Berger v. United States, 295 U.S. 78, 88 (1935). Although the prosecutor is allowed to prosecute with earnestness and vigor, and “may strike hard blows, he is not at liberty to strike foul ones.” Id. Constitutional and ethical rules impose a special obligation on prosecutors to serve and vindicate the truth and administer justice. Thus, a prosecutor violates due process and his ethical duty to serve

the truth when he presents inconsistent and irreconcilable theories at two different trials against two different defendants. Such conduct is inherently unfair, disserves the truth, and renders any resulting conviction unreliable.

29. At Avery's trial, Kratz argued in his summation that the "uncontested and uncontroverted facts" proved several issues. First, he argued that uncontested and uncontroverted facts pointed to Steven Avery as the "one person" who was exclusively responsible for the death of Teresa Halbach. Kratz argued in his summation:

- a. There is no question about who is responsible for the death and the mutilation of Teresa Halbach;
- b. All of the evidence points to one person. That's the one person being responsible;
- c. I'm going to argue at the conclusion of this case who that one person is. I bet you can guess who I'm going to suggest was responsible;
- d. The facts are uncontested, uncontroverted;
- e. Steven Avery was the last person to see Teresa alive;
- f. All the early clues pointed to one man. One person. The last person to see her alive;
- g. Who's involved in the mutilation process? The evidence keeps pointing to one individual;
- h. All of the evidence points to only one person; and
- i. Other suspects were checked out. There was no evidence pointing to suspects other than Avery.

30. Kratz also argued that Teresa Halbach's death was caused by two gunshots to her head.

He argued:

- a. We're going to hear about gunshots to the head;
- b. The instrumentality of the murder was a .22 caliber rifle;
- c. We will actually be arguing to you that Mr. Avery handled, held that weapon in his hands when Ms. Halbach was killed;
- d. Teresa's death caused by two gunshot wounds to the head;
- e. Teresa's potential and future aspirations were snuffed out by one act, and by one act from one person; and
- f. Teresa Halbach was killed by gunshot wounds.

31. Kratz also claimed that the place where Teresa Halbach was killed was in Avery's garage. He argued:

- a. No blood was found in the trailer. But since Teresa wasn't killed in the trailer, there shouldn't be;
 - b. She was not killed in the trailer;
 - c. Where was Teresa killed? This is an easy answer, or at least it is an answer that is directed by all the physical evidence in this case. Teresa Halbach was killed in the garage; and
 - d. She was killed in Steven Avery's garage.
32. But in trying Brendan Dassey, Kratz claimed that Brendan Dassey killed Teresa Halbach, or at least participated in her killing with Avery. Kratz claimed that she was killed by Avery stabbing her in the stomach, Dassey slitting her throat, Avery manually strangling her, and then incidentally adding a gunshot. He argued that she was killed in Avery's trailer, not in his garage.
33. Kratz's inconsistent contentions at the Avery and Dassey trials violate due process as well as a prosecutor's duty to promote the truth and serve justice. See Stumpf v. Houk, 653 F.3d 426 (6th Cir. 2011); Smith v. Goose, 205 F.3d 1045 (8th Cir. 2000); State v. Gates, 826 So.d 1064 (Fla. App. 2002). A prosecutor may not advance at separate trials theories of guilt which cannot be reconciled factually. Kratz could not in good faith argue at Avery's trial that Avery was the only killer, and then argue at Dassey's trial that Avery along with Dassey killed Teresa Halbach. Kratz could not in good faith argue at Avery's trial that Halbach's death was caused by gunshot wounds and then argue at Dassey's trial that her death was caused by stabs wounds to her stomach and throat and manual strangulation as well as gunshots. Kratz could not in good faith argue in Avery's trial that Halbach was killed in the garage and then argue in Dassey's trial that she was killed in Avery's trailer.
34. Kratz's theories in the two different trials of who killed Teresa Halbach, how she was killed, and where she was killed, negate one another. His claims are inconsistent and

irreconcilable. Such flip-flopping conduct by a prosecutor is inherently unfair, legally and ethically, and undermines the very concept of justice and the duty of a prosecutor to serve truth. A prosecutor cannot engage in such blatant gamesmanship; such conduct destroys confidence in the integrity of the system of justice and the constitutional and ethical precept that the prosecutor's goal is to serve justice rather than winning convictions. See Wisconsin Rules of Professional Conduct SCR 20:8.4 (c) ("professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation"); SCR 20:3.1 (1) (lawyer shall not advance claim that is "unwarranted under existing law"); SCR 20:3.1 (2)(lawyer shall not "knowingly advance factual position unless there is a basis for doing so that is not frivolous"); ABA Model Rules 8.4 (d)(professional misconduct to "engage in conduct that is prejudicial to the administration of justice.").

Kratz's Request for an Aiding and Abetting Instruction

35. Kratz requested Judge Willis to give the jury a preliminary instruction that the jury could find Avery guilty as having "caused the death of Teresa Halbach or aided and abetted Brendan Dassey in causing the death of Teresa Halbach." (TT:2/12:9). However, Kratz later stated that he did not want to highlight Brandan Dassey's identity because it might hurt his case; as Kratz noted, "some of the jurors quite candidly indicated in jury selection . . . that the state should . . . call Brendan Dassey as a witness." (TT:2/12:9-10). Kratz was worried that the jurors would think the state had the burden to call Dassey and therefore asked the judge to omit his name and substitute the word "another." The judge agreed that "it's not a good idea to focus attention on Mr. Dassey" (TT:2/12:16) and then gave the jury a preliminary instruction that Avery was charged with either directly killing Teresa Halbach or by aiding and abetting another person who directly killed her. Judge

Willis repeated to the jury the aiding and abetting theory for Avery's guilt at least eleven times.

36. Kratz's request to instruct the jury on Avery's guilt as an "aider and abettor of another" was unwarranted, dishonest, and prejudicial to the administration of justice. Kratz knew that for the previous eleven months, massively prejudicial publicity had linked Avery and Brendan Dassey in the Halbach murder. For eleven months the media had been saturated with Dassey's confession that described the gruesome details of Halbach's death. Kratz knew that the jury certainly was aware of Dassey's role in the killing. Kratz also knew that legally he was barred from using any evidence against Dassey to prove Avery's guilt. So, if Avery's culpability rested exclusively on Avery's own conduct and not on the conduct of anyone else, what was the legal basis for Kratz to seek a gratuitous reference to a legal concept that had nothing to do with the case and what Kratz intended to prove?
37. Kratz's seeking the aiding and abetting instruction in my opinion was done to remind the jury of Dassey's role and invite the jury to focus on all of the disturbing details in Dassey's confession. Kratz knew that there would be no proof relating to Dassey or his confession. Kratz thereby encouraged the jury to speculate on Dassey's participation when Kratz knew full well that there would be no proof offered that would suggest that Avery aided Dassey or anybody else in the crime. Indeed, as noted above, Kratz in his summation repeatedly told the jury that there was only person who was involved in Halbach's death and that person was Avery.
38. It was therefore dishonest, unwarranted, and a misrepresentation for Kratz to suggest to the jury that Avery was being tried as a principal and also as an aider and abettor. His conduct violated the Wisconsin Rules of Professional Conduct. SCR 20:8.4 (c) ("It is

professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation”); SCR 20:3.1 (“knowingly advancing a claim that is unwarranted under existing law”). Kratz’s bad faith conduct also was prejudicial to the administration of justice. See ABA Model Rules 8.4 (d)(professional misconduct to “engage in conduct that is prejudicial to the administration of justice.”).

Kratz’s Public Dissemination of Inflammatory Information About Avery

39. Kratz has recently published a book about the Avery case entitled The Case Against Steven Avery and What “Making a Murderer” Gets Wrong. He has also appeared on various television shows to promote his book. Kratz’s book and media appearances describe in vivid detail how he claims Avery sexually assaulted his ex-wife, his former girlfriend, his niece, and his babysitter; his horrific torture of a cat; and a variety of other violent criminal acts. Indeed, these allegations parallel the inflammatory allegations Kratz made against Avery in his sealed motion to Judge Willis. To be sure, the First Amendment protects Kratz’s freedom to publish and talk about his book. But as an attorney, and former lead prosecutor in the Avery and Dassey cases, Kratz’s free speech rights are constrained by ethical rules. Two separate rules of professional ethics limit Kratz’s freedom to speak about his prosecution: first, as noted above, the prohibition applicable to all lawyers in making extrajudicial statements that could impair a criminal defendant’s right to a fair trial, and second, a prohibition against a former prosecutor disclosing in a book or media appearance confidential information in connection with the cases he prosecuted.
40. Kratz’s book and media appearances exposed considerable information that apparently had not been publicly available that alleged that Steven Avery was a violent, sadistic, and

sexually assaultive person. Some of the information disclosed by Kratz had already been contained in Kratz's pretrial motion to Judge Willis, which as noted, Judge Willis declared inadmissible. But as noted, Judge Willis had sealed the motion to protect potential jurors from being contaminated by such inflammatory and prejudicial information. Although Judge Willis unsealed the motion after Avery was convicted, the publishing of this information was unnecessary and would certainly be prejudicial to future jurors if Avery was successful in seeking a new trial. Kratz's book is an inaccurate and inflammatory attack on the popular Netflix series "Making a Murderer."

41. Given the relatively recent trials in both the Avery and Dassey cases and the current litigation by Avery and Dassey in seeking new trials, there appears to be no legitimate reason for Kratz to disseminate this inflammatory information. Post-conviction remedies are available for both Avery and Dassey. Dassey's conviction has been vacated and an appeal is pending. Avery too has a new attorney who is seeking a new trial on a variety of grounds. If a new trial is granted for either defendant, there is no question that Kratz's public disclosures of so much unnecessarily prejudicial information has the potential to seriously impair a fair trial. See ABA Model Rules, Rule 3.6.
42. Although the Avery and Dassey cases have attracted widespread interest, and were the subject of the ten-part Netflix series "Making a Murderer," Kratz was in a unique position that was different from all other journalists and commentators. Kratz was the lead prosecutor against Avery and Dassey. Kratz was privy to considerable confidential information that had not been officially revealed. Ethical standards specifically address the question of the extent to which a former prosecutor is allowed to reveal secret information obtained in confidence while investigating and prosecuting a criminal matter.

The fact that Judge Willis unsealed Kratz's pretrial motion depicting a wide range of criminal acts by Avery does not authorize Kratz to arbitrarily decide to disseminate this information without at least obtaining the consent of the Calumet District Attorney's office, as well as to ensure that his disclosures are an accurate account of the facts and in the public interest. See ABA Prosecution Standards 3-1.11 ("In creating or participating in any literary or other media account of a matter in which the prosecutor was involved, the prosecutor's duty of confidentiality must be respected even after government service is concluded.").

Kratz's Jailhouse Contacts With Steven Avery

43. On January 14, 2013, Kratz wrote to Steven Avery on his "Kratz Law Firm" letterhead soliciting Avery's consent to meet with Kratz to discuss his case. At the time Avery was in the state prison at Boscobel, Wisconsin. Kratz advised Avery that he was presently in private practice, that he believed Avery's criminal appeals had concluded and that Avery was not currently represented by counsel, that he wanted to meet with Avery "for my own personal use," and that Avery would receive nothing of value if he agreed to talk to Kratz.
44. Avery replied on June 18, 2013, suggesting that since Kratz was no longer working for the state he could take Avery's appeal, that "you now (sic) the case and you got Candy Avery," and that "we can all get money together."
45. Two years later Kratz wrote Avery two more letters. Avery now had been transferred to the state prison in Waupun, Wisconsin. Kratz wrote him on August 10, 2015, informing him that since Avery had not added Kratz to his visitor list, the prison authorities had canceled Kratz's visit because "it would be contrary to [Avery's] programming there and

they didn't want me talking to you." Kratz once again solicited Avery's consent for a visit, emphasizing in bold letters to "ADD ME" to your visitor list, that the prison authorities "probably do not want you to tell your story to me," that "they can't tell you who you can tell your story to," and again emphasizing in bold letters "that it is YOUR DECISION if you want to talk to me or not." Kratz stated that Avery "no longer has any pending litigation pending, including appeals, and therefore there is NO conflict which exists to you speaking with me."

46. In his last letter to Avery, dated September 6, 2015, Kratz refers to Avery's letter dated August 28, 2015, in which Avery asked Kratz whether "he checked out other fingerprints found on Teresa Halbach's car." Kratz "apologizes for misunderstanding" Avery's June, 2013 letter. Kratz states that "I thought you were interested in being honest about what happened and finally telling the whole story to someone." Kratz adds that "since I'm the person who probably knows more about your case than anyone else, I hoped that you would choose me to tell your story to." Kratz continues:

Unfortunately, you only want to continue your nonsense about being set up. That's too bad, because you had ONE opportunity to finally tell all the details, but now that will never happen.

By the way, the difference between you and famous convicted murderers from the past is they told their whole truthful story to someone, who then wrote a book about what actually happened and people got to understand both sides. I was willing to do that for you. But if you are going to continue to lie about what happened between you and Ms. Halbach, I am not interested.

If you change your mind, and want to tell your honest story someday, please contact me.

47. Kratz's conduct in approaching the man he vilified, brought unsubstantiated charges against, convicted of murder and sent to prison for life without parole, in order to "tell his

story” is unlike any conduct of any ex-prosecutor I have ever encountered. Kratz’s conduct is offensive to the proper administration of justice. His intimidation and manipulation for his own selfish motive of the person he prosecuted impairs the dignity of the legal profession and the ethical responsibility of lawyers to abstain from overreaching, harassing and manipulative conduct

48. In my experience, it is unprecedented for a prosecutor who led one of the state’s most sensational murder investigations and prosecutions to solicit from the person he prosecuted his cooperation in writing a book about his case. Kratz’s solicitation of Avery is akin to a personal injury lawyer’s solicitation of cases from recent accident victims. Dubbed “ambulance chasing,” such conduct has seriously impaired the reputation of the Bar. Kratz’s conduct in my opinion is even more nefarious; Kratz had a personal involvement with Avery, and sought to manipulate that connection under the guise of appearing to act on Avery’s behalf to help him tell his “honest” story so that the public would “understand both sides.” But of course, Kratz’s appeal for Avery’s cooperation ostensibly for disinterested motives was a sham. Kratz wanted to write a book and get the person he prosecuted to help him. His solicitation was disingenuous and prejudicial to the administration of justice. See ABA Model Rules 8.4(c)(“conduct involving dishonesty, fraud, deceit, and misrepresentation”); (d)(“conduct that is prejudicial to the administration of justice”).

49. Moreover, there is an uncanny parallel between Kratz’s solicitation of Avery as a private lawyer and Kratz’s solicitation of vulnerable women when he was a prosecutor. In 2010 Kratz was investigated by the Wisconsin Division of Criminal Investigation for sending inappropriate text and email messages to women, including victims in active domestic

abuse cases Kratz was then prosecuting. There were at least ten women who complained about Kratz's improper sexual overtures to them. The state investigation led the Wisconsin District Attorneys Association to call for Kratz's resignation, for Governor James Doyle to initiate removal proceedings against Kratz, and after Kratz involuntarily resigned, for the Office of Lawyer Regulation in 2011 to bring a disciplinary complaint against Kratz alleging several counts of professional misconduct. Kratz was found to have committed professional misconduct by violating the attorney's oath, which includes abstaining from "offensive personality." Wisconsin Rules of Professional Conduct SCR 20:8.4(g), 40:15. He was suspended for four months from the practice of law. The Wisconsin Supreme Court upheld the suspension. See *In the Matter of Disciplinary Proceedings against Kenneth R. Kratz*, 353 Wis.2d 696 (2014). Among the allegations supporting that sanction were the following:

- a. Kratz contacted a young woman who had accused her boyfriend of domestic violence, asking her whether "she is the kind of girl that likes secret contact with an older elected DA...the riskier the better;"
- b. Kratz sent the same woman eight more inappropriate messages, including "You may be the tall, young hot nymph, but I am the prize! I would want you to be so hot and treat me so well that you'd be THE woman. R U that good?"
- c. Kratz, in prosecuting a parental rights termination case, told a woman who was a witness that he "won't cum in your mouth," and later that he was leaving on a trip to Las Vegas where he could have "big boobed women serve me drinks;" and
- d. Kratz commented in court to a social worker that the court reporter had "big beautiful breasts."

50. Kratz tried to defend his appalling behavior towards the women by raising "incredible," "inconsistent," "hyper-technical," and "puzzling" arguments. His claim that he wanted to amicably resolve the disciplinary proceedings, according to the Wisconsin Supreme Court, "borders on the intellectually insulting." Kratz's insistence that his conduct


resulted from addiction to drugs does not change the “ugly picture presented by the record.”

51. Interestingly, quite similar allegations in the disciplinary proceeding against Kratz are present in Kratz’s solicitation of Avery. Thus, in the disciplinary proceeding Kratz was found to have acted with a “selfish motive,” manipulated a “vulnerable victim,” engaged in “exploitative behavior,” engaged in “harassing behavior,” showed a “crass placement of his personal interests above those of his client,” and “crossed the line separating the unprofessional conduct from the acutely offensive and harassing.” The referee also noted as an aggravating factor Kratz’s considerable legal experience and leadership on victims’ rights.
52. To be sure, Avery was neither a client of Kratz nor a crime victim, and so his conduct toward Avery may not have been as “boorish,” and “appalling,” the way the Wisconsin Supreme characterized Kratz’s conduct towards the vulnerable victims of his sexual pursuits. But as a matter of professional ethics, Kratz’s conduct towards Avery was as intimidating, self-interested, and manipulative as it was to the women Kratz abused. Avery was in a hopeless position and an easy target for Kratz’s solicitations. Kratz knew the prison authorities had objected to Avery speaking to Kratz and that Kratz’s overtures might hurt Avery. Particularly disingenuous was Kratz’s ploy to suggest falsely that Kratz was simply a disinterested person trying to assist Avery to tell his “honest” story to the world, but knowing full well that he wanted Avery’s story only if Avery told his story in a way that served Kratz’s selfish interests in writing a book and promoting himself. Kratz exploited his former status as Avery’s prosecutor “who knows more about your case than anyone.” Kratz disparaged Avery’s “continued nonsense about being set up.”

He intimidated Avery as he did with the women he abused, trying to convince Avery to talk to him by the veiled threat that it was "too bad" that Avery refused to talk to him "because you had ONE opportunity to finally tell all the details, but now that will never happen."


53. That same "ugly picture" depicted in Kratz's offensive sexual misconduct with women appears in Kratz's solicitation of Avery. Kratz acted out of his own self-interest, in an utterly unethical way, abused his professional office, and engaged in conduct prejudicial to the administration of justice.

FURTHER AFFIANT SAYETH NAUGHT


Bennett L. Gershman

State of New York
County of Westchester

Subscribed and sworn before me
this 10th day of May, 2017.



Notary Public
My Commission Expires:

BERYL P. BROWN
Notary Public, State of New York
No. 01BR6131572
Qualified In Westchester County
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EDUCATION

New York University School of Law, J.D. 1966
Princeton University, B.A., cum laude 1963

TEACHING EXPERIENCE

Courses taught: Constitutional Law, Evidence, Criminal Law, Criminal Procedure, Trial Advocacy, Criminal Justice Seminar, Prosecutorial Ethics, Judicial Ethics, Death Penalty Litigation, Law and Film.

Professor of Law (Tenured) 1976-85, 1988-present
Pace Law School
White Plains, New York

Visiting Professor 1999 (Spring)
University College 2002 (Spring)
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Visiting Professor 1984 (Spring)
Syracuse College of Law
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Visiting Professor 1982-83
Cornell Law School
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PUBLICATIONS

Books

The Law School Experience: Law, Legal Reasoning, and Lawyering (with Lissa Griffin) (2000)

Prosecutorial Misconduct (2d ed. 1999) (supplemented annually)

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Scholarly Papers at Conferences and Symposia

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(January 26, 2007)

Reflections on Brady v. Maryland – South Texas Law School (November 4, 2005).

Prosecutorial Ethics and Victim Rights – Lewis & Clark Law School (March 11, 2005)

Misuse of Forensic Evidence By Prosecutors – Oklahoma City University Law School
(March 6, 2003)

Problems of Cooperating Witnesses – Benjamin Cardozo Law School (November 30,
2000)

The Prosecutor's Duty to Truth, Georgetown Law Center, Symposium on Government
Ethics (March 30, 2000)

The "Term Limits" Case – Conference on the Supreme Court and Local Government
Law: The 1994-95 Term – Touro Law School (October 6, 1995)

Urban Criminal Justice – Is It Fair? Does It Appear Fair? Stein Center for Ethics and
Public Interest Law – Fordham University School of Law (November 18, 1992)

The Expanding Criminal Law – CATO Institute, Washington, D.C. (November 15,
1990)

Prosecutorial Discretion – Conference on Municipal Law, Brigham Young Law School,
Salt Lake City, Utah (March, 1987)

The Struggle for Justice - Law Day Keynote Speech, Rockland County Bar Association
(May 1, 1992)

How Just Are Our Courts? - The League of Women Voters, Ossining, New York
(September 12, 1991)

Grand Jury Abuse, - League of Women Voters, Bronxville, New York (November, 1985)

The Hinckley Trial and the Insanity Defense - Cornell Law School (March, 1983)

Lectures at Training Programs for Judges and Lawyers

Update on New York State Criminal Law, Judicial Institute (January 8, 2004).

Orientation Program for Newly-Elected and Newly-Appointed Judges and Justices, N.Y.S. Office of Court Administration (1994-present)

Summer Judicial Seminar for New York State Trial Judges (1995, 1996)

Confronting and Handling Judicial Misconduct, Annual Meeting, New York State Defenders Association (September 22, 1995)

Fundamentals of Appellate Advocacy, New York State Bar Association (October 21, 1992)

Evidence Update, Practice Skills Seminar, Dutchess County Bar Association (march, 1992)

Current Trends in Criminal Law – Public Defender Training Program, Montpelier, Vermont (June, 1991)

Prosecutorial Misconduct – Practice Skills Seminar, New York State Defenders Association, Poughkeepsie, New York (January 1, 1991)

Closing Arguments to a Jury – Practice Skills Seminar, New York State Bar Association, Poughkeepsie, New York (September 16, 1987)

Prosecutorial Misconduct – National Legal Aid and Defenders Association, Washington, D.C. (December, 1985)

Prosecutorial Misconduct – Erie County District Attorney's Office, Buffalo New York (September, 1985)

Driving While Intoxicated, Westchester County Bar Association (September, 1984)

Undercover Police Investigations, Onondaga County Bar Association (May, 1984)

Search and Seizure, Monroe County Bar Association (October, 1983)

Program Coordinator, Sing Sing Correctional Facility Paralegal Program. Taught and administered courses in evidence, criminal law, and criminal procedure to inmates and correctional staff at the Sing Sing Correctional Facility, Ossining, New York (1984-1988)

Cornell Institute on Organized Crime, Lecturer (Summer, 1976)

Other Recent Speaking Engagements

USA Patriot Act - Hudson River Museum - June 10, 2003.

Forensic Evidence - Moderator - Judicial Institute - May 22, 2003.

2003. Lawyers and Media - Public Relations Association of America - Sept. 10,

14, 2003. The Brady Rule Forty Years After - Annual Mid-Hudson Trainer - November

USA Patriot Act - White Plains Democratic Committee - December 3, 2003.

Religious McCarthyism - Benjamin Cardozo Society - December 8, 2003.

2003. The Bill of Rights - 212th Anniversary - St. Paul's Church - December 15,

Terrorism and Civil Liberties - Sarah Lawrence College - March 6, 2004.

Expert Testimony

New York State Assembly Codes Committee, Hearing on New York State's Death Penalty (January 21, 2005)

U. S. Congress, House Committee on Government Reform (February 25, 2002)
(Amendment to 18 U.S.C. §1503)

U.S. Congress, House Judiciary Subcommittee (July 27, 2000) (Testimony on H.R. 4015: Fair Justice Act of 2000)

State of Louisiana v. Kyles (October 31, 1997)

State of Connecticut v. Valentin (March, 1995)

Commonwealth of Kentucky v. Davidson (April, 1992)

Matter of Anonymous, Grievance Committee, Massachusetts Bar Council (March, 1986)

PROFESSIONAL ACTIVITIES

Member, Editorial Advisory Board, Criminal Law Bulletin.

Consultant, New York State Board of Bar Examiners (1999-present)

LITIGATION EXPERIENCE

Prosecutorial Work

Office of the New York State Anti-Corruption Prosecutor (1973-76)

Chief, Appeals Bureau, Special Assistant Attorney General (1974-76)

Chief, Bronx Anti-Corruption Unit (1973-74)

Argued cases in state and federal courts involving public and political officials charged with corruption. (See, e.g., Cunningham v. Nadjari, 39 N.Y.2d 314 (1976); Nigrone v. Murtagh, 36 N.Y.2d 421 (1975); People v. Mackell, 40 N.Y.2d 59 (1976)

Office of Frank S. Hogan, District Attorney, New York County (1967-72)

Assistant District Attorney, Homicide, Rackets, and Appeals Bureaus. Investigated, tried and argued on appeal hundreds of felony cases, including murder, kidnapping, and corruption cases. Conducted major rackets investigations (e.g., municipal loan scandal and organized crime)

Member, Mayor's Committee for the Enforcement of Law During Civil Disorders
(1969)

Criminal Defense Litigation

Author of Amicus brief in Matter of Robert Gorghan v. DeAngelis et al., New York State Court of Appeals (September, 2006).

Author of Amicus brief in People v. Angel Mateo, New York State Court of Appeals (February, 2004)

Author of Amicus brief in U.S. Supreme Court in Jacobson v. United States, 503 U.S. 540 (1992) on behalf of American Civil Liberties Union and National Association of Criminal Defense Lawyers

Argued numerous federal and state criminal appeals involving significant criminal defense issues (See, e.g., People v. Brims, 66 N.Y.2d 61 (1985) (confessions); Hynes v. Karrasik, 47 N.Y.2d 659 (1979) (stealing records); People v. Ellis, 62 A.D.2d 469 (1978) (judicial misconduct); United States v. DiTommaso, 817 F.2d 102 (2d Cir. 1987) (right to counsel); People v. Howard, 513 N.Y.S.2d 973 (1987) (discovery); Hoff v. Kelly, (unreported) (2d Cir. 1987) (speedy trial); People v. Saraireh, 134 A.D.2d 464 (1987) (accomplice corroboration); People v. Mezon, 80 N.Y.2d 155 (1992) (suppression of evidence)

Defended murder, conspiracy, and other complex federal and state felony indictments (1976-present)

Panel member, Federal Criminal Justice Act Panel in the United States District Court for the Southern District of New York (1985-1992)

Panel member, Homicide, Felony, and Appellate panels, First Department, New York State Supreme Court (1976-present)

Assisted in death penalty litigation with Southern Prisoners Defense Committee, Atlanta, Georgia (1989-90)

Supervised law students on death penalty appeal, Alabama v. Duncan, 575 So.2d 1198 (1990) (remanded)

Assistant Public Defender, Rockland County (1984-85)

AWARDS

Pace Law School Outstanding Professor of the Year Award (May 23, 2004)

Pace Law School Outstanding Professor of the Year Award (May 18, 2003)

Pace Law School Outstanding Professor of the Year Award (May 19, 2002)

Pace Law School Outstanding Professor of the Year Award (May 20, 2001)

Pace Law School Outstanding Professor of the Year Award (May 21, 2000)

Pace Law School Outstanding Professor of the Year Award (May 31, 1998)

New York State Bar Association, Criminal Justice Section Award for Outstanding Work in Criminal Law Education (January 24, 1991)