

1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

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4 STATE OF WISCONSIN,
5 PLAINTIFF, INITIAL APPEARANCE
6 vs. Case No. 05 CF 375 & 05 CF 381
7 STEVEN A. AVERY,
8 DEFENDANT.

9
10 **DATE:** NOVEMBER 15, 2005

11 **BEFORE:** Hon. Patrick L. Willis
12 Circuit Court Judge

13 **APPEARANCES :**

14 KENNETH R. KRATZ
15 Special Prosecutor
16 On behalf of the State of Wisconsin.

17 ERIK LOY
18 Attorney at Law
19 On behalf of the Defendant.

20 CRAIG JOHNSON
21 Attorney at Law
22 On behalf of the Defendant.

23 STEVEN A. AVERY
24 Defendant
25 Appeared in person.

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TRANSCRIPT OF PROCEEDINGS

Reported by Diane Tesheneck, RPR
Official Court Reporter

1 THE COURT: At this time the Court calls
2 two matters that are scheduled for initial
3 appearance today, both entitled State of Wisconsin
4 vs. Steven A. Avery, Case No. 05 CF 375 and 05 CF
5 381. Will the parties state their appearances for
6 the record, please.

7 ATTORNEY KRATZ: Your Honor, the State of
8 Wisconsin appears by Calumet County District
9 Attorney Ken Kratz. I appear in each case as
10 Special Prosecutor.

11 ATTORNEY LOY: Steven Avery appears
12 personally with his attorneys, Erik Loy and Craig
13 Johnson, your Honor. We would note this is a
14 special appearance subject to objection of the
15 jurisdiction of the Court.

16 THE COURT: Has the defendant received a
17 copy of the Complaint in each of these matters?

18 ATTORNEY LOY: We have, your Honor. We
19 just received a signed copy of the Complaint in 05
20 CF 381. Previously, I obtained a copy of the
21 Complaint in the other felony matter in that case.
22 At this time, Mr. Avery is not eligible for our
23 services. We'll be looking into that further, but
24 at this time he's not eligible for our services on
25 that case.

1 THE COURT: He is not eligible on one case,
2 but is on the other?

3 ATTORNEY LOY: That's correct.

4 THE COURT: What's the basis for that?

5 ATTORNEY LOY: There's an asset.

6 THE COURT: Okay. Are you representing him
7 on that matter for purposes of today's hearing?

8 ATTORNEY LOY: We aren't allowed to due to
9 the eligibility standards, your Honor. I guess it's
10 up to the Court whether the Court wants to appoint
11 counsel in that case.

12 THE COURT: To this point, I haven't
13 received an application for appointment of counsel.
14 And I was not aware until this moment that you would
15 not be representing him on both cases. But a
16 defendant is entitled to be represented by an
17 attorney at all stages of these proceedings. Are
18 you asking for a continuance on that case?

19 ATTORNEY LOY: Perhaps that case could be
20 continued and the Court could hold a status
21 conference on it on the next date of the other case.

22 THE COURT: All right. You have received a
23 copy of the Complaint in 05 CF 381?

24 ATTORNEY LOY: Yes, your Honor. We'll
25 waive reading of that Complaint, request a

1 preliminary hearing. We are willing to waive time
2 limits on that case.

3 THE COURT: All right. And, Mr. Kratz, how
4 much time do you anticipate will be required for the
5 preliminary examination?

6 ATTORNEY LOY: I would ask for a half a
7 day, Judge.

8 THE COURT: I should indicate for the
9 record, I met briefly with counsel, before we began
10 today, concerning their schedules. And it's my
11 understanding that 1:00 on Tuesday, December 6th
12 works for both parties.

13 ATTORNEY LOY: That works fine for us, I
14 believe, your Honor.

15 THE COURT: Very well. The Court will
16 schedule the preliminary examination in this matter,
17 then, for 1:00 p.m. on Tuesday, December 6th. I do
18 not believe that bail has been set yet; what is the
19 State's request on bail?

20 ATTORNEY KRATZ: Just prior to talking
21 about bail, Judge, I know that the Court has put
22 aside the felon in possession case, obviously the
23 evidence which would lead to potential probable
24 cause finding of the Court is similar in that file
25 as well.

1 I don't know if the Court is in a
2 position to have a continued initial appearance
3 between now and then, perhaps use that same time
4 as the preliminary hearing date, if and when
5 Mr. Avery is afforded the assistance of counsel.
6 That would certainly be our request, that it be a
7 joint preliminary hearing. And once that
8 decision is made by the Court, I'm prepared to be
9 heard on bond. Thank you.

10 THE COURT: Mr. Loy, I'm not sure, you
11 mentioned, he didn't qualify on 375 because of an
12 asset. Doesn't he have the same asset on the other
13 case?

14 ATTORNEY LOY: The standard for eligibility
15 are different for the two types of cases, your
16 Honor.

17 THE COURT: All right. Let's do this, I
18 want to look into the matter on 375 a little
19 further, but I am going to schedule the preliminary
20 examination, at least on 381, for 1:00 on the 6th.
21 And it may be, depending on my review, that the
22 prelims can be joined between now and then or may
23 not, because I, frankly, was not ready for this
24 issue today. Moving on, then, to the question of
25 bail.

1 ATTORNEY KRATZ: Thank you, Judge. Judge,
2 the State is recommending a substantial cash bond in
3 this case. As the Court knows, there are statutory
4 factors that the Court need consider when deciding
5 the issue of bond, including the gravity of the
6 offense; potential penalties; the degree of violence
7 involved; prior record, if any; character and
8 strength of the evidence that is to be presented;
9 whether a defendant has substantial ties to the
10 community.

11 Of those, Mr. Avery, the State argues,
12 can only claim that he has ties to the community
13 in that he does live and work within the
14 community. The rest of the factors are strong
15 indicators of the need for a substantial cash
16 bond. The homicide nature and mutilation of a
17 corpse speaks to the gravity of the offense with
18 potential imprisonment that Mr. Avery faces
19 includes life, plus 22 and a half years.

20 The act that is alleged in the
21 Complaint, as well as the destruction of
22 evidence, is all of a highly violent nature.
23 Mr. Avery comes before this Court with a prior
24 criminal history including a 1986 conviction for
25 endangering safety, which was a case involving

1 pointing a firearm at a citizen; includes a 1980
2 and 1981 burglary conviction; as well as a 1982
3 conviction for the criminal offense of cruelty to
4 an animal.

5 The State argues that the character and
6 strength of evidence in this case is substantial,
7 as alleged in the Complaint. There's been a DNA
8 match, or series of matches implicating Mr. Avery
9 in the commission of each of these offenses.

10 And for all of those reasons, especially
11 given the likelihood that Mr. Avery would flee so
12 as not to be made available for future court
13 appearances, the State is asking for a \$1 million
14 cash bond. That's all I have this afternoon.
15 Thank you, Judge.

16 THE COURT: Mr. Loy.

17 ATTORNEY LOY: Your Honor, this case was
18 being investigated for several days and Mr. Avery
19 was free to come and go as he pleased. Despite the
20 fact that Mr. Avery knew about this investigation,
21 knew that he was a suspect, he didn't go anywhere.

22 He has substantial ties to the
23 community, numerous family members, a number of
24 them are here in court today. The convictions
25 that Mr. Kratz mentioned are all cases that are

1 quite old. I would ask the Court, if the Court
2 is going to set a cash bail on this case, to set
3 a more reasonable amount that perhaps Mr. Avery
4 and his family might have some hope of posting,
5 perhaps in the neighborhood of \$50,000. Thank
6 you.

7 THE COURT: All right. The -- As counsel
8 points out, there are factors the Court is to
9 consider that cut both ways in this case. I think
10 Mr. Avery has had ties to this community as not
11 indicated -- or there's been no indications that he
12 is inclined to flee.

13 On the other hand, he does have a prior
14 criminal record, as the State points out. At
15 this early proceeding, there's some indications
16 in the Complaint of corroborating elements to the
17 evidence, but I think the primary factor here is
18 the severity of the offenses that are charged, in
19 terms of warranting a significant cash bail.

20 So the Court is going to set cash bail
21 in this case at \$500,000. Is there anything
22 further from either party this afternoon?

23 ATTORNEY KRATZ: Judge, is there an
24 opportunity that the Court would like to discuss the
25 375 case, or perhaps in a phone conference, or

1 something along those lines? My concern, and I
2 appreciate the Court's dilemma, my concern is that,
3 especially the victim's family, doesn't have to go
4 through the prelim process twice.

5 THE COURT: All right. How about a
6 telephone status conference this coming Monday at
7 4:00?

8 ATTORNEY LOY: It's possible I will be
9 involved in a trial then, your Honor; although it's
10 doubtful.

11 THE COURT: Let's do this, we'll
12 tentatively set it for 4:00. It's only going to be
13 a status conference. The defendant need not be
14 present; we won't be going on the record. If for
15 some reason, Mr. Loy, you are in trial and
16 unavailable, let my judicial assistant know and
17 we'll arrange it for a different time.

18 ATTORNEY KRATZ: That's the 21st, Judge?

19 THE COURT: Correct.

20 ATTORNEY KRATZ: Who should initiate that
21 call? I'm happy to do it, Judge, if you want me to
22 do it.

23 THE COURT: That will be fine.

24 ATTORNEY LOY: I will probably just come
25 over to your chambers.

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THE COURT: Anything else this afternoon?

ATTORNEY KRATZ: That's all for today.

Thank you, Judge.

THE COURT: At this time the bail is set to cover both files. I will make the bail decision at this time even though the initial appearance is continued on Case 375. If there's nothing further, we're adjourned for today.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this day of , 2006.

Diane Tesheneck, RPR
Official Court Reporter

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, PRELIMINARY EXAMINATION

5 vs. Case No. 05 CF 375 & 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.
8

9
10 **DATE:** DECEMBER 6, 2005

11 **BEFORE:** Hon. Patrick L. Willis
12 Circuit Court Judge

13 **APPEARANCES:**

14 KENNETH R. KRATZ
15 SPECIAL PROSECUTOR
16 On behalf of the State of Wisconsin.

17 ERIK R. LOY
18 Attorney at Law
19 On behalf of the Defendant.

20 CRAIG JOHNSON
21 Attorney at Law
22 On behalf of the Defendant.

23 STEVEN A. AVERY
24 Defendant
25 Appeared in person.

* * * * *

TRANSCRIPT OF PROCEEDINGS

Reported by Diane Tesheneck, RPR

Official Court Reporter

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1 THE COURT: At this time the Court calls
2 Case Nos. 05 CF 375 and 05 CF 381, State of
3 Wisconsin vs. Steven A. Avery. These matters are
4 scheduled for a preliminary examination this
5 afternoon. Will the parties state their appearances
6 for the record, please.

7 ATTORNEY KRATZ: The State appears by
8 Calumet County District Attorney Ken Kratz. I'm
9 appearing as Special Prosecutor in the matter.

10 ATTORNEY LOY: Steven Avery appears
11 personally, with his attorneys, Erik Loy and Craig
12 Johnson. Your Honor, I would, at the outset, move
13 to separate witnesses.

14 THE COURT: Mr. Kratz.

15 ATTORNEY KRATZ: We have instructed our
16 witnesses as to sequestration, Judge, that's already
17 been done.

18 THE COURT: Have they also been instructed
19 not to speak to each other until they are done
20 testifying?

21 ATTORNEY KRATZ: Until they are what?

22 THE COURT: Any witness who --

23 ATTORNEY KRATZ: Any witness who testifies
24 will not speak with the witnesses who have not been
25 in court, Judge.

1 THE COURT: Correct.

2 ATTORNEY KRATZ: Yes.

3 THE COURT: Okay. And, Counsel, I believe
4 there's agreement that, although we're dealing with
5 two case files today, the State is going to present
6 evidence at the prelim related to both files and the
7 Court, then, will make a separate finding with
8 respect to each file, following the conclusion of
9 the hearing. Mr. Kratz, is that your understanding?

10 ATTORNEY KRATZ: That's my understanding,
11 your Honor.

12 THE COURT: Mr. Loy.

13 ATTORNEY LOY: That's our understanding
14 also, your Honor.

15 THE COURT: That's acceptable to the State
16 and the defense?

17 ATTORNEY KRATZ: Yes.

18 ATTORNEY LOY: Yes.

19 THE COURT: The Court has also received a
20 motion for bail reduction and I will take that up at
21 the conclusion of the preliminary examination.
22 Anything else before we proceed, Counsel?

23 ATTORNEY KRATZ: Not from the State, your
24 Honor.

25 ATTORNEY LOY: Not from us, your Honor.

1 THE COURT: If not, Mr. Kratz, you may call
2 your first witness.

3 ATTORNEY KRATZ: State will call Pam Sturm
4 to the stand.

5 THE CLERK: Please remain standing. Raise
6 your right hand.

7 **PAMELA STURM**, called as a witness
8 herein, having been first duly sworn, was
9 examined and testified as follows:

10 THE WITNESS: I do.

11 THE CLERK: Please be seated. Please state
12 your name, spell your last name for the record.

13 THE WITNESS: Pamela Sturm, last name,
14 S-t-u-r-m.

15 **DIRECT EXAMINATION**

16 BY ATTORNEY KRATZ:

17 Q. Ms Sturm, I'm going to ask you some questions
18 regarding involvement in a case in the early part
19 of November of this year. First of all, were you
20 familiar with a young woman by the name of
21 Theresa Halbach?

22 A. Yes, I was.

23 Q. You will need to speak up just a little bit for
24 us, please. Ms Sturm, can you tell us how you
25 knew Teresa Halbach.

1 A. Tom is my first cousin, so Teresa would be my
2 second cousin.

3 Q. You will need to tell us who Tom is?

4 A. Tom Halbach is Teresa's father.

5 Q. Ms Sturm, at some time about the 4th of November,
6 about Friday, the 4th of November, did you become
7 aware of a search effort that was ongoing for Ms
8 Halbach?

9 A. Yes, I did.

10 Q. And on the next morning then, on the 5th of
11 November, did you agree to participate in that
12 search effort?

13 A. Yes, I did.

14 Q. Could you tell the Court, please, what you did or
15 what you agreed to do that morning.

16 A. I went to Teresa's house and Ryan and Scott were
17 there. And most of the searchers were gone
18 already. So they had some maps on the table, so
19 I took a map. And he said, well, they are going
20 to search there and there and there. And I said,
21 well, I would like to go to, you know, where
22 Teresa was last, which was the Avery Salvage.
23 And he said, well, that's up to you. So that's
24 where we went.

25 Q. When you say we, could you tell me who you went

1 with?

2 A. My daughter was with me.

3 Q. And your daughter's name?

4 A. Nicole Sturm.

5 Q. About how old is Nicole?

6 A. 25.

7 Q. And did you and Nicole then proceed to a piece of
8 property west of Mishicot, Wisconsin, property is
9 known as Avery Auto Salvage?

10 A. Yes, we did.

11 Q. About what time did you get there, if you
12 remember?

13 A. Approximately 10 to 10 a.m.

14 Q. And at about 10 to 10 did you make contact with
15 anybody on that property?

16 A. Yes, I did.

17 Q. Who was that?

18 A. I talked to Earl Avery.

19 Q. And did Earl Avery identify himself or tell you
20 how he might be associated with that property?

21 A. I asked him if he was an Avery and he said, yes,
22 Earl. And on the side of the building, it says
23 that Earl is one of the co-owners. And he did
24 indicate that he is one of the owners of the
25 property.

1 Q. All right. So, in talking to Earl Avery, did you
2 ask him anything, specifically?

3 A. Yes, I did.

4 Q. What did you ask him?

5 A. I asked him if it would be okay if my daughter
6 and I searched the salvage yard for Teresa
7 Halbach's vehicle.

8 Q. Could you just describe the nature of that
9 conversation. And, Counsel, and, the Court, I'm
10 certainly not asking for the truth of the matter,
11 but what she may have done as a result of that
12 conversation. What did you talk about, Ms Sturm?

13 A. Well, we talked about -- Well, at first I said,
14 maybe since it's deer hunting season some of the
15 hunters may go out in the woods and maybe they
16 will find some evidence of Teresa. And Earl
17 indicated that they go deer hunting up in the
18 Crivitz area, that they have a cottage up there.

19 Q. Ms Sturm, I don't mean to interrupt, but I'm
20 going to. Why don't you tell us, at the
21 conclusion of your conversation with Earl, did
22 you ask for any permission to do anything?

23 A. Yes, we asked if we could walk around the
24 property and search for Teresa's vehicle.

25 Q. And did Earl Avery give you permission to search

1 the Avery Salvage Yard, specifically, to try to
2 find Teresa's vehicle?

3 A. Yes, he did.

4 Q. Did you and your daughter, Nicole, then begin a
5 search of the Avery Salvage property?

6 A. Yes, we did.

7 Q. Could you describe, generally, what you recall
8 about that morning and the size, if you will, of
9 the Avery property.

10 A. Well, we came into the property and there are
11 three roads leading into the property. So we
12 went on the center road and there are quite a few
13 huge buildings there. And it looks like a huge
14 quarry. And, evidently, it's 40 acres and it's
15 just a lot of vehicles.

16 Q. All right. Ms Sturm, you said that you began
17 searching the property; do you recall what
18 portion of the property you began to search?

19 A. Well, if you come in the driveway, we started the
20 sweep from left to right. So we started in the
21 southwest corner, I believe.

22 Q. And did you have a specific intent, you and your
23 daughter, regarding that search, what your plan
24 was that day?

25 A. Yes.

1 Q. What was your intent?

2 A. We were going to look in each and every vehicle
3 to make sure that Teresa wasn't in there.

4 Q. All right. Ms Sturm, before you completed, or I
5 should say, before you began your search at the
6 Avery Auto Salvage, did you have a description of
7 the vehicle that Teresa Halbach had last been
8 driving?

9 A. Yes, we did. We obtained some slips from Ryan
10 and Scott and the vehicle description was on
11 there.

12 Q. Basically, what kind of a car were you looking
13 for?

14 A. It was a Rav 4 Toyota.

15 Q. Small SUV; is that right?

16 A. It's a small SUV, yes.

17 Q. Ms Sturm, then, when your daughter, Nicole, and
18 you began searching some of the vehicles, did you
19 happen to come across a vehicle that you
20 believed, generally, fit the description of the
21 vehicle that Teresa had been driving?

22 A. Yes, I did.

23 Q. Could you tell the Court, please, how you came
24 across that vehicle and what it looked like.

25 A. Well, we had searched at least 50 vehicles and

1 RV's and trucks. And my daughter was in the row
2 on the right side of me. And I was going to
3 search my row. And up on an incline, there were
4 approximately seven or eight vehicles. And I
5 thought, well, I have to go up there and search
6 those and make sure it wasn't up there.

7 Q. What do you mean by "up on an incline"?

8 A. Well, if you can picture the quarry, it's like a
9 bowl shape and on top of the ridge they had a
10 little driveway of sorts. And on there, they had
11 like seven or eight cars.

12 Q. All right. I think that you had mentioned that
13 this was on the southern portion of the Avery
14 property?

15 A. Yes, that's correct.

16 Q. When you came across one of those cars, can you
17 tell us what you saw and what you thought.

18 A. Well, it was so unusual because there were
19 branches leaning up against this vehicle. And I
20 came closer and there was a hood of the vehicle
21 braced up against the driver's side of this
22 vehicle. So I went around to the back and it
23 says Rav 4 on it, Toyota. And I just -- I
24 thought, well, yeah, it's got to be that car, but
25 it appeared to be blue.

1 Q. Ms Sturm, let me interrupt, again. When you
2 found this vehicle, or when you saw that it was a
3 Rav 4, how was it that you determined that?

4 A. I looked at the back of the vehicle and it's
5 printed, Rav 4, on the back of the vehicle. And
6 it also says Toyota on it.

7 Q. All right. About what time was it that you came
8 across this vehicle?

9 A. About 10:20 a.m.

10 Q. So, shortly after you began your search; is that
11 right?

12 A. Yes.

13 Q. All right. What did you do then?

14 A. I looked to see if there were license plates on
15 the vehicle. And there weren't any on the front,
16 so I went to the back and there weren't any on
17 the back. And I couldn't see my daughter, so I
18 walked towards my daughter, because she has the
19 cell phone.

20 And I said, Nicole, Nicole. Come here,
21 come here. And she came running. And I said,
22 look at this vehicle. This has got to be the
23 vehicle. It's camouflaged even. She said, yeah,
24 ma, I think it is, but it looks kind of blue.

25 Q. Were you able -- Let me ask you a question first.

1 Are you familiar with identifications on
2 vehicles, which are called VIN numbers --

3 A. Yes.

4 Q. -- vehicle identification number. I will need to
5 finish asking the question first, sorry. How is
6 it that you are familiar with the VIN numbers?

7 A. Because I have 10 years experience in the
8 investigative field.

9 Q. All right. Ms Sturm, were you able to obtain, at
10 least partially, the VIN number for this vehicle?

11 A. Well, actually, my daughter read the number,
12 because I forgot my glasses.

13 Q. All right. Were you able to, and did you, in
14 fact, try to verify the VIN number, or try to
15 verify the identification of this vehicle with
16 any law enforcement authorities?

17 A. Yes, we did. We called the Calumet County
18 Sheriff's Office and attempted to speak with
19 Mr. Pagel. And they gave me voice mail. So I
20 went back to the operator and I said, no, I need
21 to speak to Mr. Pagel, in person now, I think we
22 found the vehicle.

23 So she gave me Mr. Pagel immediately.
24 And I told Mr. Pagel, I believe we found the
25 vehicle in the Avery Salvage Yard. And he said,

1 could you read the VIN number to us, but don't
2 touch anything. Don't touch anything. Try not
3 to touch anything.

4 So, my daughter read the four last
5 numbers, she could see those. And then he said,
6 well, could you read the rest of the numbers.
7 And she read those off to me, so I told Mr. Pagel
8 the VIN number.

9 Q. Were you instructed to do anything at that time?

10 A. We were instructed to step away from the vehicle.
11 Don't touch anything. And go as far away as you
12 can from the vehicle and just wait for the
13 police, they are on their way.

14 Q. All right. Did the law enforcement officer
15 indicate to you on the phone that the VIN numbers
16 had matched?

17 A. No, he would not tell me.

18 Q. Just told you, get away from the vehicle?

19 A. That's right.

20 Q. Now, Ms Sturm, when you and Nicole walked onto
21 the property, did you have any photographic
22 equipment with you?

23 A. Yes, we did. I borrowed a digital camera from
24 Scott because I forgot my camera. And Nicole
25 placed it under her clothing before we went into

1 the yard.

2 Q. After reading off the VIN numbers, did you
3 believe it was important to take a digital photo
4 of the vehicle which you had found and how you
5 found it?

6 A. Yes, we thought we should take photos
7 immediately, in case they told us to get off the
8 property. So we did take four or five pictures.

9 Q. All right. Ms Sturm, if you would be so kind as
10 to look behind you; I'm showing you what's been
11 marked for identification as Plaintiff's Exhibit
12 No. 1. Could you tell us what that is.

13 A. That is the vehicle that we found at Avery
14 Salvage Yard.

15 Q. Could you just kind of point to that exhibit as
16 best you can. This might be a little bit
17 difficult without a microphone, but point to an
18 area and tell us what it was that you found and
19 what you thought was significant.

20 A. As you can see, there's a -- there are branches
21 leaning up against the vehicle and also the front
22 of a -- I can't think of the name of it. And
23 then the VIN number is on the right-hand side of
24 the vehicle, on the drivers's side.

25 Q. Ms Sturm, importantly, Exhibit No. 1, is that the

1 same as -- as you observed the vehicle sometime
2 after 10:00 in the morning on the 5th of
3 November?

4 A. Yes, it is.

5 Q. Were you able to determine, during this whole
6 process, whether or not the vehicle was open or
7 whether or not it was locked?

8 A. My daughter tried the doors and the doors were
9 locked.

10 Q. How did she try the doors?

11 A. Well, we took the sleeves of our sweats and we
12 pulled on the door handle.

13 Q. And the -- all the doors of the vehicle were
14 locked, it was enclosed --

15 A. Yes, that's correct.

16 Q. -- is that right? Ms Sturm, after being told at
17 that point to step away from the vehicle, did you
18 wait for law enforcement officers to arrive?

19 A. Yes, we did.

20 Q. About how long did it take for law enforcement
21 officers to arrive at the scene, if you remember?

22 A. Approximately 20 minutes.

23 ATTORNEY KRATZ: All right. Your Honor, I
24 will move the admission of Exhibit 1 at this time.
25 I don't have any further questions of Ms Sturm.

1 Thank you.

2 THE COURT: Mr. Loy. First of all, does
3 defense have any objection to admission of the
4 exhibit?

5 ATTORNEY LOY: No objection for purposes of
6 today's hearing.

7 THE COURT: All right. Do you have any
8 questions for this witness?

9 ATTORNEY LOY: Yes, your Honor.

10 THE COURT: You may proceed.

11 ATTORNEY LOY: Thank you, Judge.

12 **CROSS-EXAMINATION**

13 BY ATTORNEY LOY:

14 Q. Ms Sturm, Exhibit 1, is that a photo that you
15 took?

16 A. That is a photo that my daughter, Nicole, took.

17 Q. Okay. With the camera that the two of you had
18 with you?

19 A. Yes, that's correct.

20 Q. Okay. And the two of you had taken a few other
21 photos that day?

22 A. Four or five photos of the car.

23 Q. When you first got to the salvage yard, where did
24 you find Earl Avery?

25 A. Well, we walked into the main building to see if

1 we could find one of the Averys and we couldn't.
2 So we came back outside and there were two
3 individuals in the parking lot. And when they
4 got finished with the conversation, I said, are
5 you an Avery. And at that time, he identified
6 himself.

7 Q. One of the two individuals?

8 A. Yes.

9 Q. Did the other person identify himself?

10 A. No, he had walked away at that point.

11 Q. When you drove into the Avery property, were
12 there any gates or anything preventing you from
13 entering?

14 A. We just drove into the property, up to the
15 building. We didn't drive any further than that.
16 But there were no blockades or anything, if
17 that's what you are asking.

18 Q. And there was no one standing there watching who
19 was going in and out of the property?

20 A. No, sir.

21 Q. So, did you park by the main office building?

22 A. Yes.

23 Q. And then, that's where you went in first to try
24 to find someone?

25 A. That's correct.

1 Q. When you went down into the area where all the
2 cars are, it was kind of a pit or a quarry; is
3 that right?

4 A. Yes.

5 Q. Did you drive down there or did you walk?

6 A. We walked down there.

7 Q. Okay. And was there anything, any gates or
8 anything, preventing you from walking down into
9 that area?

10 A. No.

11 Q. Did you see any other people down there?

12 A. There were a couple people in the salvage yard,
13 yes.

14 Q. And did you find out who those people were?

15 A. No, sir.

16 Q. Was there anyone else searching the salvage yard
17 that day, besides you and your daughter?

18 A. I don't believe so.

19 Q. As far as you know, the only people there
20 searching were the two of you; is that right?

21 A. That's correct.

22 Q. When you went in the main office, you didn't see
23 anybody there?

24 A. No, we didn't.

25 Q. Did you touch anything in that office?

1 A. No, sir.

2 Q. How long did you stay in there?

3 A. Maybe about two seconds.

4 Q. Okay. All right. What did the person who was
5 talking with Earl Avery look like? Can you give
6 me a description of him?

7 A. He was approximately 5 foot 8, 170 pounds, light
8 brown hair.

9 Q. Where were these people standing?

10 A. I'm sorry?

11 Q. Where were the two of them standing, Earl and
12 this person he was talking to?

13 A. They were out in the parking lot.

14 Q. In --

15 A. Right in front of the building.

16 Q. In front of the main office area?

17 A. I believe that's the main office.

18 Q. Okay. Was the door to the main office unlocked?

19 A. Yes.

20 Q. When you saw this Rav 4 vehicle, did you -- did
21 you move any of the items that were -- that were
22 covering it or on top of it?

23 A. The only thing that we moved was the hood. And
24 if you can picture, the hood has got a real thin
25 part where you can just move it a little bit away

1 from the car. And, again, we used our sleeves to
2 pull it away from the car.

3 Q. When you say the hood, you are talking about a
4 hood off another vehicle?

5 A. Correct.

6 Q. It wasn't the hood of the Rav 4?

7 A. No.

8 Q. It was some other hood, right?

9 A. Yes.

10 Q. Okay. And you -- How far did you move it?

11 A. We just moved it off. It was leaning against it
12 and we just moved it off to see if we could, you
13 know, see anything else.

14 Q. All right. And your daughter tried to open the
15 doors of the Rav 4?

16 A. That's correct.

17 Q. And she used her sleeve?

18 A. Yes.

19 Q. Did either of you use tissues or anything like
20 that?

21 A. No.

22 Q. The vehicle was locked?

23 A. That's correct.

24 Q. Did -- Were all the doors tried?

25 A. The two, the passenger door and the driver's

1 door, were tried.

2 Q. For the front seat?

3 A. Pardon me?

4 Q. For the front seat?

5 A. There are only two doors.

6 Q. Oh, it's only a two-door vehicle?

7 A. I believe so.

8 Q. Okay. Were you aware of any plans to have anyone
9 else search the salvage yard that day?

10 A. I don't believe so. I never heard anything.

11 Q. The people who were down in the salvage yard,
12 that you saw, can you give me a description of
13 them?

14 ATTORNEY KRATZ: Judge, I understand
15 Mr. Loy may want this information for discovery
16 purposes, but it goes beyond the scope of the
17 preliminary hearing. I will interpose an objection.

18 THE COURT: Mr. Loy.

19 ATTORNEY LOY: He is right, we would like
20 to learn more about these gentlemen.

21 THE COURT: All right. I will sustain the
22 objection.

23 ATTORNEY KRATZ: Thank you.

24 Q. (By Attorney Loy) When you opened the door to the
25 office, did you grab the doorknob and pull it

1 open, or how did you get into the office?

2 A. I believe the door goes in.

3 Q. So, you pushed the door in?

4 A. No, I think I grabbed the doorknob.

5 Q. Grabbed the doorknob and turned it and pushed the
6 door in; is that how it went?

7 A. Right.

8 Q. Okay. When you first got there, you didn't see
9 anyone outside, right?

10 A. Yes, we saw two men conversing by the car.

11 Q. Okay. So you saw these two guys conversing by a
12 car, but you went in the main office door to find
13 someone, and then -- is that right?

14 A. That's correct.

15 Q. And then, when you didn't find anyone in the
16 office, you went outside and talked to the two
17 guys?

18 A. That's correct.

19 Q. And where were they standing?

20 A. They were standing to the right of my vehicle, in
21 between two other vehicles.

22 Q. And did you park your vehicle sort of in a
23 courtyard area near the door to the main office?

24 A. I parked almost directly in front of the door to
25 the office.

1 Q. When you were talking with Mr. Avery, Mr. Earl
2 Avery, about your plans to search, what did you
3 tell him about that?

4 A. I'm sorry, I don't understand the question.

5 Q. You told Mr. Earl Avery that you wanted to search
6 the salvage yard; is that right?

7 A. That's correct.

8 Q. Did you tell him where you wanted to search?

9 A. I told him that we wanted to search the whole
10 yard.

11 Q. Okay. And did he -- What did he say in reply to
12 that?

13 A. He said that, well, you really shouldn't take
14 your car because the roads are really bad down
15 there, so I would recommend that you walk.

16 Q. Okay. Did he say anything else?

17 A. No.

18 Q. What did you say as far as why you wanted to do
19 the search?

20 A. I said it would relieve Tom and Karen's minds if
21 we could determine if the car was on the property
22 or it wasn't on the property.

23 Q. Okay. When you did the search, you were looking
24 for Teresa and for her vehicle; would that be
25 fair to say?

1 A. That's correct.

2 Q. Did Earl Avery have any response when you said it
3 would relieve the parent's minds if you could
4 look for the car? Did he have any response to
5 that?

6 A. He just said, I know how it feels, because we
7 lost a nephew a year ago and I know how they
8 feel.

9 Q. Earl Avery was very cooperative with you?

10 A. Yes.

11 Q. He didn't give you any problems with searching
12 the property?

13 A. Well, at first he said he thought somebody else
14 was there already to search, but they took a
15 vehicle through the yard. And he kind of said,
16 well, you know, they searched already.

17 Q. Did he say anything about what these other
18 searchers did or found?

19 A. No, he didn't.

20 Q. Did he say it was okay, then, for you to do the
21 search?

22 A. Yes, he did.

23 Q. Did Earl Avery say anything about where to start
24 the search, or anything along those lines, give
25 you any direction?

1 A. No, sir.

2 Q. He did say you should go on foot?

3 A. Yes, he did.

4 Q. How did you and your daughter decide where you
5 were going to start searching?

6 A. We didn't, we just said we would go from left to
7 right.

8 ATTORNEY LOY: Nothing further, your Honor.

9 THE COURT: Any redirect?

10 ATTORNEY KRATZ: No, Judge.

11 THE COURT: The witness is excused.

12 ATTORNEY KRATZ: Call Tom Fassbender to the
13 stand.

14 THE CLERK: Please raise your right hand.

15 **THOMAS FASSBENDER**, called as a witness
16 herein, having been first duly sworn, was
17 examined and testified as follows:

18 THE CLERK: Please be seated. State your
19 name for the record, please.

20 THE WITNESS: Thomas Fassbender,
21 F-a-s-s-b-e-n-d-e-r.

22 **DIRECT EXAMINATION**

23 Q. Mr. Fassbender, how are you employed?

24 A. I'm a Special Agent with the Wisconsin Department
25 of Justice, Division of Criminal Investigation.

1 Q. Sometime in early November of this year, were you
2 asked to participate in a search for a missing
3 person and, thereafter, participate in a criminal
4 investigation regarding Teresa Halbach?

5 A. Yes.

6 Q. How were you asked to participate in that?

7 A. The Calumet County Sheriff's Department requested
8 DCI services.

9 Q. Agent Fassbender, is it fair to indicate that
10 you, together with Calumet County Investigator
11 Mark Wiegert, served as lead investigators in
12 this investigation?

13 A. Yes.

14 Q. Agent Fassbender, let me first have you direct
15 your attention to what's been marked as
16 Plaintiff's Exhibit No. 2, the aerial photograph
17 to your immediate right. Since other witnesses
18 are going to be using that exhibit, could you
19 tell us what that is, please.

20 A. That's an aerial photograph of the Avery Salvage
21 Yard.

22 Q. How is it that you recognize that?

23 A. Because I was at that scene for about seven days.

24 Q. About how many hours a day were you there?

25 A. Probably averaged about 16.

1 Q. All right. So it's fair that you're pretty
2 familiar with almost every inch of that property;
3 isn't that true?

4 A. Well, I'm familiar with it, I wouldn't say every
5 inch.

6 Q. All right. Agent, I'm going to hand you a laser
7 pointer, it's the yellow button that is in the
8 middle of this particular device. Why don't you
9 just kind of give us a lay of the land, how is it
10 that you come in from the highway onto the Avery
11 property and, perhaps, point out those areas that
12 are marked on Exhibit No. 2.

13 A. Okay. Avery Road would be coming in right here
14 from, I believe, the north. They kept going
15 upward there. And the highway is up there to the
16 north.

17 If you go to what would be, I believe,
18 the west, along this driveway or road here, and
19 down to the end where you see the little circle
20 here, down here you have the residence that Steve
21 Avery stayed in. His sister, Barbara Avery,
22 lived next door to him. Steve's garage would be
23 right there and Barbara's garage right there.
24 And then, down here, I believe this was Mr. and
25 Mrs. Avery's house right back in here. If you

1 take this road --

2 Q. If I could just stop you, by Mr. and Mrs. Avery,
3 you mean Steven's parents; is that right?

4 A. Yes, Steven's parents, Al, and I think it's
5 Delores.

6 Q. Go ahead. Who else lived there?

7 A. And then this road down here, to the south, would
8 take you down in to what I believe they call the
9 pit, or the salvage yard area. You go by, I
10 think this is what would be Chuck Avery's
11 residence, which is Steve Avery's brother, right
12 along there. And then these are shops. And the
13 office, I believe, is right there, the main
14 office, and then shops where they would do their
15 work -- their work -- their salvage work.

16 And then down here, there was a crusher
17 located down in the pit. I think it was down in
18 this area, right in here, to crush cars. And
19 then there's a small road that goes along the
20 south end. There's a big berm back here. On the
21 other side of that berm is what would be a gravel
22 pit or whatever. And --

23 Q. Let me just stop you. At the bottom most portion
24 of Exhibit No. 2, that would be where the Avery
25 property ends; is that correct?

1 A. That's correct.

2 Q. Now, when you were asked to assist in the
3 investigation, in fact, very early in this
4 investigation, Saturday, the 5th of November, had
5 you received, and did you assist in the execution
6 of a search warrant for the entire Avery
7 property, all vehicles on the Avery property, all
8 residences and all out buildings?

9 A. Yes.

10 Q. Agent Fassbender, I understand that on the 5th of
11 November, law enforcement took control, if you
12 will, of the Avery property. Do you know when it
13 was that law enforcement relinquished control,
14 that is, when the dozens of search warrants that
15 were eventually executed there concluded? Do you
16 recall?

17 A. It was on a Saturday and -- the 12th, I believe.

18 Q. Okay. About a week; is that right?

19 A. Yes.

20 Q. Now, throughout that week, Agent Fassbender, you
21 were aware of various items, that you believed
22 had evidentiary value, being found. And as lead
23 investigator, were you kept apprised of not only
24 when those items were found but, specifically,
25 where they were found upon this property?

1 A. Yes, most of the time.

2 Q. You mentioned that there is a residence of Steven
3 Avery; do you know the address of that residence?

4 A. 12932 Avery Road, Town of Gibson, Manitowoc
5 County, State of Wisconsin.

6 Q. Later, that is, several days into the
7 investigation, you had occasion to make personal
8 contact with Steven Avery; is that correct?

9 A. Yes.

10 Q. Is that gentleman in the courtroom this
11 afternoon?

12 A. Yes.

13 Q. Could you point him out for the record.

14 A. To your right, wearing the black and white
15 striped outfit.

16 ATTORNEY KRATZ: Your Honor, I would ask
17 that the record reflect the defendant's
18 identification.

19 THE COURT: The record will reflect that
20 the witness identified Mr. Avery.

21 Q. (By Attorney Kratz) Now, Agent Fassbender, very
22 shortly after Ms Sturm found what was believed to
23 be Teresa Halbach's vehicle, did you become
24 involved that same day, and did you proceed to
25 the Avery Salvage Yard, to assist in this

1 investigation?

2 A. Yes.

3 Q. During the course of your investigation, did you
4 have occasion to review official reports of the
5 Wisconsin Department of Transportation and were
6 you able to determine ownership of the Rav 4 that
7 was located on the Steven Avery property?

8 A. Yes.

9 Q. I've handed you what's been marked for
10 identification as Plaintiff's Exhibit No. 4. Can
11 you tell us what that is, please.

12 A. That's a Certificate of Record Copy from the
13 Wisconsin Department of Transportation,
14 pertaining to a 1990 Toyota truck,
15 registration -- registered by Wisconsin license
16 plate number SWH582 to Teresa M. Halbach and
17 vehicle identification number JT3HP10V5X7113044.

18 Q. And on the 5th of November and, in fact, on days
19 thereafter, were you able to determine whether
20 the Rav 4 found on Steven Avery's property, in
21 fact, was the same Rav 4 that was owned by Teresa
22 Halbach?

23 A. Yes.

24 Q. And does Exhibit No. 4, that is, the certified
25 Department of Transportation Record, verify that

1 fact?

2 A. Yes.

3 ATTORNEY KRATZ: Would move the admission
4 of Exhibit 4 at this time, your Honor.

5 THE COURT: Any objection?

6 ATTORNEY LOY: No objection for purposes of
7 this hearing, your Honor.

8 THE COURT: All right. Exhibit 4 is
9 admitted. Counsel, I'm going to ask you to approach
10 here, briefly.

11 (Side bar taken.)

12 ATTORNEY KRATZ: I'm sorry, Judge, did you
13 rule on it's admissibility?

14 THE COURT: The defense admitted that -- or
15 defense did not object to admission of the exhibit
16 and I did admit it.

17 And I will indicate, for the benefit of
18 everybody else, that I was handed a note
19 indicating that, as part of the broadcast of the
20 proceedings, we have been told that at times the
21 microphones are apparently sensitive enough so
22 that the people on the broadcast can hear what
23 the attorneys are saying to each other. So make
24 sure you press the mute button when you talk to
25 each other, or lean back far enough away from the

1 microphone so that won't happen.

2 ATTORNEY KRATZ: Try not to give away any
3 secrets. That's fine, Judge.

4 Q. (By Attorney Kratz) Mr. Fassbender, on the 5th of
5 November, were you also involved in the
6 processing or review of the Rav 4 that was found
7 upon that property?

8 A. Yes.

9 Q. Were you able to view where, upon that property,
10 the Rav 4 was located?

11 A. Yes.

12 Q. And using the laser pointer, again, and referring
13 to Exhibit No. 2, if you could, again, give us a
14 orientation as to where the different buildings,
15 residences may be, and where Teresa Halbach's Rav
16 4 was found?

17 A. Again, Steve Avery's residence up on the
18 northwest corner of the property; his sister,
19 Barb; his parents; brother, Chuck; the buildings
20 where they have their shops and offices; the road
21 going south into the pit; the extreme south side
22 of or edge of their property. And down towards
23 the southeast portion of the property, on a small
24 trail, I guess you would call it, her vehicle was
25 located alongside that trail.

1 Q. After the search warrant was exec -- excuse me --
2 authorized, did you participate in viewing the
3 vehicle and did you assist members of the
4 Wisconsin State Crime Lab in processing and
5 deciding how to search that vehicle?

6 A. Yes, to a certain degree.

7 Q. What was decided regarding the processing or
8 search of the Rav 4?

9 A. That the vehicle would be, essentially,
10 transported as it was found and not processed at
11 the scene, transported through Wisconsin State
12 Crime Laboratory in an enclosed trailer and
13 processed in Madison, at the Crime Laboratory in
14 Madison.

15 Q. I'm going to show you, on the picture behind you,
16 what's been marked as Plaintiff's Exhibit No. 5;
17 can you tell us what that is, please.

18 A. That's a picture of a portion of that RAV 4
19 vehicle as it was located, or found, on the Avery
20 property, I believe.

21 Q. This is a picture that's apparently taken in the
22 evening or early evening hours. Is that the same
23 or similar as it appeared to you just prior to
24 the Wisconsin State Crime Laboratory processing
25 and, in fact, loading up that vehicle to take it

1 to Madison?

2 A. Yes.

3 ATTORNEY KRATZ: I move the admission of
4 Exhibit 5, Judge.

5 THE COURT: Any objection?

6 ATTORNEY LOY: None for this hearing.

7 THE COURT: Exhibit 5 is admitted.

8 Q. (By Attorney Kratz) Agent Fassbender, could you
9 remind those in this room, who weren't at that
10 scene, what the weather became like just after,
11 perhaps, taking that picture?

12 A. It became very nasty. It rained extremely hard.
13 Shortly after that picture, obviously, it was
14 dark, it was night, visibility was pretty much
15 zero, except for the lights, the spotlights that
16 had been put up by the Sheriff's Department.

17 Q. Excuse me. The impending weather, did that play
18 into your's and the Crime Lab's decision to also
19 remove that vehicle and have it searched in a
20 more pristine area, that being at the Madison
21 Crime Lab?

22 A. Certainly that played into that decision.

23 Q. Now, when that vehicle was located, it did not
24 bear Teresa Halbach's registration plates or
25 vehicle plates; is that correct?

1 A. That's correct.

2 Q. During the course of the investigation, and in
3 the next several days after the 5th of November,
4 did you seek the assistance, and receive the
5 assistance, of literally hundreds of law
6 enforcement and other professionals to search,
7 virtually, all of the Avery property?

8 A. Yes.

9 Q. During one of those search efforts, are you
10 familiar that in a detailed search of the
11 interior of all of those vehicles at the Avery
12 property, that the license plates for Teresa's
13 Rav 4 were located?

14 A. Yes.

15 Q. Could you describe for the Court where they were
16 located, please.

17 A. Alongside the entry road going down to Steven
18 Avery's residence and Barbara Avery's residence,
19 on the south side of that road, there was a
20 salvaged vehicle, or a vehicle located right
21 there, that law enforcement personnel that were
22 doing the search located the two license plates
23 inside that vehicle. And they were crinkled up
24 or rolled up, in that type of condition.

25 Q. All right. And so that the Court is aware, is it

1 your understanding that literally every vehicle
2 on that salvage yard was searched, not once but
3 at least two times during the course of the week,
4 not only for the body of Teresa Avery, but also
5 for -- excuse me -- Teresa Halbach, but also any
6 items that may have what might be evidentiary
7 value; is that fair?

8 A. Yes.

9 Q. Agent Fassbender, I'm going to ask you to direct
10 your attention to the upper left hand corner of
11 Exhibit #2. There are items which are identified
12 as burn barrels. Could you describe what those
13 are, please.

14 A. This burn barrel, just to the north of Steven
15 Avery's garage and residence area, had been
16 identified by Mr. Avery as his burn barrel. And
17 then, there are some burn barrels that were
18 located more to the east and south, or southeast
19 of Barbara Avery's house. And then, also a burn
20 pit, or burn area, directly behind Steven Avery's
21 garage, or to the south of his garage.

22 Q. The last item, or one of the last items
23 identified on Exhibit No. 2, is something called
24 a Plymouth Voyager. Can you tell us where that
25 is and what significance that has.

1 A. The Plymouth Voyager is located right here,
2 somewhat in between Steven Avery's residence and
3 Barbara Avery's residence. That was a vehicle
4 that Steven Avery had called the *Auto Trader* and
5 asked them to have someone come out and take a
6 picture of to put in their magazine, for sale.

7 Q. We'll talk about Mr. Avery's statements later,
8 but did Mr. Avery himself admit that Teresa
9 Halbach took pictures of that Plymouth Voyager on
10 the afternoon of the 31st of October, of 2005?

11 A. Took a picture of it, yes.

12 ATTORNEY LOY: I'm going to object on
13 grounds of foundation, your Honor. We haven't heard
14 any testimony that this admission by Mr. Avery was
15 made to this gentleman or to someone else.

16 THE COURT: Sustained.

17 ATTORNEY LOY: And move to strike.

18 THE COURT: The answer is stricken from the
19 record at this point.

20 Q. (By Attorney Kratz) Did Mr. Avery make those
21 admissions in your presence?

22 A. Yes.

23 Q. Okay. Agent Fassbender, also, while in -- Well,
24 let's just jump a little forward. On the 8th of
25 November, 2005, did you have occasion to make

1 contact with Steven Avery and, in fact, execute
2 an arrest warrant for Steven Avery for a charge
3 of being a felon in possession of a firearm?

4 A. I believe it was the 9th, but I did do that
5 activity, but I thought it was on the 9th of
6 November. Was it Wednesday, the 9th?

7 Q. The -- Agent Fassbender, I'm going to hand you,
8 or show you, what's been marked for
9 identification as Plaintiff's Exhibit No. 6. Can
10 you tell us what that is, please.

11 A. That is a **Miranda** Warning Form used by law
12 enforcement to read people their **Miranda** warning
13 before questioning them. And the date on this
14 shows that it was November 8, 2005, at
15 12:50 p.m., that these rights were read to Steven
16 Avery.

17 Q. When you read Mr. Avery those rights, after
18 taking him into custody, did he tell you that he
19 understood his **Miranda** warnings?

20 A. Investigator Wiegert actually read the rights to
21 Steven Avery and, yes, he said he understood the
22 rights.

23 Q. Just so everybody is clear, were you and
24 Investigator Wiegert together in the room and did
25 you observe the, and participate in the,

1 interview with Mr. Avery?

2 A. Yes, the rights were read to him in my vehicle,
3 in my presence.

4 Q. Is that form signed?

5 A. Yes.

6 Q. Who is it signed by?

7 A. Steven Avery.

8 Q. Is it witnessed by anybody?

9 A. Myself and Investigator Wiegert.

10 Q. And upon signing Exhibit No. 6, did Mr. Avery
11 agree to answer questions for you?

12 A. Yes.

13 ATTORNEY KRATZ: Judge, I would move the
14 admission of Exhibit 6 at this time?

15 THE COURT: Any objection to Exhibit 6?

16 ATTORNEY LOY: Not for this hearing, your
17 Honor.

18 THE COURT: Exhibit 6 is admitted.

19 Q. (By Attorney Kratz) Agent Fassbender, during the
20 contact you had with Steven Avery on the day you
21 took him into custody, did you also make any
22 observations of Mr. Avery, of a physical nature,
23 whether Mr. Avery had any signs of injury upon
24 his body?

25 A. Yes.

1 Q. Any injuries noted on Mr. Avery that you believed
2 were significant?

3 A. Yes.

4 Q. Can you describe those for the Court, please.

5 A. There was what appeared to be a scabbed over cut,
6 fairly substantial cut, on his middle finger of
7 his right hand.

8 Q. During the course of your contact, also, with
9 Mr. Avery, did you obtain from him a sample of
10 his saliva on something called a buccal swab,
11 that it was later transported to the Wisconsin
12 State Crime Lab for DNA analysis?

13 A. Yes, I was present when a registered nurse at the
14 Aurora Medical Center in Two Rivers obtained
15 those samples.

16 Q. Now, you are not a DNA analyst, are you?

17 A. No.

18 Q. Is that the kind of analysis that needs to be
19 conducted by a forensic scientist, or at least
20 somebody with expertise, at a laboratory like the
21 Wisconsin State Crime Lab?

22 A. Yes.

23 Q. And, Agent Fassbender, talking about your
24 conversation with Mr. Avery, was Mr. Avery
25 specifically asked questions regarding his

1 contact with Teresa Halbach on the 31st of
2 October?

3 A. Yes.

4 Q. What did Mr. Avery tell you?

5 A. Mr. Avery told us that, sometime between 8:00 and
6 8:30 in the morning, he made a call to the *Auto*
7 *Trader* to see if he could have a picture taken of
8 that Plymouth Voyager in question, to put in the
9 *Auto Trader*.

10 Eventually, he indicated that he made
11 some other calls to *Auto Trader* and to Teresa
12 Halbach, attempting to determine whether she was
13 going to come out to take those pictures of that
14 vehicle. And that on about -- or at about 2 to
15 2:30 in the afternoon that day she, in fact, did
16 come out and took a picture of that vehicle.

17 That when she did that, he came out of
18 the house, saw that she had taken the picture and
19 was recording the serial number on that vehicle.
20 And that he went out to that location outside of
21 that van and paid her \$40 dollars in cash for
22 that. And then he said she walked over to her
23 vehicle. He accompanied her and she got in her
24 vehicle, gave her a copy -- or gave him a copy of
25 an *Auto Trader Magazine*, which he took, and he

1 returned to his house.

2 Q. Based upon Mr. Avery's admissions of talking to
3 Ms Halbach on the afternoon of the 31st, and
4 based upon your posture as lead investigator in
5 this case, have you determined whether anybody
6 saw Ms Halbach alive after that conversation?

7 A. No.

8 ATTORNEY LOY: I'm going to object, your
9 Honor, on grounds of foundation. I think it also
10 calls for an opinion on his part.

11 THE COURT: Well, he can speak to his own
12 knowledge on the issue. I think how much value it
13 has is dependent on greater foundation, but I will
14 allow him to answer the question.

15 Q. (By Attorney Kratz) Do you understand the
16 question?

17 A. Yes. To my knowledge, I had no knowledge that
18 she was seen alive after that point in time.

19 Q. Was Mr. Avery, specifically, asked about burning
20 items upon his property and, specifically, if he
21 had burned anything on the 31st of October, or
22 anytime thereafter?

23 A. Yes, he was asked.

24 Q. What did he tell you?

25 A. He was asked about the burn barrel, which he

1 identified as his burn barrel, right there to the
2 north of his residence and garage area. He said
3 that he had not burned in that burn barrel in
4 over a week, or prior to the week before, or
5 prior to the day Teresa came to his house to take
6 that picture.

7 The burn area, or burn pit behind his
8 garage, which he identified as being right where
9 his dog was, which is where the dog was, right
10 behind the garage, he, again, said he had not
11 burned there either in at least more than a week.
12 And, actually, it was the burn pit area, I'm
13 going to correct myself, the burn pit area that
14 he said that he had not burned in prior -- until
15 prior -- his last burn was prior to the day that
16 Teresa had come on the 31st.

17 The burn barrel was quite some time, or
18 quite awhile, he said. And he designated at
19 least more than a week, or prior to the week
20 before. And, again, he said that he had not
21 burned in that burn barrel on the night of the
22 31st or the day of the 31st, October 31st.

23 Q. Agent, I'm going to ask you to look at a diagram
24 to the left of Exhibit No. 2, that's been marked
25 as Plaintiff's Exhibit No. 3; do you recognize

1 that diagram?

2 A. Yes.

3 Q. Can you tell the Court what that is, please.

4 A. That's a diagram put together by Wisconsin State
5 Patrol. I think it is based off what they call a
6 total station and, basically, usually done to --
7 I can't think of the word.

8 Q. Scale?

9 A. Scale. Done to scale.

10 Q. Okay.

11 A. Of some of the Avery property, including Steven
12 Avery's house and residence area.

13 Q. And, specifically, the area depicted in Exhibit
14 No. 3, is that a larger depiction of what would
15 be the northern most part of Exhibit No. 2, and
16 do you believe it will help explain some of the
17 evidence that is to be described and some of the
18 explanations of the relationship of the evidence
19 to various property, throughout this and other
20 hearings?

21 A. Yes.

22 Q. I may have asked you, Agent, Exhibit No. 2 and
23 Exhibit No. 3, do those appear to be accurate
24 reflections and representations of the Avery
25 property and, specifically, as they looked and as

1 they were laid out between the 5th of November
2 and the 11th of November, of 2005?

3 A. Definitely.

4 Q. Finally, Agent Fassbender, when -- or were there
5 attempts made to identify what were believed to
6 be human remains found upon the Avery property
7 and compare them to standards, or exemplars, of
8 the victim in this case, Teresa Halbach?

9 A. Yes.

10 Q. During the course of that process, did you
11 participate in obtaining an exemplar, or what's
12 called an intimate sample, of Teresa Halbach to
13 transport to the Crime Lab for analysis?

14 A. Yes.

15 ATTORNEY LOY: I'm going to object, your
16 Honor, there's been no foundation for these
17 questions. There's been no testimony that any
18 samples were found at this point.

19 THE COURT: Sustained.

20 ATTORNEY KRATZ: Do you want me to recall
21 this witness, Judge, after seven or eight witnesses
22 testify. My point, Judge, is that I appreciate the
23 objection, but as to the transport of the exemplars,
24 that's the only part of the DNA part of this case
25 that this witness will testify. If the Court would

1 be so kind as to at least hear the testimony and
2 reserve ruling on the objection when that evidence
3 is presented at that time.

4 THE COURT: Well, as I understand Mr. Loy's
5 objection, if the witness is going to answer yes to
6 this, he could at least explain where they came
7 from. I don't know that -- if I understand your
8 objection correctly, Mr. Loy.

9 ATTORNEY KRATZ: He said there was no
10 testimony about any remains being found yet. There
11 will be other witnesses that will testify to that,
12 Judge. It's the analysis and matching of those
13 remains later that I'm just asking this witness if
14 he obtained what's called an intimate sample, for
15 the victim.

16 THE COURT: Okay. But there hasn't been
17 any testimony about where they came from, even from
18 where he understood they came from.

19 ATTORNEY KRATZ: All right. I can
20 certainly do that, Judge, and then we'll have other
21 witnesses testify about that.

22 Q. (By Attorney Kratz) Agent Fassbender, did you
23 become aware, as lead investigator, that human
24 remains were found upon the Avery property during
25 the execution of the search warrant between the

1 5th and 11th of November of this year?

2 A. Yes.

3 Q. And could you describe and point, for the Court,
4 the area where you not only were aware, but where
5 you were shown, human remains were found on this
6 property.

7 A. That area would be the burn area, or identified
8 as the burn area, right behind Steven Avery's
9 garage, or to the south of his garage. That was
10 that burn pit area, right there.

11 Q. And what was the nature, to the best that you
12 observed --

13 ATTORNEY LOY: Your Honor, just -- I would
14 like to interpose an objection at this point, we
15 still don't have foundation. I don't know if this
16 witness is testifying about things that he found or
17 that somebody else found. And I understand what
18 Mr. Kratz is trying to do, but I think we may be
19 trying to put the cart before the horse here in
20 terms of having this testimony.

21 THE COURT: Well, I will let this witness
22 testify at this time what he did with whatever he
23 was told. I will reserve ruling on your objection.
24 I'm obviously not going to take his answers as
25 evidence of actual transport of remains without

1 there being tied in with subsequent testimony. I
2 think that addresses your objection, which at this
3 point I view as very well taken.

4 ATTORNEY KRATZ: Just as an offer of proof,
5 Judge, there will be testimony from at least three
6 witnesses as to the actual excavation and recovery
7 of that scene. I intend to ask this witness, as a
8 result of that, did he obtain what was commonly
9 called an exemplar, from the victim, thereafter.

10 THE COURT: I think you do have to ask this
11 witness, though, and establish a foundation how he
12 got whatever it was that he sent in, for his role,
13 and then you can --

14 ATTORNEY KRATZ: I'm going to do that,
15 Judge.

16 THE COURT: All right.

17 Q. (By Attorney Kratz) Agent Fassbender, again, with
18 just what you were told and what you observed,
19 what was the nature of the human remains found in
20 what's referred on Exhibit #2 as the burn area,
21 it's also referred to the same thing on
22 Exhibit 3?

23 A. What was found -- The nature of what was found
24 was charred bones, human bones and some tissue.

25 Q. Did you understand that those remains were

1 transported, for analysis, to places including
2 the Wisconsin State Crime Laboratory, for what's
3 commonly referred to as a DNA analysis?

4 A. Yes.

5 Q. And regarding that process, were you asked to
6 identify, obtain, and, thereafter, have
7 transported to the Wisconsin Crime Laboratory,
8 again, for analysis, what's referred to as an
9 intimate sample of Teresa Halbach?

10 A. Yes.

11 Q. Were you able to identify, and were you able to
12 find, such a sample?

13 A. Yes.

14 Q. Could you tell the Judge how you did that,
15 please.

16 A. Initially, I looked into Teresa Halbach's health
17 and medical history to see if we could find some
18 such samples. And I was able to locate pap smear
19 slides that she had provided, or were taken from
20 her, at the Bellin Health up in Green Bay and
21 were being maintained at the Bellin Health Lab in
22 Green Bay. They identified three or four such
23 samples that were taken during the past five
24 years. They maintain those samples for five
25 years.

1 Q. And your role in the identification of those such
2 samples -- I should say, recognizing that role,
3 were you then also asked to retrieve, and have
4 transported, those intimate samples to,
5 specifically, Sherry Culhane, at the Crime Lab in
6 Madison, for analysis?

7 A. Yes, I obtained them from Bellin Health Lab.
8 They were packaged and sealed. I put them in
9 another envelope and sealed them and they were,
10 ultimately, transported to the Wisconsin State
11 Crime Laboratory.

12 Q. All right. Agent Fassbender, the scene itself,
13 that is, the Avery property, when the search
14 warrants were done being executed and the
15 analysis of all these areas was completed, was
16 that then turned back over to the Avery family?

17 A. Yes.

18 ATTORNEY KRATZ: All right. For this
19 hearing, Judge, that's all the questions I have of
20 Agent Fassbender. Thank you.

21 THE COURT: Mr. Loy.

22 ATTORNEY LOY: Thank you, your Honor.

23 **CROSS-EXAMINATION**

24 BY ATTORNEY LOY:

25 Q. Officer Fassbender, were you the officer in

1 charge of this investigation?

2 A. No. Not in its entirety, no.

3 Q. Were you one of the two officers leading the
4 investigation?

5 A. Yes.

6 Q. And you were present when the search warrants
7 were executed at the Avery property?

8 A. Yes.

9 Q. Okay. Including the warrant that led to the
10 search of Mr. Avery's trailer?

11 A. Yes.

12 Q. Okay. And that trailer was searched three times;
13 is that correct, pursuant to warrants?

14 A. Two or three. One of the actual searches may
15 have been more gathering of evidence that was
16 identified on one of the searches, depends if you
17 want to call it a search or --

18 Q. And you and the other investigators first started
19 searching the Avery property on November 5th; is
20 that right?

21 A. Yes.

22 Q. You have mentioned some bones and some tissue; is
23 that correct?

24 A. Yes.

25 Q. And were you the one that found those?

1 A. No.

2 Q. Okay. Do you recall the date those were found?

3 A. I'm going to say I'm not sure, 8th or 9th,
4 November 8th or 9th.

5 Q. You indicated that there were a number of people
6 who assisted in searching the Avery property; is
7 that correct?

8 A. That's correct.

9 Q. And there were hundreds of these people?

10 A. Over the course of that week, certainly.

11 Q. At any one time, how many people would usually be
12 there searching through things?

13 A. I don't know if I can answer that right now.

14 Q. I mean, could it be that there were at least 50
15 people on the grounds of Avery Salvage,
16 searching?

17 A. Yes.

18 Q. Okay. And what were these people doing? Where
19 were they searching?

20 A. It depends what day you are talking about and
21 what time. Sometimes they were -- we had people
22 searching the vehicles in the pit area. We had
23 people searching in the office area. We had
24 teams searching in the residences.

25 Q. Was pretty much every square inch of the property

1 searched?

2 A. I can't say every square inch of property was
3 searched, but the property was searched, the
4 entirety of the property was searched.

5 Q. Searched pretty thoroughly?

6 A. I believe so.

7 Q. And who were these people, that were doing the
8 searching?

9 A. Primarily law enforcement personnel, to include
10 the State Patrol, upwards of 50 or 60 members of
11 the State Patrol, on at least two days. And
12 then, I believe, members of the fire department,
13 professional fire department, came out and
14 assisted also.

15 Q. Fire departments from where?

16 A. Most of them -- I'm not going to say. I don't
17 know for sure.

18 Q. You don't know for sure. Okay. Um, were there
19 officers in charge, monitoring what these
20 searchers were doing?

21 A. Yes.

22 Q. Was somebody from the Calumet Sheriff's
23 Department or from DCI watching every searcher?

24 A. Watching every searcher?

25 Q. Yes.

1 A. I would have to say no to that. When you have
2 got 60 troopers in the back searching cars, there
3 wasn't someone from Calumet or DCI with each of
4 those troopers, no.

5 Q. What about the searchers who were looking in
6 areas other than the cars, the residences, the
7 business areas, up, basically, where we have the
8 scaled diagram? How many people were searching
9 that area and how were they monitored?

10 A. I can't say for sure how many people were
11 searching that area, but when it came to
12 searching the residences and the buildings, there
13 was a DCI agent or a Calumet County personnel
14 with them.

15 Q. You testified that her license plates were found
16 in a vehicle, and I think there is an arrow
17 pointing to it on a diagram; is that correct?

18 A. Yes.

19 Q. Did you find those or did someone else?

20 A. Someone else.

21 Q. Okay. Do you know who found those plates?

22 A. By name, no, but I believe it was a trooper.

23 Q. Who -- It looks like you gave Mr. Avery his
24 **Miranda** warning; is that correct?

25 A. No, Investigator Wiegert read his **Miranda**

1 warnings to him.

2 Q. And you signed as a witness?

3 A. Yes.

4 Q. Where was Mr. Avery when this **Miranda** warning was
5 given?

6 A. He was in the back seat of my car, as was
7 Investigator Wiegert. I was in the front seat
8 behind the wheel. And it was at his -- in the
9 driveway of his brother's residence, Earl Avery.

10 Q. Were any other officers in the car with -- with
11 the three of you?

12 A. No.

13 Q. Was Mr. Avery under arrest at that time?

14 A. Yes.

15 Q. He had just been arrested on the gun charge?

16 A. Yes.

17 Q. And was he in handcuffs?

18 A. No.

19 Q. Did he, at that time, indicate that he wanted to
20 see an attorney?

21 A. No.

22 Q. Did he indicate that he didn't wish to speak with
23 you?

24 A. No, not at that time.

25 Q. Were you aware that Mr. Avery was represented by

1 attorneys?

2 A. I believe I was aware that he had a civil suit
3 going and he probably had attorneys on that civil
4 suit.

5 Q. Were you aware of any efforts made by those
6 attorneys to contact Mr. Avery or to contact you?

7 A. No.

8 Q. Why wasn't Mr. Avery cuffed after his arrest?

9 A. We spoke with him and Investigator Wiegert asked
10 him if he would continue to cooperate in the
11 sense that he wouldn't get physical or anything
12 and, if so, he would not be handcuffed. And he
13 agreed to do that.

14 Q. Now, at the time of his arrest, was he only
15 arrested for the gun charge?

16 A. Yes.

17 Q. He wasn't arrested at that time for anything
18 related to a homicide or anything related to
19 Teresa Halbach; is that correct?

20 A. Correct.

21 Q. And he was in the backseat of the squad?

22 A. My vehicle, it is a state owned vehicle, but it's
23 not a marked squad or anything. There's no
24 barriers or anything between the front and the
25 back seats.

1 Q. And Officer Wiegert was in the back seat with
2 Mr. Avery?
3 A. Yes.
4 Q. And you were driving?
5 A. Yes.
6 Q. You observed a scabbed over cut on the middle
7 finger of Mr. Avery's right hand; is that right?
8 A. Yes.
9 Q. And Mr. Avery told you how he got that cut,
10 didn't he?
11 A. If he said it, when he said it, I wasn't present,
12 no. He didn't tell me.
13 Q. Nothing that you heard?
14 A. No.
15 Q. Was Mr. Avery cooperative with you and Officer
16 Wiegert?
17 A. Yes.
18 Q. He answered your questions?
19 A. Yes.
20 Q. And he told you that Ms Halbach had been there
21 and had taken a picture?
22 A. Yes.
23 Q. And then she had driven away?
24 A. Yes, he said about less than five minutes she was
25 there.

1 Q. When did you first arrive on the Avery property?

2 A. Saturday, November 5, mid-afternoon. I'm
3 thinking it was around 3, 2:30, 3 p.m.

4 Q. And what did you do when you first arrived?

5 A. Met with the investigators, the sheriff of
6 Calumet County, in a command post at the Avery
7 property and became -- got briefed on what was
8 happening up to that point.

9 Q. And you were told that the Rav 4 had been found?

10 A. Yes.

11 Q. Okay. At that point, there hadn't been any other
12 evidence found, other than the Rav 4?

13 A. I believe that's correct.

14 Q. Okay. And this command post, was it inside one
15 of the Avery buildings?

16 A. No.

17 Q. Where was it?

18 A. They had a trailer out there, command post
19 trailer from the Sheriff's Department.

20 Q. From the Calumet Sheriff's Department?

21 A. They had one from each. I don't know if
22 Calumet's was there yet. But they had one from
23 Manitowoc County and Calumet County brought one
24 also.

25 Q. So, after you got briefed, what did you do next?

1 A. I believe -- I'm not sure, but I believe the
2 search warrant was being obtained for the
3 property at around that time, that the search
4 warrant was obtained and executed.

5 I went down by where the Rav 4 was
6 located, along with an investigator from Calumet
7 County, and observed its location and the state
8 it was in. After making those observations, I
9 believe we walked -- Some time after that, I
10 don't know exactly how long after that, we walked
11 that berm, on the other side of that berm, with
12 one of the cadaver dogs that had arrived at the
13 scene.

14 Q. When you went down by the Rav 4, was anyone else
15 there?

16 A. Yes.

17 Q. Who was there?

18 A. There were deputies from Calumet County that were
19 standing in the vicinity, securing that location,
20 securing that vehicle.

21 Q. About how many?

22 A. I know one, for sure, that was near that vehicle.

23 Q. Anybody else, other than Calumet County deputies?

24 A. Around that vehicle, not that I know of.

25 Q. Were other people down in the pit area besides

1 the deputies who were securing the vehicle?

2 A. When I went down there?

3 Q. Yes.

4 A. There was another vehicle near the crusher, one
5 or two vehicles. And there were deputies there,
6 staged there also. I just can't remember who
7 else went down with me, if they did. The sheriff
8 may have come down with me also.

9 Q. Now, you have testified that you were involved in
10 processing the Rav 4; is that correct?

11 A. Making the decisions on the processing of the Rav
12 4.

13 Q. You didn't actually do any of the actual
14 processing yourself?

15 A. That's correct.

16 Q. Okay. And you were part of the decision that was
17 made to take the entire vehicle to the crime lab;
18 is that right?

19 A. Correct.

20 Q. Did you supervise that processing?

21 A. I was -- I took the tow truck that went down
22 there. I escorted them down there, along with
23 the vehicle and the trailer that the Rav 4 was
24 transported in. I then maintained a position
25 near the crusher, in the pit area.

1 The Crime Lab personnel then accompanied
2 the tow truck to the Rav 4 and oversaw that as
3 they removed it from its location, back to my
4 location, where it was backed into the trailer.

5 Q. Where was the tow truck from?

6 A. I do not know.

7 Q. So, the Rav 4 was towed from the location it was
8 found, to the location where the -- where the
9 trailer was. Maybe you could show us that on the
10 map.

11 A. Okay. The Rav 4 is down here, the southeast
12 area. The tow truck, along with the truck
13 pulling the trailer, and myself, came down here
14 into this pit area. And then the crusher is
15 somewhere in this location here. And we staged
16 right in this area right here.

17 The tow truck had to go back in there
18 with the Crime Lab personnel, picked up the
19 vehicle, brought it back out to this area where I
20 was again. They backed that Rav 4 into that
21 enclosed trailer.

22 Now, the trailer and the truck pulling
23 the trailer and the driver were from Calumet
24 County. I'm not sure about the tow truck
25 operator. I had the name of the tow truck and I

1 just can't remember it right now.

2 Q. Were you present when the Rav 4 was hooked up to
3 the tow truck?

4 A. No, I was staged here. Crime lab personnel were
5 with the vehicle.

6 Q. When you first saw the Rav 4, did it still have
7 branches and other things covering it?

8 A. When I first saw it?

9 Q. Yes.

10 A. Yes.

11 Q. Okay. So, I take it that once the vehicle was
12 towed to your location, although it was no longer
13 covered with any branches or anything, right?

14 A. Yes, that's correct. The Crime Lab personnel
15 told me that they inspected and processed those
16 items. Some of them were transported with the
17 vehicle, the others were left at the scene after
18 being inspected.

19 Q. And you supervised loading the Rav 4 into the
20 trailer?

21 A. Crime Lab personnel and myself, I was present.

22 Q. And how was that done?

23 A. That was backed into the trailer by the tow truck
24 operator.

25 Q. Okay. So, just pushed into the trailer?

1 A. Yes, with a big -- a rather large enclosed
2 trailer with a ramp. And the tow truck operator
3 backed it right up that ramp into the enclosed
4 trailer.

5 ATTORNEY LOY: No further questions, your
6 Honor.

7 THE COURT: Any redirect?

8 ATTORNEY KRATZ: No, Judge. I am, however,
9 with his testimony of the Exhibits 2 and 3 being
10 accurate depictions of, one, a photograph and, one,
11 a diagram of the Avery property, I will move their
12 admission into evidence. I believe I have already
13 with Exhibit 4; is that correct?

14 THE CLERK: Yes.

15 ATTORNEY KRATZ: Or 6, I'm sorry.

16 THE CLERK: Four you did and six.

17 ATTORNEY KRATZ: I have with 6 as well?

18 THE CLERK: Yes.

19 ATTORNEY KRATZ: All right. And 2 and 3,
20 I'm moving their admission, Judge.

21 THE COURT: Any objection to Exhibits 2 and
22 3?

23 ATTORNEY LOY: No objection for purposes of
24 this hearing, your Honor.

25 THE COURT: Exhibits 2 and 3 are admitted.

1 The witness is excused. The State may call it's
2 next witness.

3 ATTORNEY KRATZ: The State would call Dan
4 Kucharski to the stand.

5 THE CLERK: Raise your right hand.

6 **DEPUTY DAN KUCHARSKI**, called as a
7 witness herein, having been first duly sworn, was
8 examined and testified as follows:

9 THE CLERK: Please be seated. Please state
10 your name and spell your last name for the record.

11 THE WITNESS: Daniel J. Kucharski,
12 K-u-c-h-a-r-s-k-i.

13 **DIRECT EXAMINATION**

14 BY ATTORNEY KRATZ:

15 Q. Mr. Kucharski, how are you employed?

16 A. I'm employed with the Calumet County Sheriff's
17 Office as a patrol deputy.

18 Q. What are your duties as a patrol deputy?

19 A. Routine patrol and I'm also an evidence tech for
20 the department.

21 Q. Just briefly, tell us what a evidence tech is,
22 please.

23 A. Search for, identify, and collect evidence at
24 crime scenes.

25 Q. Deputy Kucharski, between the 5th of November,

1 2005, and the 11th of November, 2005, were you
2 asked to serve in that capacity, as an evidence
3 tech, and did you, in fact, search residences,
4 out buildings, and other areas of the Avery
5 property?

6 A. Yes, I did.

7 Q. I'm going to, specifically, ask you about the
8 residence of Steven Avery. Let's refer to
9 Exhibit No. 3. It's a little bit bigger. It's a
10 diagram which has a depiction of something called
11 Steven Avery's residence; do you recognize that?

12 A. Yes, I do.

13 Q. And if you can take that device that's in front
14 of you, the yellow button in the middle of it
15 would be the laser pointer part of it. Could you
16 tell us if you have had occasion, during that
17 relevant time frame, to search the interior of
18 what's identified on that diagram as the Steven
19 Avery residence?

20 A. Yes, on two separate occasions I was inside the
21 Steven Avery evidence (sic), searching and
22 collecting evidence.

23 Q. You said on two separate occasions, are you aware
24 that Mr. Avery's residence and, in fact, many of
25 the residences, out buildings, office, and the

1 like, were searched on more than one occasion?

2 A. Yes.

3 Q. Perhaps you can explain, for the Court, the
4 nature of those searches and why more than one
5 search was done, specifically, of Steven Avery's
6 residence.

7 A. On the 6th, that would have been Sunday, myself
8 and my search team were given the task to collect
9 two weapons, some bedding, and a vacuum from the
10 Avery residence.

11 Q. All right. Let's talk about that for a minute.
12 This residence, can you describe what kind of a
13 residence it is.

14 A. It was a trailer home, the address was 12932
15 Avery Road, it was red in color.

16 Q. The interior of this residence, did it include
17 rooms that normal residences would have, that is,
18 bedrooms, bathrooms, kitchen, things like that?

19 A. Yes, it did.

20 Q. Was one of the rooms an area that you believe to
21 be that of Steven Avery's bedroom?

22 A. Yes.

23 Q. Can you tell the Court why you believe that to be
24 Mr. Avery's bedroom.

25 A. We did find what we called identifiers inside the

1 bedroom: Papers, pictures, things with Steven
2 Avery's name on it, photos of Steven Avery.

3 Q. All right. In that room, that included these
4 personal identifiers and pictures of Mr. Avery,
5 did you find any firearms?

6 A. Yes, we did. We located and collected two rifles
7 that were on the wall above the bed in that room.

8 Q. Describe those rifles for me, please.

9 A. One was a Glenfield Model 60, .22 caliber,
10 semi-automatic rifle. The other was a
11 Connecticut Valley Arms, .50 caliber,
12 muzzleloading black powder rifle.

13 Q. Were you the officer who actually seized and
14 collected those items?

15 A. Yes.

16 Q. Now, Officer Kucharski, before we go any further,
17 I'm going to show you what's been marked for
18 identification as Plaintiff's Exhibits 7, 8, and
19 9, ask if you can identify those exhibits and
20 tell us what they are, please.

21 A. These are State of Wisconsin court records,
22 Judgments of Convictions against Steven Avery.

23 Q. Specifically, Exhibit No. 7, is that a record,
24 certified record, regarding a Manitowoc County
25 case, No. 80 CR 773?

1 A. Yes, it is.

2 Q. And does it list a conviction dated March 23 --

3 THE COURT: Just a second.

4 ATTORNEY KRATZ: I'm sorry, Judge.

5 THE COURT: Mr. Loy, does the defense
6 require details on these exhibits?

7 ATTORNEY LOY: Your Honor, I think the
8 Court could take judicial notice, based on the
9 certified convictions, that Mr. Avery does have at
10 least one felony conviction.

11 THE COURT: All right. Is the State
12 offering Exhibits 7,8, and 9?

13 ATTORNEY KRATZ: I am, Judge. And if there
14 is a stipulation, I will be happy to accept that, as
15 Mr. Avery having prior convictions that remain, of
16 record, unreversed.

17 THE COURT: For purposes of this hearing,
18 any objection from the defense?

19 ATTORNEY LOY: No objection, your Honor.

20 THE COURT: All right. Seven, eight and
21 nine are admitted.

22 Q. (By Attorney Kratz) Deputy Kucharski, in a
23 further search of Mr. Avery's property, did you
24 have occasion to search what's identified on
25 Diagram 3, at least, with a gray box and a

1 similar representation on the photograph, Exhibit
2 No. 2, Mr. Avery's garage?

3 A. Yes, I did. That was also on the 6th of
4 November. Myself and my search team were asked
5 to search and collect any evidence that we found
6 inside that garage.

7 Q. And did you do that?

8 A. Yes, I did.

9 Q. And upon searching the garage, did you find any
10 evidence which may be relevant to firearms?

11 A. Yes, we did. We found empty .22 caliber, long
12 rifle casings.

13 Q. What are referred to as spent shell casings?

14 A. That's correct.

15 Q. How many of those did you find in that garage?

16 A. Ten of them.

17 Q. Now, Deputy Kucharski, you talked about
18 different, or additional searches of Mr. Avery's
19 residence, or his property, did that occur by
20 you?

21 A. Yes, on the 8th, we were given the task -- myself
22 and my team were given the task to collect a few
23 specific pieces of evidence at the Steven Avery
24 residence and then conduct a thorough search of
25 the residence.

1 Q. When we're talking about a thorough search of the
2 residence, could you describe for the Court why
3 that search may have been different than previous
4 searches that you had performed of Avery's
5 residence?

6 A. The first time we were sent into the residence,
7 we were specifically told just to collect the
8 three separate items: The weapons, the bedding,
9 and the vacuum, from the middle bedroom. We did
10 not search it at all.

11 Q. So the Court is clear, at least on that first
12 day, you didn't do what you would call, at least,
13 a thorough search of Mr. Avery's residence; is
14 that right?

15 A. That's correct.

16 Q. What day did you do that?

17 A. That was on Tuesday, the 8th.

18 Q. And during the search of Mr. Avery's residence,
19 including his bedroom, what, if anything, did you
20 find of interest?

21 A. We collected pornographic material. We collected
22 ammunition that we found in the bedroom. And
23 then, at one point, we found a key that appeared
24 to be from a Toyota vehicle, collected that.

25 Q. Could you tell me within the residence, or within

1 the bedroom, where that Toyota key was found?

2 A. Toyota key would have been found about 2 feet
3 away from the door entering into the residence,
4 next to the bed. It was on the floor when we
5 found it, next to a cabinet that my team had been
6 searching.

7 Q. Did you have occasion to collect that key?

8 A. Yes, I did.

9 Q. And did anybody, to your knowledge, other than
10 you, with the use of latex gloves or some other
11 protective device, anybody ever touch that key,
12 other than you?

13 A. Not while it was in my possession.

14 Q. After processing the key, after collecting it and
15 placing it into an evidence bag and sealing it,
16 did you have that key sent to the Wisconsin State
17 Crime Laboratory for further analysis?

18 A. Yes, I did.

19 ATTORNEY KRATZ: That's all the questions I
20 have of Deputy Kucharski, Judge. Thank you.

21 THE COURT: Mr. Loy.

22 **CROSS-EXAMINATION**

23 BY ATTORNEY LOY:

24 Q. Officer Kucharski, did you review any reports of
25 any prior searches before you did your search on

1 the 8th?

2 A. No, I did not.

3 Q. Did you talk with any officer who had done any
4 previous searches?

5 A. Not about the search of the residence, no.

6 Q. Who else was searching with you?

7 A. At which time?

8 Q. On the 8th, when you testified you found a key.

9 A. That would be Lieutenant Lenk and Sergeant
10 Colburn?

11 Q. And were the three of you in the bedroom at the
12 same time?

13 A. Yes, we were.

14 Q. And how were you conducting this search? What
15 were the three of you doing?

16 A. Generally, start top to bottom. You work your
17 way methodically through the room, open
18 everything, look under everything, look through
19 everything.

20 Q. Would that include, for instance, sorting through
21 everything that you found in a drawer?

22 A. Yes.

23 Q. Okay. And taking each item out of the drawer and
24 looking at it and then putting it back; is that
25 how you do it?

1 A. To a certain point.

2 Q. Okay. During this search, were you and the other
3 officers wearing gloves?

4 A. Yes, we were.

5 Q. And did you wear the same gloves throughout the
6 search?

7 A. No.

8 Q. How often would the three of you change gloves?

9 A. I can only testify as to what I did there. As I
10 would be writing or photographing, it was tough
11 to do with the gloves on so I would take them off
12 periodically and take fresh gloves then.

13 Q. So, how often did you change your gloves, do you
14 think?

15 A. In a day, or just a time period?

16 Q. Well, I'm talking, specifically, about the search
17 on November 8th?

18 A. Okay. I did several searches on that day. The
19 search of the Avery residence, Steven Avery's
20 residence, I probably changed my gloves
21 approximately two or three times.

22 Q. All right. When did you change those gloves?

23 A. Like I said, usually it was to -- if I had to
24 write something, or if I was photographing.

25 Q. Do you remember the specific times when you

1 changed the gloves?

2 A. No.

3 Q. Do you remember changing gloves around the time
4 that the key was found?

5 A. Yes, I did.

6 Q. And what would you -- what could you tell us
7 about that?

8 A. We were finishing up the search in the room. I
9 had finished up the section that I was searching,
10 the night stand. I took off my gloves.
11 Lieutenant Lenk was making a phone call. That
12 was why I took off my gloves. We had finished up
13 the search of that room, were finishing up the
14 search of that room.

15 Q. Were you and the other searchers watching each
16 other during this search?

17 A. During this specific time that we were in Steven
18 Avery's bedroom, we were, at maximum, three or
19 four feet away from each other. It's a small
20 bedroom. We were always in each other's
21 peripheral vision.

22 Q. But you weren't watching each other, were you?

23 A. We were searching, correct.

24 Q. You were looking at what you were searching; is
25 that right?

1 A. Yes.

2 Q. Okay. Now, this key, you are saying, was found
3 on the floor?

4 A. Yes.

5 Q. Was it underneath anything?

6 A. Not when we saw it, no.

7 Q. Okay. You had been in the room for how long
8 before the key was noticed?

9 A. I'm not sure. It was less than an hour.

10 Q. Okay. It was just -- When you saw it there, it
11 was sitting out there in plain view, right on the
12 floor; is that right?

13 A. Yes.

14 Q. Okay. And no one had seen it for at least an
15 hour?

16 A. Correct.

17 Q. And when you had been at the residence before, on
18 November 6th, no one had seen the key then
19 either, right?

20 A. I didn't see the key then. I can't testify to
21 anybody else.

22 Q. No one mentioned seeing it?

23 ATTORNEY KRATZ: Judge, I'm going to
24 interpose an objection. I think this officer said
25 he didn't search on the 6th. I think that is his

1 testimony.

2 THE COURT: Well, he was in the bedroom to
3 pick up some items. He didn't thoroughly search it,
4 I think that was his testimony.

5 Q. (By Attorney Loy) Just to clarify, on the 6th of
6 November, you did go in the bedroom; is that
7 right?

8 A. Yes. I walked into the bedroom. I looked at the
9 weapons on the wall, then I walked out into the
10 living room.

11 Q. Okay. And you went in there with Lieutenant
12 Lenk, Detective Remiker, and Sergeant Colburn; is
13 that right?

14 A. On the 6th, that's correct.

15 Q. On the 6th. And Lieutenant Lenk and Officer
16 Colburn are officers of Calumet County?

17 A. No, Manitowoc County.

18 Q. And Officer Remiker is also from Manitowoc
19 County?

20 A. Also, yes.

21 Q. Okay. And to your knowledge, no one saw this key
22 sitting on the floor at that time?

23 A. Not that I know of.

24 Q. When you finally did see the key, was it pretty
25 obvious?

1 A. Yes, it was laying out in the open.

2 Q. Okay. And do you have any explanation for --

3 Strike that. Now, there was also a search done

4 on November 5th; is that right?

5 A. Search of?

6 Q. Of Mr. Avery's residence, Steve Avery's

7 residence?

8 A. I don't know for sure.

9 Q. Is that the day when -- Let me just find it here.

10 Is that the day when you took the vacuum cleaner?

11 A. No.

12 Q. That was the day when Steve Avery's residence was

13 searched pursuant to a warrant; is that right?

14 A. I'm not aware on the 5th; I was searching the

15 junk yard with cadaver dogs.

16 Q. So, you weren't present for the search on the

17 5th?

18 A. If there was one, correct, I was not at the

19 Steven Avery residence on the 5th.

20 Q. Okay. And so you don't know if a thorough search

21 was done on that day or not?

22 A. Correct.

23 Q. What's a thorough search? Could you describe

24 that.

25 A. Again, starting top to bottom, open everything,

1 look under everything.

2 Q. Had you talked with any officers about -- about
3 the search on the 5th?

4 A. Again, not about the search on the 5th, no.

5 Q. Were you aware there had been a search done on
6 the 5th?

7 A. I don't remember at what point I heard about any
8 searches.

9 Q. Were you aware that there was also a search done,
10 with Mr. Avery's consent, on November 4th?

11 A. No.

12 Q. But as far as you know, no one saw this key until
13 November 8th; is that right?

14 A. Correct.

15 Q. Now, when you saw the key, what did you do next?

16 A. It was actually Lieutenant Lenk that saw the key
17 first.

18 Q. Okay.

19 A. He pointed to the floor and said, there's a key
20 there. We all kind of looked at the key. I
21 said, stop, everybody stop their searching. I
22 took the camera, photographed the key, put on a
23 pair of gloves and took the key into custody.

24 Q. Okay. And how do you do that?

25 A. I put it inside a paper bag that I brought into

1 the residence from my evidence kit. It was a new
2 paper bag.

3 Q. Okay. This evidence kit, what was in your
4 evidence kit?

5 A. Evidence collection materials.

6 Q. What kinds of things?

7 A. I have a tackle box full of equipment,
8 fingerprint equipment. And then, in the back
9 seat of the squad, I also put plastic bags, paper
10 bags, boxes, that type of thing.

11 Q. Was there any other evidence in this kit?

12 A. No.

13 Q. Okay. And were the bags in the kit?

14 A. The bags were inside a plastic bag, sealed in a
15 plastic bag like you get from a store. I opened
16 up the plastic bag when I started taking things
17 into evidence.

18 Q. What kind of bag did you put the key in?

19 A. Just a paper, kind of like a lunch bag.

20 Q. Okay.

21 A. Brown paper.

22 Q. Can you describe the process you went through in
23 collecting the key. What did you do?

24 ATTORNEY KRATZ: Your Honor, I'm going to
25 interpose an objection. I haven't until this point,

1 but this is well beyond probable cause
2 determination. This is all discovery.

3 THE COURT: Mr. Loy.

4 ATTORNEY LOY: Well, your Honor, I think
5 this is a pretty crucial piece of evidence. I think
6 it's important in determining plausibility, to
7 determine how this piece of evidence was found and
8 what was done with it. That's what I'm trying to
9 determine here.

10 THE COURT: Well, the question here at a
11 prelim is plausibility rather than credibility. I
12 think questions on both sides have probably gone
13 beyond what's normally involved in the scope of a
14 prelim. I'm going to sustain the objection. I
15 understand that eventually this may be crucial for
16 the defense, but for purposes of prelim, I'm going
17 to sustain the objection.

18 ATTORNEY LOY: Okay.

19 Q. (By Attorney Loy) How long were you in
20 Mr. Avery's residence on the 8th?

21 A. I would have to look at my report to see the
22 exact time. It was several hours.

23 Q. At least a couple hours?

24 A. Yes.

25 Q. And the other officers were also in there at the

1 same time --

2 A. Yes.

3 Q. -- with you? Okay. Those were two other
4 officers?

5 A. On the 8th, correct, the other people in my
6 search team.

7 Q. That was Officer Colburn and Officer Lenk?

8 A. Sergeant Colburn, Lieutenant Lenk, yes.

9 Q. Would you be willing to just draw us a diagram of
10 exactly where this key was found?

11 ATTORNEY KRATZ: Judge, same objection.
12 This is just what the Court, I think, had hoped
13 wouldn't happen, goes well beyond the preliminary
14 hearing scope.

15 ATTORNEY LOY: I think it goes to
16 plausibility, your Honor. It seems that this key
17 was within obvious sight and I guess it's surprising
18 and somewhat disturbing that the key hadn't been
19 noticed before. So I'm just trying to develop more
20 information about the location of the key.

21 THE COURT: Well, the witness has already
22 testified that the key was out in the open. I
23 clearly understand your point on credibility. But
24 on plausibility, there's nothing to prevent it. I
25 mean -- so I'm going to sustain the objection.

1 ATTORNEY LOY: Thank you, your Honor.

2 Q. (By Attorney Loy) The key was near some bedroom
3 slippers?

4 A. Yes.

5 Q. How close to the bedroom slippers was it?

6 A. A couple inches away.

7 Q. And there's a desk, there's a cabinet right next
8 to the desk; is that right?

9 A. Yes.

10 Q. And then, next to that, was some bedroom
11 slippers?

12 A. Next to the cabinet was the key and then the
13 bedroom slippers.

14 Q. All right. Were the bedroom slippers moved
15 during the search?

16 A. Yes.

17 Q. And that's something that you ordinarily would
18 do, right?

19 A. Yes.

20 Q. Okay. And do you remember, did you move the
21 bedroom slippers, or did someone else?

22 A. One of the other search team members moved the
23 slippers.

24 Q. And those slippers were moved before the key was
25 seen?

1 A. Yes.

2 Q. And the first time they were moved, nobody saw
3 the key?

4 A. The key wasn't there the first time they were
5 moved.

6 Q. Do you have any idea how the key got there?

7 A. Yes, we were searching the cabinet. Lieutenant
8 Lenk and Sergeant Colburn were searching the
9 cabinet next to the desk. They were pulling
10 books in and out of the cabinet, photographs in
11 and out of the cabinet.

12 They were moving the cabinet, eventually
13 putting the books and photographs and things back
14 into the cabinet, banging things around, moving
15 it. We believe it either fell out of the cabinet
16 or from some place hidden inside the cabinet or
17 underneath the cabinet, or in back of the
18 cabinet.

19 Q. You didn't actually see this happen, though?

20 A. No.

21 Q. You didn't hear anything fall to the ground?

22 A. It was carpeted. No, we didn't hear anything.

23 Q. Okay. And did you go back and look in the
24 cabinet again to try to figure out where the key
25 might have come from?

1 A. No.

2 Q. Okay. So, your testimony today about where the
3 key might have come from, that's -- that's an
4 educated guess on your part; would that be fair
5 to say?

6 A. Yes.

7 ATTORNEY LOY: Nothing further.

8 THE COURT: Any redirect?

9 ATTORNEY KRATZ: Not for this hearing,
10 Judge.

11 THE COURT: All right. The witness is
12 excused. We'll take our afternoon break at this
13 time.

14 ATTORNEY KRATZ: How long, Judge?

15 THE COURT: After 10 minutes, I would like
16 counsel to see me in chambers.

17 (Recess taken.)

18 THE COURT: Mr. Kratz, you may call your
19 next witness.

20 ATTORNEY KRATZ: Thank you, Judge. State
21 would call Tom Sturdivant to the stand.

22 THE CLERK: Please stand.

23 **SPECIAL AGENT THOMAS ALLEN STURDIVANT,**
24 called as a witness herein, having been first
25 duly sworn, was examined and testified as

1 follows:

2 THE CLERK: Please be seated. Please state
3 your name, spell your last name for the record.

4 THE WITNESS: Special Agent Thomas Allen
5 Sturdivant, S-t-u-r-d-i-v-a-n-t.

6 **DIRECT EXAMINATION**

7 BY ATTORNEY KRATZ:

8 Q. Mr. Sturdivant, how are you employed?

9 A. Employed as a Special Agent with the Wisconsin
10 Department of Justice, Division of Criminal
11 Investigation.

12 Q. In that capacity, did you assist other law
13 enforcement officers in the property known as
14 Avery Auto Salvage, sometime between the 5th of
15 November and the 11th of November?

16 A. I did.

17 Q. During that relevant time period, did you notice,
18 and did you thereafter observe, an area which is
19 now being known as the burn area?

20 A. I did.

21 Q. On Exhibits No. 3, which is the scaled diagram,
22 and on the photo, which is Exhibit No. 2, which
23 both have been received into evidence, do you see
24 that area on those exhibits?

25 A. I do.

1 Q. Could you describe for the Court, please, what,
2 if any, observations you made of that burn area.

3 A. I was out looking at various locations that were
4 discovered, pointed out by the search teams. I
5 eventually made my way over to Mr. Avery's
6 property.

7 And behind the detached garage was a
8 mound of dirt, which was new to the landscape,
9 not necessarily recently, but was a pile or mound
10 of dirt which consisted of probably rock and sand
11 and other materials. Behind his garage, at the
12 end of that mound of dirt, on the south side, was
13 a area that had been scraped out and contained
14 charred matter.

15 Q. During -- By the way, what day was it that you
16 observed or closer -- or in a closer manner
17 inspected that area?

18 A. That was on November 8th.

19 Q. After inspecting that charred matter, did you
20 request the assistance of any members of the
21 Wisconsin State Crime Laboratory, Field Response
22 Unit, to further look at that area?

23 A. I did.

24 Q. And tell us what happened, please.

25 A. Myself and three members of the Wisconsin State

1 Laboratory team, and another officer from
2 Manitowoc County, looked at that debris. And my
3 initial observation was that it appeared to be
4 bone matter, so I had summoned the assistance of
5 the Crime Lab.

6 As I looked closer, it appeared to me
7 that there was more bone matter within the
8 charred material. So I asked their assistance,
9 realizing that they had sifting equipment. We
10 decided at that point it would be easier to sift
11 through that matter and pick out any bone matter,
12 to include teeth, that we had identified.

13 Q. The sifting of that particular burn area, did
14 that result in the recovery of what you believed
15 to be -- to be human remains, including bone,
16 teeth and tissue?

17 A. Yes.

18 Q. After the recovery of that material, did you,
19 with the assistance of the Field Response Unit of
20 the Wisconsin Crime Lab, package up those
21 materials and send them, not only to the Crime
22 Lab but also to a forensic anthropologist, for
23 further analysis?

24 A. Yes, we did.

25 Q. Agent Sturdivant, I understand that the recovery

1 process took at least a couple of days; is that
2 correct?

3 A. It did. We sifted the charred debris on the 8th.
4 The stuff that we had recovered, we packaged up
5 and put into a secured trailer. Then, on
6 Thursday, we sifted through that debris again
7 locating additional bone fragments and teeth.
8 And Thursday afternoon there were other members
9 from the Division of Criminal Investigation that
10 also processed the so called pit, if you will.

11 Q. Just so the Court is aware, the recovery of some
12 of the soil and some of the other ash and other
13 materials, that remains to be further analyzed in
14 Madison; is that correct?

15 A. That's correct.

16 ATTORNEY KRATZ: For this hearing, Judge,
17 that's all the questions I have of Agent Sturdivant.

18 THE COURT: All right. Mr. Loy.

19 ATTORNEY JOHNSON: Actually, Judge, I'm
20 going to be.

21 THE COURT: Excuse me. Mr. Johnson.

22 ATTORNEY JOHNSON: Thank you.

23 **CROSS-EXAMINATION**

24 BY ATTORNEY JOHNSON:

25 Q. Agent Sturdivant, you are a special agent with

1 DCI; is that right?

2 A. That is correct.

3 Q. And when were you assigned to go up to this
4 scene?

5 A. That was on Thursday, November 8th. I'm sorry,
6 Tuesday, November 8th.

7 Q. What time of day?

8 A. I had gone over there probably 8:00 in the
9 morning.

10 Q. You work out of Madison?

11 A. No, I work out of Wausau.

12 Q. And Agent -- the other agent who was there,
13 Fassbender, does he work with you out of that
14 same office?

15 A. Tom Fassbender is out of the Appleton office. I
16 used to work out of the Appleton office, but now
17 I'm out of Wausau.

18 Q. So, agents from both Appleton and Wausau were
19 called to the scene?

20 A. As well as other agents from other offices
21 throughout the State.

22 Q. You got there, then, on the 8th. Do you remember
23 what time of day?

24 A. I'm thinking it was roughly 8 a.m.

25 Q. Okay. And you went first to the -- was there

1 like a trailer set up as the headquarters or
2 crime scene headquarters?

3 A. We referred to it as a command post, yes.

4 Q. Okay. Where was that?

5 A. That was towards the entrance to the Avery
6 Salvage Yard.

7 Q. Towards the entrance, do you have an exact
8 location where that was? I mean, when you say
9 towards the entrance, what do you mean?

10 A. I can point it out on the map, if you would
11 prefer.

12 Q. Thank you.

13 THE COURT: There's a pointer right in
14 front of you.

15 ATTORNEY KRATZ: The yellow button right in
16 the middle is the laser part of the pointer. Might
17 be upside down. The other way, Tom, point it the
18 other way. I think it's pointing towards you.

19 A. I believe the command post was set up in this
20 area.

21 Q. Is that a DCI command post, or Calumet County, or
22 what is that?

23 A. I guess I would consider it a joint command post.
24 There were a number of different vehicles there
25 from Manitowoc, Calumet, but DCI does not have a

1 command post vehicle.

2 Q. So, there's a Manitowoc County Sheriff's vehicle?

3 A. I believe there were several vehicles there. But
4 I think the primary -- the primary command post,
5 I believe it was a Calumet County trailer that
6 they had positioned at the entrance.

7 Q. Okay. And at what time of day were you -- did
8 you go over to the area you referred to as the
9 burn area?

10 A. Well, it was approximately 1:30. The search
11 teams had located a variety of items of interest,
12 if you will. And myself and two other agents
13 were assigned to go out and take a look at those
14 things, whether they be earthen piles, disturbed
15 ground, what have you. We went out to assess
16 those things to see if there was anything of
17 evidentiary value.

18 Q. You're talking about now 1:30 you did that?

19 A. Yes.

20 Q. What had you been doing between 8 a.m. and 1:30?

21 A. Between 8 a.m. and 1:30, my first responsibility
22 was to execute a search warrant at the office.

23 Q. And you did that?

24 A. I did that, yes.

25 Q. And who was there doing that with you?

1 A. I was there, it was myself, Special Agent Deb
2 Straus and Special Agent Joe Kapitany arrived at
3 the latter part of the search.

4 Q. How long did that take?

5 A. That took -- I think I was completed with that
6 sometime around noontime.

7 Q. Okay. And then, at 1:30 is when you were called
8 out to the burn area?

9 A. That is correct, approximately 1:30.

10 Q. And when you got there, who was there at that
11 burn area?

12 A. Again, I made my way across -- across the salvage
13 yard. And when I arrived, there was a deputy
14 from Manitowoc County by the name of Jason Jost.

15 Q. Okay. Anybody else?

16 A. There was another female officer from, I forget
17 what department, but there was another female
18 officer that was monitoring the emptying of the
19 septic system.

20 Q. Okay.

21 A. And Special Agent Deb Strauss was also there.

22 Q. So, those three people. Anybody else?

23 ATTORNEY KRATZ: Objection, discovery.

24 A. There were a lot of people throughout the area.

25 ATTORNEY KRATZ: I interposed an objection.

1 This is discovery.

2 THE COURT: Sustained.

3 ATTORNEY KRATZ: Thank you.

4 Q. (By Attorney Johnson) Who was actually doing the
5 sifting, or the examination of that burn area?

6 A. Well, the sifting was conducted by the three
7 members of the Wisconsin Crime Lab, myself, and
8 Deputy Jason Jost.

9 Q. Okay. When you first got there, you indicate
10 that you saw a mound of dirt and you described it
11 as new to the landscape. What do you mean by
12 that?

13 A. The first thing I saw was a piece of bone that
14 Jason Jost had pointed out to me, that was away
15 from the debris pile. What I mean by the mound
16 of dirt, it is not natural to the landscape. You
17 have got the grass and it appears as though
18 several yards of dirt had been dumped on top of
19 the existing landscape, that being the grass, and
20 built up behind the garage. There was probably,
21 I think I estimated it to be 20 feet by 20 feet,
22 or 30 feet by 30 feet, but it was as wide as the
23 garage, the two-car garages.

24 Q. Okay. And you say that this deputy pointed out
25 something to you; is that right?

1 A. That's correct. It was a red flag. And I don't
2 know who actually discovered that piece of
3 material, but there was a red flag there and
4 Deputy Jost pointed that out to me.

5 Q. And Deputy Jost, again, he was from Manitowoc
6 County?

7 A. I believe so.

8 Q. And he -- How did he point that out to you? He
9 said, look? Can you describe that.

10 A. Well, as I made my way over to some of these
11 areas that had been identified, or marked, he had
12 pointed out there was a red flag there. And I
13 think he made the same observation I did, that it
14 looked like a piece of bone.

15 Q. And where was that in relation to this -- the
16 mound that you described?

17 A. I estimated that to be about 8 feet south of that
18 mound.

19 Q. Okay. Um, now, there's sort of a -- there's sort
20 of a lip there, where it goes down into the pit
21 of the -- where all the cars are, right?

22 A. Well, that pit is a substantial distance away
23 from the back side of the house.

24 Q. Okay. So that was my next question. Where is it
25 in relation to the sort of -- the edge of the

1 pit?

2 A. I'm not certain I'm following your question.

3 Q. Well, um, if you refer to exhibit, um, Exhibit 2,
4 um, which is the area photograph, the burn area
5 is marked on there, correct?

6 A. Yes.

7 Q. And, then, I guess my question is, where was this
8 first red flagged piece of bone or --

9 A. Okay.

10 Q. Where was that, I guess, on that diagram?

11 A. If this is the edge of that mound of dirt, that
12 piece of bone was approximately 8 feet south of
13 that.

14 Q. Okay.

15 A. And directly south of that so called burn pit.

16 Q. Okay. So -- And you are not sure who had first
17 discovered that?

18 A. I am not.

19 Q. Okay. How was this deputy dressed?

20 A. He was dressed in a -- I think a jumpsuit.

21 Q. Okay. What else?

22 ATTORNEY KRATZ: Objection, discovery, your
23 Honor.

24 THE COURT: Sustained.

25 ATTORNEY KRATZ: Thank you.

1 Q. (By Attorney Johnson) Okay. So, then there's --
2 the Crime Lab people are already there at that
3 burn pit, or burn area; is that right?

4 A. Well, they eventually arrived, after I requested
5 their assistance.

6 Q. Okay. So when you first get there, the Crime Lab
7 people are not there?

8 A. That's correct.

9 Q. Okay. Um, and so after discovering this bone,
10 and seeing this mound of dirt, or dug up area
11 that you describe as being new to the landscape,
12 then -- so at that point you call in the Crime
13 Lab people?

14 A. No. What happened is, that after discovering
15 that bone, I looked to the north, where I
16 observed other bone fragments. And I have sifted
17 through bone fragments in the past. So, I made
18 the observation that it appeared to me that there
19 were additional bone fragments within that
20 debris. And I did call the Crime Lab; however,
21 they were busy recovering debris from other burn
22 barrels, so they weren't there immediately.

23 Q. When you say you made the observation, was that
24 looking into this burn area from the outside, or
25 did you physically walk through the burn area, or

1 what did you do?

2 A. From the 8 feet south of that burn pit, I could
3 clearly see that there was some bone matter
4 located around the debris pile. Then I walked
5 over and took a closer look at the charred debris
6 and realized that there was quite a bit of bone
7 matter within the debris, as well as intertwined
8 within the steel belts of burned tires, and so
9 forth.

10 Q. Okay. Can you describe more specifically what
11 you saw when you say bone matter. What exactly
12 does it look like?

13 A. Well, in this case, it just looked like different
14 lengths and different sizes of bone fragments.
15 Could I determine at that point what they were,
16 what type of bone? I could not. But I could
17 determine that it was bone matter.

18 Q. And you say you have sifted through this kind of
19 thing before; is that right?

20 A. That's correct.

21 Q. And approximately how many times?

22 A. Twice.

23 Q. Two times?

24 A. Yes.

25 Q. Okay. And when were those two times?

1 A. They were both fire scenes. One was in
2 Winnebago, the other one was up in Brown County.

3 Q. When was that?

4 ATTORNEY KRATZ: Objection, discovery,
5 Judge.

6 THE COURT: The objection is sustained.

7 Q. (By Attorney Johnson) How wide of an area were
8 these fragments spread over?

9 A. I would estimate that the size of that burn pit
10 was probably 6 feet by 6 feet, roughly. Again,
11 that's an estimate.

12 Q. And they were throughout that 6 feet by 6 feet
13 area?

14 A. They were concentrated in the middle. In the
15 middle was a pile of charred debris. So the
16 debris was probably more centered in that 6 by 6
17 foot area that had been dug out from the earth
18 and berm.

19 Q. How were you dressed?

20 A. I was dressed -- I believe I had a jumpsuit on as
21 well.

22 Q. Does that cover your feet?

23 A. I'm sorry?

24 Q. Does that cover your feet?

25 A. No.

1 Q. Okay. Um, what's your understanding, or what's
2 your knowledge of, if that area had been searched
3 before? I mean, are you aware of any search, or
4 any other times people had looked in that area?

5 A. I was not aware of what had been accomplished
6 prior to my arrival.

7 Q. What was the weather like that day?

8 A. It was a beautiful day. It was clear. It was
9 sunny, might have been a little cool, but it was
10 a beautiful day.

11 Q. Any idea of the temperature?

12 A. I don't, but I know that it was getting cold as
13 the sun was going down.

14 Q. Um, it's your impression that these -- this area,
15 this burn area, I guess, for lack of a better
16 word, you described that as new to the landscape;
17 you don't know when that was done?

18 A. That's correct.

19 Q. I mean, did it seem freshly dug, like within the
20 last day or so?

21 A. I couldn't tell you.

22 Q. When you say -- When you use the term, new to the
23 landscape, what do you have in mind when you use
24 that term?

25 A. It was added to the existing landscape. Again,

1 you have got a lawn, and at some point somebody
2 had to dump gravel or aggregate, if you will, up
3 behind the garage. Looks as though it was spread
4 out, but it was raised up about 2 feet from the
5 natural landscape or the yard, if you will.

6 Q. Now, is there like black sort of charred matter
7 all over that, I mean, like you would see it like
8 where more a campfire was, or something like
9 that?

10 A. Throughout the mound of dirt?

11 Q. Right.

12 A. No.

13 Q. Where was that? I mean, what part of the burn
14 area was filled with sort of --

15 A. May I point to it.

16 Q. Sure.

17 A. Right there is -- that is -- that is here where
18 the burn matter was. And, again, if I can make
19 this a bit clearer, you have a mound of dirt that
20 has been added to the landscape.

21 At the south end of that, it looks like
22 somebody came in with a 6 foot shovel, 6 foot
23 wide, 6 foot deep, and lifted out or removed that
24 dirt, so you had kind of a concave area at the
25 edge of that mound. And that's where the debris

1 pile was located.

2 Q. Okay. So, I mean, so it looked like someone had
3 sort of made a clearing there by adding dirt to
4 this lawn area; is that a fair statement?

5 A. Yes.

6 Q. And, then, in the southern part of that, they had
7 scooped out an area where there were fires, or
8 there was burn material there?

9 A. That's correct, yes.

10 Q. And you also saw the remains of tires and things
11 there; is that right?

12 A. Yes.

13 Q. What exactly did you see?

14 A. Well, I saw a variety of things. I saw the steel
15 belt, the wire, the remnants of a steel belt, and
16 there was bone matter intertwined with that steel
17 belt wire. There was a hack saw blade in the
18 debris. There was a hammer. There was, I
19 believe, a shovel. I can't recall if it was a
20 spade or a flathead.

21 There was another tire that had not been
22 burned. Also, there was a car seat that had been
23 consumed down to the metal. And I think I found
24 there was a piece of a zipper, some other metal
25 grommets, other things within the debris.

1 Q. You say a car seat, like a seat from a car?
2 You're not talking about a baby car seat, you're
3 talking about an actual seat from a car?

4 A. Would be a bench seat.

5 Q. Bench seat. Okay. And there were other pieces
6 of material. Could you tell -- I mean, was there
7 a way for you to tell if all that stuff had been
8 recently burned, or if some of it was older; for
9 instance, did the car seat have any rust on it,
10 or anything like that?

11 A. The car seat, it did have some rust on it, but it
12 probably oxidized due to the weather. But my
13 opinion is that the burn site, and it looked
14 fairly -- that site didn't look like it was used
15 that often, looked like it was fairly new.

16 Q. Okay. Were you there when the crime scene people
17 came to process that scene, I mean the Crime Lab
18 people?

19 A. At what point? I was there when they initially
20 sifted the material.

21 Q. Okay. Did they dig down?

22 A. We did not.

23 Q. So, you didn't -- you couldn't tell how deep,
24 like the charred dirt, or charred materials,
25 would go down into the ground?

1 A. Well, we scraped it. My opinion was, it was a
2 hard surface, compacted. Didn't look as though
3 that it had been worked over in the past. So, my
4 opinion was that it wasn't something that had
5 been used that often.

6 Q. Okay. So, then at what point did the Crime Lab
7 people get there?

8 A. The Crime Lab people might have arrived around 3
9 p.m., approximately.

10 Q. Okay. And then what did they do? What did you
11 observe them do?

12 A. We assisted the Crime Lab. We set up a sifting
13 apparatus. We took the debris from the pile,
14 sifted it in three different types of sifting
15 screens, sorted or picked through it and removed
16 what we felt were bones, as well as teeth, and a
17 zipper and some metal grommets. And stuff that
18 fell through the sifter, we collected on a tarp.

19 Q. Okay. Where did the tarp come from?

20 A. The tarp came from the Crime Lab.

21 Q. Okay. Did they have like a van or something
22 there?

23 A. They did, yes.

24 Q. And you did that throughout the afternoon of the
25 8th; is that right?

1 A. That's correct.

2 Q. Okay. And so, I assume for a couple hours, until
3 it got dark, from 3 to 5, 5:30 type of thing?

4 A. Yes.

5 Q. And what happened to the stuff that was on the
6 tarp?

7 A. The stuff on the tarp was collected, double
8 bagged in a black bag and then placed into a
9 secure trailer that was in control of the Calumet
10 County Sheriff's Department.

11 Q. Okay. What kind of bags were used?

12 A. Large, black, plastic garbage bags.

13 Q. So you put it in large, plastic garbage bags?

14 A. It all fit in one bag. We just double bagged it.

15 Q. Okay. And you say you used like three -- three
16 different strainers; is that right?

17 A. Yes.

18 Q. Sort of sift through the dirt, get all the dirt
19 out?

20 A. What you do is, there are different sifters. You
21 want some of the material to fall through and you
22 want to capture other material.

23 Q. So, how wide are we talking about?

24 ATTORNEY KRATZ: Objection, discovery.

25 THE COURT: The objection is sustained.

1 Q. (By Attorney Johnson) Were you there when the
2 stuff was taken off the tarp and bagged up?

3 A. Yes.

4 Q. Okay. Were you there that whole time, throughout
5 the afternoon?

6 A. Yes.

7 Q. Okay. So then, that stuff is taken off the tarp,
8 it is put in these plastic -- this one plastic
9 bag, double bagged, sealed; is that right?

10 A. It's not sealed, per se. It's tied and then it's
11 placed in the Calumet County van that was in
12 control of the Calumet County Sheriff's
13 Department. And Rick Reimer was the person that
14 secured it.

15 Q. Okay. And then did it, that particular burn area
16 scene, did that continue to get processed the
17 next day?

18 A. I don't believe it was actually processed until
19 Thursday.

20 Q. Okay. So, what about Wednesday, what happened
21 there?

22 A. Wednesday, I had to appear in court in Monroe
23 County, so, I wasn't available. And then I came
24 back on Thursday and assisted Special Agent
25 Rodney Pevytoe with sifting debris.

1 Q. To your knowledge, nobody did anything with that
2 particular part of this site on Wednesday?

3 A. Not to the best of my knowledge.

4 Q. Okay. Then you came back on Thursday. Did you
5 spend the whole day doing the sifting on that
6 date?

7 A. The first thing we did was, Thursday morning we
8 set up at the Calumet County Sheriff's Department
9 and sifted, again, through the debris that we had
10 collected on the tarp on Tuesday. And after
11 completing that, we then went back to the crime
12 scene and began to process that thoroughly.

13 Q. You say you went back, you mean back to that burn
14 area; is that what you are talking about?

15 A. Yes.

16 Q. Okay. And, basically, same process as on Tuesday
17 or?

18 A. Well, I was -- I wasn't intimately involved with
19 any of the processing of the scene. We had a
20 number of other agents that arrived from the
21 Arson Bureau that then processed the scene.

22 Q. Okay. Are you an arson investigator?

23 A. I was at once upon a time.

24 Q. And when was that?

25 A. That was approximately two years ago.

1 Q. For how long?

2 THE COURT: I'm going to interpose my own
3 objection.

4 ATTORNEY KRATZ: Thank you, Judge.

5 Q. (By Attorney Johnson) How long have you been with
6 DCI?

7 A. Since 1998.

8 Q. And before that?

9 ATTORNEY KRATZ: Objection, discovery, your
10 Honor.

11 THE COURT: Sustained.

12 ATTORNEY JOHNSON: That's all the questions
13 I have. Thank you.

14 THE COURT: Any redirect?

15 ATTORNEY KRATZ: Absolutely not. Thank
16 you, Judge.

17 THE COURT: Witness is excused.

18 THE WITNESS: Thank you.

19 ATTORNEY KRATZ: State will call Leslie
20 Eisenberg to the stand.

21 THE CLERK: Please raise your right hand.

22 **LESLIE EISENBERG**, called as a witness
23 herein, having been first duly sworn, was
24 examined and testified as follows:

25 THE CLERK: Please be seated. Please state

1 your name, spell your last name for the record.

2 THE WITNESS: My name is Leslie Eisenberg,
3 E-i-s-e-n-b-e-r-g.

4 **DIRECT EXAMINATION**

5 BY ATTORNEY KRATZ:

6 Q. How are you employed, ma'am?

7 A. I'm sorry?

8 Q. How are you employed?

9 A. I am currently employed by the Wisconsin
10 Historical Society in Madison and as program
11 coordinator for the State's Burial Site
12 Preservation Program.

13 Q. Do you enjoy any titles at this time?

14 A. Yes, I have a doctorate in anthropology and am
15 also board certified in forensic anthropology.

16 Q. In front of you, Dr. Eisenberg, is an exhibit.
17 It's actually a 16 page exhibit, which is
18 referred to as a curriculum vitae, or what most
19 people would call a resume, a 16 page resume. Do
20 you see that?

21 A. Yes, I do.

22 Q. Does that resume include your educational
23 background, your training and your experience,
24 including writings that you have personally and
25 collaboratively been involved in that allow you

1 to speak as an expert witness in matters of
2 anthropology?

3 A. It does, sir.

4 ATTORNEY KRATZ: Ask for a stipulation as
5 to her qualifications. Move the admission of
6 Exhibit 10, Judge.

7 THE COURT: Any objection?

8 ATTORNEY LOY: No objection.

9 THE COURT: Court will accept her as an
10 expert and admit Exhibit 10.

11 Q. (By Attorney Kratz) Dr. Eisenberg, were you asked
12 to review some material that was found at what's
13 now been referred to as the Avery Salvage Yard
14 and did you, in fact, agree to review that
15 material?

16 A. Yes, I did.

17 Q. Could you answer, please, how it was that you
18 were asked and, specifically, what it was that
19 you did with that material?

20 A. I was initially contacted on Wednesday,
21 November 9th, through a telephone message by a
22 Special Agent from the Division of Criminal
23 Investigation, State of Wisconsin, Department of
24 Justice, who indicated that she would be bringing
25 to me a box of items that were recovered from the

1 Avery property, for my examination.

2 I took possession of those remains on
3 November 10th and transferred them to the Dane
4 County Coroner's Office in Madison, the Morgue
5 Facility, where I examined those remains and
6 sorted them into and identified them as human
7 remains, and other items, which were bagged
8 separately.

9 Q. All right. Did you then separate the human
10 remains from what you believed to be non-human
11 remains?

12 A. I did.

13 Q. And regarding the human remains, could you
14 describe in a little more detail what it was that
15 you observed?

16 A. Yes. When I opened the box containing all the
17 material I first examined on November 10th, there
18 were many fragments of human bones, some as small
19 or smaller than the size of a nickel, other
20 fragments perhaps as long as 4 or 5 inches.
21 None -- None of those fragments represented an
22 entire bone, but they did represent almost every
23 segment of the human skeleton, at least in part.

24 Q. Do you know how many bone fragments, just
25 roughly, it is that you have examined?

1 A. I have not made a count at this time. And the
2 reason I have not done that is because I am in
3 the process of trying to refit those fragments
4 together, to look for any other evidence, other
5 than the burning, on the fragments that I have
6 observed.

7 Q. You indicated that there were fragments, both
8 small and larger, but none, at least to your
9 independent recollection, longer than 4 or 5
10 inches; is that right?

11 A. That's correct.

12 Q. Did it appear to you that these fragments, either
13 intentionally or otherwise, had somehow degraded
14 or been changed from their original skeletal
15 state?

16 A. Yes, sir, they have. Because of the breakage and
17 the coloration, it was obvious to me when I
18 opened the box that the human remains, the bone
19 fragments, had undergone considerable heat and
20 burning.

21 Q. And so we're clear, from what is commonly
22 referred to as mutilation, the question that I
23 have of you is, did these bones appear to have
24 been altered in some way, again, rather -- either
25 by human or other forces, so that they took a

1 shape other than what a corpse may look like that
2 was not altered? Do you understand the question?

3 A. I do. And in response, I would say that the
4 normal skeleton that I would expect to find was
5 so altered by a burning episode as to render that
6 skeleton into fragments.

7 Q. All right. Dr. Eisenberg, were you able and are
8 you able, based upon your training, experience,
9 education, and to a reasonable degree of
10 scientific certainty, identify those remains as
11 being either male or female?

12 A. Yes, I have been able to make a determination of
13 sex.

14 Q. And what, first of all, is that determination?

15 A. That determination is that the fragmentary human
16 remains presented to me for examination are those
17 of an adult female.

18 Q. And by an adult female, are you able to
19 approximate the age of those remains; in other
20 words, the age of the individual from which those
21 remains come?

22 A. At this juncture, I would like to reserve comment
23 on that until I have completed my examination.

24 Q. All right. So the Court is clear, that
25 examination, um, continues your analysis, not

1 only for the -- for this particular case but for
2 the Division of Criminal Investigation, you have
3 asked to remain involved; is that right?

4 A. That is correct.

5 ATTORNEY KRATZ: For this hearing, Judge,
6 that's all the questions I have of Dr. Eisenberg.
7 Thank you.

8 THE COURT: All right. Mr. Johnson.

9 ATTORNEY JOHNSON: Thank you.

10 **CROSS-EXAMINATION**

11 BY ATTORNEY JOHNSON:

12 Q. Dr. Eisenberg, are there -- is there scientific
13 literature that you reviewed in conjunction with
14 the examination that you made in this case?

15 A. Well, as I mentioned, I have not completed my
16 examination, but, yes, there is research that I
17 have referred to and research that I already know
18 of, based on my years in the field.

19 Q. And in conjunction with this examination, what
20 literature did you refer to, what scientific
21 literature?

22 A. Literature involving signatures of possible
23 antemortem bone trauma in burned remains.

24 Q. Do you have the name of those articles or those
25 treatises?

1 ATTORNEY KRATZ: Objection, discovery,
2 Judge.

3 THE COURT: Sustained.

4 Q. (By Attorney Johnson) Um, the examination that
5 you did -- First of all, you received these items
6 from a DCI agent; is that right?

7 A. That is correct.

8 Q. And who was that?

9 A. The name of the Special Agent was Duranda
10 Freymler, F-r-e-y-m-i-l-l-e-r.

11 Q. And you had received a phone call prior to
12 receiving these, I take it?

13 A. That is correct.

14 Q. And who was the phone call from?

15 A. It was a voice mail message left for me on my
16 work answering machine, from Special Agent
17 Freymler.

18 Q. And you returned that call?

19 A. I did not return that call because when -- I was
20 out of town when the call came in. And I picked
21 up that message in transit back to Madison.

22 Q. Okay.

23 A. After hours.

24 Q. Okay. And then, when did you actually receive
25 the items?

1 A. On Thursday morning, November 10th.

2 Q. Okay. And this agent came to your workplace?

3 A. The remains were left for me at my workplace,
4 signed for by a coworker, and left in my locked
5 office, awaiting my arrival.

6 Q. Okay. And they were in a box; is that what you
7 said?

8 A. At the time, I did not know it was in a box, but,
9 yes, I did receive a white flat rectangular box
10 identified with labels and other information on
11 that box. And the box was in a brown grocery
12 type bag, presumably to transmit the box.

13 Q. Okay. And then you take that box, then, to the
14 morgue, the Dane County Morgue; is that right?

15 A. That is correct.

16 Q. And that's where you opened it?

17 A. That is correct.

18 Q. And, um, inside that box, are the items packaged
19 inside that box, separately?

20 A. Within the box there was one plastic bag into
21 which several bone fragments had been placed by
22 another forensic anthropologist, Dr. Kenneth
23 Bennett, to whom the box was initially brought,
24 for a brief examination, to determine whether the
25 fragments in the box were of human origin.

1 Q. Okay. And the color of that plastic bag was?
2 A. Was clear.
3 Q. Okay. Was that plastic bag sealed?
4 A. In what way?
5 Q. Sealed, I mean taped shut, there was some sort of
6 a seal on it, anything like that?
7 A. There was not a seal on that bag, but the bag was
8 within the sealed box that was brought to me.
9 And the box was sealed with evidence tape and
10 had -- was intact upon my receipt of the box.
11 Q. Okay. And how many items were there in the
12 plastic bag?
13 A. I did not count them. I simply laid them out
14 during the sorting procedure I followed.
15 Q. Okay. But 10, more than 10, more than 20? Do
16 you have an estimate?
17 A. I don't recall. I'm sorry.
18 Q. Okay. How do you do an examination like this?
19 Can you just sort of take me through the steps.
20 A. The first thing that I do is, wearing appropriate
21 gloves and mask and gown and so on, remove piece
22 by piece from the box and sort them into piles
23 representing human bone fragments and items of
24 non-biological origin, like metal, plant material
25 and so on.

1 Q. And how many items of non-biological origin were
2 there here?

3 A. I did not count them. I simply, with the initial
4 sorting, segregated them into separate piles that
5 then were put into separate bags that were
6 labeled.

7 Q. Okay. And then what do you do next?

8 A. Well, this is -- it's a fairly slow process.
9 There were many fragments in the box. And what I
10 did was, at the end of the evening, grouped all
11 of the human bone fragments together, was able to
12 sort out dental structures, which may have
13 represented fragments of jawbone and/or tooth
14 structures, and bagged those separately.

15 At the end of the evening I had several
16 bags, one representing human bone and bone from
17 different areas of the body, in addition to other
18 non-biological types of items.

19 Q. Okay. And you put each group of items in a
20 separate bag?

21 A. A separate labeled bag, that's correct.

22 Q. And then, did you continue this examination the
23 next day, I assume?

24 A. I did.

25 Q. Okay. And what's the next stage in it?

1 A. If I may, Judge, may I refer to my timeline?

2 Q. Is there something that would refresh your
3 recollection?

4 ATTORNEY KRATZ: Judge, perhaps I'll just
5 interpose the objection that this goes well beyond
6 the direct examination and the purpose for which
7 it's being offered at the preliminary hearing.

8 ATTORNEY JOHNSON: Judge, if there's expert
9 testimony that's been offered, I think on
10 cross-examination I'm entitled to go into the data
11 on which that expert testimony is being offered,
12 under 907.05.

13 THE COURT: If there's a document that
14 she's used to refresh her memory to testify today, I
15 believe the defense is entitled to see that. Is it
16 here?

17 ATTORNEY KRATZ: Has he asked that
18 question?

19 ATTORNEY JOHNSON: Well, I guess, let me --

20 ATTORNEY KRATZ: She asked if she could
21 look at it.

22 ATTORNEY JOHNSON: Let me see if I can
23 clarify this.

24 Q. (By Attorney Johnson) Would it refresh your
25 recollection to refer to the timeline that you

1 prepared in conjunction with this examination?

2 A. It would, but certainly I can speak through the
3 timeline. From the initial receipt of the
4 remains on November 10th, the remains actually
5 coming into my possession, on successive days,
6 after the 10th, I spent several to many hours
7 continuing with my examination, not only of the
8 remains that were initially brought to me on
9 November 9th, but additional remains that had
10 been collected by the Division of Criminal
11 Investigation on the same property, from which
12 the original box of fragments came.

13 Q. Okay.

14 A. So, the examination continued using the same
15 basic sorting procedure.

16 Q. Okay. The question that I had asked was: The
17 next day, what did you do? And I guess that's --
18 that's my question at this point. The next day,
19 how did you continue that process?

20 A. The next day I continued to sort. This is a very
21 slow process. It's a very detailed and
22 meticulous process and not something that's
23 easily completed in just several hours.

24 Q. Okay. And are you consulting anything as you are
25 doing this sorting, or any treatises, any

1 material, any reference material?

2 A. No, sir.

3 Q. Okay. How long would you say this process of
4 sorting took you? Do you have an estimate at
5 all?

6 A. Well, I am still in the process of sorting.

7 Q. Okay. Is this a situation where you, basically,
8 are sorting these fragments and you can offer an
9 opinion as to their origin purely by a -- a
10 visual examination?

11 A. That is correct.

12 Q. Okay. There's no -- Is there any other type of
13 testing that you would do to confirm that visual
14 examination?

15 A. None that I believe is necessary, given my
16 experience in analyzing human remains not only
17 from a forensic context but from some of the
18 disaster context with which I have been involved
19 in this country.

20 Q. Okay. And I'm sorry if I have -- this has been
21 answered before, how long have you been doing
22 this? How many years?

23 A. I began consulting in forensic anthropology in
24 1986 for the office of Chief Medical Examiner in
25 New York.

1 Q. Okay. Now, you are able to offer an opinion that
2 these remains, you believe, come from an adult
3 female; is that right?

4 A. That is correct, sir.

5 Q. And how do you come to that conclusion? What is
6 it about them?

7 ATTORNEY KRATZ: Judge, I'm going to --
8 well --

9 THE COURT: I'm going to allow this
10 question. She can explain how she came to her
11 conclusion.

12 ATTORNEY KRATZ: That's fine.

13 A. There are, as forensic anthropologists, certain
14 landmarks and certain shapes, what we call
15 morphology, that differ between male and female
16 skeletons. And there are certain landmarks that
17 I find -- even though they are fragmentary -- in
18 the human remains, that I have been able to
19 identify as being of the shape and form and size
20 that I believe to come from a female.

21 Q. And what landmarks, specifically, are you
22 referring to?

23 A. Two in particular, although, because my analysis
24 is not completed, there may yet be others. But
25 there are fragments from what we call the brow

1 ridge, above the eye socket, on both sides of the
2 skull, above both orbits, as well as an elbow
3 joint at the top end of one of the lower arm
4 bones, the radius.

5 Q. And what would be -- what would be the
6 difference? I mean, how would that lead you to
7 the conclusion it was a female?

8 A. In female skulls, the shape of the upper rim of
9 the eye socket is not very robust, or very heavy
10 looking. It's actually fairly gracile, very
11 small and has a sharp margin. And I see that
12 sharp margin on both fragments of the skull, of
13 the upper eye area.

14 And the head of the radius, or the part
15 of the lower -- one of the lower arm bones that
16 forms part of the elbow joint, is also of a very
17 small size.

18 Q. Now, is there a particular standard by which you
19 would judge this to be a female? I mean, a
20 certain -- below a certain size it has got to be
21 a female, above a certain size you would offer
22 the opinion it's a male? I'm talking about the
23 radius.

24 A. That's correct, that would apply to the radial
25 head, the radius head. And there has -- there

1 has been a study done that addresses just that
2 issue.

3 Q. And what is that size?

4 A. At the present time, I don't have that number in
5 my head to report to you.

6 Q. Okay. And would that -- That study you referred
7 to, do you know the name of that study?

8 A. I don't know the name of the article. I do know
9 the name of the author. I'm not quite sure if I
10 know how to pronounce the last name. First name
11 is Emily. The last name is something like
12 Barasbieta (phonetic). It's an article that was
13 published, I believe, in the *Journal of Forensic*
14 *Science*.

15 Q. And is that dealing with averages or -- I mean,
16 is there sort of like a cut off? Do you
17 understand my question?

18 A. Yes, I do.

19 ATTORNEY KRATZ: Judge, excuse me. My
20 objection is, this goes more to weight than to
21 admissibility.

22 THE COURT: At this point, the Court will
23 sustain the objection.

24 ATTORNEY KRATZ: Thank you, Judge.

25 Q. (By Attorney Johnson) What about with regard to

1 the orbital bone, is there a similar type of
2 standard there, as to what you described, that
3 would lead you to believe it's a female?

4 A. It's not a metric or measurable kind of standard.
5 It's an observational kind of standard that we
6 all base our work on.

7 Q. So, it's a subjective call on your part?

8 A. I do not believe it's a subjective call simply
9 because it cannot be measured.

10 Q. Okay. What are you looking for in that
11 particular bone, the thickness, the length from
12 side to side?

13 A. To which bone are you referring, sir?

14 Q. The orbital, I'm sorry.

15 A. It's -- It's the sharp edge, the fact that
16 there's not a heavy and protruding brow ridge on
17 top of it.

18 Q. Okay. And so that would be true, generally, of
19 females?

20 A. That is correct.

21 Q. Okay. And is that same article that you referred
22 to before the basis for -- for your opinion on
23 that bone as well, or is --

24 A. The article previously mentioned about the radius
25 head does not at all address using the orbital

1 bone to determine sex.

2 Q. Okay. Is there another learned treatise or piece
3 of scientific literature that you would have
4 reviewed relative to the orbital bone?

5 ATTORNEY KRATZ: Objection, discovery.

6 THE COURT: The objection is sustained.

7 ATTORNEY KRATZ: Thank you.

8 Q. (By Attorney Johnson) Now, are there other tests
9 that you have performed on these -- these items,
10 other like chemical tests, or anything like --

11 A. No, sir.

12 Q. All just been a visual examination?

13 A. That's correct.

14 Q. Okay.

15 A. May I qualify that? I have also had an
16 opportunity to have the fragments of the skull
17 that were presented for analysis, x-rayed.

18 Q. Okay. And where did that take place?

19 A. That took place on November 17th, at the
20 Middleton Memorial Veteran's Hospital in Madison.

21 Q. Okay. And what did you find out as a result of
22 those x-rays?

23 A. As a result of those x-rays, several of the
24 cranial fragments, at least seven of them, showed
25 evidence for areas with a greater density than

1 the bone itself. In other words, they were small
2 tiny areas, almost flecks, that appeared whiter
3 in the x-ray than the surrounding bone.

4 (Court reporter asked for clarification.)

5 A. Whiter.

6 Q. You examined these x-rays yourself; is that
7 right?

8 A. That's correct, but I was not the only one in the
9 room at the time.

10 Q. Okay. Was there a radiologist or someone who was
11 helping you interpret those?

12 A. There was a radiology technician. There was also
13 a forensic pathologist in the room at the same
14 time.

15 Q. Okay. Who was that?

16 A. His name is Dr. Michael Stier, S-t-i-e-r.

17 Q. Is he -- He is with Dane county?

18 A. He is with --

19 THE COURT: The Court is going to impose
20 it's own objection.

21 ATTORNEY JOHNSON: Okay.

22 THE COURT: It's discovery.

23 Q. (By Attorney Johnson) And what do those findings
24 tell you, if anything?

25 A. At the moment, I have -- I am not at a point

1 where I can comment on what those mean. At this
2 point, there are -- there are areas in those
3 bones that are more dense than the bone itself.
4 It's unknown at this time what those densities
5 represent.

6 Q. Okay. And do you know what part of the skull
7 those came from?

8 THE COURT: Again, just a minute, the Court
9 is going to interpose its own objection. The
10 witness has testified that, at least at this point,
11 the significance of it is unknown, so it adds
12 nothing to this hearing.

13 ATTORNEY JOHNSON: Okay.

14 Q. (By Attorney Johnson) Do you recall what the
15 substance of the voice mail message was that was
16 left for you by the Special Agent?

17 ATTORNEY KRATZ: Objection, discovery, your
18 Honor.

19 THE COURT: What's the purpose of the
20 question?

21 ATTORNEY JOHNSON: Well, I'm trying to
22 figure out if there was something that was told to
23 her about the items that she was going to be asked
24 to look at. Was it told to her that these were
25 human remains? Remains of unknown origin? What

1 exactly was told to her.

2 ATTORNEY KRATZ: If I may, Judge, and if
3 they were, that would go to weight, not
4 admissibility.

5 THE COURT: The Court agrees, the objection
6 is sustained.

7 Q. (By Attorney Johnson) Were these items that you
8 examined, were they -- you indicate that they
9 were all badly burned; is that right?

10 A. That is correct.

11 Q. And that's -- you can see that through a visual
12 examination?

13 A. That is correct. Most all of the bone was
14 blackened from burning.

15 Q. Okay. Is there any kind of chemical analysis you
16 did to confirm that?

17 A. No, and that is really outside of the range of my
18 expertise.

19 Q. Okay. So, this is, again, just -- it's a visual
20 examination that tells you, through your training
21 and experience, that this is from burns?

22 A. That is correct.

23 Q. And you have had experience in examining human
24 remains before, from burn victims?

25 A. Yes, I have had a number of forensic cases as

1 well as some of the federal disaster work I have
2 done involving a train crash in Illinois, the
3 aftermath of the World Trade Center disaster.
4 And so I have had occasion to look at many types
5 of burned and fragmentary human remains.

6 Q. Would you have an estimate as to how many times?

7 A. I do not have an exact number for you.

8 ATTORNEY JOHNSON: Thank you. That's all
9 the questions I have. Thank you.

10 THE COURT: Any redirect?

11 ATTORNEY KRATZ: No, Judge, thank you.

12 THE COURT: The witness is excused.

13 THE WITNESS: Thank you.

14 ATTORNEY KRATZ: State will call Sherry
15 Culhane to the stand. May we approach, Judge, just
16 briefly.

17 THE COURT: Yes.

18 THE CLERK: If you would raise your right
19 hand.

20 **SHERRY CULHANE**, called as a witness
21 herein, having been first duly sworn, was
22 examined and testified as follows:

23 THE CLERK: Please be seated. Please state
24 your name, spell your last name for the record.

25 THE WITNESS: Sherry Culhane,

1 C-u-l-h-a-n-e.

2 DIRECT EXAMINATION

3 BY ATTORNEY KRATZ:

4 Q. Ms Culhane, how are you employed?

5 A. I work for the Wisconsin State Crime Laboratory
6 as a DNA analyst in the DNA Section.

7 Q. In front of you is a document which is marked as
8 Plaintiff's Exhibit No. 11, would you tell us
9 what that is.

10 A. Yes, it is a copy of my curriculum vitae.

11 Q. Does that curriculum vitae include your current
12 position, the duties with the Crime Lab, your
13 prior education, training, experience, that
14 entitles you to hold the position of DNA analyst?

15 A. Yes.

16 ATTORNEY KRATZ: Move admission of Exhibit
17 11 and ask she be considered an expert, at least in
18 that particular field.

19 THE COURT: Any objection from the defense?

20 ATTORNEY JOHNSON: No.

21 THE COURT: The exhibit is admitted. The
22 Court will accept the witness as an expert.

23 Q. (By Attorney Kratz) Ms Culhane, you have been
24 asked to participate in the investigation
25 regarding DNA analysis of samples regarding the

1 case involving Mr. Avery and Ms Halbach; is that
2 correct?

3 A. Yes, it is.

4 Q. As part of that investigative process, did you
5 have occasion to individually search and recover
6 items from a 1999 Rav 4 SUV, in Madison?

7 A. Yes, I did.

8 Q. In searching the back of that vehicle, were you
9 able to observe and did you collect various
10 material, various stains, that you believed
11 included human blood?

12 A. Yes, I did.

13 Q. I'm going to show you what's been marked for
14 identification as Plaintiff's Exhibit No. 12.
15 Excuse me. Could you tell us what that is,
16 please.

17 A. This is the back cargo area of that vehicle. And
18 I recovered a portion of a large reddish brown
19 stain that was where that yellow area is.

20 Q. All right. That stain recovery, is that
21 something that you do as a member of the Crime
22 Lab, as a DNA analyst?

23 A. Yes, it is.

24 Q. Were you also asked to examine, and did you
25 recover, a reddish stain that was located near

1 the ignition portion of the front of that same
2 SUV?

3 A. Yes, I did.

4 Q. And could you look at what's been marked as
5 Exhibit No. 13 and tell us what, if anything,
6 that depicts?

7 A. This is a photograph of the inside of the Rav 4.
8 And that squiggly --

9 THE COURT: Excuse me, there's a laser
10 pointer floating around.

11 ATTORNEY KRATZ: I have got it. The yellow
12 button.

13 A. Thank you. This area right here is where I
14 recovered a portion of this reddish brown stain.

15 Q. Ms Culhane, did you also receive in evidence and
16 were you asked to process and identify whether
17 any DNA material was located on a vehicle key,
18 which has been referred to as a Toyota key?

19 A. Yes, I was.

20 Q. By the way, once receiving that key at the Crime
21 Lab, did you do anything with the key and test it
22 as it might relate to this particular '99 Rav 4?

23 A. Yes, I did.

24 Q. What did you do?

25 A. I placed it in the ignition and turned it. The

1 key turned the ignition and I also tested it on
2 the locked front driver's side door, and it did
3 open the door.

4 Q. And so the Court is aware what key we are talking
5 about, is this the same key at least identified,
6 and identified in the evidence package, as having
7 been collected from the bedroom of Steven Avery?

8 A. Correct.

9 Q. Ms Culhane, the key itself, did you process that
10 for the recovery of possible DNA material?

11 A. Yes, I did.

12 Q. Can you tell us what that entails, please.

13 A. I, basically, took a sterile cotton swab and
14 swabbed the black rubberized portion of the key
15 that you would use to crank the key. I swabbed
16 all the surfaces and I did my analysis from that
17 cotton swab.

18 Q. Ms Culhane, the analysis of this vehicle, where
19 did that take place at?

20 A. At the Wisconsin State Crime Lab in Madison.

21 Q. All right. We're going to be showing you what's
22 been marked for identification as Exhibits No. 14
23 and 15. And as you testify about your analysis,
24 I would invite you to refer to those exhibits and
25 tell us if -- if you need to read from them.

1 But let me ask you if you were able to
2 develop what's commonly referred to as a DNA
3 profile from the bloodstain that was obtained
4 from the back of the Rav 4 SUV?

5 A. Yes, I was.

6 Q. Were you able to identify and develop a profile
7 of any DNA material that was found on the Toyota
8 key that we have heard about?

9 A. Yes, I did.

10 Q. Ms Culhane, have you received from law
11 enforcement officials what are commonly referred
12 to as exemplars, or sometimes intimate samples
13 that are referred to, from both Mr. Avery and
14 that of Teresa Halbach?

15 A. Yes, I have.

16 Q. And were you able, specifically, from a buccal
17 swab saliva sample of Mr. Avery, to develop a DNA
18 profile?

19 A. Yes, I was.

20 Q. And, specifically, from a slide, a pap smear of
21 the victim in this case, Teresa Halbach, were you
22 able to develop a DNA profile?

23 A. Yes, I was.

24 Q. Did you also, Ms Culhane, receive from the Crime
25 Lab various bone and tissue material which was

1 represented to you as having been collected from
2 a burn area on the Avery property?

3 A. Yes, I was.

4 Q. Did you attempt to develop a DNA profile from
5 those charred remains of bone and tissue?

6 A. Yes.

7 Q. Referring then, first, to Exhibit No. 14 --

8 THE COURT: Just a minute, did she say she
9 tried? What was the --

10 ATTORNEY KRATZ: She said she did, Judge,
11 I'm sorry.

12 THE COURT: You were able to read the DNA
13 from the charred remains; is that what you said?

14 THE WITNESS: Yes.

15 Q. (By Attorney Kratz) Ms Culhane, then, regarding
16 the profiling, or regarding the analysis that you
17 performed, were you able to compare the DNA
18 profile from the key found in Mr. Avery's
19 bedroom, from the blood found near the ignition
20 inside of Ms Halbach's vehicle, and compare that
21 with Mr. Avery's DNA exemplar?

22 A. Yes, I was.

23 Q. What were the results of that analysis?

24 A. The profile developed from the buccal swabs that
25 were taken from Steven Avery was consistent with

1 the DNA profile that I developed from both the
2 Toyota key and the apparent blood stains that
3 were taken from the ignition.

4 Q. Were you able to develop and compare the DNA
5 profiles from the blood found in the back of the
6 Rav 4 and compare that with the DNA profile, the
7 pap smear from Teresa Halbach?

8 A. Yes, I was.

9 Q. What were those results?

10 A. The profile from the pap smear was also
11 consistent with the stain from the back cargo
12 area of the Rav 4.

13 Q. And so the Court is clear, there was also a soda
14 can that was found in the front of Teresa's
15 vehicle, that you developed a DNA profile from;
16 is that right?

17 A. Yes.

18 Q. And what, if anything, did that match, or what
19 was that consistent with?

20 A. That was also consistent with the profile
21 developed from the pap smear of Teresa Halbach.

22 Q. And, finally, Ms Culhane, were you able to
23 compare the DNA profile from the pap smear of
24 Teresa Halbach and compare those to the charred
25 tissue and charred remains found on the Avery

1 property?

2 A. Yes, I was.

3 Q. Could you describe the results for us, please.

4 A. The profile -- The DNA profile from the charred
5 remains was a partial profile and, mainly,
6 because that was a very degraded sample of DNA.
7 That partial profile was consistent with the
8 profile developed from the pap smear of Teresa
9 Halbach.

10 Q. Were you able, Ms Culhane, to speak as to
11 statistics, or a frequency of occurrence, that
12 is, between the partial profile and the known or
13 exemplar sample of Ms Halbach?

14 A. Yes, I am.

15 Q. Could you describe how that analysis occurs and
16 what, if any, statistical data you can provide in
17 that regard?

18 A. When we do this type of DNA analysis, we're
19 looking at several different locations on the DNA
20 molecule. The more locations, the more areas of
21 the DNA we test, the more discriminating and the
22 more specific that profile becomes.

23 Because the profile from the charred
24 remains was a partial profile, it was only -- it
25 matched the pap smear sample at seven different

1 locations. Statistically, if we look at how rare
2 this profile occurs in the population, we can
3 statistically look at all those different areas,
4 and combining those, we come up with a composite
5 statistic that characterizes this sample and how
6 rare it is in the population.

7 In the case of the partial profile from
8 the charred remains, it occurs one person in one
9 billion in the Caucasian population -- I have to
10 refer to the exact numbers -- one person in two
11 billion in the African/American and southeastern
12 Hispanic populations and one person in three
13 billion in the southwestern Hispanic population.

14 Q. And at least for our purposes, regarding whether
15 or not those charred remains are in fact those of
16 Teresa Halbach, is it a fair statement, then,
17 with the analysis that you have provided, to
18 indicate that the chances, if you will, that it
19 is not Teresa Halbach would be one in one
20 billion? Is that roughly a restatement of what
21 you are telling us?

22 A. Basically, it just means that this profile occurs
23 in the general Caucasian population one person
24 out of a billion and it is consistent with
25 Teresa.

1 Q. So, the seven out of seven loci, in other words,
2 the DNA analysis, at least to the frequency of
3 one in one billion, matched between that of
4 Teresa Halbach and that of the charred remains;
5 is that correct?

6 A. That's correct.

7 ATTORNEY KRATZ: That's all I have of this
8 witness, Judge. Thank you.

9 THE COURT: Mr. Johnson.

10 ATTORNEY JOHNSON: Thank you.

11 **CROSS-EXAMINATION**

12 BY ATTORNEY JOHNSON:

13 Q. When did this car arrive at the Crime Lab?

14 A. I got involved in it on November 7th --

15 Q. Do you know --

16 A. -- 2005.

17 Q. I'm sorry, 2005, is that what you said?

18 A. Yup.

19 Q. Okay. When did it arrive, to your knowledge?

20 A. I believe it arrived the day before, on a Sunday.

21 Q. Okay. And then you didn't have anything to do
22 with it until that day?

23 A. Correct.

24 Q. And where was it when you first saw it?

25 A. It was in the garage of our laboratory.

1 Q. Okay. And it was parked there? Was it in a van?
2 How was it?

3 A. No, it was parked in the garage and it was being
4 photographed by the photographer in the
5 laboratory.

6 Q. Okay. Who else was there?

7 A. Myself, Mike Riddle, who is another analyst in
8 the lab, Nick Stahlke and Ron Groffy.

9 Q. And those are other Crime Lab personnel?

10 A. Yes.

11 Q. Okay. Were any of those people people who had
12 been on the scene when the car was recovered?

13 A. I don't recall if they were there or not.

14 Q. Okay. And was the car -- were the doors open and
15 the hatch open?

16 A. Yes, I believe so.

17 Q. Okay. And they were taking photographs; is that
18 right?

19 A. Yes.

20 Q. And were they processing the vehicle otherwise?
21 Were they looking like for fingerprints, doing
22 things like that?

23 A. Usually when we process a vehicle like this, as a
24 DNA analyst, I look at it first for any
25 biological material. In this case, I was

1 interested in any blood stains, apparent blood
2 stains, that I might find. So, I was involved in
3 the beginning.

4 The car is photographed, first. Then I
5 was involved in looking for blood stains,
6 apparent blood stains. And after I was completed
7 with my portion of it, then it would have been
8 processed for fingerprints.

9 Q. Okay. So the car is there, there are a number of
10 people around it. Are the doors open and things
11 like that?

12 A. Yes.

13 Q. Okay. And so someone had done that prior to your
14 arrival?

15 A. As far as I recall, yes.

16 Q. Okay. And so you get there. And what do you
17 have with you?

18 A. Pardon me?

19 Q. What do you have with you? I mean, what
20 materials do you have?

21 A. I have the supplies that I use to process the
22 car: Cotton swabs, chemicals that I use to look
23 for presumptive test for blood, my notes, that
24 sort of thing. And I begin -- flashlight -- by
25 actually visually looking at the car to see if

1 there is any blood stains.

2 Q. Okay. And how are you dressed?

3 A. I have a lab coat on.

4 Q. Okay.

5 A. I don't remember what else.

6 Q. Okay. And you have --

7 A. Gloves, lab coat, gloves, yup.

8 Q. Okay. Anything covering your mouth, or anything
9 like that?

10 A. Not my mouth, but I had safety goggles, glasses.

11 Q. Okay. And so what's the first thing you do --

12 (Court reporter asked to have the question repeated)

13 Q. I'm sorry. What's the first thing you do in
14 relation to this car?

15 THE COURT: Just a second. Mr. Kratz, can
16 you turn off the photo machine, it will make life
17 easier for the reporter.

18 A. The first thing I do is begin to take notes. I
19 verify that the car that's in the garage is the
20 car that I'm actually supposed to be looking at.
21 I write down the VIN number, what type of car it
22 is, and then I begin, basically, by -- with a
23 flashlight, looking on the inside of the car.

24 As I come across stains that appear to
25 be consistent with blood stains, I diagram and

1 note where those stains are. I collect those
2 stains by using a sterile cotton swab that's
3 in -- dipped in sterile water and I swab the
4 area. In some cases those are photographed. Not
5 all stains from every car is photographed. And
6 I, basically, write my notes as I go along.

7 Q. Okay. Now, do you speak to anybody before you
8 start this process?

9 A. I'm usually -- I have usually been told what case
10 it is, some of the background on the case. In
11 this particular case, I was told by one of the
12 supervisors what kind of case this was, where
13 this car was found, and what we were interested
14 in looking at.

15 Q. Okay. So you knew -- you knew some background
16 about the case, where the car was found, you knew
17 it was the victim's car?

18 A. Correct.

19 Q. And you knew that -- that -- that it was,
20 potentially, you would expect to find blood
21 stains there?

22 A. Correct.

23 Q. And other potential DNA material?

24 A. Correct.

25 Q. And that's all before you go out and start

1 processing the car?

2 A. Yes.

3 Q. Okay. So, then, does anybody point out, like
4 different possibilities about what stains you
5 might want to look at, or do you just do that
6 yourself?

7 A. Actually, in this case, Nick Stahlke, who is
8 another analyst, he is a blood spatter analyst as
9 well as a document analyst, we were sort of doing
10 it in conjunction, and we were kind of looking at
11 the stains together.

12 Q. Okay. And so you -- you -- do you recall which
13 stain you looked at first?

14 A. Yes, the first one was the one in the back cargo
15 area, because it was the largest and the most
16 obvious.

17 Q. How big an area was that stain?

18 A. I didn't measure it exactly. That was the
19 photograph you were shown earlier. I would guess
20 about that big.

21 Q. And you are holding your hands --

22 A. -- about six inches across.

23 Q. About six inches. Would you say --

24 A. Approximately.

25 Q. Would you say six inches around, I mean, like

1 sort of a circular type of stain?

2 A. Yes.

3 Q. And what do you do to process that stain?

4 A. We do a test that is a presumptive test for
5 blood. It is not specific for human blood, but
6 we use it as a screening tool. It's a --

7 Q. What test is that?

8 A. It's phenolphthalein.

9 Q. Okay.

10 A. It is a color test. If you -- If it's probably
11 blood, you get a bright pink color.

12 Q. Okay.

13 A. So, I did that on the stain. It appeared to be
14 that it was consistent with a possible
15 bloodstain, so I collected that one.

16 Q. Okay. And, then, to collect it, what do you do?

17 A. I took a sterile cotton swab, wet it with sterile
18 water and just, basically, wiped it over the
19 surface until I had enough on the cotton swab
20 that I felt I could get a DNA profile from.

21 Q. Okay. And is that cotton swab, the tip of it,
22 like saturated then, or just a small amount of
23 the bright pink on it, or?

24 A. I use a different swab. I use the swab -- a swab
25 for the phenolphthalein to test that. Then I

1 throw that away. Then I take a another swab to
2 actually take my sample for DNA extraction.

3 Q. Okay. You throw that away, where do you throw
4 that away?

5 A. Into a biohazard box.

6 Q. And then what do you do? Then you take a
7 different cotton swab and you swab the stain?

8 A. Correct.

9 Q. Then what do you do with that swab?

10 A. I allow it to air dry and then I put it into a
11 paper coin envelope and I mark on the outside the
12 item designation, the laboratory number. Any
13 evidence or any case that's opened into the
14 laboratory has a unique number and we use that
15 number to identify everything associated with
16 that case.

17 So I put the lab number on it. It was
18 Item A, and it was the first stain that I
19 collected so it was A1.

20 Q. Okay. And you allow it to air dry; how long does
21 that take?

22 A. It wasn't very wet. I probably -- What I have is
23 a rack and this -- the cotton swabs, as I collect
24 the stains, are put into this rack and they are
25 left there until I'm completed. Then I put them

1 all into a envelope.

2 Q. And how big is this rack, a foot long?

3 A. No, not that long.

4 Q. Six inches?

5 A. Yeah.

6 Q. Okay. So, like square, six by six?

7 A. Yeah.

8 Q. How many different cotton swabs can fit in there?

9 A. I usually put about three, then I use another
10 one.

11 Q. And then you put those, where? Is there like a
12 table or something there you put them on?

13 A. Yes, it's an area that I designated as my work
14 surface. It has paper down and it has all the
15 tools, the forceps and everything that I use for
16 examination.

17 Q. Okay. And that little holder stand sits on that
18 table?

19 A. Correct.

20 Q. And, um -- So you take the cotton swab, put it in
21 the stand, you go on to the next stain, then, at
22 that point?

23 A. Correct.

24 Q. What do you do with that stain, the next stain,
25 same process?

1 A. Same process, correct.

2 Q. Okay.

3 A. Yes.

4 Q. Okay. Is it the same thing with the blood test
5 first, the presumptive blood test first?

6 A. Yes. And then that's discarded into a biohazard
7 box and then I take my actual sample.

8 Q. Where is that biohazard box; is that also on that
9 little table, the work table?

10 A. It's in a -- It's a box on the floor, it's a big
11 biohazard box right by where I am.

12 Q. Is it like covered, or?

13 A. What do you mean by cov -- No, it's open.

14 Q. It's just an open box?

15 A. An open box, yeah.

16 Q. Okay. You're sort of pitching stuff into?

17 A. Correct.

18 Q. Okay. Do you remember which stain you went to
19 next?

20 A. Yes, I do. I did not -- I believe there were a
21 total of 10 stains that were -- I actually
22 swabbed and collected. I only did DNA on four of
23 them. The next stain was on the cargo area, the
24 back cargo area of the car. There's a little
25 plastic strip that you get into the car. I don't

1 know exactly what it's called, but that was the
2 second stain that I took.

3 Q. That's sort of like the -- the rear of the car,
4 where the sort of carpeting ends and there's sort
5 of a little plastic area there?

6 A. That's correct.

7 Q. Right where the hatch back opens?

8 A. Correct.

9 Q. Okay. And that's -- that's the stain you did
10 next?

11 A. Yes.

12 Q. Okay. How do you get access to the stain in the
13 interior of the cargo portion? Did you go
14 through the door, or how did you get to that?

15 A. No, I just leaned over.

16 Q. You leaned over. Okay. How big of a lean is
17 that?

18 A. I don't recall, maybe a few feet.

19 Q. Okay.

20 A. Just a reach. I could comfortably reach it.

21 Q. Are you touching anything else when you are doing
22 that?

23 A. No.

24 Q. Okay. So, then this strip, you do that one next.
25 How big is that stain?

1 A. I don't recall. I would have to look at my notes
2 to see exactly.

3 Q. Okay. You would refresh your recollection by
4 looking at your notes?

5 A. Yes.

6 Q. Okay.

7 THE COURT: I'm going to interpose my own
8 objection here. Is this one of the ones you
9 analyzed?

10 THE WITNESS: No.

11 THE COURT: For purposes of this hearing, I
12 don't believe it's relevant.

13 Q. (By Attorney Johnson) Okay. So, this is not one
14 of the stains you analyzed for DNA?

15 A. That is correct.

16 Q. Okay. Why don't we go to the next stain you
17 analyzed for DNA?

18 A. Okay.

19 Q. Where was that?

20 A. There was a stain on the driver's seat. It was
21 actually in the fabric of the seat. I cut that
22 out.

23 Q. Okay. Using what?

24 A. A pair of scissors.

25 Q. Okay. Where did the scissors come from?

1 A. In the laboratory, my work scissors.

2 Q. Are they from that same work area?

3 A. Yes. Yes, all the tools that I use for my
4 processing and examination are all in the same
5 area.

6 Q. Okay. That's that little table where the little
7 stand for the swabs is sitting?

8 A. Correct.

9 Q. And how big is that table, again?

10 A. I don't recall exactly, probably maybe 3 feet by
11 2 feet.

12 Q. Okay.

13 A. It's a laboratory counter.

14 Q. Okay. All right. So -- So you get the pair of
15 scissors and your, um, and, um, you cut out
16 that -- that stain out of that driver's, uh,
17 seat; is that right?

18 A. Yes.

19 Q. Okay. And how big is that stain?

20 A. It's probably the size of my thumbnail.

21 Q. Okay. Which is half an inch? I mean, an inch?

22 A. Quarter of an inch.

23 Q. Quarter of an inch. Okay. You cut that out;
24 what do you do with it?

25 A. I put that in a coin envelope and also label it

1 with a case number, the date, and my initials,
2 and the item designation that I give it, which in
3 this case I believe it was a six.

4 Q. Okay.

5 A. It was the sixth thing I took.

6 Q. So that -- now would that stain -- You don't take
7 a swab of that stain right there?

8 A. No.

9 Q. When do you -- So what do you do with that
10 envelope?

11 A. That's put on my work surface.

12 Q. Okay.

13 A. It's folded over and sealed and put on my work
14 surface.

15 Q. Okay. In the meantime, you collected, I assume,
16 four other stains?

17 A. Correct.

18 Q. And those are all with Q-tips?

19 A. Yes, they are.

20 Q. Okay. And those Q-tips are stored in that same
21 little --

22 A. Yes.

23 Q. Okay. That's the same little stand, Q-tip drying
24 stand or something?

25 A. Yes.

1 Q. Okay. Um, and, um, and then what's the next --
2 next thing you do?

3 A. The next stain that I process?

4 Q. Yes.

5 A. The next stain that I collected, that I actually
6 did DNA on, was the stain that was right to the
7 right of the ignition.

8 Q. Okay. And how do you get that stain?

9 A. Again, I collected that on a cotton swab.

10 Q. Okay. Is that after you have done the
11 presumptive test?

12 A. Yes, same process with each one of these. Each
13 one of these stains I do a presumptive test first
14 and then I do the actual collection of the
15 sample.

16 Q. Okay. And how do you decide which ones you
17 are -- I mean are you taking swabs that you
18 intend to do DNA analysis --

19 A. Yes.

20 Q. -- on from each one of these stains?

21 A. All of the stains that are on a hard surface,
22 like the dashboard or a metal part of a car, we
23 can't actually cut that metal out, so the way to
24 remove those stains is to use a cotton swab and
25 actually take the stain off.

1 If it's a stain on a piece of fabric --
2 We don't -- it's much more efficient and we get
3 more sample out of it when we cut the stain. So
4 all the stains that were collected from like
5 cloth seats, the stain was actually cut. If it
6 was a stain that was on a hard surface, it was
7 collected with a cotton swab.

8 Q. Okay. And -- But did you not analyze some of
9 these stains later, for DNA, or did you analyze
10 all of them?

11 A. No, I didn't. I only chose four to analyze.

12 Q. Okay. And how did you decide which four?

13 A. Um, it was -- I basically just took a random
14 sampling of some of the stains -- as I said, Nick
15 Stahlke, one of the other analysts in the
16 laboratory, is proficient in blood spatter --
17 under his direction. He said that some of the
18 stains appeared to be possible drips. Those
19 stains I collected for sure. And that's how I
20 decided which ones to actually look at.

21 Q. Okay. So, he -- he basically told you which ones
22 he thought looked like blood?

23 A. Right.

24 Q. Okay.

25 A. Not looked like blood, but looked like they were

1 drips of blood. The stain -- I collected -- All
2 the stains I collected gave me a positive
3 phenolphthalein for blood and were consistent
4 with the appearance of blood.

5 Q. Okay.

6 A. I chose to do DNA on certain stains, the ones
7 that appeared to be drip marks or that appeared
8 to be isolated stains, not with the larger
9 bloodstain. I only did one of those.

10 Q. Okay. And the reason for that was because they
11 appeared to have dripped from the other stains?
12 I guess I'm --

13 A. Well, I mean they could have appeared to have
14 dripped from anything, from someone that was
15 injured, from an object, from a weapon, from
16 anything. They just appeared to be different.

17 A lot of times when we process cars, or
18 any kind of evidence, that's part of the process,
19 is to decide which stains maybe look different,
20 which stains are separated from other stains,
21 which stains might be -- give a little more
22 probative evidence than the --

23 For instance, in this case, the large
24 stain in the back, I took that stain, but there
25 were other smaller stains associated with that.

1 I took that stain, but I didn't take, you know,
2 four or five samples from that stain, I just took
3 one sample from that stain.

4 The other samples, perhaps they were
5 from another source of the blood. So that's why
6 we choose certain samples to take and certain
7 ones not to examine.

8 Q. Okay. So the -- And how long does this process
9 take?

10 A. To process a car?

11 Q. Right.

12 A. My portion of it, it took me most of the day.

13 Q. Okay.

14 A. And then someone else had to process it for
15 fingerprints. You know, it depends on the
16 vehicle. Sometimes they take a day, sometimes it
17 may be two or three days. It just depends.

18 Q. And so there is a total of 10 stains that you get
19 presumptive positive blood tests from?

20 A. Correct.

21 Q. And I think you said four of those you also
22 swabbed for -- with a swab, a cotton like, for
23 DNA?

24 A. All of them -- All of those 10 I collected.

25 Q. For DNA?

1 A. Right --

2 Q. Okay.

3 A. -- with a swab --

4 Q. Okay.

5 A. -- but I only chose to examine four of them --

6 Q. Four. Okay.

7 A. -- for DNA.

8 Q. All right. And you go through the same process

9 in each one?

10 A. Yes.

11 Q. And how many of them are drying -- drying at the

12 same time?

13 A. Well, I don't recall exactly, but as they are

14 dry, I take them out and put them into the

15 envelope as I, you know, as I go along.

16 Q. Okay. And how can you tell if they are dry; do

17 you like feel them?

18 A. Actually, I put them in the envelope and then I

19 reopen them. I reopened them at my desk and let

20 them air dry.

21 Q. Okay. So they are not quite dry, you put them in

22 the envelope --

23 A. They weren't -- I mean, they were put in the

24 envelope, then I took them up to my desk and I

25 opened -- the end of them was opened so the air

1 could circulate. But they were never taken out
2 of the envelope again.

3 Q. Okay. When you do that, how are you carrying
4 them up to your office?

5 ATTORNEY KRATZ: Objection, discovery,
6 Judge. This is well beyond the preliminary hearing.

7 THE COURT: Sustained.

8 Q. (By Attorney Johnson) Um, okay. So then, um, you
9 are finished processing the car and, um, you are
10 going to do the, uh, the analysis of these
11 stains; is that right?

12 A. Yes.

13 Q. Um, and how do you do that?

14 A. Um, these stains that I recovered?

15 Q. Right.

16 A. I take each of the stains. I cut a small portion
17 of the stain. I put it in a tube and I do a
18 procedure that basically extracts the DNA from
19 the cells. Um, I go through a process where I
20 clean it up. And in the end, I end up with a
21 vial with about 45, 50 microliters of liquid that
22 has nothing but DNA in it.

23 Q. Okay.

24 A. I take that DNA. I quantitate it, which means I
25 try and find out how much DNA, what the

1 concentration is of the DNA. Some samples have a
2 lot of DNA. Some samples don't have very much.
3 So I have to quantitate it to find out how much
4 is in there. I then set up these samples to be
5 amplified for DNA.

6 In this type of DNA analysis, we're
7 looking for specific fragments of DNA. These
8 fragments have to be amplified, which I set them
9 up for that process in the laboratory. Then I
10 run them on an instrument that detects those
11 fragments of DNA that we're looking for. When
12 the data comes off of the instrument, what I get
13 is a composite profile of DNA fragments that
14 characterizes that particular stain.

15 Q. Okay. So with the amplification, that's the PCR;
16 is that right?

17 A. Yes.

18 Q. Okay. And then you do, um, the -- the process by
19 which you look for the -- the -- the repeats, is
20 that right, the short tandem repeats?

21 A. Yes. It's a PCR based system. And STRs are the
22 fragments we're looking for. We use a
23 commercially prepared kit that tags those
24 fragments with a fluorescent dye and then our
25 instrumentation detects that dye and that's how

1 we get the actual size that comes out of the
2 fragments.

3 Q. Okay. And then, um, that ultimately ends up,
4 you -- you look for, is it 13 different
5 locations?

6 A. There are 13 core loci. In our laboratory we use
7 a kit that is produced by Promega, which has,
8 actually, two extra ones. There are no
9 statistics associated with those extra ones, but
10 we do the 13 core loci that the FBI requires, in
11 addition to two extra ones.

12 Q. Okay. So, basically, when you talk about core
13 loci, what you are talking about is 15 different
14 points, 15 different locations, right?

15 A. Yes.

16 Q. Okay. And then you are looking for what's at
17 those particular locations?

18 A. You are looking at fragments of different sizes.
19 For instance, at a particular locus, say D5, I
20 might be a 14/15, someone else is a 15/16. So
21 they have one fragment that's a little bit
22 bigger. Those fragments are determined -- The
23 difference in those fragments is determined by
24 the size of them.

25 Q. And this is all done by a computer, right, a

1 machine?

2 A. It's done by a 310 capillary electrophoresis
3 instrument?

4 (Court reporter asks her to repeat her answer.)

5 A. 310 capillary electrophoresis instrument. And
6 that detects the fragments as it goes through the
7 instrument with the dyes attached to it and that
8 tells us what the size of those fragments are.

9 Q. Do you get like a printout then --

10 A. Yes.

11 Q. -- with some peaks on it?

12 A. With peaks on it, yes.

13 Q. Okay.

14 A. And those peaks represent the fragments.

15 Q. Right. So, like if you -- you get sort of a
16 chart and one particular area there's -- which
17 represents a particular location on the DNA loci,
18 or locus, basically, I guess, if you are talking
19 about one, then you look for two peaks, if there
20 is two, or one if there's one and you -- and
21 that's the 14, or the 15, or the 16, or whatever?

22 A. Correct.

23 Q. Okay. And for each of these 13 loci, you will
24 get a reading of however many peaks there are in
25 that particular DNA sample?

1 A. Correct.

2 Q. At that -- at that locus?

3 A. Correct.

4 Q. And do you do the -- the reading of that graph,
5 that -- that chart with the peaks?

6 A. Yes, I do.

7 Q. Okay. So -- So, you are the one who -- who looks
8 and says that -- the computer tells you --

9 A. Well, we actually have a computer program, but I
10 actually analyze -- I mean, each analyst is
11 responsible for looking at their own data and
12 making those interpretations.

13 Q. Okay. So, that's your call as to whether a
14 particular peak actually represents the presence
15 of an allele there versus some background noise
16 and things like that that sometimes gets printed
17 out as well?

18 A. Correct.

19 Q. Okay. Um, and you go through this process for
20 each of these 13 core loci that the FBI tells you
21 to look at, right?

22 A. Correct.

23 Q. And plus, this particular commercially
24 manufactured thing, this is the PowerPlex 16; is
25 that right?

1 A. Yes.

2 Q. It gives you two more, that's like penta E and
3 penta D, or something like that; is that right?

4 A. Correct.

5 Q. Okay. And then -- So you look for those
6 additional loci as well?

7 A. Correct.

8 Q. Okay. And then, um, and then do you also look to
9 see if there's a, um, a genetic marker for sex?

10 A. Yes.

11 Q. Okay. And you did that with the samples that you
12 got, four of them; is that right?

13 A. Yes, from that item of evidence.

14 Q. Okay. And do you remember which four?

15 A. I believe it was A6, A8, A9 and A12. Um, A6 was
16 a stain from the driver's side front seat. A8
17 was a stain near the ignition. A9 was on the
18 front seat in the passenger side. And A12 was a
19 stain that was, um, it was between -- it was on
20 the passenger side, between the front and back
21 door, that metal panel. Um, I don't know what
22 you call it. It was on the passenger side, the
23 metal piece that -- that -- where the door
24 closes.

25 Q. Okay. Like the frame?

1 A. Yeah.

2 Q. Okay.

3 A. On the side of the frame.

4 Q. Okay. And that was on the side of the frame on
5 the passenger --

6 A. Yes.

7 Q. -- side in the rear?

8 A. Right.

9 Q. Is this a four-door or two-door?

10 A. Four-door.

11 Q. Four-door. Do you ever do any other test with
12 regard to whether or not it is blood?

13 A. No, we do not.

14 Q. Now, you generate a DNA profile based on the --
15 the presence of different alleles at these
16 different loci, correct?

17 A. Yes.

18 Q. Okay. And, then, did you compare that to, um,
19 the DNA Data Bank, Wisconsin DNA Data Bank?

20 A. Originally, yes.

21 Q. So that was the first thing you did?

22 A. Um, after I generated the profile, I requested a
23 keyboard search, um, through the Milwaukee Data
24 Bank.

25 Q. Okay. Why did you do that?

1 A. Because I was asked to do that.

2 Q. By who?

3 A. The police department. Um, there was -- My
4 initial testing indicated that it was a male
5 individual. Um, I did not have any samples from
6 anyone, um, so we thought someone may be in there
7 that matched, so we did a keyboard search. Um, I
8 think between myself and the DCI agents -- and I
9 don't remember who -- we had a discussion and it
10 was decided that we would do it.

11 Q. Okay. How -- How broad a keyboard search did you
12 do?

13 A. I did not actually do it. Dan Haase did it, who
14 is the -- in charge of the data bank over in
15 Milwaukee. I sent him the profile that I
16 developed from these stains. Um, and he searched
17 all the state -- the convicted offender -- State
18 Convicted Offender Data Base.

19 Q. Okay. But did you do, um, a search -- I mean, do
20 you know if he did a keyboard search just based
21 on those specific alleles at each one of those
22 different loci, or did he do a broader search
23 whereby he would put in more than those two
24 alleles for each loci? Do you know what I'm
25 asking you?

1 A. No, you would just --

2 ATTORNEY KRATZ: Judge, I'm going to
3 object. Whatever he's asking is well beyond a
4 preliminary hearing.

5 THE COURT: The objection is sustained;
6 it's discovery.

7 Q. (By Attorney Johnson) Now, with regard to the
8 key, when did you get the key?

9 A. I believe it was the 8th. Let me check my notes
10 to make sure.

11 Q. You are using your notes there to refresh your
12 recollection; is that correct?

13 A. Yes, I am.

14 Q. Can I just -- Can we approach?

15 THE COURT: Yes.

16 (Side bar taken.)

17 Q. (By Attorney Johnson) Does that refresh your
18 recollection as to when you got the key?

19 A. Yes.

20 Q. Okay. When did you get it?

21 A. November 8th.

22 Q. Okay. And how did it come to you?

23 A. It came into the laboratory from a DCI agent,
24 Matthew Joy.

25 Q. How was it packaged?

1 A. In a brown paper bag.

2 Q. Okay.

3 A. With evidence tape. I opened it up and then --

4 Q. I'm sorry, where was this taking place, in your
5 office?

6 A. No, in the garage.

7 Q. In the garage?

8 A. Yes.

9 Q. Same garage?

10 A. Yes.

11 Q. Okay. And is there like a table or something
12 that's set up to do this kind of thing?

13 A. No, I believe it was taken in by an evidence
14 specialist and then it was brought down to me,
15 because they wanted it swabbed before it could be
16 tested on the car to see if it -- it would turn
17 the ignition.

18 Q. Okay.

19 A. So they gave it to me. I had gloves on. I
20 opened the package. I swabbed the area, the
21 black part of the key that does the crank, with a
22 cotton swab. There was no visible staining on
23 it. That's when I took the key and put it in the
24 ignition and tested the lock on the door.

25 Q. Okay. So you, um, you swabbed the black part; is

1 that the only part you swabbed?

2 A. Yes.

3 Q. Okay. And then what do you do with that swab?

4 A. That was also laid out in my work space to air
5 dry.

6 Q. Okay. I assume there's -- that's the one swab
7 there at this time?

8 A. Yes, this was the next day.

9 Q. Okay. Um, what is the procedure? Is this the
10 same work space that you used down in this garage
11 all the time or was this sort of a temporary set
12 up?

13 A. It was a temporary set up. It's not my work
14 space that I use all the time. It's just set up,
15 an area set up for processing cars.

16 Q. Okay. And -- And it was brought to you there
17 because the car was still there and you expected
18 to -- to eventually try the key on the car; is
19 that the idea?

20 A. Yes.

21 Q. Okay. And this was -- Um, what's the procedure
22 for dealing with that work space in between the
23 time you examined the car and the time you
24 examined this key?

25 A. Well, it's used by multiple people, I mean,

1 whoever needs the space to work on the car.

2 Before I start working on it, I clean it down
3 with bleach and put down white paper.

4 Q. Okay. And what about the little Q-tip holder?

5 A. That's also cleaned down with bleach, at my desk.

6 Q. You do that personally?

7 A. Yes.

8 Q. Okay. And so you -- you -- you do that everyday
9 at the end of the day, or how do you do that?

10 A. We do it several times a day, depending on what
11 kind of evidence we have out, what we're working
12 on. We clean our pipettes. We clean our work
13 bench. We clean our forceps, our -- everything,
14 numerous times.

15 Q. Okay. Do you know how many times this was
16 cleaned?

17 A. No, I don't.

18 Q. In between the car and the key, you don't know?

19 A. No, I don't know how many times. It was cleaned,
20 because I always clean it every time I use it.

21 Q. Okay. You clean it right at the beginning of
22 processing any piece of evidence?

23 A. Yes, I do.

24 Q. Okay. And so then you swab this, this air dries,
25 and then what do you do with the key?

1 A. Then I put it back into the paper container and I
2 believe I retained custody of it.

3 Q. Were you the person that tried it in the ignition
4 then, too?

5 A. Yes.

6 Q. Okay. And you did that right after you swabbed
7 it?

8 A. Yes.

9 Q. Right. Immediately --

10 A. I -- As soon as I was done swabbing it, I tried
11 it in the car.

12 Q. Okay. And you tried it in the ignition and you
13 said, also, in the door; is that right?

14 A. Yes. I locked the door and it opened the lock.

15 Q. Okay. And then you turned the ignition and it
16 turned over?

17 A. Actually, it didn't turn over because, I
18 believe -- It didn't crank. I believe the
19 battery was disconnected?

20 Q. Oh.

21 A. But it -- I mean it turned completely over. It
22 just didn't crank the engine.

23 Q. Okay. Um, and then, um, when do you get the, um,
24 the samples from -- Mr. Kratz referred to them as
25 the intimate samples -- when do you get those

1 things?

2 A. Um, the buccal swabs?

3 Q. Right.

4 A. The standard samples?

5 Q. Right.

6 A. I will have to check my notes and evidence.

7 Q. Go ahead.

8 A. There were three buccal swabs that were

9 submitted, and they were all three submitted on

10 the 11th of November.

11 Q. Okay. And who were those from?

12 A. Allan Avery, Bryan Dassey, and Steven Avery.

13 Q. Okay. Those are the three that you got?

14 A. Buccal swabs, yes.

15 Q. Okay. And those -- And you generated profiles

16 off of those three?

17 A. Yes, I did.

18 Q. Okay. And that's the same process that you did

19 with generating the profile from the -- from the

20 stains in the car?

21 A. Yes.

22 Q. And how did those -- those swabs come to you?

23 A. How are they packaged?

24 Q. Right. How did you get them?

25 A. They came into the laboratory --

1 THE COURT: I'm going to impose my own
2 objection here, again. This goes to discovery.

3 ATTORNEY JOHNSON: Okay.

4 Q. (By Attorney Johnson) Now, the partial profile
5 that you received from the, um, the charred
6 materials, when did you receive those?

7 A. The 11th as well.

8 Q. Okay. And, um, you generated a partial profile,
9 that's because you could only -- there was only
10 enough DNA material to -- to find seven out of
11 the 13 loci; is that the idea there?

12 A. No, I suspect in this case it was because the DNA
13 was degraded.

14 Q. Okay.

15 A. It was not a very, um, good sample for DNA.

16 Q. Okay. And so what does that do to it?

17 A. Um, when you look at a DNA profile, as you are,
18 um, the larger -- when a DNA sample -- when DNA
19 begins to degrade, the larger fragments will
20 begin to break up and we don't detect them.

21 So, when you look at a sample where the
22 smaller fragments are detected, which was the
23 case in this particular instance, if it's a
24 degraded sample, you usually see the larger
25 fragments drop out. So, I only got fragments at

1 seven loci instead of 13.

2 Q. Okay. And -- and, um, so those -- those --
3 those, um, fragments that you got on the seven
4 loci would have been larger fragments?

5 A. Smaller fragments.

6 Q. Smaller fragments. The larger ones would drop
7 out?

8 A. Yes.

9 Q. Okay. The loci would be present, you just
10 wouldn't see any peaks in those particular
11 places; do I have that right?

12 A. Well, the loci basically just refers to a
13 location.

14 Q. Right.

15 A. The peaks are the actual fragments that are
16 there, but any time a biological sample starts
17 to -- such as DNA -- starts to degrade and break
18 up, it basically just breaks apart. And so the
19 DNA at those places are beginning to break apart.

20 Q. So you don't -- So what, are there no peaks at --

21 A. Nothing.

22 Q. -- those loci?

23 A. Right. There's nothing.

24 Q. Nothing --

25 A. Nothing.

1 Q. -- on the printout, there's just nothing there?

2 A. Correct.

3 Q. Okay. Using those -- At those seven different
4 loci, did you get two alleles at each one; do you
5 know?

6 ATTORNEY KRATZ: Objection, discovery,
7 Judge.

8 THE COURT: Sustained.

9 Q. (By Attorney Johnson) How do you come up with the
10 calculation of one in a billion in the Caucasian
11 population?

12 A. We use the FBI's Data Bank and, basically, each
13 one of these fragments are inherited
14 independently of each other. So, we can multiple
15 the frequencies of each one of these fragments,
16 how frequent -- how common or how rare that
17 particular fragment is in the population.

18 So, by combining those numbers, by
19 multiplying the frequencies of the fragments of
20 the alleles that I did get, and comparing that to
21 the FBI's data base, the frequency is one in a
22 billion in the Caucasian and the other numbers
23 that I stated.

24 Q. At any particular loci, you will get two alleles,
25 correct?

1 A. If that person is a heterozygote, yes.

2 Q. Okay. What does that mean?

3 A. It means they inherit -- You always inherit half
4 of your DNA from your mother and half from your
5 father. If you are heterozygote, you inherit a
6 different fragment of DNA from your mother and a
7 different from your mother -- from your father.

8 If you are homozygote, then you inherit
9 the same one from each parent.

10 Q. So, then you would have two 14's at the same
11 locus?

12 A. You would only have one peak.

13 Q. Okay.

14 A. And it would be 14.

15 Q. Okay.

16 A. So that person is homozygote.

17 Q. Okay. Um, if the DNA is not degraded, it doesn't
18 take much to get a profile; is that right?

19 A. Correct.

20 Q. How much?

21 A. When we amplify the DNA, we usually shoot for
22 around one nanogram.

23 Q. And how much is that?

24 A. I don't recall exactly.

25 Q. Okay. I'm sorry, I think I may have asked this,

1 I'm not sure. When you process the vehicle, you
2 wear a lab coat; is that right?

3 A. Yes.

4 Q. Gloves?

5 A. Yes.

6 Q. And safety glasses?

7 A. Yes.

8 Q. And -- And do you wear a face mask?

9 A. No, I didn't.

10 Q. Other people there wearing face masks?

11 A. No.

12 Q. Okay. Other people there wearing gloves?

13 A. Yes, everybody wears gloves.

14 Q. Okay. And -- And any other protective clothing?

15 A. I don't recall what the other people were
16 wearing.

17 Q. Okay. But you, yourself, no other protective
18 clothing, nothing like on your feet, anything
19 like that?

20 A. No, I didn't have anything like that on.

21 Q. Okay. And you wear gloves throughout the entire
22 process?

23 A. Yes.

24 ATTORNEY JOHNSON: That's all the questions
25 I have. Thank you.

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THE COURT: Any redirect?

ATTORNEY KRATZ: No, Judge.

THE COURT: All right. The witness is excused.

ATTORNEY KRATZ: We will move the admission of Exhibits 12, 13, 14, and 15 at this time.

THE COURT: Are there -- Is there any objection to 12, 13, 14 and 15? I believe 12 and 13 are photos and 14 and 15 are lab results.

ATTORNEY LOY: No objection for purposes of this hearing.

THE COURT: All right. Those exhibits are admitted.

ATTORNEY KRATZ: Your Honor, the last piece of evidence that's being offered, and is by stipulation, is Exhibit No. 16, which is a certified copy of a death certificate -- death certificate for that of Teresa M. Halbach, having date of birth, March 22nd, 1980.

That death certificate was filed by Michael Klaeser, Calumet County Medical Examiner. It was filed in the Manitowoc County Register of Deeds Office today. And the designation of cause of death is that of a homicide. I will provide the Court with Plaintiff's Exhibit 16 at this

1 time.

2 THE COURT: Any objection to Exhibit 16?

3 ATTORNEY LOY: Not for purposes of this
4 hearing.

5 THE COURT: All right. Exhibit 16 is
6 received. Is there anything further from the State?

7 ATTORNEY KRATZ: State rests, your Honor.

8 THE COURT: Is there any evidence to be
9 offered from the defense?

10 ATTORNEY LOY: No, your Honor.

11 THE COURT: Do the parties -- either party
12 wish to make argument with respect to either of
13 these cases?

14 ATTORNEY KRATZ: I do not, Judge. I'm
15 going to move the Court for bindover, asking the
16 Court, with the evidence and the reasonable
17 inferences, to find probable cause that a felony has
18 been committed, that the defendant probably
19 committed that felony, and bind him over for trial.

20 THE COURT: Mr. Loy, or Mr. Johnson?

21 ATTORNEY LOY: Your Honor, we'll simply
22 move to dismiss, for the record.

23 THE COURT: All right. Based on the
24 evidence presented, the Court is going to determine
25 that there's probable cause to believe that a felony

1 has been committed in each of these cases, that is,
2 05 CF 375 and 05 CF 381. The Court will schedule
3 these matters for an arraignment. I will ask the
4 clerk to get me my calendar.

5 Counsel, I know there is a bail
6 reduction motion as well. We have run out of
7 time to hear it today. I can hear it at the same
8 time as the arraignment, if the parties wish.

9 ATTORNEY KRATZ: That's fine, Judge.

10 THE COURT: Mr. Loy.

11 ATTORNEY LOY: Your Honor, I could try to
12 be very brief with my bail motion.

13 THE COURT: I'm not -- I said 5:00 was the
14 deadline today. We stretched that a bit already.

15 ATTORNEY LOY: I appreciate that, your
16 Honor. That's fine.

17 ATTORNEY KRATZ: If I may, Judge, and I
18 understand that the Court had anticipated this, the
19 State is going to file with the Court at this time a
20 three count Criminal Information in case No. 05 CF
21 381. We are merging the three counts from the two
22 different Complaints into one Information. It was
23 contemplated that Mr. Loy would ask for a separate
24 arraignment date and we obviously have no objection
25 to that.

1 ATTORNEY LOY: We have been served with a
2 copy of the Information, your Honor. We would ask
3 for an arraignment at a later date.

4 THE COURT: All right. Well, the choices
5 are as follows: Next week I have some civil trials
6 scheduled. I do not know the status. There's also
7 some criminal trials, actually. The calendar is
8 thinning out a bit, but I have no days that are open
9 at this time. So, if you want to take a contingent
10 date next week, I can look at that, otherwise we're
11 looking into January. I can give you -- How about
12 3:00 on Monday, January 9th.

13 ATTORNEY KRATZ: I'm actually in a jury
14 trial that afternoon. Did the Court have
15 something -- did you say next week Tuesday or
16 Wednesday?

17 THE COURT: Well, what I said is, at this
18 time I have got trials scheduled next week. I have
19 got two trials scheduled for Tuesday and one for
20 Wednesday.

21 ATTORNEY LOY: Your Honor, actually, we
22 would prefer a January date because there are some
23 things we need to do.

24 THE COURT: All right. How about 3:00 on
25 Thursday, the 12th.

1 ATTORNEY KRATZ: I'm sorry, Judge, I'm
2 unavailable then, as well. The entire next week I
3 am available, as well as the week of the 23rd.

4 THE COURT: All right. How about 9:00 on
5 the 17th?

6 ATTORNEY KRATZ: That would be fine.

7 ATTORNEY LOY: That's fine with us.

8 THE COURT: Works fine with both parties,
9 very well, that would be for the arraignment and
10 bail reduction hearing.

11 ATTORNEY KRATZ: Just so the parties --
12 should we anticipate bringing our calendars to
13 schedule future matters at that time as well, your
14 Honor?

15 THE COURT: That would probably be
16 advisable.

17 ATTORNEY KRATZ: Thank you, Judge.

18 ATTORNEY LOY: Thank you, your Honor.

19 THE COURT: January 17th. We are adjourned
20 for today.

21 (Proceedings concluded.)

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1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 20th day of January, 2006.

Diane Tesheneck, RPR
Official Court Reporter

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,
4 PLAINTIFF, ARRAIGNMENT & BAIL MODIFICATION
5 vs. Case No. 05 CF 375 & 05 CF 381
6 STEVEN A. AVERY,
7 DEFENDANT.
8

9
10 **DATE:** JANUARY 17, 2006

11 **BEFORE:** Hon. Patrick L. Willis
12 Circuit Court Judge

13 **APPEARANCES :**

14 KENNETH R. KRATZ
15 Special Prosecutor
16 On behalf of the State of Wisconsin.

17 ERIK R. LOY
18 Attorney at Law
19 On behalf of the Defendant.

20 CRAIG JOHNSON
21 Attorney at Law
22 On behalf of the Defendant.

23 STEVEN A. AVERY
24 Defendant
25 Appeared in person.

* * * * *

TRANSCRIPT OF PROCEEDINGS

Reported by Diane Tesheneck, RPR

Official Court Reporter

1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery, Case No.'s 05
3 CF 375 and 05 CF 381. These matters are scheduled
4 for an arraignment and a bail modification motion
5 hearing today. Will the parties state their
6 appearances for the record, please.

7 ATTORNEY KRATZ: State of Wisconsin appears
8 by Calumet County District Attorney Ken Kratz
9 appearing as Special Prosecutor.

10 ATTORNEY LOY: Steven Avery appears
11 personally and by his Attorneys Erik Loy and Craig
12 Johnson, your Honor.

13 THE COURT: Very well. It's my
14 understanding that the State has filed an
15 Information in Case 05 CF 381, but has not filed an
16 Information in 05 CF 375; is that correct, Mr.
17 Kratz?

18 ATTORNEY KRATZ: That is correct, Judge.
19 We have joined the three counts, the two counts from
20 381, and the single count in 375, in a single
21 Information in 05 CF 381.

22 THE COURT: All right. The law is, then,
23 in the case of 05 CF 375, that if the Information is
24 not filed within 30 days of the bindover, the matter
25 is dismissed without prejudice. Does either party

1 have any objection to the Court dismissing that
2 matter?

3 ATTORNEY KRATZ: No, Judge, that should
4 occur.

5 ATTORNEY LOY: No objection, your Honor.

6 THE COURT: All right. Then the Court will
7 dismiss Case 05 CF 375. Mr. Loy, has your client
8 received the Information in Case 05 CF 381?

9 ATTORNEY LOY: We have the Information,
10 your Honor, we'll waive its reading and enter pleas
11 of not guilty to all charges, reserving our right to
12 object to the jurisdiction of the court and,
13 particularly, to object to adding the felon with a
14 gun charge to the Information in 381.

15 THE COURT: Very well. And before I accept
16 your plea, it's my understanding that the defendant
17 also wishes to file a motion to change of venue; is
18 that correct?

19 ATTORNEY LOY: We do, your Honor. We are
20 filing that today, pursuant to the statute; however,
21 we are also reserving our right to withdraw that
22 motion and to -- for Mr. Avery to insist on his
23 constitutional right to be tried by a jury from this
24 county.

25 THE COURT: Very well, the Court will note

1 that the motion has been timely filed. I will
2 receive it at this time. I will accept the
3 defendant's not guilty plea to the three charges in
4 the Information.

5 And at this time, before proceeding to
6 the bail modification motion, for purposes of
7 scheduling, I would like to set a deadline by
8 which pretrial motions, if any, if there be any
9 others, should be filed. I will hear the parties
10 with respect to that issue at this time.

11 Mr. Loy, how much time do you anticipate the
12 defense would need for such filing?

13 ATTORNEY LOY: Your Honor, there are a
14 number of potential motions in this case. I believe
15 there were 15 or 20 search warrants; we have to look
16 at those. Mr. Kratz has been very good about
17 providing us with discovery and we -- I think we
18 have the majority of those materials. I believe
19 there's still some more to come, though, and it's a
20 rather high stack of paper work.

21 What we would ask the Court to do is to
22 give us approximately two months to file motions
23 and perhaps set a status date near the end of
24 that time period. At that time, then, the Court
25 will know what we filed and scheduling could be

1 done.

2 THE COURT: All right. I started out
3 earlier with my calendar, but my judicial assistant
4 got it before I came out. So I will get my calendar
5 at this time.

6 I'm looking at Friday, March 17th, then,
7 as a date for filing of motions. And I could set
8 a status conference -- let's see -- how about
9 10:00 on Friday, March 10th; will that work for
10 the parties?

11 ATTORNEY LOY: I was wondering if you would
12 want to set the status conference for after the
13 deadline, that's the question I have.

14 THE COURT: All right. I misunderstood, I
15 thought you were leaving open the possibility you
16 might ask for a longer period. All right. Let's
17 set a status conference then for -- how about March
18 23rd, at 10:00?

19 ATTORNEY LOY: Your Honor, I'm scheduled to
20 be gone that day. Most of the rest of that week I'm
21 free, if the Court has any other time.

22 THE COURT: All right. Friday, the 24th,
23 at 10:00?

24 ATTORNEY JOHNSON: That's fine, unless we
25 could do it a little bit earlier.

1 THE COURT: Earlier in the morning?

2 ATTORNEY JOHNSON: By like 9:00.

3 THE COURT: I have got a sentencing set for
4 9 and a plea date for 9:30.

5 ATTORNEY JOHNSON: That's fine, then, 10
6 will work.

7 THE COURT: Okay. Otherwise, I could do it
8 at 8:30, but I know some folks are traveling to get
9 here. I would be happy to do it at 8:30, if it
10 works with the parties.

11 ATTORNEY JOHNSON: 8:30 is fine with me.

12 THE COURT: Mr. Kratz?

13 ATTORNEY KRATZ: It doesn't matter to me,
14 Judge.

15 THE COURT: All right. 8:30 it is, on
16 Friday, the 24th.

17 ATTORNEY KRATZ: So I understand, Judge, we
18 will be scheduling the motion hearings at that time
19 and will we at least begin to discuss potential
20 trial dates?

21 THE COURT: Yes. And I will ask the
22 parties at this time to -- after you have had a
23 chance to review the discovery, have some idea of
24 how long each of you believe the trial will take, to
25 have that information ready for the Court at the

1 time of the status conference so we can look at
2 scheduling this matter for trial at that time, along
3 with setting a motion date for any motions that are
4 filed.

5 (Partial Transcript begins here.)

6 At this time, then, the Court will move
7 on to the defendant's motion for modification of
8 bail. Mr. Loy, or Mr. Johnson, which one of you
9 will be heard on that motion?

10 ATTORNEY LOY: Your Honor, we filed --
11 actually, we recently filed an amended motion for
12 bail reduction. And the amendment, we're asking the
13 Court to consider allowing sureties. And the
14 sureties would be Mr. Avery's family.

15 They are here in the courtroom today. I
16 have talked with them. They are willing to
17 guarantee a recognizance bond. They have
18 property in the county. They own Avery Salvage
19 Yard, business and the land. And I believe that
20 that's worth somewhere in the neighborhood of 200
21 to \$250,000, if not more.

22 Mr. Avery is a lifetime resident of
23 Manitowoc County, except during a period of time
24 when he was incarcerated. He has very
25 substantial ties to this community. His parents,

1 his siblings, his children, all reside in this
2 county. And most tellingly, your Honor, early on
3 in this investigation, when evidence was found at
4 the Avery Salvage Yard, and Mr. Avery was
5 questioned, he was cooperative with law
6 enforcement.

7 He, despite knowing that he was at least
8 a person of interest, he didn't go anywhere. He
9 was up, I believe, in Crivitz at a family cabin
10 and he came back. There's no reason to believe
11 that -- that Mr. Avery would flee, um, given his
12 behavior before he was incarcerated.

13 Um, he talked with law enforcement
14 officers. He allowed law enforcement officers
15 access to his residence. I don't see, um, any
16 reason to think that Mr. Avery is likely to flee.

17 He has not been able to post the bail
18 that's currently set. I believe the bail right
19 at this time is \$500,000. Your Honor, we would
20 ask the Court to reduce the bail to a smaller
21 amount, perhaps a hundred thousand dollars, or we
22 would ask the Court -- and this, actually, would
23 be our preference -- to set the bail as a
24 recognizance bail, but a recognizance bail that
25 has to be guaranteed by, I think the wording of

1 the statute is solvent sureties. And the solvent
2 sureties would be his parents and other family
3 members.

4 I don't think that Mr. Avery would be
5 likely to violate his bail if he knew that, you
6 know, his family's livelihood was on the line if
7 he did so. So, your Honor, that would be our
8 request.

9 THE COURT: All right. Mr. Kratz.

10 ATTORNEY KRATZ: Thank you, Judge. When
11 the original bond issue was brought up, the State
12 cited Section 969.01 (4), the factors that this
13 Court should consider when determining bond. The
14 State had argued at that time for a \$1 million cash
15 bond. The Court did set \$500,000 noting the gravity
16 of the offense, the penalties involved, the degree
17 of violence that was used in this case, the degree
18 of violence he used in evidence hiding and
19 destruction, defendant's prior felony criminal
20 record, the character and strength of the evidence,
21 his history on release, and his ties to the
22 community.

23 Of those, the defendant only has a
24 positive consideration in ties to the community.
25 The rest of those factors weigh heavily in favor

1 of the Court not modifying the \$500,000 cash
2 bond. The only change since the last time the
3 Court visited the issue of bond is the Court has
4 now found probable cause that the defendant has
5 committed a felony offenses.

6 Defendant's attempts to raise bond money
7 have been well publicized. He's attempting to
8 raise bond money from sources unrelated to him.
9 And if raised -- if successful in raising money
10 from strangers or other sources that's, of
11 course, a factor for this Court to consider.
12 There's no incentive at all to comply with bond,
13 no financial incentive or other risk to violate
14 that particular kind of bond.

15 The suggestion, also, that a salvage
16 yard could be put up as a surety, does not
17 provide the incentive for Mr. Avery to not flee,
18 to be made available for future court
19 appearances. This Court also must consider
20 community safety; the degree of violence, again,
21 involved; the fact that this was a stranger, or
22 at the very best, casual acquaintance homicide
23 allegation. Risk of future violence to
24 additional victims or other members of the
25 community is substantial. For all of those

1 factors, I'm asking the Court to deny the defense
2 motion at this time. Thank you.

3 ATTORNEY LOY: Just a brief response, your
4 Honor.

5 THE COURT: Yes, Mr. Roy.

6 ATTORNEY LOY: I think it's worth noting
7 that Mr. Avery is, at this point, presumed innocent.
8 The State hasn't proved his guilt to a jury. So I
9 think it may be premature to assume any guilt on his
10 part of the allegations against him.

11 Regarding the efforts to raise bail
12 money, I think I can tell the Court that those
13 efforts have not met with a great deal of
14 success. I don't think that there's much chance
15 that -- that strangers are going to be donating
16 anything even remotely close to the amount of
17 money needed for bail here.

18 What we're really asking the Court to do
19 is to allow Mr. Avery's family to be sureties.
20 And Mr. Avery, I'm sure, would not want to
21 imperil his family's business by violating his
22 bail. And, um, that's -- that's all I have to
23 say at this point, your Honor.

24 THE COURT: All right. The factors that
25 the Court is to consider in setting bail are set

1 forth in Section 969.01 (4). Each of the parties
2 have touched on those factors in their arguments.

3 And there are a number of the factors
4 that warrant consideration of Mr. Avery's
5 request; specifically, his inability to make bail
6 as it is set now, and his lifelong residence in
7 Manitowoc County, and the fact that there's no
8 record that he's ever tried to flee before, and
9 was apparently cooperative with officers earlier
10 in the investigation of this matter.

11 There are also factors that support the
12 State's argument; specifically, the Court is to
13 consider the number and gravity of the offenses.
14 In this case, the defendant is charged with three
15 felonies including, most significantly, first
16 degree intentional homicide, which carries with
17 it a penalty of life in prison if convicted.

18 The Court also considers the -- whether
19 the alleged acts were violent in nature. And the
20 Court certainly, at this time, is making no
21 determination or venturing no opinion as to the
22 guilt or innocence of the defendant, but the
23 allegations are of a crime which is certainly
24 violent in nature.

25 And with respect to the strength of the

1 evidence, the Court has already found probable
2 cause to believe that the defendant committed a
3 felony and bound the defendant over for trial.

4 Based primarily on those considerations,
5 the Court feels that its initial determination as
6 to the appropriate bail amounts, or amount, is
7 still appropriate. So I'm not going to modify
8 bail; I'm going to leave it at \$500,000.

9 I will, however, indicate that in lieu
10 of cash, the Court would consider a mortgage of
11 property of the defendant's family, if that's
12 what's offered, providing there was a sufficient
13 showing of the equity in the property and its
14 fair market value to meet a part or all of the
15 \$500,000.

16 Mr. Kratz, I will direct you to prepare
17 the order with respect to the Court's decision in
18 this case. Is there anything further today
19 before we adjourn? Mr. Kratz?

20 ATTORNEY KRATZ: I don't believe so, Judge.
21 Thank you.

22 THE COURT: Mr. Loy.

23 ATTORNEY LOY: No, your Honor.

24 THE COURT: All right. If not, we're
25 adjourned for today.

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ATTORNEY JOHNSON: Thank you.
ATTORNEY LOY: Thank you, your Honor.
(Proceedings concluded.)

1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this day of , 2006.

Diane Tesheneck, RPR
Official Court Reporter

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, MOTION HEARING

5 vs.

6 Case No. 05 CF 381

7 STEVEN A. AVERY,

8 DEFENDANT.

9
10 **DATE:** MARCH 17, 2006

11 **BEFORE:** Hon. Patrick L. Willis
12 Circuit Court Judge

13 **APPEARANCES :**

14 KENNETH R. KRATZ & NORMAN GAHN
15 Special Prosecutors
16 On behalf of the State of Wisconsin.

17 DEAN ARTHUR STRANG & JEROME F. BUTING
18 Attorneys at Law
19 On behalf of the Defendant.

20 STEVEN A. AVERY
21 Defendant
22 Appeared in person.

23 * * * * *

24 **TRANSCRIPT OF PROCEEDINGS**

25 Reported by Diane Tesheneck, RPR

Official Court Reporter

1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery. It's Case No.
3 05 CF 381. We're in court this morning to deal with
4 a number of motions that have been filed -- or this
5 afternoon. Will the parties state their appearances
6 for the record, please.

7 ATTORNEY KRATZ: State of Wisconsin appears
8 by Calumet County District Attorney Ken Kratz. I
9 appear as Special Prosecutor and lead counsel on the
10 case.

11 Seated with me is Norm Gahn, G-a-h-n,
12 Assistant District Attorney from Milwaukee
13 County. Mr. Gahn has been appointed by this
14 Court, also, as Special Prosecutor. The record
15 should further reflect that Jeff Froehlich,
16 Assistant District Attorney from Calumet County,
17 also is present in the courtroom.

18 ATTORNEY BUTING: Good afternoon, your
19 Honor, this is Attorney Jerome Buting of Buting
20 and Williams appearing with Mr. Avery. I'm
21 co-counsel.

22 ATTORNEY STRANG: And good afternoon, as
23 well. Steve Avery is here to the far right at
24 the table, Dean Strang of Hurley, Burish, Stanton
25 on his behalf as well.

1 THE COURT: Very well. I will indicate for
2 the record that I met with counsel briefly in
3 chambers before beginning today. The first order of
4 business that we are going to take up is the
5 defendant's motion for an order limiting public
6 disclosure. And I will also indicate for the record
7 that I had a brief telephone conference with counsel
8 about this motion a week or so ago.

9 I indicated at that time that I
10 believed, that under Supreme Court Rule 20:3.6,
11 that it's the Court's understanding that further
12 trial publicity, in the form of press releases or
13 other conversations with the press by counsel,
14 would be extremely limited by that rule. And I
15 encouraged the attorneys to meet with each other
16 and try and work out an agreement for any press
17 contacts that they felt were necessary before the
18 Court would take up the issue as a contested
19 matter.

20 But I can indicate for the benefit of
21 everyone, that under that rule, the circumstances
22 in which counsel for either party are permitted
23 to communicate with the press during the course
24 of legal proceedings are quite limited. And the
25 Court expects, and I have received assurances

1 from attorneys from both sides, that they are
2 fully aware of the rule and intend to comply with
3 it.

4 There are some exceptions in the rule
5 that apply, including discussion regarding
6 information contained in public records. And
7 it's my understanding, from speaking with the
8 attorneys, that that's the matter they are
9 intending to meet with each other about to reach
10 an agreement. Counsel, I will give each of you a
11 chance to comment on the record to confirm that
12 fact.

13 ATTORNEY KRATZ: Judge, I do confirm that
14 we have discussed this matter. Mr. Strang and I
15 are, I think, very close in our positions regarding
16 Rule 3.6 and public dissemination of information.
17 I'm quite confident that should there be any need
18 for any additional information, or should there need
19 to be an agreement reached on filing of public
20 information, that that can be accomplished between
21 Mr. Strang and myself.

22 THE COURT: Mr. Strang.

23 ATTORNEY STRANG: I think now that the
24 Court has reiterated the requirements of Supreme
25 Court Rule 20:3.6 and both counsel have acknowledged

1 those, that the Court, at the moment, need take no
2 further action on that motion. I would add that,
3 it's my recollection and understanding, in the
4 course of an off the record conversation, that the
5 State agreed, that for purposes of this motion and
6 the agreement such as it is that we have reached,
7 that the Calumet County Sheriff, other agents of the
8 state or of the Sheriff's Department, would be
9 embraced within the scope of our agreement.

10 Like Mr. Kratz, I also think that, with
11 a little bit of further talking, we ought not
12 have difficulty reaching some understanding on
13 future filings, or invited response for that
14 matter, which is something that I understand
15 Mr. Kratz also thinks worthy of discussion, and
16 I'm happy to do that.

17 THE COURT: Mr. Kratz, is that correct?

18 ATTORNEY KRATZ: That is, Judge.

19 THE COURT: All right. The Court, for the
20 time being at least, will hold that motion in
21 abeyance, with the consent of the parties and,
22 hopefully, you will be able to come to an agreement
23 that will resolve that matter.

24 The next motion has to do with the
25 State's motion to amend the Complaint and the

1 Information in this case and the filing in
2 opposition of that motion from the defense. I
3 have received both the State's request to amend
4 and a memorandum in opposition from the defense.
5 Before I get to you, Mr. Strang, I guess
6 technically it's Mr. Kratz's motion to amend.

7 ATTORNEY STRANG: And I wondered if I might
8 have a moment's indulgence, since we're being
9 broadcast as I understand and may be streamed, or
10 whatever the word is, on the web. I wonder if the
11 Court, perhaps, ought not address media rules here,
12 particularly intrusion into counsel table on either
13 side, filming during recesses, that sort of thing,
14 before we move forward.

15 THE COURT: Right. It was brought to my
16 attention, and normally we have been dealing with
17 the media matters through the media coordinator and
18 representatives of the television broadcast
19 stations, and there are a few things that counsel
20 asked me to bring up, which I will later.

21 The one that should be brought up
22 immediately is that the papers that are on the
23 desk of either counsel often contain privileged
24 information. So I'm going to ask the cameras who
25 are present in the courtroom, or the --

1 specifically, the video camera, not to zoom in on
2 papers on table which may be confidential. Is
3 that what you are looking for today, Mr. Strang?

4 ATTORNEY STRANG: That and the recess
5 issue, but the Court can deal with that at a time of
6 its choice.

7 THE COURT: Mr. Kratz, I will hear from you
8 then, first, on your request to amend the Complaint.

9 ATTORNEY KRATZ: Thank you, Judge. As the
10 Court knows, the State has filed a motion to both
11 amend the Criminal Complaint and the Criminal
12 Information, which is the formal charging document
13 in felony prosecutions. The State has cited two
14 separate cases authorizing, alternatively, the
15 filing of the Amended Complaint, and also the
16 requirement, or lack of requirement, for an
17 additional preliminary hearing upon the filing of
18 new charges.

19 The State reiterates that these new
20 offenses charging Mr. Avery with three separate
21 counts -- including first-degree sexual assault,
22 false imprisonment, and kidnapping -- are not
23 wholly unrelated to the original series of
24 charges.

25 I understand Mr. Strang has filed with

1 the Court a motion challenging, not the timing of
2 the filings, but the sufficiency of the
3 information contained in the Complaint. And with
4 approval of the Court, I will address those
5 issues at this time, unless the Court wants me to
6 wait until Mr. Strang makes his argument. I have
7 received his written argument and I'm prepared to
8 address the sufficiency of the Complaint argument
9 at this time, if the court would prefer I do
10 that.

11 THE COURT: All right. Mr. Strang, as we
12 discussed in chambers, it's my understanding the
13 defense is not challenging the State's right to
14 file, at this time, an Amended Complaint and
15 Information, but rather the sufficiency of the
16 Amended Complaint and Information that's been
17 proposed; is that correct?

18 ATTORNEY STRANG: That's the bottom line on
19 that point. The State, of course, needs leave of
20 the Court to file an Amended Complaint, or for that
21 matter, an Amended Information. Leave would be
22 withheld if the timing, or some other aspect of the
23 filing, were prejudicial to the defense, in and of
24 itself, and it's not. That's not my concern. It's
25 really the reliability, or the sufficiency of the

1 Complaint, with which I am concerned.

2 THE COURT: All right. I'm not sure which
3 one of you wishes to be heard first. Mr. Kratz is
4 proposing the amendment, and I'm sure he feels that
5 the Amended Complaint with the language included is
6 sufficient, but, Mr. Kratz, I will -- since it's
7 your motion, I'm going to let you start and briefly
8 summarize for the Court why you feel it is, and then
9 I will hear from Mr. Strang.

10 ATTORNEY KRATZ: Thank you, Judge. Your
11 Honor, as this Court knows, any Complaint needs to
12 present probable cause, or proof to the level of
13 probable cause which requires a Court to look at the
14 facts contained within the four corners of the
15 Complaint, together with any reasonable inferences
16 that may be drawn therefrom.

17 Mr. Strang has complained about the
18 sufficiency of the information in the Complaint.
19 I might -- I might add that Mr. Strang, in his
20 written motion and -- excuse me -- in his written
21 pleadings, as well as other information, contains
22 a great deal of criticism of the State for
23 providing too much information within the four
24 corners of this Amended Complaint.

25 But this Court understands that

1 reliability of information within the four
2 corners of the Complaint is something that the
3 Court must find. And so the State, in providing
4 the detail that it did, argues that that was
5 necessary, absolutely required, for this Court to
6 make that finding of reliability.

7 Mr. Strang also argues that there are no
8 claims of physical evidence or other
9 corroboration in the Amended Complaint. The
10 State obviously disagrees. There is a lengthy
11 list of physical evidence that has been
12 recovered, that was seized, and in fact analyzed
13 in this case, which is all recited in the Amended
14 Complaint.

15 I'm not going to go item by item, but
16 the statements of now co-actor, Brendan Dassey,
17 in his recounting the behavior of himself and of
18 Mr. Avery that ultimately led to the death of
19 Teresa Halbach, as well as the other criminal
20 behavior, is quite detailed indeed. The State
21 does argue, Judge, that within those details, and
22 as I have mentioned, those details are
23 corroborated by physical evidence which is
24 recited for the Court within the four corners of
25 the Complaint.

1 Finally, Mr. Strang argues that if
2 Dassey's statement alone was the basis for this
3 particular prosecution, that at trial, it could
4 not stand besides the *Lilly* as well as the
5 *Crawford* case. And the State concedes that, at
6 trial, if the State intended to convict Mr. Avery
7 on Mr. Dassey's statements alone, without any
8 physical evidence, that they may be unable to do
9 so. Or if we attempted to introduce a co-actor's
10 statement, without an opportunity to
11 cross-examine, that would also be problematical,
12 require an advanced ruling.

13 But those are trial issues, Judge.
14 Those are issues that apply to Sixth Amendment
15 Confrontation and are unique to trial. I think
16 Mr. Strang, at page 9 of his brief, concedes
17 that, that although those rules appear to the
18 trial and not to an analysis under the Criminal
19 Complaint, Mr. Strang invites this Court to,
20 nonetheless, throw out the Complaint, just in
21 case, I guess, just in case the State intended to
22 only provide that statement. Well, the State
23 does not intend to provide only that evidence at
24 trial. But, again, these are trial arguments, it
25 has nothing to do with the Criminal Complaint.

1 When this Court reviews the four corners
2 of the Criminal Complaint, it will find probable
3 cause that the defendant committed each of the
4 violations as set forth. And as I have cited in
5 the **Burke** case, B-u-r-k-e, an additional
6 preliminary hearing is not required, based upon
7 the connection, or nexus, of the six criminal
8 behaviors that our alleged, that is, that they
9 are not wholly unrelated. We will ask the Court
10 grant leave to file the Amended Complaint and
11 Information. Thank you, Judge.

12 THE COURT: All right. Mr. Strang.

13 ATTORNEY STRANG: The proposed Amended
14 Complaint founder is not, of course, on a posit of
15 detail here but rather on the unreliability of the
16 detail that is included. Let me -- let me walk
17 sequentially here through the problem that confronts
18 the Court.

19 There was an original Complaint, of
20 course, that started this criminal case back in
21 November. It charged three crimes: First-degree
22 intentional homicide, mutilation of a corpse,
23 felon in possession of a firearm. The time to
24 challenge that Complaint, or probable cause
25 showing, is gone.

1 We don't -- It's established for
2 purposes of this motion and today's proceedings.
3 I raise it because, now, in it's proposed Amended
4 Complaint, that the State has incorporated by
5 reference -- as lawyers are fond of saying -- the
6 factual allegations in the original Complaint.
7 So, let's start there.

8 No one, no one presumably at the table
9 to my left, would contend that the original
10 Complaint, without the March 2 or whenever it was
11 additions, made out probable cause to believe
12 that Steve Avery committed first-degree sexual
13 assault.

14 No one, I assume, in the courtroom,
15 would contend that the original Complaint's
16 factual basis made out probable cause, or
17 anything close to it, on kidnapping or false
18 imprisonment, which are the other two new counts
19 in the proposed Amended Complaint.

20 So the incorporation of the factual
21 basis in the first Complaint, while I acknowledge
22 it, really adds nothing at all to our problem
23 here today, focusing maybe most usefully on the
24 first-degree sexual assault allegation that the
25 State wishes to toss into the mix of this case

1 now.

2 What is new in the proposed Amended
3 Complaint, as counsel acknowledges, is a
4 statement that Brendan Dassey gave, evidently, to
5 law enforcement officers in response to law
6 enforcement questioning, out of Steve Avery's
7 presence, and that now the State would -- would
8 like to use as a reliable basis for a finding
9 that he probably committed first-degree sexual
10 assault, and kidnapping, false imprisonment.

11 Again, it's not -- it's not a lack of
12 detail, there's a great deal of ugly detail that
13 the police say Mr. Dassey provided here. It's
14 the reliability as to Steve Avery that's the
15 problem. I'm delighted to hear counsel
16 acknowledge, in a fashion here today, that the
17 Dassey statement would be inadmissible, not
18 allowed, at trial, against Mr. Avery, absent a
19 chance to cross-examine Mr. Dassey in that
20 witness chair, or some similar chair. Not
21 admissible evidence against him.

22 I also acknowledge that a Complaint can
23 include the inadmissible. The Court can look at
24 that within the four corners of the Complaint.
25 But as *Knudson* and a variety of other Wisconsin

1 decisions, at least back to 1968 with **State ex**
2 **rel. Evanow against Seraphim**, and I'm sure
3 decisions before that, before I was born, as the
4 Court knows, hearsay or not, the factual
5 assertions in a Complaint have to be reliable.

6 The State here, in the Complaint,
7 alleges that these are presumptively reliable,
8 presumed truthful and reliable, I think is the
9 exact wording of the Complaint. In fact, of
10 course, the presumption is just the opposite.
11 It's just the opposite as a matter of law. The
12 U.S. Supreme Court has made that clear at least
13 by **Bruton** back in 1968, while we're on 1968
14 cases, **Lee, Williamson, Lilly**.

15 This is sort of beyond repetition at
16 this point. This is really very clearly
17 established, that when an accomplice or someone
18 claims he is an accomplice, is questioned by the
19 police and says, yeah, I was involved, you know,
20 but he was -- he was involved too, he did this
21 and that, and points to someone else, that's
22 unreliable stuff.

23 It's blame shifting. It's literally
24 finger pointing. And it's a very effective way
25 for an accomplice, caught cold or not, to sound

1 credible by acknowledging some involvement, but
2 to lay off blame, in part, or in large part, on
3 another person. Are the risks of that
4 particularly high when we're talking about a 16
5 year old boy who may be slow and being questioned
6 by two police officers, presumably without a
7 parent or a lawyer around? Yes, the risks of
8 that are particularly high, if we get into
9 specifics on reliability.

10 But the Court's, including the Wisconsin
11 Court of Appeals in *Myren*, which Mr. Buting and I
12 have cited, has been very clear that this stuff
13 is inherently suspect, inherently unreliable,
14 presumptively unreliable, just to quote bits and
15 pieces. So the State really can't claim the
16 presumption that the amendment tenders.

17 Neither does the Complaint offer
18 anything more than a presumption that Brendan
19 Dassey's statements are truthful and reliable,
20 not as to Brendan Dassey, but as to Steve Avery.
21 And that's where the problem is. They simply are
22 not, as a matter of law, reliable as to Steven
23 Avery; hence, the motion asking the Court, not to
24 strike the original three charges, of course, but
25 to deny the State leave here to file the three

1 new charges.

2 Timing is not prejudicial, that's not
3 the issue, as we have agreed. The reliability,
4 or rather the unreliability of the entire factual
5 basis here, there being as to first-degree sexual
6 assault, kidnapping, and false imprisonment,
7 nothing but an inadmissible, unreliable statement
8 by Brendan Dassey to support this Complaint.

9 Allowing it to be filed would require
10 the Court only later, when I filed a motion
11 challenging probable cause, to dismiss those
12 three counts. Again, there's no reason to do
13 that. The Court, on the grounds we have
14 articulated, ought deny leave to file this
15 proposed Amended Complaint, at least as to the
16 three new charges. That ruling would necessarily
17 moot inquiry into what is procedurally a
18 subsequent document in Wisconsin criminal courts,
19 which is an Amended Information.

20 We also don't have to get to the
21 question of a preliminary examination, if the
22 Court denies leave to file the Amended Complaint,
23 because there's nothing on which to have a
24 preliminary examination at that point.

25 I could pause and let the Court say

1 something, but I will note that I very much
2 disagree were this Amended Complaint to be filed
3 with leave of the Court and then to withstand a
4 motion to dismiss on probable cause grounds; I
5 very much disagree that a preliminary examination
6 would be unnecessary, legally, as to those three
7 counts.

8 And I can get into **Burke**, and more
9 illuminating, **Bailey**, a decision that **Burke**
10 extends, or at least endorses. It's the facts of
11 both of those cases, suggest why, although their
12 new counts were not wholly unrelated to the
13 evidence adduced at the preliminary examination
14 here, these new counts would be wholly unrelated,
15 at least the first-degree sexual assault, and the
16 kidnapping. May not need to get there, so I will
17 yield the microphone.

18 THE COURT: Mr. Kratz, anything in
19 rebuttal?

20 ATTORNEY KRATZ: Just a couple of things,
21 briefly, Judge. Once again, if Mr. Strang and the
22 defense is allowed to extend these trial
23 confrontation principles to the Criminal Complaint
24 analysis, State argues that you would never, or at
25 least would be very difficult to ever charge

1 co-defendants, at least when one of the defendants
2 makes a statement and the other does not.

3 Again, they simply are not Complaint
4 principles, these are trial confrontation
5 principles. Let me also talk, then, to the
6 reliability question that Mr. Strang raises.
7 Reliability of statements of a co-declarant in
8 **Lilly** and in other cases cited by Mr. Strang,
9 don't just inculcate the co-defendant, don't just
10 point the finger at somebody else, but they are
11 also meant to exonerate the declarant.

12 That's not what we have here.
13 Mr. Dassey's statement in no respect, at least as
14 cited in the Amended Complaint, intended to
15 exonerate Mr. Dassey at all. Mr. Dassey
16 inculcates himself. He says I acted together
17 with my uncle, Steven, without threat, without
18 reprisal, knowingly and voluntarily engaging in
19 the same kinds of behaviors.

20 So when a defendant -- when a suspect
21 makes a statement, that against their own penal
22 interests, they deserve reliability. And that is
23 much distinguished from the kinds of statements,
24 again, that were offered in **Lilly** and others.
25 That's all I have got, Judge. Thank you.

1 THE COURT: All right. First of all, there
2 have been a number of reported decisions, especially
3 United States Supreme Court decisions, in recent
4 years involving the admissibility of the statements
5 of co-defendants at trial where the State seeks to
6 introduce the statement, not through the actual
7 person of the co-defendant, but as hearsay
8 testimony.

9 And the law in that regard has changed a
10 good deal in recent years against the State and
11 in favor of the defense, culminating with the
12 **Crawford** case, which held, as close as you can,
13 as a black letter rule, that if a co-defendant's
14 testimony is going to be used against the
15 defendant, the co-defendant in virtually all
16 cases has to testify.

17 But I think it's dangerous to simply
18 equate those cases to the situation where you are
19 dealing with a Complaint and whether or not the
20 statements of a co-defendant can be used as a
21 basis for a Complaint. The closest case from
22 Wisconsin on the facts, that I could find, is a
23 1974 case called **Ruff versus State**, which dealt
24 precisely with this issue, that is, whether or
25 not a Complaint could be based on the statement

1 of a co-defendant that implicated the defendant.

2 I will read a little bit from that
3 decision. The Court asked: Was the Complaint
4 legally sufficient to establish probable cause?
5 The defendant admits the sufficiency of the
6 Complaint to establish probable cause that the
7 alleged crimes had been committed, but challenges
8 the sufficiency to establish probable cause that
9 the defendant committed the crimes.

10 The part of the Complaint which names
11 the defendant is based upon statements made to
12 police officers by the defendant's accomplices,
13 Charles Flowers and Willy Payne. Such statements
14 were hearsay, but a Criminal Complaint may be
15 based on hearsay.

16 The Court goes on in that case to hold
17 that, the statements against penal interest made
18 by a co-defendant can be used as a basis for
19 probable cause in a Complaint where the statement
20 is not the statement of the co-defendant
21 essentially attempting to exculpate himself, that
22 is, there can be cases where a co-defendant is
23 simply trying to blame someone else.

24 But where the statements are
25 interrelated, such that the co-defendant is

1 implicating himself at the same time he's
2 implicating someone else, I believe the law in
3 Wisconsin, as it applies to Criminal Complaints,
4 remains, that such statements can be used where,
5 when considered in context, they have sufficient
6 indicia of reliability. And based on my review
7 of the Complaint, I do believe that that's the
8 case here.

9 I recognize that some of that rationale
10 has been criticized in the cases that have led to
11 testimony in those cases not being admitted where
12 it doesn't come from the co-defendant himself at
13 trial. But that's based primarily on
14 confrontation clause issues under the United
15 States Constitution. And I'm not aware of any
16 decision that has used the same rationale to say
17 that the statements of a co-defendant cannot be
18 used to supply a probable cause in a Complaint.

19 So, for that reason, I believe that the
20 statements of Mr. Dassey contained in the
21 proposed Amended Complaint can be used as a basis
22 for the Complaint. And I believe that with those
23 statements, the Complaints are sufficient as they
24 have been filed. I believe that's the only basis
25 on which the Amended Complaint is really being

1 challenged. So, the Court is going to grant the
2 State's motion to file the Amended Complaint.

3 I think implicit in Mr. Strang's
4 argument is that he may have other issues related
5 to that matter that he wishes to argue. So,
6 Mr. Kratz, I will direct you to prepare the order
7 allowing you to file your Amended Complaint.
8 And, Mr. Strang, I will give you the opportunity
9 to file additional pleadings, if you wish,
10 regarding whether your client is entitled to a
11 preliminary examination, based on the Amended
12 Complaint.

13 ATTORNEY STRANG: I can do that within 10
14 days after the order is signed, if that's sufficient
15 for the Court.

16 THE COURT: All right. I will allow you to
17 do that. At the end of today's proceedings, I can
18 see we may have to do some scheduling. But for now,
19 I will give you 10 days to file your motion in that
20 respect. Let me ask this, do the parties anticipate
21 any additional issues other than the defendant's
22 right to a preliminary examination on the Amended
23 Complaint, relating strictly to the Complaint and
24 the proposed Amended Information?

25 ATTORNEY STRANG: We can short circuit the

1 one I would see which is, I will move now to dismiss
2 the three new counts for want of probable cause,
3 relying on the arguments I have already made. And
4 if I heard correctly, the Court ruled that, with the
5 Dassey statements in, as a factual basis, there is
6 probable cause. I disagree and I will make the
7 motion, for the purpose of making it clear, that I
8 do want those three counts dismissed once the
9 Amended Complaint is filed.

10 THE COURT: All right.

11 ATTORNEY STRANG: But don't need to brief
12 it separately.

13 THE COURT: Okay. Anything further on the
14 Complaint issue before we move on?

15 ATTORNEY KRATZ: No.

16 THE COURT: All right. The next issue that
17 the Court will take up is the defendant's motion to
18 assure fair forensic testing, which involves a
19 request by the defense to either be present when the
20 State Crime Lab performs analysis on items that have
21 been seized in the course of the investigation in
22 this case, or in the alternative, to have the
23 testing procedures videotaped. And if I understand
24 correctly, Mr. Buting, you will be making the
25 defense argument on this issue?

1 ATTORNEY BUTING: Yes, your Honor.

2 THE COURT: I will hear from you at this
3 time.

4 ATTORNEY BUTING: The defense motion is
5 somewhat unusual, but I think given the nature of
6 this case and it's unique history, I think it's
7 appropriate, especially in light of concerns that
8 were raised earlier, before either Mr. Strang or
9 myself became involved in the case, about possible
10 bias from law enforcement, that I would think the
11 State would actually welcome efforts to make the
12 testing process more transparent.

13 And that would be by allowing a defense
14 representative to be present during any portions
15 of the testing where they are handled -- where
16 the evidence gets handled by the analyst or
17 technicians and/or to videotape those portions of
18 the testing process to ensure, or at least to
19 limit the possibility of there being any
20 contamination that may occur of the evidence in
21 the lab once it gets there, either accidental or
22 otherwise.

23 I believe that, although there are no
24 cases that have specifically addressed this
25 issue, I think the Court does have authority to

1 do so by considering Statutes 165.79 and 971.23
2 together. The first allows the Court to order
3 the Crime Lab to perform tests on the defense
4 behalf under certain circumstances.

5 And if the Court has the authority to do
6 that, then this is a lesser remedy, or request,
7 which is simply to allow the defense to
8 participate in observing, not to interfere with
9 the process itself, and to necessarily then be
10 present during the generation of the results of
11 the tests, which are disclosable anyway under
12 971.23. And all this would do is move up the
13 time when those rules get disclosed, that is, at
14 the time that the State learns them, the defense
15 representative would also be there and also learn
16 them.

17 There are, I think, very unusual
18 circumstances in this case that warrant that.
19 The remedy that the State suggests in their
20 response objecting to our motion, is independent
21 testing. Independent testing can work in some
22 instances and to some degree, but not if material
23 is already contaminated.

24 A repeated independent test of
25 contaminated evidence does nothing towards

1 getting at the truth, it simply repeats or
2 confirms the original erroneous results. The
3 State also suggests that, in addition to that, by
4 the way, having independent tests done subsequent
5 to the State's test, can also build an additional
6 delay.

7 I don't know how long it's going to take
8 for the State to complete the tests that they
9 have not yet done. That would be, presumably, on
10 items that were seized in the March 2nd, I think
11 it was, search warrant. But an independent test
12 would necessarily have to take place after that.
13 And that could be while Mr. Avery is at least
14 presently incarcerated.

15 The bail issue, we'll be dealing with
16 later, but if he remains incarcerated then that
17 works to his disadvantage by requiring him to sit
18 in jail longer, just because the State resists
19 transparency in the process, at this point,
20 allowing a defense view of what goes on in the
21 Crime Lab. So independent testing is not a
22 adequate remedy to the concerns that the defense
23 has in this particular case.

24 The State also, in it's written
25 objection, complained that somehow this would

1 jeopardize the accreditation of the State Crime
2 Lab if an outside observer were allowed in. And
3 I don't see that at all. Nothing that they cite
4 in their written brief indicates that.

5 Accreditation requires that a lab comply
6 with security and control and methods, which are
7 not always done, by the way, despite the fact
8 that they are supposed to be accredited. But
9 those could also be complied with very easily
10 with the defense expert who might be present.

11 I have spoken with a defense expert who
12 has done this in other labs, in various states,
13 including recently Illinois, I believe also
14 Maine. It's done very easily. He is clothed in
15 surgical type scrubs, mask, same way that the
16 State analyst should or would be.

17 He is also -- has no objection to the
18 State's concern that -- that the Crime Lab has a
19 process whereby their staff provides their own
20 DNA genotype, so that in the event results should
21 come up, or would come up, that would show that
22 there's some other DNA in it, if it turns out to
23 be the analyst's, then it could be discarded as
24 evidence -- as indication of contamination. The
25 defense expert would also be willing to do that.

1 So, I don't see anything about the way
2 that the Crime Lab is set up in it's testing that
3 would prohibit, or make it somehow a threat or
4 jeopardy to their accreditation to allow a
5 defense representative to be present simply
6 observing what's going on. The State also cites
7 in their written opposition a number of older
8 cases where the Courts did rule that it was
9 not -- or they denied defense motions to do
10 similar types of observations.

11 But one reason that this motion is
12 brought in this case is because of what we have
13 learned, what the public has learned, about Crime
14 Labs all over the nation in the last five, six
15 years. I cite to some law review articles that
16 talk about the studies that have been done.

17 Now 17 states, Crime Labs in 17
18 different states, have been found to have either
19 had fraudulent behavior by some of the analysts,
20 or erroneous test results, incompetence,
21 everything, the entire spectrum of problems that
22 result in false tests, that, in some instances in
23 Kansas, resulted in the correct suspect being
24 released, going out and committing another
25 offense. And in other instances, innocent people

1 being wrongly identified through DNA testing and
2 only later, fortuitously, was it determined that
3 the mistake was made.

4 The FBI lab, once considered the most
5 prestigious, elite lab in the world, went through
6 a horrible scandal of disclosure of, not just
7 mistakes -- and there were many, many instances
8 of that -- but also deliberate, fraudulent
9 conduct resulting in one of their analysts being
10 convicted of a misdemeanor for fraudulent
11 reporting on DNA reports. That went on for two
12 years before the lab discovered it.

13 Now, I'm sure the State will say more
14 different, this is Wisconsin, we have a very fine
15 lab here, it's never been proven to have
16 fraudulently or erroneously come up with test
17 results that have affected a case. But I am also
18 quite sure that the prosecutors in courts and
19 public believe that in all of those other states,
20 in each of those cases.

21 And yet we now know otherwise. We now
22 know that these kinds of mistakes do take place
23 and there is worldwide discussion on what to do
24 about the problems with Crime Labs. DNA evidence
25 has considered this with programs like CSI on TV

1 and other things like that, considered this the
2 ultimate proof, the pristine evidence one way or
3 the other. But that's only true so much as the
4 Crime Labs in this country and in this state are
5 competent, fair, and able to produce correct
6 results.

7 Therefore, what we're suggesting is,
8 given the implications of what has gone on in
9 this case, or what was implied anyway, earlier,
10 before we became involved, we think that the best
11 way to resolve, to assure that that doesn't
12 extend further into the testing process, is to
13 simply allow transparency.

14 That's all we're asking, no
15 interference, just transparency to allow a
16 defense representative to be present during the
17 handling of the evidence, or in the alternative,
18 a less favored alternative. But at a minimum,
19 something that certainly wouldn't cause any
20 contamination, would be to videotape at any time
21 when the analysts are handling the evidence
22 itself.

23 There's periods of time when it's sort
24 of cooking in the incubator, and it wouldn't need
25 to be filming that portion, but when it's taken

1 out, when it's moved from one step in the process
2 to the next, that could certainly be recorded and
3 preserved and that would, I think, lessen the
4 likelihood of there being any implications of
5 wrong doing or mistakes down the road. I think
6 there is authority for it. It's in the Court's
7 discretion to grant it and that's what we ask.
8 Thank you.

9 THE COURT: All right. Mr. Strang, do I
10 understand that Mr. Gahn is going to be addressing
11 this issue? Mr. Kratz, I'm sorry.

12 ATTORNEY KRATZ: Yes, Mr. Gahn.

13 THE COURT: Mr. Gahn.

14 ATTORNEY GAHN: Thank you, your Honor. I'm
15 going to rely upon the brief that I filed in
16 response to their request to be present for the
17 testing or, in the alternative, to have it
18 videotaped and just amplify a few portions of that
19 brief.

20 Again, the defense has cited no
21 authority, or any statutory authority, or case
22 precedent, to authorize them into the Crime
23 Laboratory, or for videotaping of the procedures
24 that go on in the Crime Laboratory. I must
25 emphasize to the Court that in a Crime

1 Laboratory, especially with DNA testing, the
2 issues of security and contamination are just of
3 the utmost importance.

4 And they are so very important in the
5 accreditation process of a Crime Laboratory. And
6 any time that you lessen that security, or allow
7 the potential to introduce other contaminants
8 into the Crime Laboratory, that's going to place
9 that accreditation into some jeopardy.

10 The State has cited three cases where
11 that issue has come before appellate courts and
12 they have ruled against the defense. I guess,
13 your Honor, you have to understand what happens
14 at the Crime Laboratory. We're talking about a
15 huge number of items here of evidence. This is
16 not just one item that is coming into the Crime
17 Lab. It's just a huge number of items.

18 And when the Crime Lab gets these items
19 of evidence, they are going to be screened, first
20 of all, and that can take a couple of days. And
21 once it's been screened, and they believe there
22 may be something of potential value to submit to
23 some type of DNA testing, then that's when the
24 extraction process takes place. And that can
25 take, also, a couple of days.

1 The problem is, once the extraction
2 process is finished, the items are batched. And
3 what happens is, other analysts may batch, with
4 this case, items that they are testing for their
5 cases. And then there's what's called the
6 quantitation. And this is a very important
7 process, which is, again, days and days later.

8 And once they realize how much DNA is
9 present, whether there is a certain quantity,
10 then the analysts, again, determine which are
11 going to be set up for the amplification process.
12 And then you still have a number of other
13 processes that can take two to three weeks to
14 complete.

15 The intrusiveness, the burdensome nature
16 of their request, would make it almost impossible
17 for a Crime Lab to operate when you are looking
18 at so many items of evidence, and the process,
19 and how the process -- how the analysis process
20 takes place.

21 The Crime Lab is accredited. They
22 follow very strict, stringent, national
23 standards. And one of the reasons for writing
24 such strict national standards is that the
25 defense is given, in their discovery process, and

1 it's routinely done in Wisconsin, they are given
2 the bench notes. They are given the protocol.
3 They are allowed to see the quality assurance
4 guidelines as followed, the gene scan data, the
5 genotype RE-data.

6 It's all designed so that an outside
7 expert can look at the protocol, can look at the
8 process, the analysis that was done, and
9 determine whether it was followed, so that
10 defense is not left without anything in this
11 case. They are open to all the paperwork and the
12 analytic process through the DNA typing.

13 Having someone in and trying to video
14 tape it, again, would be so burdensome and such
15 an order were granted, I think the Court can
16 appreciate, if every defendant were allowed to
17 have an expert go in to look, or a videotaping
18 done, you could almost shut down the Crime
19 Laboratory.

20 There are so many sensitive items that
21 are out at the Crime Lab. It's evidence from
22 cases all over the State of Wisconsin. It's a
23 very, very, sensitive issue and security is
24 paramount. So I would ask the Court --

25 One other issue I would like to address

1 is the unnamed independent expert. I don't know
2 what were the circumstances of this independent
3 expert, or what the circumstances were to go into
4 an Illinois Crime Lab and observe. In all
5 candor, I will admit to the Court, I have heard
6 of cases where that is done, or there's an
7 agreement between the defense and the prosecution
8 to send the item for independent testing. But
9 those generally are cases where there is one
10 critical piece of evidence and there will be a
11 total consumption of that evidence.

12 Then you get into issues of what is
13 materially relevant, what is potentially
14 exculpatory evidence, and you get into an **Arizona**
15 **vs. Youngblood** analysis. That's generally where
16 those cases come about, where it is just one
17 piece of evidence that could be inculpatory, or
18 it could be exculpatory. And the defendant has
19 no other comparable means of getting that
20 evidence analyzed.

21 Under those circumstances, I have heard
22 of where the defense and the State would get
23 together and maybe agree on an independent lab to
24 do it, or perhaps agree upon the -- a defense
25 expert viewing that process. But that is the

1 rare case. And -- From my understanding and from
2 the knowledge that I have.

3 So I would ask the Court to grant our
4 position and that the defense not be allowed in
5 to observe the testing, or to videotape it,
6 mostly because of just the burdensome nature it
7 would have upon the Crime Lab and the security
8 issues and just the integrity of the whole Crime
9 Lab set up. Thank you, Judge.

10 THE COURT: Mr. Buting, anything else?

11 ATTORNEY BUTING: Just briefly, your Honor.

12 As to the question of burdensome, there being so
13 many items, I seriously doubt that in this case,
14 because from what I understand from prosecution,
15 that most, if not all, of the items originally
16 seized back in November in this case have been
17 tested. So, we're really only talking about items
18 that are seized as a result of the most recent
19 search warrant.

20 And I don't think there are that many of
21 them that were seized, and probably a very small
22 percentage of them that, that when looked at,
23 will have any area that would be worthwhile to
24 test. So there may only be a handful, five, six
25 items perhaps, that in this case will still be

1 tested.

2 So I don't understand the argument that
3 it's so burdensome, because there are so many
4 items. There's no reason those can't all be run
5 at the same time. That would not -- In fact, it
6 would probably be the normal course, if there's
7 one analyst working on this case, which I
8 understand there would be.

9 Yes, through discovery, the State does
10 provide bench notes and raw data and that sort of
11 thing, which can be helpful to an expert, but it
12 says nothing about the potential of
13 contamination, cross-contamination between items
14 of evidence. None of that can be found after the
15 fact. That's the problem.

16 That's why, it's that very reason that
17 the State, in order to become accredited, has to
18 take all kinds of precautions to try and prevent
19 that. But accreditation, some of these other
20 labs, where these problems have been developed,
21 have been accredited, and have thought that they
22 had very good, sound protocols that were being
23 followed and, low and behold, they discover
24 that's not the case.

25 Finally, as to the question of whether

1 there is -- It's true that perhaps these motions
2 are more likely granted or agreements made when
3 there is one item of evidence that will be all
4 used up in the course of the testing, but at this
5 point I don't know whether that's going to be the
6 case here or not. I don't know yet.

7 I don't think the State knows that, that
8 there is sufficient, or that there would be, if
9 they find an area that would be worthy of
10 searching for DNA, that it would be sufficient to
11 guarantee a separate half of it, or whatever
12 sample, for a subsequent, independent test. And
13 I don't think they are going to know that until a
14 number of things happen --

15 One, they eyeball it and look at it,
16 whether it's cloth, or concrete, or whatever it
17 may be. And, secondly, only after they have run
18 it through a process to determine whether there
19 is an amount that's quantifiable, that's enough,
20 enough DNA present to try and test it further.
21 So we may find ourselves in that situation where
22 there is nothing left for the defense to test,
23 once the State completes its.

24 The last point is that I would ask, or I
25 guess maybe to make clear as a matter of a Brady

1 Demand, orally, I can follow up with something in
2 writing. In the event the Court does not grant
3 this motion, I do want to make it clear that we
4 do consider raw data, notes, charts, things of
5 that matter, and preservation of sufficient
6 quantities of future testing to be considered
7 Brady material that could be exculpatory, that
8 could point to other individuals.

9 And that would include DNA fingerprints,
10 all types of forensic evidence. That would also
11 include, particularly in this case, any test
12 results that prove positive for law enforcement
13 DNA, which in most cases are simply discarded as
14 erroneous mistakes, but in this case, given the
15 history, we view as Brady material that should be
16 preserved for subsequent review by the defense.
17 So with that I would ask the Court to grant the
18 motion.

19 THE COURT: All right. For purposes of
20 today's hearing, I'm taking up the motion as it's
21 been filed. I'm not going to comment on the last
22 items that you mentioned. I'm specifically dealing
23 with the defense request to either observe testing
24 by the State Crime Lab or to have that testing
25 videotaped.

1 The first issue I looked at was whether
2 or not there was a due process right on the part
3 of the defendant to observe such testing. I,
4 actually, before I got the State's response,
5 looked at the New York case that's cited, that is
6 ***New York vs. Monigas***, which is a case that
7 involved a request, I believe, precisely
8 identical to that that was made here. And the
9 Court in that case ruled that there was not such
10 a due process right. I have not been able to
11 find any case that creates a constitutional right
12 to observe testing in cases like this. And I
13 don't understand the defense to be arguing that
14 there is any such authority.

15 I next look at the Wisconsin Statutes.
16 We do have a statute that has been mentioned, I
17 think by both parties, that deals with this
18 issue; specifically, Section 165.79 (1). That
19 reads in relevant part as follows:

20 Evidence, information and analyses of
21 evidence obtained from law enforcement officers
22 by the laboratories -- and I understand it to
23 mean the State Crime Lab there -- is privileged
24 and not available to persons other than law
25 enforcement officers. Nor is the defendant

1 entitled to an inspection of information and
2 evidence submitted to the laboratories by the
3 State, or of the laboratory's findings, or to
4 examine laboratory personnel as witnesses
5 concerning the same, prior to trial, except to
6 the extent that the same is used by the State at
7 a preliminary hearing and except as provided in
8 Section 971.23.

9 Upon request of a defendant in a felony
10 action, approved by the presiding judge, the
11 laboratories shall conduct analyses of evidence
12 on behalf of a defendant. No prosecuting officer
13 is entitled to an inspection of the information
14 or evidence submitted to the laboratories by the
15 defendant, or of the laboratory's finding, or to
16 examine laboratory personnel as witnesses
17 concerning the same, prior to trial, except to
18 the extent that the same is used by the accused
19 at a preliminary hearing and except as provided
20 in Section 971.23.

21 The statute was discussed in the case of
22 ***State of Wisconsin vs. Franszczak,***
23 ***F-r-a-n-s-z-c-z-a-k,*** a 2002 Wisconsin Court of
24 Appeals case. And in that case, the Court
25 essentially says that the statute means what it

1 says and that is, that the State Crime Lab
2 performs testing on behalf of the State. It's
3 not subject to disclosure or discovery, except as
4 provided by the statute. And, likewise, if it
5 provides discovery on behalf of the defendant,
6 that the State can't get at the information,
7 except in the circumstances provided for in the
8 statute.

9 I'm not going to decide today whether or
10 not there might be some special circumstances
11 under which the Court could grant the request
12 made by the defense in this case. I don't see
13 anything in the statute that expressly prohibits
14 it, but at least the statute seems to suggest
15 that, in the ordinary course of things, absent
16 some extenuating circumstances at a minimum, the
17 legislature doesn't contemplate the statute
18 granting a request like this.

19 I will also note that, although there
20 have been incidents of mistakes in other Crime
21 Labs, and I think any time you are dealing with
22 human beings that's always a possibility, I'm not
23 aware that our State Crime Lab has ever been
24 involved in this type of a thing. And as the
25 State noted in the brief, it was actually the

1 State Crime Lab's tests in the defendant's prior
2 case that resulted in him being released from
3 prison after being wrongfully convicted. And the
4 State fully acknowledges that fact.

5 So based -- For those reasons, I don't
6 believe there's a basis here for granting the
7 defendant's request and I'm going to deny the
8 State's motion regarding forensic testing.

9 ATTORNEY GAHN: The defense motion, your
10 Honor.

11 THE COURT: The defense motion for forensic
12 testing. I'm certainly not foreclosing the parties
13 from coming to an agreement, if they do. Anything
14 that expedites the process and makes both parties
15 feel assured the testing is being done properly is a
16 benefit to all. But in the absence of that, the
17 statute seems to contemplate, as a general rule, a
18 different approach and, therefore, the Court is
19 denying the defendant's motion.

20 The last item to deal with today is the
21 motions that have been made by each of the
22 parties for modification of bail in this case.
23 The defense made its motion first, so I will hear
24 from the defense first. Will that be Mr. Strang
25 or Mr. Buting?

1 ATTORNEY STRANG: Mr. Strang.

2 THE COURT: Mr. Strang.

3 ATTORNEY STRANG: We have no quarrel
4 with -- today with the reasonableness of the amount
5 of bail set by the Court here, working off of the
6 half million dollar number. Our motion goes to the
7 surety or the security that the Court would accept,
8 as a financial condition, to reasonably assure
9 Mr. Avery's appearance in court, as he is required,
10 and the safety of the community.

11 And what we're asking here is for the
12 Court to allow the posting of property, the
13 tendering of a mortgage, or can be done with a
14 Quitclaim Deed that then is not filed by the
15 County Clerk unless bond conditions are violated.
16 But there are different ways to accomplish using
17 real property as security to meet the financial
18 aspect of the bail condition.

19 Mr. and Mrs. Avery, who are behind me,
20 are willing to post all of the property they own
21 in the world, the Manitowoc County property, the
22 Marinette County property. We have had that
23 appraised for fair market value. The combined,
24 unincumbered value of those properties well
25 exceeds the half million dollars in bail that the

1 Court has set.

2 These are solvent sureties, in other
3 words, and the Wisconsin Statutes have absolutely
4 no presumption against, or bias against, the use
5 of property to secure appearance and compliance
6 with bail conditions, as opposed to cash. Real
7 property as opposed to cash or other personalty.

8 The Corporation Counsel for the County
9 of Manitowoc filed a letter of his own raising
10 concerns. And I think that Corporation Counsel
11 misapprehends the very purpose of posting
12 property. The issue here is not what value the
13 Avery Salvage Yard or a property near Crivitz
14 might have to Manitowoc County. The issue is its
15 fair market value and, more importantly, it's
16 value to Steve Avery or the people he loves and
17 care about him.

18 The point, of course, is not for the
19 property to come into legal ownership of
20 Manitowoc County. The point is that if he didn't
21 follow conditions of bond, his parents would
22 lose, literally, the farm. That's the level that
23 we have to assure a defendant's compliance with
24 conditions of release, that the Court sets.

25 So, without wading into DNR issues or

1 other issues really, fundamentally, the
2 Corporation Counsel's concerns miss the point of
3 Chapter 969. There's no real question here that
4 the fair market value, regardless of what
5 Manitowoc County might pay for the property, the
6 fair market value of the property well exceeds
7 the half million dollars in cash.

8 As a practical matter, unless the Court
9 modifies bail, he is not getting out. As a
10 practical matter. Now, the Court knows, I know,
11 perhaps some in the public or some in the media
12 even have forgotten, that he's innocent. As he
13 sits here today, he is legally presumed innocent.

14 I mean, we can dress him up in something
15 that makes him look like he, you know, jumped off
16 a Monopoly game board or something. He's a
17 get-out-of-jail-free card come to life. But he
18 is innocent as he sits here today.

19 And, you know, he had his Thanksgiving
20 meal, as a presumptively innocent man, in the
21 jail. He had his Christmas meal, as a
22 presumptively innocent man, in the County Jail.
23 He is heading toward his Easter meal, as a
24 presumptively innocent man.

25 And all of this delay is necessary,

1 nobody is quarreling with the delay. But the
2 earliest, as I understand it, that he's going to
3 have a full chance to be heard, and to put the
4 State to its burden of proof here to prove what
5 it alleges, will be after his Labor Day meal, as
6 things stand, if he is not out.

7 Ten months is a long time to sit, if you
8 are presumptively innocent. And this is someone
9 who is sort of sensitive about sitting in custody
10 when he's innocent, and I understand that. He's
11 got no history of trying to evade justice,
12 skipping court. If anything, it's justice that
13 once evaded him.

14 He's lived right here in Manitowoc
15 County all his life. Lives on the parent's
16 property. This is -- This is not just a
17 homestead, but it's a place on which the family's
18 business, you know, from which it derives its
19 entire livelihood. He is not going to put that
20 at risk.

21 The reasonable perception here is he is
22 not going to put that at risk by failing to abide
23 conditions of release. His parents would stand
24 to lose everything, if he did, as would he. I
25 mean, it's his livelihood that is made on this

1 property as well.

2 The State here has relied on angry
3 letters that he wrote to his ex-wife, who
4 divorced him while he was in prison for a crime
5 he didn't commit. Those were written, the most
6 recent of them, according to Judge Hazlewood in
7 his transcript, was 15 years ago now, in 1991.
8 They were angry, they were aggressive.

9 His wife was trying to deprive him of
10 any further contact with his young children. I
11 guess I would be angry too, in his circumstance,
12 particularly where I'm sitting in prison on
13 something I didn't do, which is exactly the
14 situation he was in at the moment.

15 So it's not to excuse angry, aggressive,
16 ugly letters that he wrote 15 years, 17 years, 19
17 years ago. It is to put them into a context that
18 suggests they say very, very, little today about
19 whether he will come back to court when he's
20 supposed to and whether he will stay in his
21 house, as he's supposed to, other than when
22 conditionally allowed to leave by this Court.

23 Once we get past letters to his ex-wife,
24 now we're into the State offering past criminal
25 acts that are getting near a quarter century old.

1 We're getting into the State offering convicts
2 who only now are coming forward and saying,
3 presumably, or at least tacitly suggesting, get
4 me out of jail and I will testify that this guy,
5 you know, talked about building torture chambers,
6 and all kinds of other stuff, that inmates didn't
7 bother to report for the 15, or 18 years, or
8 whatever it's been since they say they heard it
9 from Avery.

10 This is all so much nonsense, honestly.
11 Really, so much nonsense. The State has been out
12 and searched the Avery property, with consent,
13 probably five times or more. With search
14 warrants, at least a couple times, maybe three,
15 something like that. Nobody had a torture
16 chamber. No torture chamber on the Avery
17 property, in the trailer he lived in, or anywhere
18 else.

19 So it's really, some of that is beneath
20 further comment. But what's not is the Court's
21 ability to fashion non-monetary, non-financial
22 conditions as well. And Steve Avery wanted me to
23 tell the Court, and invite the Court, to impose
24 any other non-monetary conditions it sees as
25 appropriate here, including increasing the

1 restrictiveness of the conditions of release
2 already set, since we have moved to modify.

3 Something your Honor might reasonably be
4 concerned about is, if he's out of jail, are we
5 going to be asking that he be allowed to go down
6 to Madison to see me, or down to Brookfield to
7 see Mr. Buting. And the answer is, no, we will
8 come to him. He can be restricted to Manitowoc
9 County. Electronic monitoring wouldn't be a bad
10 idea and is fully acceptable to Steve Avery.
11 Very controlled time out of the house or away
12 from the property, fully acceptable to Mr. Avery.

13 If the Court wants him to report in
14 person to the Two Rivers' Police Department, or
15 some other law enforcement agency, on a regular
16 cycle, fully acceptable to Mr. Avery. And, of
17 course, I would expect, that in the process of
18 posting real property to secure the bail that the
19 Court has set, that the State would want to look
20 at the appraisals, want to look at title and any
21 encumbrance to it. And I'm wholly prepared to
22 share all of that information with the State.

23 Indeed, the Avery's, the senior Avery's,
24 have gone to the trouble of retaining
25 Mr. Krajnek, a local lawyer here who does real

1 estate work, to assist in assembling the
2 information that would be necessary to secure
3 bail with real estate, rather than cash. So,
4 that is -- that's our request here today. I know
5 the State has a competing motion, but perhaps
6 it's better in my place to respond to the State's
7 argument in that respect.

8 THE COURT: All right. Mr. Kratz.

9 ATTORNEY KRATZ: Thank you, Judge.

10 Mr. Strang is correct, the State does have a
11 competing motion that we filed. Actually, the other
12 side of Mr. Strang's motion, the other side of the
13 coin, if you will, is our second motion, that is,
14 our motion to increase cash bail. And I'm going to
15 take this opportunity then to first argue that,
16 since it addresses those same factors that
17 Mr. Strang has argued.

18 The State no longer believes that a
19 \$500,000 cash bond is appropriate. The Court may
20 recall that this State originally requested a
21 \$1,000,000 cash bond to secure Mr. Avery's future
22 court appearances. But this Court can, and I
23 believe should, take into consideration new
24 factors, that is, what we have learned since the
25 last time we addressed bond.

1 Since the last time I was before this
2 Court and addressed bond, substantial changes
3 have occurred in this case. Now, Mr. Strang can
4 sit here and presume Mr. Avery to be innocent; I
5 don't have to do that. And when I make these
6 arguments to the Court, the statute, 969.01 (4),
7 is on the State's side in that regard when it
8 invites, in fact, requires the Court consider the
9 character and strength of the State's case.

10 Now, the character and strength of the
11 case against Steven Avery, I will argue, has
12 changed dramatically since we last visited this
13 issue. The detailed statements given by what I'm
14 calling the co-actor, the co-perpetrator in this
15 case, speak directly to the nature, number, and
16 gravity of offenses. And to leave bond at the
17 previously issued, I believe does a disservice
18 not only to this particular case, but does not
19 reflect Mr. Avery's likelihood of appearing at
20 future court appearances.

21 Those other factors that I previously
22 argued, including the degree of violence used,
23 there's new information as to those. I had
24 already argued the prior criminal record, the
25 fact that other crimes have been committed while

1 Mr. Avery was out on legal status, that he's now
2 been bound over for trial.

3 New information, though, on our request
4 to increase cash bail to \$2 million, includes the
5 allegations of his plans to flee the
6 jurisdiction. The alternatives to cash bail not
7 being warranted, as cited by Manitowoc County
8 Corp Counsel, and what I'm arguing is one of the
9 most important factors, that is, Mr. Avery's
10 character.

11 Those items contained in the
12 affidavit -- again, an affidavit, something more
13 than mere allegations, but something contemplated
14 by the motion practice in the State of
15 Wisconsin -- sets forth some specific acts of
16 violence, some specific plans of Mr. Avery that I
17 think are very important as to the State's
18 request for the increase in cash bail. And,
19 therefore, I make that request, your Honor, to
20 raise cash bail, to deny any kind of surety or
21 property bond and to increase the cash bail
22 previously authorized, to \$2 million.

23 I am prepared, Judge, although as I
24 mentioned, included in a formal detailed motion
25 and affidavit, to argue the denial of bail. But

1 I didn't know if the Court wanted to address the
2 first motion, or what I have characterized as the
3 other side of Mr. Strang's motion, first. But I
4 am prepared to proceed, your Honor.

5 THE COURT: With respect to the motion to
6 deny bail, that's a request that has not been made
7 to me before in another case. But as I read the
8 statute, and I reread it this morning, I believe it
9 involves a testimonial hearing, an evidentiary
10 hearing, with fairly extensive description. It
11 involves, essentially, a mini trial.

12 ATTORNEY KRATZ: It does, Judge, and that's
13 why I have stopped. I have the witnesses. I have
14 officers prepared for that. I don't know how much
15 time the Court has set aside for that. Let me also
16 indicate that, depending on how the Court and
17 Mr. Strang wants to proceed, it may even contemplate
18 calling other witnesses, or providing writs, or the
19 like, for what the Court calls a mini trial.

20 I don't disagree with that procedure as
21 contemplated in the statute, that's why I'm
22 stopping at this point and, I think, asking the
23 Court to rule on Mr. Strang and my motion.
24 Frankly, Judge, depending on that motion, the
25 State may ask in another manner to be heard on

1 the denial motion.

2 THE COURT: Mr. Strang, I'm looking now for
3 your response to the motion to increase cash bail.
4 I'm not seeking comment on the motion to deny bail.

5 ATTORNEY STRANG: Okay. It's -- A lot of
6 this is so academic that one wonders why the State
7 wants to talk about it. The original charges, the
8 first one, carries a mandatory life sentence. And
9 then we have got 12 and a half years of possible
10 confinement on one charge, beyond that. And I
11 haven't even looked recently, seven years, or five
12 years, or something on the other one. But once you
13 are at mandatory life, you know, adding on more
14 exposure, really doesn't alter the calculus much for
15 a defendant in deciding whether he's going to stick
16 around or try to make a run for it.

17 In terms of his proclivities, boy, I
18 mean, I didn't notice much in my television back
19 in early November, any inclination of him to
20 avoid anybody, a camera, a police officer. He's
21 consenting to searches. He's talking to anybody
22 who wants to search him. He's going up to the
23 family's cottage, to be sure, a cottage they have
24 had for decades up in Crivitz. Everybody knows
25 where he is.

1 There's nothing here, not only in the
2 lead up to this arrest, but in his earlier cases,
3 to suggest that he tries to runaway or avoid
4 obligations to come to court. There's just
5 nothing. Not a bench warrant, as far as I know,
6 at least nothing the State has tendered to the
7 Court. So, you know, and adding -- we could add
8 a hundred more charges here, if creative counsel
9 wanted to do that, and it wouldn't really change
10 the functional incentives that have been in place
11 since this case was charged with a first-degree
12 intentional homicide count.

13 Beyond that, you know, I note under our
14 statutes, and specifically 969.08 (5), it is a
15 little bit ambiguous here. If he were out on
16 release and the State alleged that he violated
17 conditions of release and wanted to tighten up or
18 add conditions to address a violation of
19 conditions of release once he's out, if that were
20 the State's request, we would be entitled to a
21 hearing. And the State would bear the burden of
22 proof by clear and convincing evidence, in
23 establishing both the violation and the need for
24 some tighter conditions.

25 Now, it is ambiguous because one also

1 can read the same statute, 969.08 (1) or (5) as
2 allowing the Court, on the State's motion, to
3 increase conditions of bail. So, I'm not hanging
4 my hat, so to speak, on this entirely. But it's
5 passing strange to say that if you were out, you
6 know, increasing cash from half a million dollars
7 to \$2 million as a response to some violation of
8 conditional release would entitle me to a hearing
9 at which there is an intermediate standard of
10 proof.

11 But when he is not out and has no
12 realistic prospect of posting half a million
13 dollars in cash, that's not happened, would have
14 happened by now if that was anywhere within the
15 realm of possibility, that the State, with no
16 showing other than statements of inmates or 20
17 year old allegations being filtered through a law
18 enforcement officer's affidavit now can quadruple
19 the amount of bail that the Court is being asked
20 to set.

21 THE COURT: Anything else, Mr. Kratz?

22 ATTORNEY KRATZ: No, not on this issue,
23 Judge. Thank you.

24 THE COURT: I'm going to take a brief
25 recess. I have my notes from the prior bail hearing

1 in chambers. I'm going to look at them and then
2 I'll come back.

3 ATTORNEY BUTING: Your Honor, could we deal
4 with that issue of recess with regard to cameras and
5 filming at this time, if we're going to break the
6 proceedings?

7 THE COURT: Yes, for purposes of today's
8 hearing, I'm going to ask the camera folks to
9 shutdown during the recess. The court proceedings
10 aren't going on during that time and the parties are
11 entitled to speak with each other privately during
12 that time.

13 ATTORNEY BUTING: Thank you.

14 (Recess taken.)

15 THE COURT: I did take the opportunity to
16 go back and review my notes from the last bail
17 modification motion hearing. I'm not going to
18 repeat all of the findings and matters I relied on
19 at that time because of the fact that the defense in
20 this case is not disputing the current level of bail
21 at \$500,000.

22 But I think it is worthwhile to review
23 the things that have changed since the last bail
24 modification hearing, as I view them. I will
25 note that, based on the Court's decision today,

1 the Court has allowed the filing of additional
2 charges against the defendant. The number and
3 gravity of the offenses are greater, as are the
4 penalties that the defendant faces. Though, as
5 noted by defense counsel, the penalties under the
6 existing charges are already significant.

7 The Court further notes that the level
8 of violence alleged in the Complaint is greater
9 than it was before, based on the new allegations.
10 And the Court, while keeping in mind that the
11 defendant is innocent until proven guilty -- and
12 the Court makes no comment on what the final
13 disposition in this case might be, a jury will
14 obviously make that determination -- but the
15 statutes do direct the Court to take into
16 consideration, in setting bail, the strength of
17 the evidence that has been presented.

18 And this is no longer purely a
19 circumstantial evidence case, based on the new
20 allegations made by the State. And the Court
21 would have to characterize the strength of the
22 evidence at this point as greater than it had
23 been in the past.

24 The State has also alleged that a
25 statement on behalf of the defendant that at one

1 point in the proceedings, before his initial
2 arrest, he considered flight. I think that
3 that's not -- as it's stated, it's not an
4 unequivocal statement.

5 It may reflect just the defendant's
6 thought at the time. There is no evidence he has
7 actually tried to flee the jurisdiction or
8 anything like that, but it was made at a time
9 before the charges were actually filed. And to
10 the extent the defendant ever would have
11 considered flight, the reasons would be greater
12 at this stage than in the past.

13 Finally, although it may not be the most
14 significant consideration, based on the fact that
15 the defendant has now retained private counsel,
16 is not represented by the Public Defender's
17 Office -- and the Court has been informed that
18 was as a result of a settlement of a lawsuit --
19 the defendant's ability to give bail is somewhat
20 greater than it has been in the past.

21 Taking those factors into account, the
22 Court believes that the bail in this case should
23 be increased from \$500,000 to \$750,000 and I'm
24 going to order that bail be increased in that
25 amount. Because of the severity of the offenses

1 involved and the possible penalties that the
2 defendant faces, the Court concludes in this case
3 that cash bail is necessary.

4 I'm not going to allow a bond to be used
5 in lieu of cash. I will note to the extent that
6 the defendant's family has assets, they could, of
7 course, borrow against those assets and obtain
8 cash. I'm aware of that. But both because of
9 the severity of the offenses and the possible
10 penalties, primarily for that reason, the Court
11 is going to have bail remain at a cash figure and
12 the amount will be \$750,000.

13 Now, before we conclude today, Counsel,
14 I believe going back to one of the earlier
15 motions, it appears we're going to need another
16 motion date. I hope you brought your calendars
17 with you. And, Mr. Kratz, I didn't say it, but
18 if you still intend to pursue your motion to deny
19 bail, I'm not going to start that at 10 minutes
20 to 4 today.

21 I think, even though you may have
22 witnesses here, I believe that the defense should
23 have an opportunity to produce evidence of their
24 own, if they wish. I believe they have that
25 under the statute and I think they would be

1 entitled to specific notice that we're going to
2 have such a hearing before we proceed. So I
3 won't require you to make that decision today.

4 ATTORNEY KRATZ: If I may suggest, Judge,
5 if the Court is going to be setting another motion,
6 if the Court would give me leave to provide the
7 Court with sufficient notice before that time to be
8 heard at that new time, or to withdraw my motion one
9 way or another, I can alert the Court what I intend
10 to do.

11 THE COURT: All right. Counsel, you may be
12 contemplating the filing of other motions that I
13 haven't heard about today, so rather than me
14 suggesting a date to you, I will let the attorneys
15 tell me when you would like to meet next. I know
16 there was going to be a defense motion relating to
17 the Complaint.

18 ATTORNEY STRANG: Yes.

19 THE COURT: And it sounded to me like
20 perhaps sometime less than a month from now.

21 ATTORNEY STRANG: I'm going to bring a
22 motion relating to the right to a preliminary
23 hearing on the three new charges, which the Court
24 has now ruled, in denying bail or property bond, are
25 significant and add something. And I guess for

1 purpose of a preliminary hearing, I share that to a
2 degree. And I had suggested that within 10 days --
3 what I said earlier was from the Court signing
4 Mr. Kratz's proposed order I can file a motion, but
5 the fact is I can do it 10 days from today. I don't
6 need to wait for a written order since I understood
7 the Court's ruling.

8 THE COURT: All right. So you are going to
9 file a motion within 10 days relating to any
10 challenges you have to the Amended complaint, which
11 the Court today allowed to be filed.

12 ATTORNEY STRANG: Right. Say by the 27th,
13 which would be 10 days, if that's acceptable.

14 THE COURT: Mr. Kratz, any objection?

15 ATTORNEY KRATZ: No. At the same time, I
16 didn't know if Mr. Strang intended to include the
17 issue of the preliminary hearing.

18 ATTORNEY STRANG: That is the issue.

19 THE COURT: Yes, that's my understanding.

20 ATTORNEY KRATZ: If I may also ask, Judge,
21 I don't know if Mr. Strang believes that oral
22 argument is required or if the Court would be
23 satisfied with just written argument, my ability to
24 respond and then just your ruling.

25 THE COURT: Are the parties willing to have

1 that matter decided on written briefs?

2 ATTORNEY KRATZ: That's fine, Judge.

3 ATTORNEY STRANG: Sure. And if the ruling
4 goes our way, then we would have to have a telephone
5 conference for purposes of scheduling a preliminary,
6 I suppose.

7 ATTORNEY KRATZ: That's right.

8 THE COURT: I'm worried about things
9 getting backed up. I would like to set contingent
10 dates that you reserve on your calendar, so that if
11 something has to be done it can be done. I don't
12 want the calendar to get out of hand here. I do
13 have the entire morning of April 13th available. I
14 would ask the parties how they feel about that.

15 ATTORNEY STRANG: It's not an issue here,
16 but for what it's worth, I know Passover begins that
17 day. I'm clear that day. Mr. Buting has to be in
18 another circuit court in the state.

19 ATTORNEY BUTING: Judge, at 1:30 I have to
20 be in Waukesha on an oral argument.

21 THE COURT: All right.

22 ATTORNEY BUTING: I suppose if it takes
23 about -- if we broke by 11:30.

24 THE COURT: I think that would work. We
25 could start at nine. Let me do this. I'm just

1 going to hold that date for now. And depending on
2 the motions that the parties file, if a hearing has
3 to be held, I would like to hold it on that date.

4 And I would also like to be kept
5 informed by the parties of progress being made
6 with respect to discovery and testing, so that if
7 there are any motions that have to be filed, they
8 can be filed in a timely manner and I can hear
9 them, so they don't jeopardize a September trial
10 date.

11 ATTORNEY STRANG: I don't want to sit on my
12 hands here and not give the Court fair warning, but
13 I think it's at least possible with the March 1,
14 March 2 developments, and now presumably further
15 testing and much material and discovery that the
16 State can't disclose to us because it doesn't have
17 it yet, I think the September 5 trial date is very
18 questionable.

19 It's not a calendar problem for me, I
20 just think it's very questionable. And I can
21 understand why the Court would not want to move a
22 date once one is set, so I don't want to sit here
23 and sound like I'm acquiescing or not raising at
24 least the concern that, for all the reasons we
25 have discussed today, just scheduling like bail

1 consideration and, you know, what charges Mr.
2 Avery is facing, all of these things may also
3 have an affect on trial scheduling.

4 THE COURT: Mr. Kratz, I don't know if you
5 have any information yet about the timing of the
6 testing that's going to be done.

7 ATTORNEY KRATZ: On Monday, Judge, we -- we
8 meaning myself and the investigator involved in the
9 case -- intend to meet directly with the Crime Lab
10 to get those answers. And so once we have a
11 timetable, I would be happy to provide that to
12 Mr. Strang and Court.

13 THE COURT: All right.

14 ATTORNEY STRANG: The Court's ruling on the
15 motion concerning fair forensic testing means that
16 now, necessarily, the only avenue open to the
17 defense would be sequential testing once the State's
18 private testing is done, so that -- I don't know
19 that we'll do that, but we may. That's what's left
20 to us.

21 ATTORNEY KRATZ: If I can be heard. We
22 have offered what's already been tested already for
23 retesting. Defense hasn't taken us up on that yet,
24 we'll see if they do. That is already available for
25 retesting. That decision should be able to be made

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before this new testing is done, Judge.

ATTORNEY STRANG: That's absolutely true,
as to stuff seized in November, absolutely so,
agreed.

THE COURT: All right. Is there anything
else either party wishes to take up this afternoon?

ATTORNEY BUTING: Judge, one other matter.
When you mentioned other motions that we might need,
we may be able to just short circuit that. If
Mr. Kratz is willing to today, I could file a motion
for return of property -- I'm informed that
co-counsel has already spoken to the State and
reached some agreement on that, so that's fine.

THE COURT: All right. Anything else this
afternoon?

ATTORNEY KRATZ: No, Judge.

THE COURT: If not, we're adjourned for
today.

ATTORNEY KRATZ: Thank you.

ATTORNEY STRANG: Thank you.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
)ss
2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 25th day of April, 2006.

Diane Tesheneck, RPR
Official Court Reporter

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, MOTION HEARING

5 vs.

6 Case No. 05 CF 381

7 STEVEN A. AVERY,

8 DEFENDANT.

9
10 **DATE:** APRIL 13, 2006

11 **BEFORE:** Hon. Patrick L. Willis
12 Circuit Court Judge

13 **APPEARANCES :**

14 KENNETH R. KRATZ & THOMAS J. FALLON
15 Special Prosecutors
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG & JEROME F. BUTING
18 ATTORNEYS AT LAW
19 On behalf of the Defendant.

20 STEVEN A. AVERY
21 Defendant
22 Appeared in person.

23 * * * * *

24 **TRANSCRIPT OF PROCEEDINGS**

25 Reported by Diane Tesheneck, RPR

Official Court Reporter

1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery, Case No. 05 CF
3 381. This matter is scheduled this morning for a
4 Court decision on a motion that's been filed by the
5 defense. Will the parties state their appearances
6 for the record, please.

7 ATTORNEY KRATZ: Your Honor, the State of
8 Wisconsin appears by Calumet County District
9 Attorney Ken Kratz, having been appointed as special
10 prosecutor in this case. The State also appears
11 this morning by Tom Fallon. Tom is with the
12 Department of Justice, also having been assigned
13 special prosecutor in this matter.

14 ATTORNEY STRANG: Good morning. Steven
15 Avery, second to my right, he's in custody. Dean
16 Strang appearing on his behalf and Jerome Buting,
17 also as counsel for Mr. Avery.

18 THE COURT: All right. I will indicate for
19 the record that the motion that's the subject of the
20 hearing today is a motion that was filed by the
21 defense, renewing a previous motion that the new
22 charges in the Amended Complaint should be
23 dismissed, or in the alternative, if the Court
24 permits the filing of the charges, that the
25 defendant be entitled to a preliminary examination

1 on the new charges.

2 I will also indicate for the record that
3 I met with counsel in chambers, briefly, before
4 we began this morning. And as I understand it,
5 the defense would like the opportunity to
6 supplement it's written argument, which the Court
7 has already received and reviewed, and the
8 prosecution would like a chance to respond. Is
9 that correct, Mr. Strang?

10 ATTORNEY STRANG: It is.

11 THE COURT: All right. I will hear you at
12 this time.

13 ATTORNEY STRANG: I will not belabor the
14 written arguments nor repeat arguments made at the
15 initial oral motion to dismiss the Complaint.
16 Leaving, in summary, my argument on the motion to
17 dismiss the Complaint, that when the United States
18 Supreme Court, probably close to half a dozen times
19 since 1968, has explained that statements against a
20 declarant's interest, that then go on to inculcate
21 another person, are unreliable, that those sorts of
22 unreliable statements fail Wisconsin's reliability
23 requirement for the factual assertions in a Criminal
24 Complaint. The Court already has ruled adversely to
25 me on that. I have renewed the motion in writing

1 and I will leave argument there on that point.

2 As to the question of a preliminary
3 hearing, if the Amended Complaint is allowed to
4 stand, I confess that I had been -- become
5 occupied, if not preoccupied, with **Burke** and
6 **Bailey** and the profusion of case law, criminally,
7 from the Wisconsin Supreme Court that make very
8 thick, I think, intellectually interesting, very
9 complicated, the law in an area in which the
10 underlying statutes, at least to my eye, look
11 fairly straight forward, but now have been
12 construed, or rather with such gloss that there's
13 nothing at all straight forward about the area of
14 the law. And I became very interested in that,
15 and that case law, and what it all means, where
16 it sorts out and applies here, as the focus of my
17 briefs, I think also the focus of the State's
18 written submissions.

19 And so I have written arguments that
20 suggest to the Court why it should grant a
21 preliminary hearing here and I think over looked
22 a statutory command that the Court shall order a
23 preliminary hearing in the unusual procedural
24 posture in which we find ourselves here today.

25 We step back to early in mid-March. The

1 State's request was for leave to file an Amended
2 Complaint and leave to file and Amended
3 Information. We took issue with the first of
4 those requests, to file an Amended Complaint.
5 That was the briefing, our opposition to an
6 Amended Complaint, or to the request that he be
7 granted to file an Amended Complaint, was the
8 thrust of the briefing that brought us here the
9 last time before your Honor.

10 The Court overruled my position and did
11 grant the State's request to leave to file an
12 Amended Complaint, that occasioned by oral motion
13 to dismiss the Complaint for want of probable
14 cause. And we covered that ground already.

15 But we are not here today on a request
16 for leave to file an Amended Information only.
17 We're here with an Amended Complaint now having
18 been filed on leave of the Court, no initial
19 appearance having been made on that Amended
20 Criminal Complaint. And I think, therefore,
21 we're within the field covered by Wisconsin
22 Statute Section 970.02, and for our purposes
23 here, narrowly 970.02 (5), which governs the
24 initial appearance and what's to happen and -- at
25 and after the initial appearance.

1 And the question is, or the statutory
2 command is, that if the defendant does not waive
3 the preliminary examination, the Judge shall,
4 forthwith, set the action for a preliminary
5 examination under Section 970.03. That's the
6 preliminary examination we seek. We're certainly
7 not waiving it.

8 The question becomes somewhat circular
9 because, if we don't have a right to preliminary
10 examination for some reason in the first place,
11 then there's nothing that we would be asked to
12 waive or, properly, could resist waiving. I
13 don't have any case law construing 970.02 (5) in
14 this setting, or anything that I can offer today
15 from which the Court might draw guidance, other
16 than statutory language.

17 But the procedural posture, I think, is
18 indisputable. We are here with the Court having
19 granted leave to file an Amended Complaint, which
20 is what the State had requested. We are here on
21 an Amended Complaint. There has not been an
22 initial appearance on that Amended Complaint.
23 The Amended Complaint adds three new charges, not
24 before seen in the course of this case to date.

25 We, of course, have disputed whether

1 those are transactionally related to and derived
2 from the evidence at the earlier preliminary
3 hearing. We think they aren't, the State thinks
4 they are. But the fact is, this is a new
5 Complaint and it is a Complaint on which the
6 case, as to the three new charges, presently is
7 founded.

8 We don't waive the preliminary hearing.
9 We think we have a right to it. And we think the
10 statutory command is clear, that the Court shall
11 schedule a preliminary hearing forthwith on the
12 three new counts.

13 THE COURT: All right. Mr. Kratz, or Mr.
14 Fallon?

15 ATTORNEY KRATZ: Judge, Mr. Fallon wrote
16 the brief on this issue. And with leave of the
17 Court, I would like him to argue this today.

18 THE COURT: Very well. Mr. Fallon.

19 ATTORNEY FALLON: Yes. Thank you, Judge.
20 Good morning. I think I feel compelled to address
21 counsel's concern regarding the posture of the case
22 and whether or not an additional preliminary
23 examination is needed at this time.

24 We're firmly convinced that no such
25 examination is needed for both a practical reason

1 and a legal reason. The legal reason being,
2 quite frankly, is he's not entitled to one. And
3 I say that because, interestingly enough, the
4 defendant has received a benefit to the fact that
5 the State sought and did, in fact, file an
6 Amended Complaint, which was jurisdictionally
7 unnecessary.

8 The defendant has been provided far more
9 information relative to the additional charges
10 than the law in Wisconsin normally permits. So
11 he has received a benefit already, one to which
12 he was not entitled, one in which, as a result of
13 which, no preliminary examination is required
14 under the law.

15 Once the original charges are filed,
16 once a Court finds probable cause at a
17 preliminary examination and binds the matter over
18 for trial, the Information becomes the governing
19 procedural document. The document upon which
20 this Court may exercise its authority and power
21 to determine the course of action for the
22 parties.

23 In this particular case, additional
24 information came to pass, which ethically permits
25 the prosecutor, and also based on the transaction

1 related law that each side has briefed rather
2 thoroughly, to add additional charges. Assume,
3 for the sake of argument, this Court had granted
4 the defense motion to dismiss the Complaint.
5 Would the state be precluded from being in the
6 exact posture we're in right now? Absolutely
7 not.

8 As the Court is aware, and the parties
9 are aware, the cases of ***State vs. Bailey***, ***State***
10 ***vs. Burke***, ***State vs. Richer***, ***State vs. Williams***,
11 *State vs. Akers* (sic) ***State vs. Bury***, all
12 occurred and were litigated in the context of
13 post-probable cause, based upon the original
14 Complaint and a subsequent preliminary
15 examination and no additional or Amended
16 Complaints after bindover.

17 So, in effect, the defendant has
18 received a benefit, based on a local custom and
19 practice, to provide additional information
20 should, in the average felony case, the result, a
21 change of plea. The parties would have a factual
22 basis upon which to make a determination to
23 accept a plea, to refer the matter for further
24 presentence investigations, what have you. A
25 current local custom and practice, but one which

1 is not jurisdictionally required and nor should
2 it be.

3 So, even if the Court had granted the
4 motion to say, no, I'm not going to let the State
5 file an Amended Complaint with these additional
6 counts, the State would not be precluded from
7 seeking leave to amend the Information for the
8 reasons stated in the State's brief, that the
9 additional charges are transactionally related,
10 or to borrow the phrase, not wholly unrelated to
11 the transaction which was the subject of the
12 preliminary examination, that is, the murder and
13 mutilation of Teresa Halbach.

14 I would also note, parenthetically, that
15 even if we were to get it wrong, so to speak, any
16 error relative to preliminary examination is
17 cured by a fair, impartial jury trial. And
18 that's ***State vs. Webb***. And I see that
19 possibility of no error because he is not
20 entitled to a preliminary examination and, thus,
21 looking at the law as just cited in ***Bailey***,
22 ***Burke, Richer, Williams, Akins, Bury***, the case
23 that followed ***Bailey***, I'm not going to reiterate
24 the points of my brief, I think they are very
25 clear.

1 The State is entitled to add the
2 additional charges because they are
3 transactionally related and whether we have --
4 there's no legal requirement, there's no
5 jurisdictional imperative to have a preliminary
6 examination ordered on those Complaints because
7 those Complaints were not required by law. They
8 were not jurisdictionally mandated. They were
9 not necessary. They were provided as a courtesy.

10 And I would note that 99 percent of the
11 defendants in Wisconsin law find themselves
12 wondering, well, jeez, how did that prosecutor
13 add these additional counts. None of them had
14 the benefit of the additional information being
15 provided in the Complaints, because they are not
16 necessary. They are not required. They do not
17 provide the jurisdictional predicate that the
18 defense seems to suggest that they do.

19 So, he has received the benefit. He has
20 received notice. He has received the
21 information. He is, in effect, better off at
22 this early stage in the proceedings than all the
23 other defendants who may find themselves in this
24 posture. So, that's the equitable argument. The
25 legal argument is there's no jurisdictional

1 basis. They are not required and they are
2 unnecessary.

3 So, we ask the Court to decide this
4 strictly in the context of whether or not a
5 prosecutor may seek leave and amend the
6 Information, based on the theory that the
7 additional counts are either: One, directly flow
8 from evidence adduced at preliminary examination
9 or, as we theoretically and actually posit in our
10 brief, the additional charges are transactionally
11 related to the information, to the subject matter
12 which was testified to at preliminary
13 examination. We thank the Court.

14 THE COURT: Thank you. Mr. Strang.

15 ATTORNEY STRANG: I'm very pleased to hear
16 my colleague, a very skilled lawyer, concede here
17 that the Complaint was unnecessary, the Amended
18 Complaint was unnecessary. I don't know that I
19 fully can accept his gracious concession to the
20 extent that he qualifies it by saying
21 jurisdictionally unnecessary, but it is gratifying
22 to hear the concession that this Amended Complaint
23 was unnecessary.

24 Only lawyers, though -- I think only
25 lawyers could imagine that that unnecessary

1 Complaint conferred a benefit on Steve Avery.
2 The benefit is then that he has been pilloried in
3 the press on the basis of unreliable,
4 inadmissible, hearsay accusations in the
5 Complaint. Repeatedly pilloried in the press.

6 The benefit has been that this Court
7 explicitly cited that information in the
8 Complaint as part of the reason for raising his
9 bail from a half million dollars to three quarter
10 of a million dollars cash. The benefit is that
11 we are here today fighting simply to have the
12 State stand beside and submit to the minimal
13 testing of a preliminary hearing, the information
14 that it has spread before the public in this
15 Amended Complaint and by comments to the news
16 media that tracked some of the allegations of the
17 Criminal Complaint. And the State resists the
18 minimal testing that occurs at a preliminary
19 hearing in this State where it is required only
20 to establish probable cause.

21 So, I don't share the sense that any
22 benefit has been conferred on Mr. Avery by this
23 Amended Complaint. I do have the sense that it
24 introduces altogether something new in this case.
25 And I think everybody watching, or listening, or

1 sitting behind me today, understands that there
2 are altogether new things that the State has been
3 alleging since early March, against Mr. Avery.
4 And those ought to be tested by preliminary
5 hearing.

6 THE COURT: All right. By way of
7 background, the Court notes first that the initial
8 charges in the initial Complaint in this case
9 charged the defendant with first-degree intentional
10 homicide, mutilation of a corpse, and a felon in
11 possession of a firearm. The State sought
12 permission, and the Court granted permission, for
13 the State to file an Amended Complaint adding the
14 charges of first-degree sexual assault, kidnapping,
15 and false imprisonment.

16 The defendant's motion before the Court
17 today raises two separate issues. First, the
18 defense renews its argument that the Amended
19 Complaint should be dismissed on its face, or in
20 the alternative, the defense also argues that if
21 the Court permits the filing of an Amended
22 Complaint, the defendant is entitled to a
23 preliminary examination on the new charges.

24 The Court will first, briefly, readdress
25 the argument regarding the sufficiency of the

1 Complaint. The Court has already ruled that the
2 State is permitted to add the new charges in the
3 Amended Complaint, and I don't believe there's a
4 reason for the Court to reconsider that ruling at
5 this time.

6 There is no claim of prejudice on the
7 part of the defense, based on the lack of time to
8 answer the new charges. The defense alleges that
9 there is no reliable information in the Amended
10 Complaint to support the new charges. However,
11 the statements of the alleged co-defendant can,
12 in this Court's opinion, be used to support the
13 charges in the Amended Complaint under the law in
14 the case of **Ruff vs. State**, which I cited at the
15 last hearing. And the Court still believes that
16 case to be the law in the State.

17 With respect to the reliability of
18 statements of the alleged co-defendant that form
19 the basis of the new allegations, the Court
20 cannot presume that that witness won't be
21 available to testify. The development of the law
22 in the area of confrontation certainly suggests
23 that if he doesn't testify, the State will have a
24 difficult time supporting the allegations, based
25 on the statements attributable to the

1 co-defendant.

2 But the Court is not aware of any law
3 that wouldn't find that the co-defendant's
4 statements would not be relevant if he did
5 testify. And I believe they still can form the
6 basis of the charges in the Amended Complaint.
7 Therefore, the Court does not find a basis for
8 denying the State's request to file and Amended
9 Complaint.

10 The next logical issue to take up here
11 is the new argument raised by the defense today.
12 And that is, whether or not the defense is
13 entitled to a preliminary examination upon the
14 filing of new charges in the anticipated new
15 Information, is the defendant entitled to a
16 preliminary examination under Section 970.02
17 based on the filing of an Amended Complaint.

18 The parties did not brief that issue in
19 written form, but both parties have informed the
20 Court today that they are not aware of any
21 relevant case law. So we're left with the
22 language of Section 970.02 itself.

23 Significant in the Court's mind is the
24 title of that statute. It is the duty of the
25 judge at the initial appearance. I don't believe

1 that the filing of an Amended Complaint triggers
2 a new initial appearance in this case. It can
3 result in the defendant responding to the
4 charges, but I don't believe that a second
5 initial appearance is contemplated within the
6 meaning of the statute; 970.02 (5) says, if the
7 defendant does not waive preliminary examination
8 the judge shall forthwith set the action for a
9 preliminary examination understand 970.03.

10 Implicit in the statute is that there's
11 a right of a preliminary examination to waive.
12 And I think that merely postpones the question to
13 the one that the parties have addressed in -- at
14 length in their written briefs, and that is, is
15 the defendant entitled to a preliminary
16 examination upon the filing of additional
17 charges, after the bindover.

18 I agree with the -- I believe both
19 parties today, that the case law as it is
20 developed does not appear to require, nor does
21 the statutes require, the State to file an
22 Amended Complaint as a condition precedent to
23 adding charges in the Information. The fact that
24 the State has elected to do so and provide the --
25 everyone with the alleged factual basis for the

1 additional charges, I'm not sure how, absent some
2 specific wording in the statutes requiring it,
3 that that fact alone would add anything to the
4 argument that the defendant should be entitled to
5 a preliminary examination.

6 It does provide the defendant with
7 notice of the factual basis for the State's
8 charges. And I think that that's a benefit to
9 the defense in the sense that it alerts the
10 defense as to what the basis for the new charges
11 are going to be. So, I don't find anything in
12 Section 970.02 that would independently trigger a
13 right to an additional preliminary examination in
14 this case.

15 The Court will move on then to what both
16 of the parties have focused on in the written
17 briefs as the primary argument, and that is, when
18 the State seeks to add charges in an Information,
19 that were not the subject of the Complaint at the
20 time of the original preliminary examination, is
21 the defendant entitled to a second preliminary
22 examination on the new charges.

23 I will first note that the factual basis
24 for the defendant's claim of entitlement to an
25 additional preliminary examination is largely

1 undisputed. The State did not produce any
2 evidence to support the charges it seeks to add,
3 at the time of the original preliminary
4 examination. In fact, the State does not claim
5 it was in possession of any such evidence to
6 support those charges at the time of the original
7 prelim. There is no specific evidence in the
8 record from the original preliminary examination
9 that would support the additional charges.

10 As noted by the parties in their briefs,
11 the question of whether the State can add charges
12 not included in the original Complaint, after a
13 defendant has been bound over for trial following
14 a preliminary examination, has been the subject
15 of extensive litigation over the years.

16 The governing statutes themselves are
17 not particularly clear on their face as far as
18 providing an answer to this question. And the
19 Supreme Court decisions dealing with the issue
20 have not always been unanimously decided.

21 The starting point is Section 971.01
22 (1), which provides that the district attorney
23 shall exam all the facts and circumstances
24 connected with any preliminary examination
25 touching the commission of any crime. If the

1 defendant has been bound over for trial and
2 subject to Section 970.03 (10), shall file an
3 Information according to the evidence on such
4 examination, subscribing his or her name thereto.

5 The statute is somewhat ambiguous on its
6 face and susceptible to different interpretation.
7 One interpretation certainly might be that the
8 district attorney is limited to pursuing only
9 those charges supported by evidence produced at
10 the preliminary examination. However, the
11 Supreme Court has held many times that that is
12 not the law in this state and the defense in this
13 case does not argue otherwise.

14 The question then becomes, what is the
15 test for determining whether the State can add
16 additional charges. The test was stated in the
17 case of **State vs. Richer** reported at 174 Wis. 2d,
18 231, by the Supreme Court as follows:

19 From our discussion in **Leicham** to our
20 recent decision in **Burke**, we have seen a
21 broadening of prosecutorial discretion from a
22 rule limiting charges to those supported strictly
23 within the confines of the evidence adduced at
24 the preliminary, to a rule granting prosecutors
25 the discretion to charge, in the Information, any

1 felony that is, quote, "not wholly unrelated",
2 end quote, to the initially charged crime.

3 The common denominator in all these
4 decisions was that the charges must be related to
5 one another, either from an evidentiary viewpoint
6 or a transactional one. We conclude that a
7 felony not charged in the preliminary examination
8 can be made a count in a subsequently filed
9 Information if there is evidence, direct or
10 inferential, in respect to that felony, adduced
11 at the preliminary, or if a subsequently charged
12 felony is demonstrated by the State to be
13 transactionally related, that is, not wholly
14 unrelated, to one or more of the felonies for
15 which the defendant has been bound over for
16 trial.

17 This test has been adhered to in all the
18 cases cited by each of the parties in their
19 briefs. The parties differ concerning how they
20 believe the standards to be applied to this case.
21 The defense argues that the not wholly unrelated
22 test applies to evidence introduced at the
23 preliminary hearing itself, as opposed to the
24 transaction, which was the subject matter of the
25 preliminary examination.

1 The Court concludes that while there is
2 such a distinction, the law is that charges can
3 be added which do not have to be specifically
4 related to the evidence introduced at the
5 preliminary examination. Perhaps the closest
6 case on the facts, to those in this case, is that
7 of the ***State vs. Bailey*** reported at 65 Wis. 2d,
8 331. It's a 1974 Wisconsin Supreme Court
9 decision.

10 The Complaint in that case charged
11 Bailey with one crime, first-degree murder. The
12 Information filed after the preliminary
13 examination added counts of indecent behavior
14 with a child, child enticement, and attempted
15 child enticement. The additional charges related
16 to the abduction of the child, who was
17 subsequently murdered by the defendant. In
18 upholding the prosecutor's authority to add these
19 charges, the Court ruled as follows:

20 In our view of Section 970.03 (10) does
21 not prohibit the prosecutor from including in the
22 Information, once a defendant has been bound
23 over, charges in addition to those advanced at
24 the preliminary hearing, so long as they are not
25 wholly unrelated to the transactions or facts

1 considered or testified to at the preliminary.

2 This view is consistent with the
3 legislative statement in Section 970.03 (1), that
4 a preliminary hearing is held, quote, "for the
5 purpose of determining if there is probable cause
6 to believe a felony has been committed by the
7 defendant", end quote. Once it is determined
8 that the defendant should be bound over for trial
9 on at least one count, the purpose of the
10 preliminary has been satisfied and the prosecutor
11 may, in his discretion, allege such other
12 offenses as permitted by the limitations stated
13 above.

14 In this case, assuming there is no
15 evidence presented as to them at the preliminary,
16 it is clear that the sex related offenses, Counts
17 2, 3, and 4, were not wholly unrelated to the
18 murder count. They are related in terms of
19 parties involved, witnesses involved, geographic
20 proximity, time, physical evidence, motive, and
21 intent.

22 There's a strong parallel between the
23 facts recited in **Bailey** and those here. The
24 child enticement counts were related to crimes
25 that immediately preceded the murder and were

1 part of the motive for the murder.

2 Now, as the defense points out in its
3 brief, the Court in **Bailey** went on to find that
4 the facts introduced at the preliminary
5 examination in that case would have been
6 sufficient to bind over on the enticement counts
7 anyway. So the language quoted could be
8 considered dicta not necessary to the Court's
9 decision.

10 And I believe that's an entirely valid
11 distinction on the defense's part. I think the
12 language could easily have been characterized as
13 dicta. And, in fact, it was. It wasn't really
14 necessary to the Court's decision because the
15 Court found the facts introduced at the prelim by
16 themselves would have been sufficient to support
17 the additional counts.

18 However, **Bailey** has been cited in a
19 number of subsequent Supreme Court decisions and
20 the Court has never backed away from its
21 rationale, whether or not that rationale is
22 characterized as dicta. In fact, the Supreme
23 Court has accepted the dicta from **Bailey** as the
24 law.

25 For example, in the case of **State vs.**

1 **Burke**, the Court held as follows: **Fish** and
2 **Bailey** hold that, in a multiple offense
3 transaction case, once the defendant has been
4 bound over for trial on at least one count
5 related to the transaction, the prosecutor may,
6 in the Information, charge additional counts not
7 wholly unrelated. **Bailey** further establishes
8 that the direct evidence related to the
9 additional counts may not have been presented at
10 the preliminary examination.

11 In the Court's opinion, we are not left
12 to wonder how additional charges must relate to
13 the evidence introduced at a preliminary
14 examination in order to be includable in an
15 Information. The test has been repeated often.
16 To meet the test of transactionally related or
17 not wholly unrelated, the charges must be related
18 in terms of parties involved, witnesses involved,
19 geographic proximity, time, physical evidence,
20 motive and intent. That's the test that the
21 Court is required to apply and that test can be
22 applied in this case.

23 Referring specifically to the facts in
24 this case, the Court concludes that the new
25 charges clearly meet the test which the Supreme

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Court has established:

The parties involved in the alleged crime are the same, that is, it's the same defendant and the same victim.

The witnesses, who would be the persons alleged to be present at the time of the crime, are the same in each case.

With respect to geographic proximity, everything is alleged to have happened at the same location.

With respect to time, the new charges are alleged to have immediately preceded the homicide and mutilation of a corpse charge from the original Complaint.

In addition, the physical evidence involved is likely to significantly overlap the charges in the original Complaint and the Amended Complaint.

With respect to motive and intent, the kidnapping, false imprisonment, and sexual assault charges will form an important basis on the alleged motive for the homicide and mutilation charges.

The Court concludes that it's difficult to imagine how the additional charges could be

1 more closely related to the original charges in
2 this case, than they are. Thus, the Court
3 concludes that the State is permitted to add the
4 new charges and the defendant is not entitled to
5 a preliminary examination on the other charges.

6 For those reasons, the Court is denying
7 the motion of the defense to dismiss the -- I
8 will reiterate the Court's denial of the motion
9 to dismiss the Amended Complaint. And the Court
10 also denies the motion requesting an additional
11 preliminary examination on the additional
12 charges.

13 Mr. Kratz, I will direct you to prepare
14 the order in this case. Procedurally, at this
15 point, I don't know if the State is prepared to
16 proceed with an Information at this time or not.
17 Mr. Kratz.

18 ATTORNEY KRATZ: I think probably, Judge,
19 the Court should schedule an arraignment at which
20 time the Amended Information can be filed.

21 THE COURT: I know, Mr. Strang, you
22 indicated previously, in the correspondence, that
23 the defense may seek a permissive appeal from the
24 Court's ruling if the Court ruled as it did. I
25 don't know if the -- if the defense is going to seek

1 to delay with respect to arraignment or not.

2 ATTORNEY STRANG: Well, that's a question,
3 the Court is right. And I agree with Mr. Fallon's
4 assessment of *Webb*. I read that case the same way,
5 in the sense that, if we think the Court erred on
6 the sufficiency of the Complaint, or on our
7 entitlement to a preliminary hearing, the only time
8 we can raise that is now. Because the trial will
9 certainly cleanse the error, or render it harmless,
10 if in fact there was error.

11 So, this is not a usual case, the stakes
12 are very high. Obviously, we understand what
13 they are for Mr. Avery, for the Halbach family,
14 for the State, people of the State. I think it
15 prudent for us to ask the Wisconsin Court of
16 Appeals for leave to file an appeal here,
17 permissively, that the Court doesn't have to --
18 that is, the Court of Appeals doesn't have to
19 grant leave. But if I don't ask, I'm giving up
20 my only opportunity to be heard on the
21 correctness of the Court's ruling and to have
22 those rulings reviewed. So, I do and will do
23 that.

24 I have 10 days from the entry of the
25 written order, I think -- 14 days, I'm sorry,

1 from the entry of the written order memorializing
2 the Court's rulings. It seemed, although I don't
3 have an answer on whether an intervening
4 arraignment would affect the posture of a request
5 for permissive appeal, I can tell the Court this,
6 if we're put to an arraignment before we seek
7 leave to file from this appeal, we will stand
8 mute and not participate in that, not wanting to
9 waive or imperil our position on the request for
10 this interlocutory appeal.

11 So, the better practice may be to
12 schedule the arraignment after the deadline, at
13 least, for filing a petition for leave to take
14 permissive appeal. I think that's probably the
15 wiser procedural course for the Court to follow.
16 Although counsel may well view it differently,
17 that's the view at this table.

18 THE COURT: I did read the **Webb** case and I
19 understand that, as a result of that case, if you
20 want to challenge the Court's ruling you -- the
21 lesson is pretty clear, you have to do it before the
22 trial. I didn't see anything in there to suggest
23 that holding an arraignment would prejudice the
24 defendant in anyway. But on the other hand, the
25 Court didn't really address the issue in this case.

1 Mr. Kratz.

2 ATTORNEY KRATZ: On the 9th of March I did
3 file the Amended Information already. That's why,
4 when I was searching, I couldn't find it, it's
5 already been filed. If the Court can just recognize
6 today that it's been filed, however the Court wishes
7 to address the responsive pleading, you can do that.

8 ATTORNEY STRANG: I did not remember the
9 date, but I do remember seeing the proposed, at that
10 point, Amended Information. It was, I suppose,
11 filed conditionally on the granted leave to file,
12 which the Court now has granted. And I certainly
13 have a copy of the proposed Amended Information.

14 THE COURT: All right. Does the State have
15 any objection to scheduling the arraignment shortly
16 after the appeal deadline for the defense?

17 ATTORNEY KRATZ: No, Judge, once the Court
18 accepts, or recognizes the filing of the
19 Information, an arraignment can be held any time.

20 THE COURT: Well, let's see. All right.
21 How about 9:00 on -- or Mr. Strang, is life easier
22 for you -- or, actually, we have Mr. Fallon
23 traveling as well. Does 9:30 work out better for
24 you?

25 ATTORNEY STRANG: Well, I assume Mr. Fallon

1 is in the same position. I have to be seated in my
2 car three hours before the Court starts. So I
3 wouldn't be seated in my bed at 6:00 a.m., but I
4 also wouldn't be in my car.

5 THE COURT: What if we do it this way, how
6 about 10:00 on May 30th. I will tell you, here, for
7 security purposes, the Sheriff's Department likes to
8 have your hearing be the first thing done in the
9 courtroom that day. So, I have pressure on both
10 sides here.

11 ATTORNEY FALLON: I don't know about Dean,
12 but it doesn't matter to me, whatever is convenient
13 for the Court and security purposes. If you want to
14 hold this at 7:00 a.m., I will be here.

15 ATTORNEY STRANG: Right.

16 ATTORNEY KRATZ: If all we're doing is the
17 arraignment, I suspect Mr. Fallon is not going to be
18 here. It should be a 30 second hearing.

19 ATTORNEY STRANG: I will be here any time
20 the Court sets it. I was being a little bit
21 flippant. Yes, it's a three hour drive, but I will
22 be here whenever the Court sets it.

23 ATTORNEY KRATZ: Is there any chance of
24 doing it just before noon on the 4th of May? The
25 reason I say that, co-defendant, Mr. Dassey's

1 motions before Judge Fox are scheduled, I have to be
2 here that morning anyway. And if we could -- if
3 this is such a short hearing, if we could do it
4 sometime later that morning on the 4th, that would
5 sure help my schedule.

6 ATTORNEY STRANG: Both Mr. Buting and I
7 have a Criminal Law Section Board meeting for the
8 State Bar at 11:00 on the morning of May 4th.

9 THE COURT: Where is that held?

10 ATTORNEY STRANG: That one is in Madison.

11 ATTORNEY KRATZ: The 3rd is fine, Judge.
12 That's fine.

13 THE COURT: All right. Let's say 10:00 on
14 the 3rd then. All right. Is there anything else
15 that either party wants to bring up on the record
16 this morning?

17 ATTORNEY KRATZ: Not the State, your Honor.

18 THE COURT: Mr. Strang.

19 ATTORNEY STRANG: No.

20 THE COURT: All right. If not, we're
21 adjourned for this morning.

22 (Proceedings concluded.)
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1 STATE OF WISCONSIN)
)ss
2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 25th day of April, 2006.

Diane Tesheneck, RPR
Official Court Reporter

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, ARRAIGNMENT & MOTIONS

5 vs. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** MAY 3, 2006

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
12 Special Prosecutor
On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
14 Special Prosecutor
On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
16 Special Prosecutor
On behalf of the State of Wisconsin.

17 DEAN A. STRANG
18 Attorney at Law
On behalf of the Defendant.

19 JEROME F. BUTING
20 Attorney at Law
On behalf of the Defendant.

21 STEVEN A. AVERY
22 Defendant
Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery. This is Case
3 No. 05 CF 381. We're here this morning for an
4 arraignment on the Amended Information in this case
5 and also to hear a couple motions that have been
6 filed by the defense. Will the parties state their
7 appearances for the record, please.

8 ATTORNEY KRATZ: State of Wisconsin appears
9 by Calumet County District Attorney Ken Kratz
10 appearing as Special Prosecutor. Also appearing is
11 Tom Fallon from the Department of Justice.

12 ATTORNEY STRANG: Good morning. Steve
13 Avery is here and in custody, your Honor. Dean
14 Strang and Jerome Buting appearing on his behalf.

15 THE COURT: All right. The Court will
16 first take up the arraignment on the Amended
17 Information. Has the defense -- I believe the
18 defense has previously received a copy of the
19 Amended Information, but I would like to confirm
20 that at this time.

21 ATTORNEY STRANG: That is confirmed.

22 THE COURT: And, Mr. Strang, do I
23 understand that, before proceeding to take a plea,
24 the defense had a motion regarding the Information?

25 ATTORNEY STRANG: Your Honor, the defense

1 does. I confine my remarks to the three new counts
2 in the Amended Complaint and then reiterated or
3 replied in the Amended Information; that is, first
4 degree sexual assault, the kidnapping and false
5 imprisonment. As to those three counts, the Amended
6 Complaint demonstrated no probable cause and
7 therefore that Amended Complaint established no
8 personal jurisdiction. I moved to dismiss it, the
9 Court denied the motion. I renew the motion here
10 now, understanding that the Court has ruled.

11 We then requested a preliminary
12 examination on the three new counts, all three of
13 them felonies. We were not afforded the
14 preliminary examination. I object to that.
15 Further, I move to dismiss the Amended
16 Information because there is no personal
17 jurisdiction over Mr. Avery as to the three new
18 counts. So the three new counts in the Amended
19 Information I move to dismiss on personal
20 jurisdiction grounds.

21 THE COURT: All right. Mr. Kratz, is there
22 anything further from the State with respect to that
23 motion?

24 ATTORNEY KRATZ: No, Judge, the Court has
25 already ruled, as Mr. Strang has indicated, and

1 we'll rely upon our argument on the previous
2 findings of the Court.

3 THE COURT: All right. For reasons
4 previously stated by the Court, the Court will deny
5 the defense motion. The Clerk's Office informed me
6 that there had been an interlocutory appeal filed on
7 behalf of the defense today. I have not seen it,
8 but I assume that the rationale for the defense
9 motion is the subject of that appeal. But for
10 purposes of the hearing today, the Court will deny
11 the defense's motion to dismiss.

12 I should also note, with respect to the
13 Amended Information, while it adds three new
14 counts as Counts 4, 5, and 6, I believe it also
15 amends Counts 1 and 2 to allege party to the
16 crime, rather than the simple offense in the
17 original Complaint.

18 Mr. Strang, to those new charges, is the
19 defendant prepared to enter a plea this morning?

20 ATTORNEY STRANG: The defendant stands
21 silent.

22 THE COURT: Okay. Very well. Based on the
23 defendant standing mute, the Court will infer a
24 plea, on the defendant's behalf, of not guilty to
25 each of the six charges in the Amended Information.

1 Now, the Court has also received, and
2 agreed to hear today, a motion on behalf of the
3 defendant to extend the deadline for filing
4 motions in this case and also a motion to adjourn
5 the trial. The motion itself contains some
6 argument in support of those requests.

7 Mr. Strang, does the defense have anything in
8 addition to add at this time?

9 ATTORNEY STRANG: Your Honor, the time
10 that's intervened since I have filed this motion to
11 extend, not quite two weeks ago I guess, hasn't
12 diminished in any way the basis for the motion. I
13 still seek the relief that I have requested, namely
14 a motion filing deadline applicable to both parties,
15 on or before June 16; scheduling of a motion hearing
16 at the convenience of the State, and the Halbach
17 family, and the Court, and defense counsel; and a
18 trial in 2007, some time after the holidays and
19 accommodating holiday obligations of the Court, and
20 families, and counsel.

21 We're now at about 5400 pages of
22 discovery, give or take. The most recent search
23 warrant executed by the State I think came the
24 day I filed this. I think it was April 21,
25 thereabouts. I have received a copy of at least

1 the hard drive of the principle evidence seized
2 in that search warrant.

3 I'm informed by counsel this morning, as
4 well, that within about 10 days, give or take,
5 the State will be in a position to provide Crime
6 Lab reports, relating to March 1 seizures, to the
7 defense. So I note that if counsel's estimate is
8 good, as I expect it is, that we would be getting
9 the Crime Lab -- a large number of Crime Lab
10 reports at about the time the provisional
11 deadline for motions arrives, which is May 12, at
12 the moment.

13 I think as a matter of efficiency, it
14 makes sense here not -- or to try to avoid the
15 piecemeal filing of motions. I realize others --
16 that motions in limine will come much closer to a
17 trial date. I realize as well that the State's
18 investigation may be ongoing in this case, just
19 as it is in almost any case. The State can't
20 predict the course of future events any better
21 than I can.

22 That said, I think it makes sense to
23 acquire what we have, that is, what the State
24 has, look at it and file some, as far as
25 possible, one round of motions. June 16 ought

1 enable the defense to do that. It is a tight
2 timeline. This is not an issue on which I have
3 asked for a mile hoping to get a half mile, that
4 is not my style, or my practice, in any event.

5 I think June 16 is the minimum amount of
6 time I reasonably need, with Mr. Buting, to meet
7 my obligations to Mr. Avery under the 6th
8 Amendment. I ask the Court to do that, as well.
9 I think the September 5 trial date will not work,
10 will not afford justice to the people of
11 Wisconsin, or to the man whose liberty here is at
12 stake for the rest of his life and will not
13 assure that this Court sees counsel perform as
14 the 6th Amendment and this Court demand. So I
15 stand on the earlier requests, I don't need to
16 reiterate what I provided in writing. But that's
17 what I can add.

18 THE COURT: And I understand, along with
19 the requesting that the motion filing deadline be
20 extended to that point, that the defendant is asking
21 to have June 16 as a deadline to notify the Court
22 whether or not the defendant wishes to pursue a
23 change of venue motion as well.

24 ATTORNEY STRANG: Yes. And I would propose
25 to be bound by that. You know, at this point I have

1 straddled, in a sense. I have said, and because
2 it's true, that the defense continues to prefer a
3 Manitowoc County jury, if we can get an impartial
4 jury from this county. I recognize the practical
5 obstacles to that.

6 I also appreciate that the Court and
7 the Clerk of Court have a good deal of
8 administrative work to do if venue is to be
9 changed. In balancing all that, it strikes me as
10 fair that the defense take a final position on
11 that issue. And I see no reason not to couple
12 that with the motion deadline, if the Court will
13 indulge our scheduling needs in that respect.

14 THE COURT: All right. Mr. Kratz.

15 ATTORNEY KRATZ: Thank you, Judge. I have
16 several points. First, this Court, on the issue of
17 motion extension, I believe necessarily needs to
18 address the trial date issue first. In granting
19 relief to the defense for moving the trial date past
20 the current September 5th date, the Court very well
21 may then wish to similarly extend the motion date.

22 And let me just tell the Court that,
23 should the Court be moving the trial date, I
24 don't have any objection to Mr. Strang's request
25 that the motions themselves be put off for an

1 additional five weeks or so. As to the trial
2 date, the State does not necessarily object to
3 the September 5th date being moved, at least in
4 some some respect, given the Crime Lab analysis
5 that has now been completed, at least now that --
6 or what we have already submitted we believe is
7 completed.

8 Mr. Strang is correct that we can't
9 predict if there is going to be additional work
10 in the future, but at least that what has been
11 submitted has been completed. The reports are to
12 be forwarded do Mr. Strang in the near future.

13 In considering a motion for adjournment
14 of the trial date, this Court is required to
15 consider the position not only of the parties,
16 but also of the victim. Victim Rights, Section
17 950.04 (1v)(a) requires this Court consider the
18 victim's position. Victim in a homicide case
19 extends to the surviving family members.

20 I can tell the Court that after
21 explaining the realities of discovery, the
22 realities of the effective assistance of counsel,
23 that Mr. Avery is entitled, by Mr. Strang and
24 Mr. Buting, that the family would not object to a
25 continuance of the trial date past September 5th.

1 I'm also authorized by the family to extend their
2 request that the trial date be finished as soon
3 as this Court is able to realistically schedule
4 that.

5 The State has suggested to this Court an
6 October 16 start date, that is, jury selection to
7 begin on the 16th. That would, with at least the
8 timeline we have provided the Court, have us
9 completed by, hopefully, the 17th of November,
10 and certainly no later than the 22nd of Noember,
11 which is before the Thanksgiving holiday.

12 That would be an extension of time, I
13 believe sufficient, for those reasons set forth
14 in Mr. Strang's arguments to the Court, as
15 something certainly the State could be prepared
16 for and could live with. And that is, in fact,
17 my affirmative recommendation to the Court, that
18 the trial date be then set as a firm date
19 beginning October 16th, with motions then to be
20 filed, both by Mr. Strang and myself, no later
21 than the 16th of June.

22 THE COURT: Mr. Strang, anything with
23 respect to the date of trial, should the Court grant
24 your request to extend the trial date from the
25 current September date?

1 ATTORNEY STRANG: October 16 surely would
2 be better than September 5, but I don't think it's
3 adequate. It's better, but I think not sufficient.
4 Again, the defense proposed 2007 because that's what
5 we think is necessary to accommodate, for example,
6 defense testing, if we need to, once we have got the
7 Crime Lab results; to accommodate the exchange of
8 expert witnesses; and just to get through the mass
9 of discovery here and do the necessary defense
10 investigation.

11 So, I don't want to sound inflexible.
12 Again, October 16 is better. It's an improvement
13 on September 5. It's not what I would prefer or
14 I think we need.

15 THE COURT: All right. First of all, with
16 respect to the request to extend the motions
17 deadline, I think the information provided by the
18 defense in the motion gives a number of reasons why
19 an extension of the deadline for filing pretrial
20 motions is appropriate.

21 The volume of discovery in this case is
22 significant. And as I understand it, the
23 information that will be provided by the State to
24 the defense has not yet to be completed, although
25 it's expected to be completed in the near future.

1 The Court also recognizes that the case
2 took somewhat of a different turn, if you will,
3 by the filing of a Complaint against an alleged
4 co-defendant. And the defense legitimately
5 wishes to monitor media reports to assess its
6 request for a chain of venue.

7 For all of those reasons, the Court
8 believes that the request to extend the deadline
9 for filing pretrial motions in this case is
10 appropriate. I'm going to grant the defense
11 motion to extend the deadline for filing pretrial
12 motions in this case to June 16th of this year.

13 I will ask the parties to include
14 written argument in support of any motion they
15 file, with the filing of the motion. I will give
16 the other party until June 26th to file any
17 written response which they wish to file. And I
18 would propose hearing the motions on Thursday,
19 July 6th. Hopefully you have got your calendars
20 with you.

21 ATTORNEY KRATZ: I am not available on the
22 6th, Judge, in fact.

23 THE COURT: What about the following week.

24 ATTORNEY KRATZ: That is, I'm leaving on
25 the 6th, actually, to be out of the state until the

1 14th. I would be available on the fifth.
2 Certainly, the week before would work as well.

3 THE COURT: What about the defense?

4 ATTORNEY STRANG: The 5th is fine, the 6th
5 is fine, the 10th is fine. The Court should
6 accommodate Mr. Kratz's schedule here, so far as
7 possible, in that we're the ones moving the motion
8 deadline.

9 THE COURT: Mr. Kratz.

10 ATTORNEY KRATZ: The 5th should be fine.

11 THE COURT: All right. Let's set it for --
12 What time on the 5th?

13 ATTORNEY STRANG: The sooner we can, it
14 appears we would only have one day for that.

15 THE COURT: 9:30, 9:00?

16 ATTORNEY STRANG: I think 9:00 would be
17 most prudent.

18 THE COURT: All right. Nine o'clock on
19 July 5th. And I will hold the day for motions on
20 that day.

21 ATTORNEY KRATZ: Judge, as we have informed
22 the Court before, Mr. Strang and I will make every
23 effort, before the 5th, to discuss motions to be
24 filed. And if we can reach some stipulations, we'll
25 certainly alert the Court of that on the 5th, or

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even before.

THE COURT: All right. Thank you.

Next, the Court will take up the defendant's motion to adjourn the trial date in this case. That request is based on a number of considerations that are set forth in the motion. One of them is -- relates to the effect of pretrial publicity. Needless to say, there has been a significant amount of pretrial publicity in this case. Though, I will note that the pace of media reports, at least, has slowed somewhat.

There have been no press conferences or direct communication from the defense attorney's to the media, recently. And the statements from both the victim's family and the defendant's family, to the press also, fortunately, have settled down somewhat.

In considering the request to adjourn the September trial date, I did take into consideration, and I am taking into consideration, all of the reasons offered by the defense for an adjournment. In that regard, the defense makes a number of supplemental requests: First that the Court rule on the defendant's motion of March 8 for an order limiting public

1 disclosure in this case.

2 In evaluating this request, I cannot
3 help but note a reference in the defendant's
4 motion to what purports to be exculpatory DNA
5 evidence regarding one of the items that was
6 seized in this case. I think the example of the
7 reference in this to the pleadings demonstrates
8 the difficulty of effectively keeping either side
9 from conveying evidentiary information to the
10 media even without direct communication.

11 The applicable rule that governs the
12 attorneys in this case is SCR20 3.6. That rule
13 provides in relevant part as follows: A lawyer
14 shall not make an extra judicial statement that a
15 reasonable person would expect to be disseminated
16 by means of public communication. If the lawyer
17 knows, or reasonably should know that it will
18 have a substantial likelihood of materially
19 prejudicing an adjudicative proceeding in the
20 matter.

21 The rule goes on to provide that a
22 statement referred to in Paragraph A ordinarily
23 is likely to have such an effect when it refers
24 to a criminal matter and the statement relates
25 to, among other things, the results of any

1 examination or test, or the identity or nature of
2 physical evidence expected to be presented.

3 So the reference in the pleading in this
4 case, had it been directly communicated to the
5 media, would have been within the prohibition of
6 the rule. For that reason the reference in the
7 motion was, at least technically, not in
8 violation of the rule. However, in the Court's
9 opinion, the reference was not really necessary
10 to support the motion in this case. And it was
11 placed in a pleading, which by now both parties
12 are well aware the media regularly reviews in
13 this case.

14 Therefore, the Court concludes it's
15 somewhat disingenuous for the defense to ask this
16 Court to impose a gag order on the attorneys, but
17 disseminate information to the press indirectly
18 through a pleading where it's inclusion, for
19 argumentative purposes the Court believes is
20 somewhat marginal.

21 My criticism in this regard is not
22 limited to the most recent example in this
23 pleading. I'm not at all sure that the press
24 conference, that was held when the charges were
25 filed against Mr. Dassey, was limited and

1 certainly could have an adverse affect on
2 selecting a jury in this case.

3 And I will note that when I listened to
4 one of the press reports referring to the
5 information contained in the defendant's motion,
6 the news reporter reported that the State had no
7 response at this time but would reserve the right
8 to respond to the press at a later date.

9 Mr. Kratz, I have no direct information
10 of anything you told the media, but I will note
11 that I don't believe within the context of rule
12 that if that report was accurate that there could
13 be a direct response to the press for something
14 that was contained in a pleading.

15 I'm not attempting here today really to
16 jump down on either of you because I think each
17 of you are trying to comply with the rules and
18 allow an impartial jury to be selected. However,
19 I think that the -- what's taken place here
20 serves as an example that, even if the Court did
21 issue a gag order in this case on the attorneys,
22 it would not prove especially effective.

23 So, since the Court has been requested
24 to rule on the motion for an order limiting
25 public disclosure I'm going to rule on that

1 motion at this time. And I'm going to deny the
2 motion for a number of reasons. First, the
3 granting of such a motion is highly unusual and
4 difficult to police. The Court has not, in this
5 case, seen behavior on either side so egregious
6 that in the Court's opinion it warranted a gag
7 order.

8 Secondly, the Court is satisfied, if the
9 parties religiously adhere to please with SCR 20
10 3.6 that rule will provide adequate safeguards in
11 this case.

12 And third, as the reference in the
13 defendant's pleading demonstrates, the Court is
14 not really satisfied that issuing a gag order
15 would provide the complete protection that the
16 Court might hope to gain by issuing such an
17 order. So I'm going to deny the defense motion
18 for an order limiting public disclosure.

19 The defense also asked the Court
20 strictly enforce SCR Chapter 61, as to the media.
21 Actually, Mr. Strang, I wasn't exactly sure what
22 you were driving at there. I haven't -- I
23 reviewed SCR 61 again. I have not really noted
24 in this case any violations by the media. I have
25 been communicating with the media through the

1 media coordinator, and to the best of my
2 knowledge they have complied with all my KR-SZ
3 and I think were operating under SCR 61. Is
4 there anything specific you had in mind?

5 ATTORNEY STRANG: The only ongoing problem
6 of which I'm aware, it arises with streaming video
7 on some of the -- at least one of the television
8 websites -- and probably more than one, although I
9 don't know that -- and that's -- that's with the
10 camera running when your Honor is not on the bench.
11 And that -- As I read Chapter 61, that is not
12 allowed. I think that after the Court raised this,
13 at the joint request of the parties, in March, I
14 think that zooming in on either counsel table has
15 stopped, at least I haven't noticed anything more
16 like -- like that.

17 THE COURT: All right. I did, following
18 our discussion, convey a written instruction to the
19 media, through the media coordinator. I believe, to
20 the best of my knowledge at this point, unless I
21 receive a report otherwise that those instructions
22 are being complied with.

23 The Court has also been requested to
24 keep motions in limine, seeking admission or
25 inclusion of sensitive evidence, filed under

1 seal. The motions in limine themselves, as noted
2 by the parties, will be filed at a later date,
3 closer to the trial.

4 But I do agree that motions by the
5 parties that are due now by June 16th, which
6 could include a motion from either party to admit
7 other acts evidence, could prove prejudicial and
8 make it more difficult to select a fair and
9 impartial jury. So, I am going to order that any
10 motions seeking other acts evidence, that are
11 filed by June 16th, be filed under seal.

12 I ask the parties to differentiate those
13 motions, put them in a separate document than
14 your other motions. Include any written argument
15 in favor of your request with the motion. And
16 whether or not the Court releases them from being
17 kept under seal, I will make that determination
18 after I review them.

19 Mr. Kratz, is there anything you wish to
20 raise regarding that?

21 ATTORNEY KRATZ: No, Judge, the other acts
22 motion, we were just going to point out as
23 Mr. Strang and I had discussed, and I believe it was
24 outside of the Court's presence, that the concern is
25 any motions that may require the Court to balance a

1 prejudicial effect versus probative value. Those
2 wouldn't be limited to the character type evidence,
3 or other acts evidence, but could include other
4 kinds of motions in limine where we seek advance
5 rulings of the Court where that analysis that is to
6 be made. Those are the kinds of sensitive material
7 and motions that perhaps the Court is already
8 envisioning be filed outside of the public domain.
9 And then the Court can rule on dissemination
10 thereafter.

11 THE COURT: I know the parties have
12 previously agreed to, informally at least, exchange
13 motions with each other before they are filed and,
14 certainly, I ask that do you that. If either of you
15 have any motions you see are going to be filed by
16 the other side that you file should also fall within
17 the Court's order, we can conduct a telephone
18 conference ahead of time. You can notify me of
19 those ahead of time and I would make a
20 determination.

21 The Court is also -- or the defense also
22 asks the Court to reconsider the Court's motion
23 denying modification of bail. I wouldn't take
24 such action unless a formal motion was made to
25 that effect. But I will simply state at this

1 time, I think I have addressed that issue
2 previously on the record and I'm not aware of any
3 information that would cause the Court to
4 reconsider the decision that's already been made.

5 With those considerations in mind, the
6 Court has been asked to adjourn the trial date.
7 And with respect to the trial date, first of all,
8 I agree and I don't really hear the State to be
9 seriously disputing it, that an adjournment trial
10 date from the early September date is called for
11 in this case.

12 The case not only involves voluminous
13 discovery, but there's been a second round of it
14 related to a subsequent investigation by the
15 State. I think the defense, which to this point
16 hasn't received all of the lab results from the
17 State, is entitled to adequate time in order to
18 assess the results of the State's investigation,
19 to evaluate those results, and to determine
20 whether or not the defense wishes to conduct
21 additional testing on it's own.

22 That takes time and that -- I believe
23 the time that's required would be pushing it, at
24 least if we stuck with the September trial date.
25 I do feel that there are countervailing reasons

1 for holding the trial promptly. People's
2 memories tend to fade, both parties are entitled
3 to a trial that is held as soon as it can
4 reasonably be held, giving the parties an
5 opportunity to prepare.

6 I believe, in this case, it's most
7 appropriate to adjourn the trial date in this
8 case to Monday, October 16th. I believe that has
9 a number of advantages. First of all, it -- that
10 means it would take place more than five months
11 from today. I think that would allow dissipation
12 of any adverse publicity there might have taken
13 place already.

14 It gives the party an adequate chance to
15 prepare and yet it does not unduly delay the
16 trial in this case. By starting it on
17 October 16, I think it can be completed before
18 the Thanksgiving holiday. And for those reasons
19 I think that's an appropriate delay.

20 I haven't heard anything specific that
21 would call on the Court to consider a delay
22 longer than that. So I'm going to delay the
23 start of trial until Monday, October 16th. Is
24 there anything else that either party wishes the
25 Court to take up this morning?

1 ATTORNEY KRATZ: Mr. Strang, with that new
2 trial date, had previously discussed with me an
3 exchange of experts and a more detailed scheduling
4 order regarding some more detailed discovery
5 matters. May I suggest, Judge, that the Court allow
6 Mr. Strang and I to try to resolve those matters and
7 report to the Court, within our correspondence, by
8 June 16th, as to our discussion as to exchange of
9 experts, and the like, and other kinds of scheduling
10 matters, and then should we need acquiescence or
11 approval of the Court, that we can seek that
12 sometime after the 16th.

13 THE COURT: All right. Mr. Strang.

14 ATTORNEY STRANG: That makes sense. And I,
15 further, will take as implicit and consider myself
16 bound by a June 16 deadline for making a final
17 decision on change of venue.

18 THE COURT: Yes.

19 ATTORNEY STRANG: Barring something really
20 unforeseen happening.

21 THE COURT: I meant to include that in your
22 order; yes, you can consider that included. And at
23 this point, I haven't specifically addressed an
24 additional scheduling order to deal with matters
25 before the trial. I certainly anticipate that there

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will be one.

I appreciate the fact that the attorneys will be talking with each other and attempt to present the Court with joint recommendations on dates, but there will be a date, for example, for filing motions in limine and that type of thing before the trial. Anything else this morning?

ATTORNEY KRATZ: Not by the State, Judge.

ATTORNEY STRANG: Nothing here either.

THE COURT: All right. If not, the Court will prepare an order reflecting the Court's decision this morning on the motions. And with that, we're adjourned for today.

ATTORNEY KRATZ: Thank you, Judge.

THE COURT: The Clerk just reminded me of something, the May 18 and 19 dates that had been held for hearing, the motions which were due on May 1st, the hearing on those dates are cancelled.

ATTORNEY KRATZ: Thank you, Judge.

ATTORNEY FALLON: Thank you.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this [redacted] day of [redacted], 2006.

Diane Tesheneck, RPR
Official Court Reporter

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, MOTION HEARINGS

5 vs.

6 Case No. 05 CF 381

7 STEVEN A. AVERY,

8 DEFENDANT.

9
10 **DATE:** JULY 5, 2006

11 **BEFORE:** Hon. Patrick L. Willis
12 Circuit Court Judge

13 **APPEARANCES :**

14 KENNETH R. KRATZ & THOMAS J. FALLON
15 Special Prosecutors
16 On behalf of the State of Wisconsin.

17 DEAN ARTHUR STRANG & JEROME F. BUTING
18 Attorneys at Law
19 On behalf of the Defendant.

20 STEVEN A. AVERY
21 Defendant
22 Appeared in person.

23 * * * * *

24 **TRANSCRIPT OF PROCEEDINGS**

25 Reported by Diane Tesheneck, RPR

Official Court Reporter

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1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery. It's Case No.
3 05 CF 381. This case is scheduled for a hearing on
4 a number of pretrial motions this morning. Will the
5 parties state their appearances for the record,
6 please.

7 ATTORNEY KRATZ: The State of Wisconsin
8 appears by Calumet County District Attorney Ken
9 Kratz appearing as Special Prosecutor. Also
10 appearing this morning is Tom Fallon from the
11 Department of Justice, also appointed by this Court
12 as Special Prosecutor.

13 ATTORNEY STRANG: Good morning, Steven
14 Avery appears in person, he's second to my right.
15 Jerome Buting of Buting and Williams is immediately
16 next to me, representing Mr. Avery. And I'm Dean
17 Strang, I also represent Mr. Avery.

18 THE COURT: All right. I will indicate for
19 the record that before we began today, I met with
20 counsel to discuss the logistics of the hearing
21 today. I believe both parties agree that there is
22 some overlap with some of the motions today and some
23 of those will be heard together. With respect to
24 the order of the motions, the parties have
25 requested, and the Court agrees, that we'll proceed

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first on the Defendant's Motion to Dismiss.

And I understand, Mr. Strang, that the defense has some evidence to offer in relation to that motion, as well as the Motion For Change of Venue and Motion to Exclude the Sheriff's Department and It's Employees From Testifying and Overseeing Jurors; is that correct?

ATTORNEY STRANG: That is, your Honor.

THE COURT: All right. You may call your witness at this time.

ATTORNEY STRANG: Defense calls Sheriff Kenneth Petersen.

ATTORNEY KRATZ: I should note, Judge, that the examination of Sheriff Petersen and the argument on this particular motion will be done by Mr. Fallon.

THE COURT: Very well.

SHERIFF KENNETH J. PETERSEN, called as a witness herein, having been first duly sworn, was examined and testified as follows:

THE CLERK: Please be seated. Please state your name and spell your last name for the record.

THE WITNESS: Kenneth J. Petersen,
P-e-t-e-r-s-e-n.

DIRECT EXAMINATION

1 BY ATTORNEY STRANG:

2 Q. Good morning. Let's start with a little bit of
3 background if we may, Sheriff Petersen. You have
4 been with the Manitowoc County Sheriff's
5 Department for about 31 years at this point?

6 A. Correct.

7 Q. Started as a patrol deputy?

8 A. That's correct.

9 Q. You have served as sheriff for the last six
10 years, roughly?

11 A. Correct.

12 Q. Six and a half years, pretty close to that right
13 about now?

14 A. It will be six years in January.

15 Q. January, that's right, you were sworn in in
16 January, 2001, as the sheriff?

17 A. Correct.

18 Q. As the Manitowoc County Sheriff, it would be fair
19 to describe you as the chief county law
20 enforcement officer for the County of Manitowoc?

21 A. Yes.

22 Q. During your experience with the Manitowoc County
23 Sheriff's Department, sir, when was the first
24 time in which you participated, personally, in a
25 prosecution of Steven Avery on a charge related

1 to murder?

2 A. You mean murder of a person?

3 Q. Or attempted murder, yes, of a human being?

4 A. I think 1984.

5 Q. And that involved an event that since has become
6 widely-known, involved a violent assault on a
7 beach here in Manitowoc County?

8 A. Correct.

9 Q. You, personally -- I'm going to at least suggest
10 to you that I think it was 1985; does that
11 sound--

12 A. Somewhere in the mid '80's, yes.

13 Q. We're talking about a violent assault on a beach?

14 A. Yes.

15 Q. You, personally, were requested by the, then,
16 sheriff in Manitowoc County, Tom Kocourek, to
17 arrest Mr. Avery on a charge of attempted murder?

18 A. Yes.

19 Q. You did that?

20 A. Yes.

21 Q. Prior to that arrest, you already knew where
22 Steven Avery lived in 1985?

23 A. Yes.

24 Q. And that prosecution went forward following
25 Mr. Avery's arrest?

1 A. Yes, it did.

2 Q. On a charge of attempted first-degree intentional
3 homicide?

4 A. I'm not sure what the actual charge was at the
5 time of trial.

6 Q. But attempted murder charge and a sexual assault
7 charge of some kind, perhaps others, correct?

8 A. Yes.

9 Q. That resulted in a conviction?

10 A. Yes, it did.

11 Q. Resulted in a 32 year sentence being imposed?

12 A. Yes.

13 Q. You participated after the arrest of Mr. Avery,
14 personally, in that prosecution, as a witness in
15 that trial?

16 A. Yes.

17 Q. Later, in 2003 to be specific, the claim that
18 Mr. Avery had made in 1985, that he was innocent
19 of those crimes, proved to be true?

20 A. Possibly.

21 Q. That is, the State made a motion to release him
22 from prison?

23 A. Yes.

24 Q. After some DNA testing was done?

25 A. Yes.

1 Q. That motion was made by the State, by the
2 District Attorney of Manitowoc County, after
3 consulting with you?

4 A. Yes.

5 Q. And Mr. Avery was released the day, or the day
6 following the State's motion to release him?

7 A. Yes.

8 Q. Now, when you say possibly, is there any question
9 in your mind that Gregory Allen was identified by
10 DNA evidence as the sole attacker of the woman at
11 issue on the beach in 1985?

12 A. Yes, I would have doubts.

13 Q. I'm sorry?

14 A. I would have doubt.

15 Q. You have doubts about that?

16 A. Yes, I believe the DNA created reasonable doubt
17 and enough to release Steve, but I don't think
18 that single hair was enough to convict Gregory
19 Allen.

20 Q. Okay. Do you have doubts whether, in fact,
21 Gregory Allen was the person who's hair was
22 tested?

23 A. No, I believe it was.

24 Q. You base your doubts on the reliability of DNA
25 evidence?

1 A. No.

2 Q. That is, you accept the DNA evidence and that the
3 pubic hair at issue, in fact, was Gregory
4 Allen's?

5 A. Yes.

6 Q. You have no reason to question or doubt the
7 claims of the victim, the testimony of the victim
8 in that case that one man, and one man only,
9 attacked her in 1985 on the beach?

10 A. Yes.

11 Q. You do doubt that?

12 A. Oh, no. No.

13 Q. Okay. Mr. Avery, in any event, spent, give or
14 take, 18 years in prison following his conviction
15 for that crime?

16 A. I believe he had six years, also, on another
17 charge.

18 Q. Running concurrently?

19 A. Right.

20 Q. Okay. So the total time in prison was about 18
21 years?

22 A. Yes.

23 Q. Or in custody, I should say more accurately. You
24 arrested him in July of 1985?

25 A. Yes.

1 Q. He was released on September 11, 2003?

2 A. Yes.

3 Q. 18 years and two months, give or take, in
4 custody?

5 A. Yes.

6 Q. As you point out, six years of that also being on
7 a separate and unrelated conviction?

8 A. Correct.

9 Q. But running at the same time, or concurrently?

10 A. Yes.

11 Q. You know, in your life, have you -- have you ever
12 spent a day, or a night, in jail, for a crime you
13 didn't commit?

14 A. No.

15 Q. Certainly not 18 years?

16 A. No.

17 Q. Or 12 years, or anything close to that?

18 A. No.

19 Q. If you were sitting here, if you were in Steven
20 Avery's chair and you were in his shoes, so to
21 speak, would you trust the Manitowoc County
22 Sheriff's Department in the investigation and
23 prosecution of yourself, a second time?

24 MR. FALLON: Objection, speculation.

25 Q. (By Attorney Strang)~ I'm not asking you to

1 speculate at all. I'm saying, if you were Steven
2 Avery, with your present sense, on whether you
3 would trust your department?

4 MR. FALLON: Relevance, then.

5 THE COURT: I'm going to sustain the
6 objection.

7 Q. (By Attorney Strang)~ You have told us that you
8 are the chief county law enforcement officer?

9 A. Yes.

10 Q. Meaning, you run the Manitowoc County Sheriff's
11 Department?

12 A. Correct.

13 Q. The Sheriff's Department here in Manitowoc
14 County, as in most counties, is organized with
15 people in rank, correct?

16 A. Yes.

17 Q. That's a clumsy way to put it, but you hold the
18 rank of sheriff?

19 A. Yes.

20 Q. Obviously. The Wisconsin Statutes require you to
21 have something called an under sheriff?

22 A. No.

23 Q. You do have an under sheriff?

24 A. I do.

25 Q. Okay. And the under sheriff is the number two

1 person in the department?

2 A. Yes.

3 Q. Is that person, whose name I think is

4 Mr. Hermann, if I have it right?

5 A. That's correct.

6 Q. Does he have another rank or title in addition to

7 under sheriff?

8 A. Inspector.

9 Q. All right. And he's the one inspector for the

10 Manitowoc County Sheriff's Department?

11 A. Yes.

12 Q. Now, he reports directly to you?

13 A. Yes.

14 Q. Others in the department then report up through

15 him?

16 A. That's correct.

17 Q. Below him, who's the next ranking officer?

18 A. Deputy Inspector of Operations.

19 Q. And that's who?

20 A. Greg Schetter.

21 Q. I'm sorry, maybe you could spell that for the --

22 A. S-c-h-e-t-t-e-r.

23 Q. Thank you. He's the deputy inspector?

24 A. Yes.

25 Q. Below that who do we have?

1 A. Deputy Inspector of Support, that's Larry
2 Ledvina, L-e-d-v-i-n-a.

3 Q. That's not a parallel position; the one deputy
4 inspector is below the other?

5 A. Yes.

6 Q. All right. How far down -- I'm not going to go
7 through everybody at the department, but how far
8 down do we get before we get to the chief
9 investigator, or the lieutenant in charge of the
10 Detective's Bureau?

11 A. He would be under the Deputy Inspector of
12 Operation.

13 Q. As well as Mr. Ledvina?

14 A. No, it's two separate divisions.

15 Q. I understand that but, in other words, under
16 Mr. Schetter, you said --

17 A. Yes.

18 Q. -- would be the lieutenant in charge of the
19 Detective's Bureau?

20 A. Yes.

21 Q. And the other deputy inspector?

22 A. No, the Deputy Inspector of Support would take
23 care of the court services, secretarial
24 functions, records releases, that type of thing.

25 Q. It's my clumsiness. I understand they have

1 separate areas, but the person who's the
2 lieutenant in charge of the Detective's Bureau is
3 James Lenk?

4 A. Yes.

5 Q. L-e-n-k?

6 A. Yes.

7 Q. All right. Mr. Lenk and Mr. Vetter (sic) both
8 report to Mr. Schetter; is that right -- or
9 Mr. Ledvina?

10 A. Ledvina.

11 Q. Both report to Mr. Schetter?

12 A. Ledvina wouldn't directly report to him, but Lenk
13 would.

14 Q. All right. And then below Lenk, there are
15 investigators or detectives, whichever you call
16 them, and -- correct?

17 A. Correct.

18 Q. I'm sorry, I should have paused there. Where do
19 sergeants fall in the hierarchy?

20 A. Sergeants are in patrol, normally. I have
21 sergeants in the jail and on the road.

22 Q. They are in charge of deputies?

23 A. Correct. But there's lieutenants in patrol also,
24 which would supervise the sergeants in the
25 patrol.

1 Q. Got it. So if we work our way up, we have got
2 deputies in the various divisions of the
3 department?
4 A. Yes.
5 Q. They report directly to sergeants?
6 A. Yes.
7 Q. Sergeant's report directly to lieutenants?
8 A. Yes.
9 Q. You haven't described any captain's, is that --
10 A. Deputy inspector would be equivalent to a
11 captain.
12 Q. All right. And you have told us about them. So
13 the lieutenants report to deputy inspectors?
14 A. Correct.
15 Q. Who deputy inspectors report to the inspector and
16 under sheriff?
17 A. Yes.
18 Q. And then, ultimately, the top of the chart, or
19 the pyramid, is you?
20 A. Correct.
21 Q. Now, you are familiar with a man named Andrew
22 Colborn?
23 A. Yes.
24 Q. All right. He's a sergeant in your department?
25 A. Yes.

1 Q. What -- Just to identify him, what's his area of
2 responsibility?

3 A. He's a patrol sergeant.

4 Q. Patrol meaning, covering the county's roads?

5 A. Right. He would be referred to as a shift
6 commander, so he would assign the beats, the
7 vehicles, and brief the patrolmen before they go
8 out into the road.

9 Q. In the patrol division?

10 A. Yes.

11 Q. Another person who will come up is, I believe, a
12 Lieutenant named Remiker. I could be wrong. He
13 may be a detective.

14 A. Remiker is a detective.

15 Q. All right. So he's in the Detective Bureau,
16 obviously?

17 A. Correct.

18 Q. He would report directly to Mr. Lenk?

19 A. Yes.

20 Q. And, in a sense -- I don't mean this to sound
21 like a loaded question, if it does, but in a
22 sense, the Manitowoc County Sheriff's Department
23 has a paramilitary structure in that we have
24 these ranks that we have now established, and the
25 chain of command is clear and well established?

1 A. Yes.

2 Q. You, as the sheriff, set the overall tone for the
3 department?

4 A. I believe so.

5 Q. You try to express your values?

6 A. Yes.

7 Q. Your policy directives?

8 A. Yes.

9 Q. And, ordinarily, you would do that -- or I
10 shouldn't even say ordinarily -- but you may do
11 that by written directive?

12 A. Yes.

13 Q. That written directive may go directly to one of
14 your subordinates?

15 A. It could.

16 Q. Or it could go to a number of people, including
17 those several steps down the ladder, correct?

18 A. Correct.

19 Q. You may send a written directive to all staff,
20 for example?

21 A. Correct.

22 Q. But in any event, you are the person who sets the
23 tone and the policies of your department?

24 A. Yes.

25 Q. You have the power to hire?

1 A. Yes.

2 Q. You have the power to fire, probably with some
3 oversight from the County Board or some committee
4 of the County Board?

5 A. Generally, we have to inform personnel and, of
6 course, we have to follow the State Statutes.

7 Q. Yes, of course. But in -- It would be fair to
8 say that, in a rough sense, the buck stops on
9 your desk?

10 A. Yes.

11 Q. Do you find, in general, that the Manitowoc
12 County Sheriff's Department operates as a well
13 disciplined organization?

14 A. I believe so.

15 Q. That is, your directives are communicated,
16 faithfully, to those below you?

17 A. Yes.

18 Q. And they are followed?

19 A. Yes.

20 Q. On Saturday, November 5, 2005, and just to orient
21 you, that Teresa Halbach, we now know, was last
22 seen on October 31, 2005. I don't expect that
23 you necessarily know this, but I'm led to believe
24 that she was reported missing on Thursday,
25 November 3. All right.

1 So I'm talking about two days later, on
2 Saturday, November 5, 2005, at about 11:30 or
3 11:45 in the morning, a decision was made to
4 transfer control of the investigation into her
5 disappearance, and circumstances surrounding it,
6 to the Calumet County Sheriff's Department and to
7 DCI, or the Division of Criminal Investigation;
8 is that true?

9 A. Yes.

10 Q. That decision to transfer control was made by
11 you?

12 A. Indirectly, yes.

13 Q. You say indirectly, the primary focus of the
14 investigation was in Manitowoc County, within the
15 metes and bounds of Manitowoc County, correct?

16 A. Correct.

17 Q. To fall within your jurisdiction?

18 A. Correct.

19 Q. Your department had been involved in early steps
20 in the investigation of Ms Hallbach's
21 disappearance?

22 A. Correct.

23 Q. Maybe you would explain, then, for me, what you
24 mean when you say, indirectly, the decision that
25 Saturday morning was made by you?

1 A. I had been out of town the previous week. I was
2 out in Seattle, Washington. And I arrived home
3 probably 10:30, quarter to 11, Saturday morning.
4 And that decision to transfer had already been
5 made, I assume, by the inspector. I never
6 inquired. I agreed with the way it was going, so
7 I didn't interfere.

8 Q. Okay. I need to explore that just a little bit
9 further to nail down timing. When you say you
10 arrived home, do you mean physically at your
11 home?

12 A. Yes.

13 Q. All right. You didn't go in to work immediately
14 that Saturday morning?

15 A. No.

16 Q. Had you been in contact with the office during
17 the course of that week in Seattle?

18 A. No.

19 Q. So you really were --

20 A. The first I heard --

21 Q. -- out of loop so to speak?

22 A. Yeah. The first I heard about the Halbach case
23 was when a reporter called me Saturday after 11.

24 Q. Do you recall about when, after 11?

25 A. About 11:15, somewhere in that general area.

1 Q. Okay. And this was entirely news to you at that
2 point?

3 A. Yes.

4 Q. You got in contact with Mr. Hermann?

5 A. Yes.

6 Q. Inspector Hermann?

7 A. Right.

8 Q. Do you remember about when you did that?

9 A. It had been shortly after the reporter called.

10 Q. I will bet. By telephone?

11 A. Yes.

12 Q. All right. And at that point, he told you that
13 he had already decided to shift the primary
14 responsibility for the investigation to the two
15 other law enforcement agencies I described?

16 A. Yes.

17 Q. Did he tell you when he had made that decision?

18 A. No. He had talked about conferring with Corp
19 Counsel and that was what he advised. Normally
20 we follow his advice.

21 Q. You agreed with that advice?

22 A. Yes.

23 Q. You had a discussion with him on his reasoning?

24 A. Yes.

25 Q. And in a nutshell -- and you are free to disagree

1 or explain this -- but in a nutshell, the reason
2 he described to you, after consulting with
3 Corporation Counsel, was to avoid the appearance
4 or the reality of a conflict of interest?

5 A. Correct.

6 Q. Because at least a person of interest at that
7 point was Steven Avery?

8 A. Yes.

9 Q. You were told that?

10 A. No, they didn't give me any specific suspects or
11 people of interest. They merely stated that the
12 vehicle had been found on the Avery Salvage Yard
13 property.

14 Q. Correct. And what further information did you
15 need, or ask for, or inquire about, to decide
16 whether, in fact, there was a conflict of
17 interest or the appearance of one?

18 A. I didn't need anything more than that at that
19 point.

20 Q. Avery Auto Salvage Yard, car found, that was
21 enough?

22 A. Sure.

23 Q. The reason you perceived, or you agreed with
24 Inspector Hermann's assessment, that there was a
25 potential conflict of interest, is that at that

1 time a civil lawsuit by Steven Avery was pending
2 against Manitowoc County and some former
3 officials?

4 A. Correct.

5 Q. That was a civil lawsuit for 36 million dollars
6 in damages?

7 A. Correct.

8 Q. It related to the 1985 conviction that you and I
9 have discussed this morning?

10 A. Correct.

11 Q. Did you see that as a real and present conflict
12 of interest on November 5?

13 A. I don't see it so much as a conflict of interest,
14 I would say a prudent decision just to keep
15 accusation free.

16 Q. All right. And what did you -- what did you
17 understand the decision to be, in terms of the
18 shifting of responsibility?

19 A. That the Calumet County Sheriff would run the
20 investigation and I would pay for it.

21 Q. Okay. In addition to paying for the
22 investigation, what role was the Manitowoc County
23 Sheriff's Department to play, if any?

24 A. Support.

25 Q. What does support mean?

1 A. Logistics, equipment, whatever they needed,
2 manpower.

3 Q. So the Calumet County Sheriff, Mr. Pagel, was to
4 communicate with you, or your department?

5 A. As far as?

6 Q. Logistics, support, manpower, whatever he needed?

7 A. Yes.

8 Q. All right. So he would request it of you, or
9 someone in your department?

10 A. Yes.

11 Q. And then you would provide it?

12 A. Yes.

13 Q. The Manitowoc County Sheriff's Department, in
14 that way, continued to play an active role in the
15 investigation into Ms Halbach's disappearance?

16 A. Yes, I believe so.

17 Q. You monitored the progress of that investigation?

18 A. No, I have never seen a report on the actual
19 investigation.

20 Q. All right.

21 A. I have gotten copies of bills, we have had
22 conferences on security, that type of thing.

23 Q. The guy in charge usually gets the bills.

24 A. Yeah.

25 Q. But in your department, reports generated by

1 deputies, or detectives, or sergeants, or
2 lieutenants, don't necessarily all come up to
3 your desk?

4 A. Most of them do.

5 Q. And this one may have or haven't?

6 A. Have not.

7 Q. Why?

8 A. I divorced myself from the early investigation.

9 Q. You personally?

10 A. Correct.

11 Q. All right. When did that happen, Sheriff
12 Petersen?

13 A. On that Saturday.

14 Q. Immediately?

15 A. Right.

16 Q. Okay. Who did you leave as the liaison, or the
17 contact person, or the reviewing person within
18 your department, for your department's role in
19 the investigation?

20 A. Deputy Inspector Schetter.

21 Q. With a formal directive to him of some kind?

22 A. No.

23 Q. With a conversation?

24 A. No, I didn't talk to him. He may have talked to
25 the inspector, he didn't talk to me.

1 Q. Oh. Okay. Do you know whether someone directed
2 Deputy Inspector Schetter to play a reviewing
3 role?

4 A. No.

5 Q. How do you know he is?

6 A. Because he was out at the scene with the sheriff
7 and his people.

8 Q. All right. And who is getting the reports
9 generated by the Manitowoc County Sheriff's
10 Department on the Halbach investigation and,
11 ultimately, the arrest and prosecution of
12 Mr. Avery?

13 A. I would believe Calumet County Sheriff's
14 Department would.

15 Q. Not Deputy Inspector Schetter?

16 A. Well, they would still be in our files, there
17 would be copies there -- or originals there. The
18 copies would be -- would be shipped.

19 Q. All right. I will see if I can do this
20 efficiently, and the problem is, you may not know
21 some of the facts I'm going to suggest to you.

22 A. Okay.

23 Q. Because it sounds like I have seen Manitowoc
24 Sheriff's Department reports that you probably
25 have not. All right?

1 A. Sure.

2 Q. But let me suggest these things and we'll see
3 what you know and what you don't know, or what
4 you dispute. All right. The first law
5 enforcement officer to speak with -- speak
6 personally with Steven Avery about Teresa
7 Halbach, which was on November 3, was Sergeant
8 Andrew Colborn of your department; is that right?

9 A. Don't know.

10 Q. One way or the other?

11 A. Yeah, don't know.

12 Q. You don't dispute that?

13 A. Yeah, I don't know.

14 Q. All right. The first law enforcement officers to
15 search Mr. Avery's trailer, this time with
16 consent, on Friday, November 4, were two members
17 of the Manitowoc County Sheriff's Department,
18 Lieutenant Lenk and Detective Remiker?

19 A. I believe they were with a Calumet County
20 officer.

21 Q. You think they may have been with a Calumet
22 County officer?

23 A. I believe so.

24 Q. But you know that Lenk and Remiker --

25 A. Had been at the trailer.

1 Q. -- did a consent search of the trailer on Friday,
2 November 4th?

3 A. Yes, I believe so.

4 Q. On Saturday, November 5, the first law
5 enforcement officer, as opposed to citizen,
6 unsworn citizen, to see Teresa Halbach's Toyota
7 Rav 4, was a member of your department, Detective
8 Remiker?

9 A. I don't know that.

10 Q. You don't dispute it, you just don't know one way
11 or the other?

12 A. I don't know.

13 Q. All right. The first search of Mr. Avery's
14 trailer, with a search warrant, occurred later on
15 Saturday, November 5. And that involved, again,
16 Detective Remiker of your department and Calumet
17 County Investigator Gary Steier, or is that
18 something you know?

19 A. That, I believe, is what I was referring to.

20 Q. All right. The first law enforcement officers
21 that day to collect any suspected blood in
22 Mr. Avery's trailer, or on it, was, again,
23 Detective Remiker of your department, correct?

24 A. It's possible, yes.

25 Q. He gave that to Sergeant Colborn of your

1 department?

2 A. That I don't know.

3 Q. Don't dispute, but just don't know?

4 A. Yeah.

5 Q. The detached garage between Mr. Avery's trailer
6 and Barb Yanda's trailer, I believe first was
7 searched pursuant to warrant on Sunday, November
8 6. Were you aware that Detective Remiker and
9 Lieutenant Lenk and Sergeant Colborn, along with
10 a Calumet County deputy, were the first law
11 enforcement officers to search the detached
12 garage?

13 MR. FALLON: Excuse me, your Honor, I'm
14 going to impose an objection on this particular line
15 of questioning as -- and the reason is, the previous
16 testimony of Sheriff Petersen indicating that as of
17 earlier that day, 11:30, 11:45, control of the
18 investigation was passed. And given that fact, the
19 fact that there may have been some logistical or
20 support personnel provided by the Manitowoc County
21 Sheriff's Department to assist in these searches or
22 contacts, was all under the control and direction of
23 Sheriff Pagel at Calumet County. Thus, this
24 particular line of questioning, I would suggest to
25 the Court, is irrelevant.

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THE COURT: Mr. Strang.

ATTORNEY STRANG: Let me ask some clarifying questions, because I'm not necessarily in disagreement with the factual portion of Mr. Fallon's statement, and I will clarify that.

Q. (By Attorney Strang)~ Any actions that members of your department took after, let's say 11:30, on Saturday, November 5, you believe would have been taken with the knowledge, or under the direction, at the request, however you want to put it, of either the Calumet County Sheriff's Department or the DCI?

A. Correct.

Q. That is, neither you, nor Inspector Hermann, nor anybody above the level of the people in your department involved, were directing, or controlling, or supervising the steps of those people?

A. Correct.

Q. My -- And I think you and I are in agreement, I'm not trying to suggest otherwise, my questions really are just inquiring into who the boots on the ground were, who the people were, not who's directing them, or telling them what to do and not to do; do you understand me that way?

1 A. Correct.

2 Q. Okay. So with that limitation, Lenk, Remiker and
3 Colborn, along with a Calumet deputy -- Calumet
4 County deputy, were the first to search the
5 detached garage on Sunday, November 6th?

6 MR. FALLON: I'm going to renew the
7 objection. I understand counsel's point, but I
8 still fail to see the relevance as it pertains to
9 the motion to dismiss and/or the motion to
10 exclude.

11 ATTORNEY STRANG: It bears more on the
12 motion to exclude. I have moved to exclude not just
13 Sheriff Petersen from further involvement in this
14 case, supervising the jury, or in a logistical or
15 support role to the Court, but have moved to exclude
16 the entire department from providing that logistical
17 or support role. So, I think this has a bearing,
18 the involvement of others in the department clearly
19 has a bearing on that motion, your Honor.

20 THE COURT: I believe it relates to the
21 motion to exclude, so I'm going to allow it.

22 ATTORNEY STRANG: Do you recall my last
23 question?

24 THE WITNESS: No.

25 Q. (By Attorney Strang)~ Sunday, November 6,

1 detached garage, first law enforcement officers
2 to search, Lenk, Remiker, Colborn, and a deputy
3 from Calumet whose has a name, and that's Dan
4 Kucharski?

5 A. I wouldn't know who searched it.

6 Q. Don't know one way or the other?

7 A. No, I don't know who was in the garage.

8 Q. Don't dispute that the three Manitowoc people
9 were among the first law enforcement people to
10 enter the garage?

11 A. It's possible.

12 Q. All right. This one you may know. On November
13 8, which is Tuesday, it was widely reported that
14 a law enforcement officer found a Toyota key that
15 fit the Toyota Rav 4, in the bedroom of Steven
16 Avery, in the trailer; do you recall that?

17 A. That would be Detective Lenk.

18 Q. That was Detective Lenk -- or Lieutenant Lenk of
19 your department?

20 A. Yes.

21 Q. Law enforcement officers first came across bone
22 fragments in a burn pit out -- south, south and
23 east of the Avery -- the Steven Avery trailer on
24 November 8 as well. Do you recall Deputy Jost,
25 or Sergeant Jost, of your department, as being

1 the first officer who claimed to see a bone
2 fragment?

3 A. I don't know who saw the bone fragments.

4 Q. One way or the other?

5 A. Correct.

6 Q. Am I pronouncing Jost's name right? J-o-s-t?

7 A. Yes.

8 Q. Now, of the names that have come up here we
9 have -- I have mentioned Lieutenant Lenk and
10 Detective Remiker and Sergeant Colborn, more than
11 once each, this morning. I want to be clear, one
12 of the reasons you disengaged personally,
13 completely, from this investigation, on November
14 5, is that you, personally, had sat for a
15 deposition in Steven Avery's civil claim against
16 Manitowoc County?

17 A. No, I don't think I had anything to do with that
18 decision, no.

19 Q. Let's break this down. First of all, you did
20 have your deposition taken in that lawsuit?

21 A. Yes.

22 Q. You had your deposition taken on October 13,
23 2005; does that sound right?

24 A. It's possible.

25 Q. About two and a half, three weeks, before Ms

1 Halbach disappeared?

2 A. Somewhere in that time period.

3 Q. And the other two members of your department who
4 had their depositions taken about the same time
5 were Lieutenant Lenk and Sergeant Andrew Colborn,
6 correct?

7 A. I don't know. I don't know who gave depositions.

8 Q. You don't one way or the other?

9 A. I saw one person, actually, two people, but I
10 don't know who they all deposed now.

11 Q. I think one of them had his deposition taken the
12 same day you did. Did you ever talk to
13 Lieutenant Lenk about having his deposition taken
14 in that lawsuit?

15 A. No.

16 Q. Or Sergeant Colborn?

17 A. No.

18 Q. You don't disagree that they both sat for
19 depositions in that lawsuit in mid-October, 2005,
20 you just don't know?

21 A. As I recall, that had something to do with some
22 information that came somewhere in the late 90's.

23 Q. Mid 1990's, that's right.

24 A. Yeah, but I don't know when they were deposed. I
25 wouldn't have a clue.

1 Q. You understand they were, you just don't know
2 when?

3 A. Correct.

4 Q. And one of the things, that initially, I think,
5 probably brought you here, was an interview, or a
6 special two part series that FOX 11 TV in Green
7 Bay did in May; do you remember that?

8 A. Yes.

9 Q. I'm not going to go into the substance of that.
10 I just want to nail down a couple of questions.
11 First of all, that was you who appeared as
12 Sheriff Petersen in that two part segment?

13 A. Yes.

14 Q. All right. Do you remember now about when you
15 actually sat for the interview, or interviews,
16 that were aired on May 10 and 11?

17 A. I believe it was somewhere in the second half of
18 April.

19 Q. Okay. So two weeks or more before this segment
20 aired?

21 A. At least two weeks before.

22 Q. Sometime after April 15, roughly?

23 A. Roughly.

24 Q. I mean that's your best recollection as you sit
25 here?

1 A. Yes.

2 Q. Do you remember whether there was one interview
3 or more than one interview?

4 A. One interview, lasted about a half hour.

5 ATTORNEY STRANG: And that's all I have.
6 Thank you.

7 THE COURT: Mr. Fallon, any questions?

8 MR. FALLON: One moment, Judge. I just
9 have probably two or three questions, Sheriff.

10 **CROSS-EXAMINATION**

11 BY ATTORNEY FALLON:

12 Q. As far as you know, all decisions, instructions,
13 and supervision of the Manitowoc County Sheriff's
14 personnel participating in the investigation of
15 this case came at either the direction or request
16 of Sheriff Pagel from Calumet County, or members
17 of the Department of Justice's Division of
18 Criminal Investigation; is that true?

19 A. That's correct.

20 Q. In your capacity as sheriff, of the county in
21 which these proceedings are being held, have you
22 instructed anyone, or told anyone, what to do or
23 what to say relative to any of the court support
24 personnel that are present here today?

25 A. No, I have not.

1 Q. Have you directed them to engage in any comments
2 with the media or anyone connected with this
3 case?

4 A. No.

5 Q. As far as you know, have you issued any orders or
6 directives at all relative to the handling of
7 these court proceedings, to your personnel, or
8 has that been left to others, or is it simply
9 something that they routinely do what they do?

10 A. You mean like court security?

11 Q. Right.

12 A. That would be what they normally do.

13 Q. All right. And you have given no other
14 instructions or directions?

15 A. No.

16 ATTORNEY FALLON: That's all I have.

17 THE COURT: Any redirect?

18 ATTORNEY STRANG: I do.

19 **REDIRECT EXAMINATION**

20 BY ATTORNEY STRANG:

21 Q. Just so I'm clear, I mean, do you have a division
22 that provides court support? Is that a separate
23 division within the Manitowoc County Sheriff's
24 Department?

25 A. That comes under the Support Division, Deputy

1 Inspector Ledvina.

2 Q. So everybody in this courtroom who is wearing a
3 Manitowoc County Sheriff's deputy uniform,
4 ultimately, calls you boss?

5 A. Yes.

6 Q. All right. On the scene of the investigation, I
7 think you testified, in response to Mr. Fallon's
8 question, that Manitowoc County Sheriff's
9 Department personnel would have been following
10 the directions of either the Calumet County
11 Sheriff's Department or DCI; did I understand you
12 correctly?

13 A. Correct.

14 Q. And within the ranks of those there in the
15 Manitowoc County Sheriff's Department, you would
16 expect the ordinary hierarchies continue to
17 apply, correct?

18 A. Yes.

19 Q. When -- You testified as well that you haven't
20 directed anyone in your department to speak to
21 the media about this investigation or
22 prosecution?

23 A. Correct.

24 Q. All right. And, in fact, I'm going to take that
25 a little bit further. On or about September 12,

1 2003, if we go back not quite three years now,
2 you had a conversation with Manitowoc County
3 Corporation Counsel in which he suggested that
4 you and members of your department make no public
5 statements at all about Steven Avery?

6 A. I don't recall.

7 Q. Do you recall issuing a directive, a written,
8 very short directive, to your department, that
9 people were to make no public statements about
10 Steven Avery?

11 A. It's possible.

12 Q. Back in December, 2003?

13 A. It's possible.

14 Q. Do you recall that?

15 A. No.

16 Q. That was, I think, marked as Exhibit 140 of your
17 deposition; would it help to look at the
18 deposition?

19 A. Could be, yeah.

20 Q. Okay. I am approaching you with a transcript of
21 your deposition. You are welcome to look at all
22 of it, but I would invite your attention
23 particularly to page 45, right after Exhibit 140
24 is identified. You can look at that yourself and
25 see if that helps restore your recollection.

1 A. I don't see what you want me to see here.

2 Q. I'm sorry, do you see where it refers to Exhibit
3 140?

4 A. Yes.

5 Q. Okay. Here we go, the lawyer who is asking you
6 questions is asking you about the circumstances
7 of making that two sentence memo that he's marked
8 as Exhibit No. 140?

9 A. Okay.

10 Q. All right. What it was, I mean, if you now
11 recall, you had done a very short memo, about two
12 sentences, telling your entire department, don't
13 talk about Steven Avery?

14 A. Okay.

15 Q. On the advice of the Corporation Counsel.

16 A. Correct.

17 Q. Do you remember doing that?

18 A. I believe so.

19 Q. Okay. When did you -- When, if ever, did you
20 lift that order?

21 A. Didn't.

22 Q. Did it apply to you in mid-April, 2006, when you
23 sat down with FOX 11?

24 A. No, I don't believe so. I believe if anyone
25 would have talked, would have been able to come

1 from myself or the inspector.

2 Q. Okay. So the two of you, the lead inspector
3 being Mr. Hermann?

4 A. Correct.

5 Q. The two of you were excepted -- outside the scope
6 of that and could make public comments about
7 Steven Avery?

8 A. I believe.

9 Q. You believe?

10 A. Yeah, I believe we could.

11 Q. You are the guy who wrote the memo, I mean, is it
12 yes or no?

13 A. Yes.

14 Q. Thank you. That's it. Oh, another question, you
15 won't need the deposition, but give me -- I don't
16 know if you have an exact number, but about how
17 many detectives do you have in the detective
18 bureau of the Manitowoc County Sheriff's
19 Department?

20 A. I believe five, including the lieutenant.

21 Q. Including Lieutenant Lenk?

22 A. Yes.

23 Q. All right. And do they cover all three shifts or
24 is that primarily a day shift bureau?

25 A. Primarily a day shift, with an on call basis.

1 Q. And then are there acting detectives as well, or
2 people who perform investigative duties outside
3 the Detective Bureau?

4 A. We have evidence techs and things like that, yes.
5 People that know how to take pictures, people
6 that know how to lift fingerprints, that type of
7 thing.

8 Q. To what division are they assigned?

9 A. Operations.

10 Q. To operations?

11 A. Yes.

12 Q. They are not assigned to the patrol division?

13 A. They come out of the patrol division, yes.
14 Patrol operations are synonomous.

15 Q. I see. All right.

16 ATTORNEY STRANG: Thank you. I will just
17 take that back. And that's all I have, your Honor.

18 ATTORNEY FALLON: Nothing further.

19 THE COURT: Any further questions?

20 ATTORNEY FALLON: No.

21 THE COURT: All right. The witness is
22 excused. Mr. Strang, any other evidence relating to
23 these motions?

24 ATTORNEY STRANG: Yes. No other testimony.
25 If, and when, we get to talking directly about a

1 change of venue, I'm -- and this was at the Court's
2 urging -- I'm going to offer two full boxes of
3 material. I have provided the same to the State,
4 identical sets.

5 And these boxes include 24 DVD's and
6 then thousands of 8 1/2 by 11 pages of paper,
7 which consist of transcripts of television and a
8 few radio broadcasts, newspaper articles that we
9 copied to reduce the bulk. I had four boxes and
10 I reduced this to 2 by photocopying, judiciously.
11 Photo copies from websites, some of newspapers,
12 some other than newspapers, for example,
13 television stations.

14 And then there are lists provided to me
15 by something called Wisconsin Media Services that
16 provides a few lines of text from television
17 broadcasts relating to Ms Halbach or Mr. Avery.
18 I used those lists to select which TV reports I
19 wanted copied to DVD.

20 And I'm going to guess that of all the
21 stories that Wisconsin Media Services covered for
22 me, I don't know, it took a quarter to a half,
23 somewhere in there, maybe more than half of some
24 of them. And I -- The DVD's all come from either
25 the Milwaukee media market or the Green Bay Media

1 Market.

2 So, in other words, the Milwaukee and
3 the Green Bay television stations, but not
4 Wausau, not Madison. I did not make any effort
5 to capture publicity in those media markets. So
6 that's what's in the two boxes behind me. That
7 may be something that's bulky enough that I
8 should discuss with the Deputy Clerk during a
9 break here this morning.

10 But if we get to the change of venue
11 after we have argued dismissal and an
12 adjournment, I'm prepared to offer that. Beyond
13 that, I have got no other evidence to tender on
14 the three motions that we're undertaking
15 initially.

16 THE COURT: Does the State have any
17 evidence to offer with respect to those three
18 motions of the defense?

19 ATTORNEY KRATZ: As to the Motion to
20 Dismiss, Judge, we did intend to call Sheriff Pagel
21 to testify.

22 THE COURT: All right. You may call him at
23 this time.

24 **SHERIFF GERALD A. PAGEL**, called as a
25 witness herein, having been first duly sworn, was

1 examined and testified as follows:

2 THE CLERK: Please be seated. Please state
3 your name, spell your last name for the record.

4 THE WITNESS: Gerald A. Pagel, P-a-g-e-l.

5 **DIRECT EXAMINATION**

6 BY ATTORNEY KRATZ:

7 Q. Mr. Pagel, how are you employed?

8 A. I am the Sheriff for Calumet County.

9 Q. And as we have heard in this last series of
10 examinations, your department, and you
11 personally, were requested to assume
12 investigative responsibility in the disappearance
13 of Teresa Halbach and the subsequent
14 investigation into how that occurred; is that
15 correct?

16 A. That is correct.

17 Q. Sheriff Pagel, do you recall on Saturday,
18 November 5, 2005, being at the Avery Salvage Yard
19 and accepting responsibility for this
20 investigation?

21 A. Yes, I do.

22 Q. After that period of time, is it a correct
23 statement, as we have heard from Sheriff
24 Petersen, that your department, in concert with
25 the Division of Criminal Investigation, made all

1 investigative decisions, that is, you directed
2 the investigation; is that correct?

3 ATTORNEY STRANG: Now that we're beyond
4 preliminary questions, I'm going to object to
5 leading, at least I assume Sheriff Pagel is not
6 hostile to Mr. Kratz.

7 THE COURT: The objection is sustained.

8 Q. (By Attorney Strang)~ Who then, Sheriff Pagel,
9 was involved in directing this investigation?

10 A. It was members of the Calumet County Sheriff's
11 Department, in conjunction with the Department of
12 Criminal Investigation, as far as a joint
13 investigation, team work.

14 Q. Mr. Strang's motions as to pretrial publicity and
15 related motions deal with pretrial publicity.
16 Let me first ask you whether you have any
17 experience or training in media relations,
18 specifically, as it relates to high profile
19 cases?

20 A. Yes, I do. I have gone to two separate training
21 sessions in media relations with law enforcement.

22 Q. Are you an elected official?

23 A. Yes, I am.

24 Q. And similar to Sheriff Petersen, do you consider
25 yourself the head of your law enforcement agency?

1 A. Yes, I do.

2 Q. Sheriff Pagel, prior to the discovery of Teresa
3 Halbach's vehicle on November 5th, was your
4 agency involved in what's been referred to as a
5 missing persons investigation?

6 A. Yes, we were.

7 Q. Could you describe, just briefly, the scope of
8 that investigation for us?

9 A. On, I believe it was November 3rd, our department
10 received a call of a missing person, that being
11 Teresa Halbach. Our agency became immediately
12 involved in speaking with the relatives and
13 friends of Teresa. And, ultimately, that
14 Thursday evening, I received a call at home from
15 Investigator Mark Wiegert, informing me of the
16 fact that Teresa Halbach was missing and that
17 last contact with her had been on October 31st.

18 Q. Have you been engaged in missing person
19 investigations before?

20 A. Yes, I have.

21 Q. As part of those investigations, Sheriff, and I
22 will just ask you directly, as part of this
23 investigation as well, did you invite
24 participation of the media or the general public
25 in assisting in locating Ms Halbach?

1 A. Yes, I did.

2 Q. How was that done?

3 A. That was done Thursday evening, shortly after I
4 received the call from Investigator Wiegert. I
5 responded to the Sheriff's Department. And it's
6 been my theory, and also information that has
7 been provided to me through investigative
8 matters, that the quicker you get information to
9 the media the better.

10 We need public's assistance in trying to
11 locate missing individuals, and this was my
12 thought that evening, was to get the information
13 about Teresa, about her disappearance, to the
14 media, so that we could have the public's
15 assistance in attempting to locate her.

16 Q. After Ms Halbach's vehicle was found on the 5th
17 of November, were there discussions as to what,
18 if anything, would be disseminated, or told, to
19 the general public?

20 A. Yes, it was felt that we needed to control the
21 information that was disseminated to the general
22 public. It was done for investigative purposes
23 and also to control the information that the
24 media received, that we needed to have
25 disseminated to them. We still had a missing

1 person and we needed, again, the public's
2 assistance in trying to locate Teresa.

3 We found her vehicle, that was true, but
4 we still had not found Teresa. So we still felt
5 that we needed the public's assistance in
6 locating her.

7 Q. Was it decided, Sheriff Pagel, who would be
8 involved in disseminating information about --
9 both about the investigation and the request for
10 assistance from the public?

11 A. Yes, a decision was made that we were going to,
12 again, control who the media went to as far as
13 gathering or obtaining information. And it was
14 felt that myself and yourself would be the
15 individuals who would disseminate the
16 information.

17 Again, we could control the information
18 that the media would obtain and, also, that it
19 would not impair the investigation. Often in
20 these type of cases, the media wishes to contact
21 investigators, contact individuals who are
22 involved in the investigation. And we felt it
23 would be better if we just had two individuals
24 who they could contact and who would be the
25 individuals that they would go to in attempting

1 to obtain information.

2 Q. While this case remained a missing persons
3 investigation, was it decided how many times per
4 day the media would receive information?

5 A. Yes, we felt that we would provide information
6 daily to the media to keep them informed, and
7 also to, again, provide information to the
8 general public as to the outcome, the scope,
9 where the investigation was going.

10 Q. Sheriff Pagel, on those early occasions, that is
11 the press conference on the 5th and perhaps the
12 6th of November, could you characterize the
13 interest from the public, that is, from both the
14 media and general public, be able to gauge how
15 interested they were in this investigation?

16 A. We were able to determine that there was a huge
17 interest in this investigation. And we knew
18 then, and we knew beginning, going into this
19 investigation, that there would be a huge, or a
20 large interest in the media for this
21 investigation, and by the public as to this
22 investigation.

23 Q. Were there any discussions held as to limiting
24 what was said and the reasons to not provide
25 information of a specific nature?

1 A. Yes, we had daily meetings to discuss what
2 information was going to be provided to the
3 media. Again, this was done for several reasons.
4 One was to -- for investigative purposes, to
5 ensure that information was not disseminated that
6 we did not wish to have disseminated.

7 We also wanted to do what is being
8 alleged here, in that not having prejudicial
9 information, inflammatory information, provided
10 to the public. And we also had a sensitivity
11 issue. We felt that we had -- we owed it to the
12 Halbach family, to the relatives, that
13 information provided to the media, to the public,
14 would be sensitive in nature and that we kept
15 them informed. They were involved in the loop.

16 In fact, before any information was
17 provided to the media, the Halbach's were
18 contacted and they were informed of what
19 information was going to be provided that evening
20 or that day.

21 Q. Was there more information that the Sheriff's
22 Department had in it's possession that was held
23 back, or not provided, to the media during this
24 investigation?

25 A. Most definitely.

1 Q. Sheriff Pagel, at any point, at least prior to
2 the 9th of November, was a specific suspect
3 identified?

4 A. No, there was not. In fact, we -- it was a wide
5 open investigation.

6 Q. On the 9th of November, Steven Avery was arrested
7 on a charge of felon in possession of a firearm;
8 do you remember holding a press conference
9 announcing that fact on the 9th?

10 A. Yes, I do.

11 Q. Do you recall any discussions on the 9th
12 regarding limiting your comments to the facts
13 that were contained within that public document,
14 that is the Criminal Complaint?

15 A. Yes, that information was going to be public
16 knowledge in the Criminal Complaint and it
17 pertained to the felon in possession. We still
18 had a missing person investigation.

19 Q. Sheriff Pagel, later in that week, between the
20 9th and the 11th of November, do you recall
21 receiving specific questions, and even at the
22 press conferences, obtaining inquiries, regarding
23 allegations made by Mr. Avery and his family,
24 regarding being set up or framed?

25 A. Yes, I do. In fact, I would be receiving phone

1 calls from the media, who indicated that they had
2 received information from either Mr. Avery or
3 members of his family. And they were making
4 inquiries about these -- this information that
5 they were receiving. And, again, I would not
6 elaborate on those type of things at that
7 particular time, via phone contacts.

8 Any members of the media would be
9 informed that any information that was going to
10 be released would be released at a news
11 conference to be determined or announced later.

12 Q. All right. That brings me, then, to questions
13 regarding a press conference held on the 11th of
14 November, Friday, the 11th; do you recall that
15 press conference?

16 A. Yes, I do.

17 Q. Do you recall specific information being
18 released, as it related to public questions, or
19 direct questions, from the Avery's, as to being
20 set up or framed?

21 A. Yes. Again, we felt that we owed it to the
22 public, to insure them that there was no
23 information, no evidence gathered through the
24 investigation, tending to indicate that there was
25 any type of conspiracy theory in effect here.

1 Q. Now, this may be a little awkward since I'm not a
2 witness in this case, but I'm going to ask you
3 about conversations that you and I had. Do you
4 recall specific conversations with me regarding
5 limiting, or being very careful about what was
6 disseminated, to insure a fair trial for
7 Mr. Avery?

8 A. Yes, I do. Again, we would have conferences
9 daily to discuss what was going to be
10 disseminated. You also indicated that it's your
11 policy, once charges are filed, that the
12 information disseminated to the media would
13 cease, and that it would be the joint thought
14 here that anything after that point would not be
15 disseminated, there would be no more conferences.

16 Q. You are aware that at some point, in fact, on the
17 5th of November, Judge Fox, from Manitowoc
18 County, appointed me as Special Prosecutor in
19 this case; is that correct?

20 A. That is correct.

21 Q. Have you worked on other criminal cases with me
22 as the Calumet County Sheriff?

23 A. Yes, I have.

24 Q. Are you familiar with my general policy of not
25 commenting on pending criminal matters, other

1 than in the courtroom?

2 A. Yes, that is your policy.

3 Q. Sheriff Pagel, while present with me at not only
4 press conferences, but other times that we may
5 have been approached, do you recall me, and other
6 members of my office, reiterating, or explaining
7 that policy, that no comment policy, if you will,
8 to members of the media?

9 A. Yes, you did.

10 Q. Have you, individually, Sheriff Pagel, received
11 offers from local, or regional, or even national
12 news sources to comment on this case?

13 A. Yes, I have received numerous requests from the
14 news media, not only in Green Bay, but in
15 Milwaukee. And I have also received numerous
16 calls from national news outlets requesting
17 interviews, requesting comments.

18 And everything nationally has been
19 refused. I indicated in the beginning that I
20 would not go on any national news show to discuss
21 this matter.

22 Q. Several months after Mr. Avery's Criminal
23 Complaint was filed, I think it was the 14th of
24 November when it was filed, but in early March,
25 March 1st and 2nd, did you become aware of a

1 second suspect having been arrested regarding the
2 homicide and related charges with Ms Halbach?

3 A. Yes, I did.

4 Q. And who was that person?

5 A. Brendan Dassey.

6 Q. On March 1st, do you recall holding a joint news
7 conference informing the public?

8 ATTORNEY STRANG: Leading?

9 ATTORNEY KRATZ: I'm sorry, what was that?

10 ATTORNEY STRANG: Leading.

11 ATTORNEY KRATZ: Oh.

12 Q. (By Attorney Kratz)~ I could ask, what day did
13 you hold the news conference that you informed
14 the public of Mr. Dassey's involvement?

15 A. I believe it was March 1st.

16 Q. All right. Then, do you recall a Criminal
17 Complaint being drafted and filed against
18 Mr. Dassey?

19 A. Yes, I do.

20 Q. Then on -- Do you recall another, in fact, the
21 last press conference jointly held in this case?

22 A. Yes, I do.

23 Q. Do you remember when that was?

24 A. That would have been the following day. I
25 believe it was March 2nd.

1 Q. Sheriff Pagel, prior to that news conference,
2 were you aware of the details; that is, were you
3 aware of the information that would be included
4 in that public document, in that Criminal
5 Complaint, against Mr. Dassey?

6 A. Yes, I was.

7 Q. Do you recall having conversations with me about
8 what information should be released and how to
9 release that information?

10 A. Yes, you had indicated that the information that
11 was going to be released was information that was
12 in the document. And we had -- a decision had to
13 be made how it was going to be released, or what
14 was going to be released. And it was felt that
15 we would, again, try to control the information
16 that was going to be released, rather than having
17 the news media take the report and then go
18 wherever they were going to go with it.

19 It was a decision that was difficult to
20 do, but was ultimately decided that we needed to
21 provide the information to the public and, again,
22 control what information was disseminated.

23 Q. Without limiting the information in that news
24 conference, what did you believe would happen if
25 that document was simply released to the public?

1 A. Personally, I felt it was going to be helter
2 skelter. That the news media was going to take
3 it and go in all directions with it. And, again,
4 we would probably lose control over what was --
5 what was gathered by the news media if we just
6 gave them the article and gave them the Criminal
7 Complaint, I mean, and let them go from there.
8 And, again, we felt that we needed to control the
9 information.

10 Q. You had mentioned sensitivity to the Halbach
11 family, to the victims, especially regarding that
12 disturbing information. Were meetings held,
13 before the 2nd of March, to disclose to the
14 family what would be included in that document?

15 A. Yes. We had met the night before, with them, and
16 provided them with the information that the
17 investigators had gathered. And that provided
18 them with the information that was going to be in
19 the Criminal Complaint.

20 Q. At any time, Sheriff Pagel, were there
21 attempts -- and I can only ask you
22 individually -- but were there attempts by you to
23 influence any potential jurors, or to in any way
24 prejudice Mr. Avery through this criminal
25 process?

1 A. None. In fact, this is, again, why we tried to
2 control the information that was released, so
3 that we could control any prejudicial
4 information, any inflammatory information, so as
5 to prevent, as much as possible, any pretrial
6 prejudicial publicity.

7 Q. And, again, that's consistent with other cases
8 that you and I have worked on; is that correct?

9 A. That is correct.

10 ATTORNEY KRATZ: That's all the questions I
11 have of Sheriff Pagel. Thank you, Judge.

12 THE COURT: Mr. Strang.

13 **CROSS-EXAMINATION**

14 BY ATTORNEY STRANG:

15 Q. Is it typical, in a missing person Complaint,
16 that you, as the sheriff, would be notified at
17 home, after hours, on the day that someone is
18 reported missing?

19 A. It's not typical, nor is it non-typical. The
20 investigators, the staff, do keep me informed of
21 their investigations and do keep me informed if
22 they want something done. And in this particular
23 case, they wanted the information disseminated to
24 the media and they felt it would be best if I
25 came in and did that for them.

1 Q. All right. You say the investigators, how many
2 investigators, or detectives, are employed in the
3 Calumet County Sheriff's Department?

4 A. We have four investigators.

5 Q. Does that include the lead investigator or chief
6 investigator?

7 A. They are all investigators. There's no lead
8 investigator. Whoever gets the case, initially,
9 is the -- basically, the lead investigator,
10 pertaining to that particular investigation.

11 Q. And to whom do the four investigators report
12 directly?

13 A. They report to either the lieutenant or to
14 myself.

15 Q. And I will keep this short, and I hope simple for
16 you, but to the extent that you know, does the
17 Calumet County Sheriff's Department have fewer
18 sworn personnel than the Manitowoc County
19 Sheriff's Department?

20 A. Yes.

21 Q. Do you know, roughly, the numbers --

22 A. No, I don't.

23 Q. -- at least to your own department?

24 A. I don't know what the difference would be.

25 Q. How about your department; how many sworn

1 officers of any rank?

2 A. Okay. We have 24 sworn officers and, I believe,
3 27 non-sworn.

4 Q. Non-sworn being support people, secretarial,
5 clerical, bookkeeping, business management?

6 A. Dispatch and correctional officers.

7 Q. Very good. Were you acquainted with the Halbach
8 family personally, before November 3, 2005?

9 A. I know members of the Halbach family, yes, I do.

10 Q. Personally?

11 A. Yes.

12 Q. Had you known Teresa Halbach personally?

13 A. No, I did not.

14 Q. But you knew some members of her family?

15 A. Yes.

16 Q. Was that in part why Detective Wiegert said he
17 was calling you that evening?

18 A. No, it was not. He had no knowledge that I would
19 have known the Halbachs.

20 Q. But what he did say was, hey, we need to get the
21 public's help, or words to that effect?

22 A. Yes, he felt that it was important that the
23 information be disseminated to the media so that
24 they could disseminate it to the public for their
25 assistance.

1 Q. The media being a tool to reach the public?

2 A. That is correct.

3 Q. All right. You agreed?

4 A. Yes. Yes, I did.

5 Q. As early as the evening of November 3?

6 A. Yes.

7 Q. That evening is the point at which -- and I think

8 your words were -- you knew going into the

9 investigation that there would be a huge amount,

10 or huge interest on the part of the public and

11 the media?

12 A. Yes. Well, I guess, not that particular evening,

13 we didn't know the enormity. November 5th is

14 when we realized that we were probably going to

15 have a large media interest.

16 Q. You testified on direct, in response to

17 Mr. Kratz's question, you knew going into the

18 investigation. And so my question is, you know,

19 is it November 5, or some time prior to or after

20 that, that you knew going into the investigation

21 it would be huge media and public interest?

22 A. What I was referring to was November 5th, the day

23 that her vehicle was found on the Avery property.

24 Q. What was it that was so hugely interesting about

25 her car being found?

1 A. The fact that Steven Avery had garnered a large
2 amount of media interest concerning his release
3 from prison, for charges that he had been alleged
4 to have committed, and the vehicle being found on
5 Avery property. You didn't have to be a rocket
6 scientist to know that the media was, again,
7 going to be interested in this.

8 Q. Steven Avery was a man you knew from the media
9 before November 5?

10 A. That is correct.

11 Q. You were familiar, at least with the general
12 outlines of his wrongful conviction and eventual
13 exoneration?

14 A. Yes.

15 Q. Release from prison?

16 A. Yes.

17 Q. Were you aware that he had filed a big lawsuit
18 against Manitowoc County over that series of
19 events?

20 A. Prior to what?

21 Q. November 5.

22 A. No, I was not aware of any lawsuit prior to that.

23 Q. But you were aware of Avery and you thought, gee,
24 this will attract the media?

25 A. Yes.

1 Q. All right. Now, that's two days after Ms Halbach
2 is reported missing. And I guess it's as early
3 as that evening, November 3, in which you
4 realized, look, we need some public assistance
5 here, and the way to accomplish that is by using
6 the media?

7 A. Yes, we felt that the information should be
8 disseminated concerning Teresa Halbach, and her
9 disappearance, and the fact that we were looking
10 for her and the vehicle.

11 Q. Giving information directly to the media was not
12 the only strategy you employed to get the word
13 out to the public?

14 A. I guess I don't know.

15 Q. For example, you had a telephone number, that you
16 encouraged members of the public to call and
17 encouraged investigators to share with the
18 public?

19 A. Our local Sheriff's Department number, yes, or
20 tip number.

21 Q. Right, sort of a dedicated line, not for this
22 case, but for tips, or for information from the
23 public?

24 A. That is correct.

25 Q. You got that out to the public?

1 A. Yes.

2 Q. You had members of your department going to
3 friends and family members of Teresa Halbach's in
4 the early days of this search?

5 A. Yes, most definitely.

6 Q. In part, to ask them when they had last seen her,
7 and what information they might have, but also,
8 in part, to encourage them to talk to others?

9 A. Yes, to try to garner any information we could
10 from them, again, when was the last time you had
11 seen her, and garner any information we could
12 about Teresa.

13 Q. Sure. And to get the network going so to speak,
14 might ask a friend who else do you know she may
15 have talked to, or called, or been e-mailing, or
16 appointments she may have had, things like that.

17 A. Yeah, would be a typical missing person
18 investigation.

19 Q. You also took some other steps that would be
20 publicly visible but controlled. I mean, for
21 example, did you -- did you rent an airplane or
22 make arrangements for an airplane at some point?

23 A. Yes, that was done on November 4th.

24 Q. Went to an aviation service and took a plane up
25 in the air?

1 A. Yes.

2 Q. And that involved circling a good deal, I assume,
3 over parts of Manitowoc County?

4 A. Manitowoc, Brown, Calumet. I don't think we got
5 down into Sheboygan, but basically a three county
6 area.

7 Q. Sure. And at fairly low altitude?

8 A. Yes.

9 Q. That, you knew, at least would attract some
10 public attention and raise the profile that
11 people should be on the lookout for a missing and
12 possibly endangered person?

13 A. The fact that we used the airplane?

14 Q. Yeah.

15 A. No. That was basically a search to try and to
16 locate her vehicle. We knew that her vehicle was
17 missing. And we were trying to locate her
18 vehicle, or anything which could be of assistance
19 in the missing person investigation.

20 Q. Okay. So, is that why you only used the plane on
21 Friday, November 4?

22 A. Yes.

23 Q. There was -- Once you found the car, the Toyota,
24 there was no need for further flyovers or that
25 kind of visible activity?

1 A. There were other flyovers done after, yes. There
2 were the use of other planes and helicopters
3 throughout the search for Teresa.

4 Q. The search continued until -- well, I mean it
5 continued beyond this, but on November 8, some
6 bone fragments were found; does that sound right?

7 A. That could be the date, yes.

8 Q. All right. Which would have been a Tuesday?

9 A. That would be about right, yes.

10 Q. Were you, personally, out at the Avery Auto
11 Salvage property on the days following this phone
12 call, at home, on November 3?

13 A. Yes, I was.

14 Q. Each day?

15 A. Yes, I was there every day.

16 Q. Starting Friday, November 4.

17 A. No, the 5th.

18 Q. So, November 5th?

19 A. Yes.

20 Q. Saturday, November 5. And then how many days in
21 a row did you remain, personally, out at the
22 Avery Auto Salvage property?

23 A. I would go out there during the daylight hours
24 and generally would leave anywhere between 7, 8,
25 9 at night.

1 Q. How long did that continue, Sheriff Pagel?

2 A. I was there the entire week that we were out

3 there.

4 Q. And until the road was reopened and the searching

5 was done?

6 A. That's correct.

7 Q. All right. Now, during that time that you were

8 out there, during these long daylight hours,

9 essentially, did you, personally, direct the

10 activities of Lieutenant Lenk?

11 A. Did I, personally? How did you phrase it?

12 Q. Direct the activities of Lieutenant Lenk of the

13 Manitowoc County Sheriff's Department?

14 A. Not personally, no. It was -- Could have been

15 done either through the command post. Again,

16 they were there as a support group. So we would

17 utilize our investigators, our officers, our

18 personnel, along with agents from the Department

19 of Criminal Investigation and individuals would

20 then be assigned to those particular individuals

21 who would be the lead people doing particular --

22 particular programs or parts of the investigation

23 out there.

24 Q. Activities. All right. So you set up a command

25 post?

1 A. Yes.

2 Q. You set that up in conjunction with the DCI?

3 A. Yes.

4 Q. There were other law enforcement agencies, also,
5 at the command post?

6 A. Yes, there were other agencies involved in the
7 investigation who were there for support and
8 assistance.

9 Q. In the command post?

10 A. Not necessarily inside the command post. We
11 tried to limit individuals who would be in the
12 command post. We had a number of individuals who
13 were out there on any particular day and we
14 couldn't have all those individuals in the
15 command post, but we would have the individuals
16 who were going to be responsible for doing a
17 particular activity, given their assignments.

18 Q. Okay. Physically, what was the command post?

19 A. Physically, what was it?

20 Q. Yeah.

21 A. It's our command trailer that we have at the
22 Sheriff's Department?

23 Q. Like a Winnebago type?

24 A. It's a good size.

25 Q. Okay. But not everybody can crowd into those

1 things?

2 A. Right.

3 Q. Okay. So people, law enforcement officers, would
4 come in as necessary to participate in
5 discussions?

6 A. Yes. Whoever we needed to discuss matters with
7 would be invited into the command post and we
8 would then discuss our information with them.

9 Q. The -- You ran this investigation in conjunction
10 with DCI, you said?

11 A. Yes.

12 Q. And then, jointly, with a number of other
13 agencies?

14 A. Yes.

15 Q. The FBI was involved?

16 A. Yes, the FBI.

17 Q. They were in the command post from time to time?

18 A. They were -- They were only out there for a short
19 period of time. They arrived and indicated that
20 if we needed their assistance for anything we
21 should feel free to contact them. I think they
22 might have been there personally, only a couple
23 of hours.

24 Q. Okay. But they said, call if you need help?

25 A. Yes.

1 Q. The Wisconsin State Patrol was out there for a
2 longer period of time?

3 A. They were there several days, yes.

4 Q. They had command officers in and out of the
5 command post?

6 A. Yes, they would have had individuals in and out.

7 Q. The Two Rivers Police Department?

8 A. Yes.

9 Q. They had senior staff in and out of the command
10 post?

11 A. I don't know if they would have had individuals
12 in or out, specifically, or if they were just
13 part of the support group.

14 Q. All right. But what you tried to do was run this
15 as a collaborative, or a joint effort?

16 A. Yes.

17 Q. You consulted with Manitowoc County Sheriff's
18 personnel?

19 A. Yes.

20 Q. They were in and out of the command post?

21 A. Yes.

22 Q. At least the ranking members were?

23 A. Yes.

24 Q. So you weren't necessarily, personally, directing
25 things, but you were part of a group that was

1 making conjunctive, or joint, or collaborative,
2 investigative decisions, so that all the tasks
3 got done?

4 A. Attempting to, yes.

5 Q. Right. Were you aware, on November 5, let's say,
6 that Lieutenant Lenk and Sergeant Colborn of the
7 Manitowoc County Sheriff's Department recently
8 had given depositions in Steven Avery's civil
9 lawsuit?

10 A. No, I was not aware of that.

11 Q. When did you first learn that?

12 A. Today, in court.

13 Q. Mr. Avery, then, was arrested on November 9, if I
14 understood your testimony correctly?

15 A. I believe that would be correct, yes.

16 Q. Charged, initially, with being a felon in
17 possession of a firearm?

18 A. That's correct.

19 Q. Now, you have had enough time in the criminal
20 justice system to know that, typically, at least
21 when somebody is charged in a Circuit Court of
22 the State of Wisconsin, there's a Criminal
23 Complaint filed?

24 A. Yes.

25 Q. With the court?

1 A. Yes, will eventually be filed.

2 Q. With the court, correct?

3 A. Yes.

4 Q. And, typically, as far as I know, always, that's

5 a publicly available document?

6 A. Yes.

7 Q. That is, anyone from the public, including a

8 reporter, could go to the Clerk of Court's Office

9 and say, May I see the Criminal Complaint against

10 Joe Blow, or Steven Avery, or anyone else?

11 A. That is correct.

12 Q. Make a copy of it?

13 A. Yes.

14 Q. And leave with it?

15 A. Yes.

16 Q. All right. So in terms of making something --

17 making information available to the public, one

18 way to do that is to file, at least, an unsealed

19 public document in court?

20 A. It would be a public document, yes.

21 Q. That was done here with the felon in possession

22 of a firearm Complaint, as to Mr. Avery, correct?

23 A. I believe so, yes.

24 Q. It was done with the criminal charge against

25 Brendan Dassey on or about March 2, 2006?

1 A. That's correct.

2 Q. You know, of your personal knowledge, that
3 Mr. Dassey, although 16 years old, was charged as
4 an adult from the outset?

5 A. Yes.

6 Q. So you knew that that was a public proceeding
7 from the outset, not a juvenile and closed
8 proceeding?

9 A. Yes.

10 Q. You knew that the Criminal Complaint against
11 Brendan Dassey, therefore, was a public document?

12 A. That is correct.

13 Q. You and Mr. Kratz began to talk about public
14 dissemination of information in this
15 investigation, when?

16 A. The dissemination of information to the media and
17 to the public?

18 Q. Yeah.

19 A. That was done on the first day, that Saturday
20 that we were at the Avery property.

21 Q. Mr. Kratz was out there as well?

22 A. Yes.

23 Q. You learned on November 5, or shortly after, that
24 a number of people lived on what we are calling
25 the Avery property, correct?

1 A. That is correct.

2 Q. Family members, including extended family
3 members, correct?

4 A. Yes.

5 Q. Husbands, wives, boyfriends, girlfriends, a whole
6 collection of people?

7 A. That is correct.

8 Q. This is a large -- relatively large parcel of 40
9 acres, plus?

10 A. Yes.

11 Q. Steven Avery being one of the people who lived
12 somewhere on what you are calling the Avery
13 property?

14 A. That is correct.

15 Q. On November 5, when you and Mr. Kratz were on the
16 Avery property, you began to discuss, I guess,
17 gee, how are we going to disseminate information
18 to the media?

19 A. And what information was going to be
20 disseminated.

21 Q. And what. Were you and Mr. Kratz the only two
22 decision makers on those discussions?

23 A. No. The investigative staff, agents from DCI,
24 investigators from my office, would meet, and
25 discuss, and come up with what investigative

1 material. What information was going to be, and
2 should be, and needed to be, released to the
3 media and to the public.

4 Q. So, again, I guess, a little bit, as you were
5 describing the investigation itself, your
6 personal style, or your approach to dissemination
7 of information to the media, was more collegial
8 or collaborative and inclusive?

9 A. That would be correct.

10 Q. And that's just a matter of personal style for
11 you?

12 A. No, it's done for a number of reasons: One, to
13 ensure that information that investigators have,
14 information that they do not wish to be divulged,
15 is not divulged. And, again, it's better to do
16 it jointly, together, so that you don't say or
17 disseminate information that should not be, and
18 disseminate information that should be.

19 Again, we had a missing person. We were
20 still looking for Teresa Halbach. And throughout
21 this case we were looking for Teresa Halbach.

22 And we felt that it was important that the media,
23 the public, be provided with this information.

24 Q. In a criminal investigation -- Well, first of
25 all, a criminal investigation would be different

1 in your world, in the jargon of law enforcement,
2 than a missing persons investigation, correct?

3 A. Yes, there would be different aspects.

4 Q. You separate those two things, or distinguish
5 between them?

6 A. You can, occasionally, but sometimes they run
7 hand in hand. If you still do not have a
8 missing-- if you still have not located the
9 missing person, you still have an individual you
10 are trying to locate, so they can run jointly.

11 Q. Of course, but at the outset, in law enforcement,
12 at least in Calumet County, you distinguish
13 between those two, a missing person investigation
14 and the criminal investigation?

15 A. Yes.

16 Q. Many missing person investigations turn out to be
17 a teenager who was upset with mom and ran away
18 for a few hours?

19 A. That can be true, yes.

20 Q. And I think even here, I don't remember which
21 news conference, but I think at some point you or
22 Mr. Kratz made a comment that, we now have a
23 criminal investigation, not just a missing
24 persons investigation. This isn't verbatim, I
25 don't remember the exact words.

1 A. Yeah, but words to the effect that the
2 investigation was tending to lead towards a
3 criminal investigative nature.

4 Q. Right. And that would have been -- Regardless of
5 when and who said it, you began to think of this
6 as a criminal investigation, or at least leading
7 that way, when?

8 A. Probably after information was obtained from the
9 Crime Lab, which was providing us with details as
10 to information being found in Teresa's vehicle.

11 Q. So the vehicle was found November 5?

12 A. Yes.

13 Q. What looks like blood is found that same day,
14 November 5?

15 A. Yes, I believe so.

16 Q. Some swabs for collection of the blood is
17 undertaken?

18 A. Yes. The entire vehicle is removed from the
19 Avery property and taken to Madison, to the Crime
20 Lab.

21 Q. What day was it removed?

22 A. It was removed Saturday evening, late Saturday
23 evening.

24 Q. Taken directly to the Crime Lab?

25 A. Yes.

1 Q. And further collection of evidence is done, then,
2 from the vehicle?

3 A. Yeah, the evidence -- the vehicle is then
4 analyzed for evidence.

5 Q. When -- When, then, did you get your first
6 information back from the Crime Lab that caused
7 you to think of this as looking like a criminal
8 investigation?

9 A. Again, it was probably Monday or Tuesday. I
10 can't recall, specifically, what day it was.

11 Q. Okay. Maybe this will help, you remember
12 somebody first saying, gee, I think we have got
13 bone fragments?

14 A. That would have probably been on Tuesday, I think
15 you said, was the 8th.

16 Q. Right.

17 A. Then, yeah, we discovered some bone fragments on
18 the property. And, again, they had to be
19 analyzed to determine whether they were human in
20 nature.

21 Q. But had you heard back from the Crime Lab before
22 somebody said we have got bone fragments, or
23 after?

24 A. I believe it was before, that we had some
25 information back, some preliminary information

1 back from the Crime Lab.

2 Q. So probably Monday, November 7th?

3 A. Could be, correct.

4 Q. Okay. Now, in a criminal investigation, one of
5 the things that law enforcement people do in
6 disseminating information publicly is attempt not
7 to disclose information that should be known only
8 to the culprit, or the perpetrator, correct?

9 A. We try to do that, yes.

10 Q. So that if you find someone, and in talking with
11 that person they have that information, you know
12 that they haven't gotten it by watching
13 television?

14 A. That would be correct.

15 Q. Or reading the newspaper or something. What sort
16 of information, prior to a criminal
17 investigation, do you not want disclosed in a
18 missing persons investigation?

19 A. Well, in a missing persons investigation, you
20 want to get information out to the public as to
21 the person who was missing, what the person might
22 have been wearing, a general description of the
23 person, and in this particular case, her vehicle.

24 Q. Okay. And by elimination, then, certain personal
25 information you would not want disclosed, I

1 assume?

2 A. Personal information?

3 Q. About the missing person, private information?

4 A. You possibly could want to withhold that, yes.

5 And it's a -- a decision is made, is it

6 pertinent --

7 Q. Right.

8 A. -- to this particular missing person.

9 Q. If it's not particularly pertinent, then privacy

10 concerns would prevail?

11 A. Sure.

12 Q. All right. Now, the purpose, then, of these

13 collaborative or collegial meetings, was to find

14 out, gee, guys, what information do you think we

15 should and should not disclose?

16 A. Yes.

17 Q. Reach some agreement on that, as a group?

18 A. Yes.

19 Q. And then, you know, as people say, make sure

20 we're all on the same page?

21 A. Correct.

22 Q. Then, you and Mr. Kratz would be the public

23 spokespeople?

24 A. That was a decision that was made, yes.

25 Q. Who were the decision makers on that, in the end?

1 A. As far as what information is released?

2 Q. Right. And by whom?

3 A. Again, it is a collaborative effort among
4 everybody who's involved in the investigation.
5 There were several incidences where the
6 investigators said, no, we can't release this, or
7 maybe we should release this, and a discussion
8 was held.

9 Q. And maybe an agreement was reached each of those
10 occasions, but to the extent that there was no
11 agreement, or somebody had to make the call, make
12 the decision, so to speak, who was doing that?

13 A. Well, I guess that information, the ultimate
14 information that was released, would have been
15 Mr. Kratz and myself, because we were the
16 individuals who released the information.

17 Q. Jointly, not one over the other?

18 A. Yeah, I would believe probably, right, he would
19 release information, I would release information,
20 but we knew what information was going to be
21 released.

22 Q. And you decided that jointly?

23 A. Yes.

24 Q. The press conferences on March 1 and March 2, of
25 course, were well after Mr. Avery had been

1 charged with murder?

2 A. Yes.

3 Q. The March 1 press conference was before Brendan
4 Dassey had been charged with murder and other
5 crimes?

6 A. He was in custody.

7 Q. Right.

8 A. But he had not --

9 Q. Before a Criminal --

10 A. Yes.

11 Q. -- Complaint had been filed?

12 A. Yes, before he had been taken to court.

13 Q. The March 2 press conference was after he had
14 been charged formally, a Criminal Complaint had
15 been filed against Mr. Dassey?

16 A. Yes.

17 Q. The Criminal Complaint was distributed to
18 interested members of the media at the March 2
19 press conference, or after?

20 A. I can't recall if it was before or after.

21 Q. But one or the other?

22 A. Yes.

23 Q. You made copies available?

24 A. Yes. Yes.

25 Q. To save them the trouble of going to the Clerk of

1 Court?

2 A. Right.

3 Q. So the press conference wasn't going to replace
4 disclosure of the Criminal Complaint?

5 A. Again, it was felt, a decision was made, that
6 maybe we needed a press conference so that we
7 could discuss this information with the news
8 media and kind of inform them of what they were
9 going to be reading and seeing in the Criminal
10 Complaint.

11 It was felt that it was important. And
12 it was a tough decision to make, should we just
13 give it to them, or not. We felt that it was
14 better to be able to control and to answer
15 questions, I guess, that the media might have.

16 Q. Well, what control did you have after you handed
17 them a copy of the Complaint?

18 A. Well, you still are able to answer questions and
19 you are still able to provide them with some
20 information that is of help, I guess,
21 sensitivity, again, to the family in this matter.

22 Q. Okay. You had no -- you had no serious question
23 about the ability of the assembled reporters to
24 read English?

25 A. No, we knew that they were going to be doing

1 that, yes.

2 Q. They would read the Complaint for themselves?

3 A. Yes.

4 Q. All right. So I guess, necessarily, the purpose
5 of answering questions, or providing further
6 information, was to tell them details, or
7 explanations, beyond those contained in the words
8 of the Criminal Complaint?

9 A. Yes. And, again, the concern was that they were
10 going to take this and go in all directions. And
11 we wanted to be able to control, again, the
12 information. You have to look at it as a whole
13 picture here, not just -- excuse me -- not just
14 little pieces, but a whole picture.

15 Q. And I guess my question was, how in the world
16 were you going to control the media after they
17 left that room? And we have something called the
18 First Amendment in this country, right?

19 A. Mm-hmm.

20 Q. Did you ask them not to print certain things, not
21 to broadcast certain things?

22 A. No, but I think by being able to answer questions
23 and providing them with information, it's going
24 to enhance our ability to be able to provide them
25 and not let them run in all directions with this

1 Complaint, talking to individuals, trying to
2 gather more information than what was in the
3 Criminal Complaint.

4 And that's always a concern that
5 everybody has in major investigations, is that
6 the media, or anybody else, is going to take
7 information that they have obtained and go
8 further and try to enhance what they are reading,
9 and what they are seeing, or what's in the
10 Criminal Complaint.

11 Q. Okay. Now, you have used the word control here
12 at least -- at least a half dozen times or
13 something, I haven't counted, but. By control,
14 you certainly could control what you and
15 Mr. Kratz were saying, correct?

16 A. Yes.

17 Q. You could put out the information under your
18 control, that you chose to disseminate. You had
19 control in that sense, correct?

20 A. Yes.

21 Q. You could decline to put out information, that
22 was a way to exercise control?

23 A. Yes, that's true.

24 Q. You could phrase information in a certain way,
25 that was another form of control you had?

1 A. Yes.

2 Q. You -- These news conferences didn't just happen,
3 invitations were sent, or notices were sent to
4 media outlets?

5 A. They were provided with a date and time so that
6 we could have everybody together at one time,
7 rather than having individuals from the media
8 calling and getting information at this time, and
9 this time, and that time.

10 Q. Sure. Sure. So either your office or
11 Mr. Kratz's office, somebody was either mailing
12 or faxing, you know, here's the date, here's the
13 time, here's the place, kind of information to
14 media outlets?

15 A. Yes. And, again, this goes back to some training
16 that I have received as to providing one news
17 conference where everybody gets the same
18 information.

19 Q. Fair enough. And you made a facility available
20 at which cameras could be set up?

21 A. Yes.

22 Q. Microphones could be set up?

23 A. Yes.

24 Q. And that was another form of control, in the
25 sense that, if your words are recorded on tape

1 or, you know, orally, as opposed to visually.
2 Now, you know, somebody plays the tape, you know
3 exactly what the viewer will see and hear?
4 A. Yes.
5 Q. But what the media did after they left your news
6 conference, after they shut off the lights, and
7 turned off the cameras, and took the microphones,
8 that you couldn't control?
9 A. That is correct.
10 Q. What Steven Avery might choose to say, you could
11 not control?
12 A. That is correct.
13 Q. What his family members might say, you could not
14 control?
15 A. That is correct.
16 Q. Other than the week or thereabouts that you had
17 control of the Avery property, you couldn't
18 prevent the media from going and talking to the
19 Avery family members?
20 A. Yes, and that happened.
21 Q. How many times in your -- Well, how long have you
22 been a law enforcement officer?
23 A. 33 years.
24 Q. Part of a long line of Pagels, I think, with the
25 Sheriff's Department in Calumet County, right?

1 A. Yes.

2 Q. And during your 33 years in law enforcement, on
3 how many occasions have you held a televised news
4 conference, as you did on November 11, to respond
5 to something that somebody, charged with being a
6 felon in possession of a firearm, may have said
7 publicly?

8 A. How many times have we had similar type --

9 Q. Yes.

10 A. -- news conferences? I would have to go back and
11 check through my notes and records but --

12 Q. I bet you remember.

13 A. There have been a couple.

14 Q. There have been a couple?

15 A. Yes, we have had a number of major investigations
16 that we have conducted, that we have had these
17 type of news conferences.

18 Q. But my question was really more narrow. I mean,
19 how often have you had a news conference to
20 respond to something that an arrested defendant
21 has said publicly?

22 A. Myself, probably none.

23 Q. This was the only time?

24 A. Yes, I believe so.

25 Q. This case?

1 A. Myself, as sheriff, investigating or being
2 involved?

3 Q. Yes.

4 A. Yes. I know there's been other cases, but not
5 myself, no.

6 Q. Ever -- Ever in your experience with him, ever
7 hear Mr. Kratz give a news conference to respond
8 to some claim that a defendant has made publicly?

9 A. I don't know. I guess that would be something
10 you would have to ask Mr. Kratz if he can --

11 Q. But you don't remember seeing --

12 A. I don't know.

13 Q. -- or hearing such a thing?

14 A. I would have to look back. I don't know. I
15 can't answer that.

16 Q. As you sit here today, you don't recall?

17 A. I don't recall, sitting here today.

18 Q. Okay. If I understood your testimony on direct,
19 you were getting phone calls from Avery family
20 members, or members of the general public, saying
21 something like, are you framing Steven Avery?

22 A. No, the news media was calling my cellphone and
23 indicating that they were getting calls from Mr.
24 Avery, or from family members, and that certain
25 information was being released to the news media

1 via them.

2 And they were trying to confirm whether
3 this was factual or not. And they would be
4 informed that any information that was going to
5 be divulged would be divulged at the news
6 conference, or at the press conference.

7 Q. Referring to the November 11 news conference?

8 A. This was numerous times throughout this. And, in
9 fact, even the day of March 1st, I was receiving
10 phone calls from the news media inquiring about
11 the fact that, we understand that Brendan Dassey
12 has been interviewed, the Avery's have called us
13 and told us this.

14 And, again, they were disseminating the
15 information themselves. And we had -- we felt we
16 had an opportunity, or we should be dispelling
17 some of the information that the Avery's were
18 providing.

19 Q. Well, let me be clear. I mean, it was members of
20 the news media who were telling you that the
21 Avery's had called them?

22 A. Yes.

23 Q. You probably saw some Avery family members back
24 before Steven was in custody so, that is, before
25 November 9, probably saw some film footage, if

1 you watched the TV's at all, of him and other
2 family members?

3 A. That is correct.

4 Q. But you also know that you were getting calls
5 from media people in which they claim that they
6 had gotten information from the Avery's that had
7 not been made public by those media sources?

8 A. Yes.

9 Q. And so you and Mr. Kratz made a decision to
10 respond publicly to these phone calls on your
11 cellphone, that you were getting from the media
12 people, saying the Averys are calling us and
13 telling us X, Y, or Z?

14 A. The news media was told that any information that
15 was going to be released would be done at the
16 press conference and that we weren't going to be
17 speaking to them, or giving them information
18 without having a joint conference.

19 Q. Okay. Although, you did do that, you sat down
20 for an interview on air, in your office, at one
21 point, didn't you?

22 A. Yes, I have had interviews in my office.

23 Q. About this case?

24 A. Yes.

25 Q. Including about claims that evidence was not

1 handled appropriately?

2 A. Yes, there was one, yes.

3 Q. Prior to November 11, which I think was the news
4 conference that responded to suggestions of
5 mishandling of evidence, or improper motives,
6 prior to that date, what investigation had you,
7 or those under your direction, done to assure
8 yourself that there had not been mishandling of
9 evidence?

10 A. Interviews were done, and the information that we
11 were obtaining from the State Crime Lab was
12 tending to indicate, or inform us, that this was
13 impossible.

14 Q. When you say interviews were done, who did you
15 interview about the possible mishandling of
16 evidence?

17 A. We would be conversing with individuals out at
18 the scene. And we knew that there was no
19 possibility, because there was always an
20 investigator, either from the Sheriff's
21 Department of Calumet County, or from DCI, with
22 these individuals. So we knew that wasn't a
23 possibility.

24 Q. So when you say these individuals, you were
25 referring to Manitowoc County Sheriff's

1 Department personnel?

2 A. That's who I thought you were referring to.

3 Q. I'm just asking who you were referring to?

4 A. Yes.

5 Q. Okay. So the safeguard, so to speak, was, well,
6 we will make sure we always have a Calumet County
7 person with the Manitowoc people?

8 A. Calumet, DCI, yes.

9 Q. Somebody from outside the Manitowoc County
10 Sheriff's Department?

11 A. That was -- That was done, yes.

12 Q. Was that actually a policy that was put in place
13 for this investigation?

14 A. Yes.

15 Q. When was that policy put in place?

16 A. Shortly after the investigation was turned over
17 to Calumet County and DCI.

18 Q. And who put that policy in place?

19 A. It was a joint decision made through our agency,
20 the Calumet County District Attorney's Office,
21 and the Manitowoc County D.A.'s Office, and Corp
22 Counsel, and Sheriff's Department.

23 Q. Okay. So, the three Manitowoc County agencies,
24 D.A., Sheriff's Department, and Corp Counsel,
25 correct?

1 A. Yes.

2 Q. Two Calumet County agencies, Sheriff's Department
3 and District Attorney's Office?

4 A. Yes.

5 Q. And I think I missed someone. DCI?

6 A. DCI.

7 Q. DCI. So among these six groups, this decision
8 was made, we will always have somebody from
9 another department there with any Manitowoc
10 County Sheriff's Department person involved in
11 this investigation?

12 A. Yes, because of the fact that we were the lead
13 agency and we found out about the pending
14 litigation against Manitowoc County by Mr. Avery.

15 Q. That's done on November 5, right?

16 A. Yes.

17 Q. Why would that be done on November 5, if Steven
18 Avery was not a suspect, or a person of interest,
19 until November 9?

20 A. Again, the evidence -- the vehicle was found on
21 the Avery property. There's a lawsuit filed by
22 Steven. So -- So, as to not look like there was
23 any type of tampering, we felt it was important
24 that we do the investigation properly from the
25 beginning. And this is the reason it was done.

1 Q. Again, I don't think that that addresses my
2 question. Why, if Steven Avery was not a
3 specific person of interest, or a suspect, until
4 November 9, why the great concern to be
5 shadowing, or accompanying, and watching over the
6 shoulder of the Manitowoc County Sheriff's
7 Department?

8 A. Because --

9 ATTORNEY KRATZ: Judge, I'm sorry. Judge,
10 I'm going to interpose an objection if Mr. Strang is
11 meaning to quote a previous answer or question. The
12 question was why was he not identified as a suspect.
13 Mr. Strang has now said, if he was not a suspect.
14 It is a mischaracterization of the previous question
15 that was placed.

16 ATTORNEY STRANG: I will have the court
17 reporter read back my original question.

18 (Question read back.)

19 Q. (By Attorney Strang)~ Maybe you could answer that
20 question?

21 A. Okay. We have a vehicle that's found on the
22 property. We have a missing person
23 investigation. We have Steven Avery being one of
24 the individuals who is living on this property as
25 were other members of his family.

1 Because of the litigation, it was felt
2 that, let's insure that there's no thing in the
3 future that's going to be construed as being a
4 cover up, or anything like that. Let's ensure
5 that if we are going to do this investigation, we
6 are going to do it properly, and let's do it from
7 the beginning. And that's why it was done that
8 way.

9 Q. All right. Now, do I understand, then, that as
10 to what investigation you had done into the
11 possible mishandling of evidence as of the
12 November 11 news conference, the answer is none,
13 but that you had put this policy in place on
14 November 5?

15 A. The policy, meaning the policy as far as?

16 Q. If someone from another law enforcement agency is
17 looking over the shoulder of any Manitowoc County
18 Sheriff's Department person involved in this
19 investigation.

20 A. Again, that's the reason that Manitowoc asked us
21 to do the investigation in the first place --

22 Q. I understand.

23 A. -- because of this litigation. And so, because
24 of that litigation, we felt it was very
25 important, that if you wanted us to be the lead

1 agency, that we do it properly from the beginning
2 and start, and so that there can't be any
3 inference in the future that it wasn't done
4 properly.

5 Q. Understood. And the question was, as of November
6 11, then, putting this policy in place was the
7 only step you had taken to assure yourself that
8 there was not mishandling of evidence, or other
9 misconduct by law enforcement officers?

10 ATTORNEY KRATZ: Judge, I am also going to
11 interpose an objection. I think we're well beyond
12 the change of venue or pretrial publicity portion of
13 these motions. These might be relevant to other
14 motions, but I don't know as to pretrial publicity,
15 the motion to dismiss, or the change of venue that's
16 before the Court.

17 ATTORNEY STRANG: I will leave it with his
18 answer, if he's permitted to ask that question --
19 answer that question, I should say.

20 THE COURT: All right. Are you withdrawing
21 your objection if this is the last question?

22 ATTORNEY KRATZ: Yeah, if we can move on.

23 THE WITNESS: I guess I'm still confused as
24 to what you are asking.

25 ATTORNEY STRANG: Do you want to read it

1 back.

2 (Last question read back.)

3 ATTORNEY STRANG: Judge, I don't think we
4 have got that exactly right.

5 Q. (By Attorney Strang)~ What I meant to ask was, as
6 of November 11, other than putting in place the
7 policy that you have described, of watching over
8 Manitowoc County people --

9 A. Okay.

10 Q. -- you had taken no step to assure yourself that
11 there had not been mishandling of evidence or law
12 enforcement misconduct?

13 A. I guess that was the reason.

14 Q. That was the step.

15 A. The step we took that day to ensure --

16 Q. Right. And the question is --

17 A. -- that could not be a question in the future,
18 yes.

19 Q. Is that the only step, as of November 11?

20 A. I believe so, yes.

21 Q. Last area I have -- and I'm shifting gears off
22 that, or shifting off that. You told Mr. Kratz
23 that you had --

24 THE COURT: Mr. Strang before you start,
25 about how long do you think you have got to go yet?

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ATTORNEY STRANG: Three minutes.

THE COURT: Three minutes, go ahead.

Q. (By Attorney Strang)~ You told Mr. Kratz, on direct examination, that you have gotten many phone calls, or approaches from national media, as well as local and regional media?

A. Yes.

Q. You have turned down all the national media requests for comment?

A. Yes.

Q. Have you, personally, been approached by anyone for a book deal, or a movie deal, or something of that kind?

A. Approached, no. I don't know what you mean. No.

Q. Well, now, I don't know what you mean. I mean, by approached, I mean a letter written, a call made, an e-mail received, has anybody suggested to you that you ought to become involved in a book, or a television movie, or a commercial movie, or something like that, about the Avery or the Halbach case?

A. No.

ATTORNEY KRATZ: Thank you. That's all I have then.

THE COURT: Counsel, if you have got some

1 redirect, I'm going to have you do it after lunch.

2 ATTORNEY KRATZ: I think I only have two
3 questions, Judge. I promise it will be very brief.

4 THE COURT: All right. Go ahead.

5 ATTORNEY KRATZ: If I may.

6 **REDIRECT EXAMINATION**

7 BY ATTORNEY KRATZ:

8 Q. Sheriff Pagel, just a couple of questions. The
9 press conference on the 2nd of March, do you
10 recall, before that press conference, or before I
11 made any comments, an admonition, or a reminder
12 to the public that all accused individuals are
13 presumed innocent until proven guilty?

14 A. Yes, you did.

15 Q. And that wouldn't be something, if the Complaint
16 was just released, that would be included,
17 typically, in the Complaint; is that correct?

18 A. That is correct, yes.

19 Q. Finally, the sensitivity to the Halbach family
20 and to crime victims, was that discussed in how
21 details would be released? I'm specifically
22 talking about the March 2nd Complaint and the
23 details within there, how things would be
24 phrased, what should be left out regarding a
25 sensitivity to the Halbach's.

1 A. Oh, yes, most definitely. That was done on
2 March 2nd, and it was done throughout the
3 investigation.

4 ATTORNEY KRATZ: That's all the questions
5 as to the venue and the publicity issue, Judge.

6 THE COURT: All right. You are excused.
7 Counsel, then as I understand it, we're going to
8 have one more evidentiary witness after lunch and
9 then I will hear argument on the motions; is that
10 both parties understanding?

11 ATTORNEY STRANG: Not necessarily
12 immediately after lunch -- I shouldn't speak for
13 Mr. Fallon.

14 ATTORNEY FALLON: The remaining testimony
15 anticipated for today has nothing to do with any
16 motion that will be decided today, that's relative
17 to a motion set for the 19th. So I think it would
18 be better to hear the arguments, or get through as
19 many of the arguments as we can before we take the
20 testimony of that other witness.

21 THE COURT: Very well. I think in most
22 cases, these motions, each of the parties have
23 submitted written arguments already, so they will be
24 somewhat supplemental. I assume they won't be too
25 lengthy.

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ATTORNEY FALLON: Correct.

THE COURT: All right. We'll see you at 1:00.

(Noon recess taken.)

THE COURT: At this time we're back on the record, all counsel are present. And I believe that, with the exception of some testimony we're going to hear on one of the July 19 motions later this afternoon, we have completed the evidence portion of the hearing today; is that correct, Counsel?

ATTORNEY KRATZ: Judge, there may be some brief testimony as to the bond modification motion of Mr. Strang that we intend to come much later this afternoon, once that motion is addressed.

THE COURT: All right. Moving on to the motions themselves, and before dealing with a particular motion, I know there were a number of motions and supporting documents filed under seal. And it's my understanding from our status conference leading up to today's hearing, that the parties were going to request that a number of the documents that had been filed be unsealed. Is that correct, counsel?

ATTORNEY STRANG: I don't know that it's a

1 great number. The principal issue, at least as I
2 recall it, your Honor, was the -- the defense motion
3 to exclude the Manitowoc County Sheriff's
4 Department, which I filed under seal in deference to
5 Mr. Kratz's expressed view that it ought to be. So
6 I thought it only fair to honor that, in the first
7 instance, and then to let the Court decide rather
8 than, in effect, deciding it myself by filing it
9 other than under seal.

10 I don't think it's properly sealed.
11 That is, I couldn't defend a media request to
12 unseal it. It concerns information that already
13 has been broadcast publicly. And in general
14 here, Steve Avery is aware that the public nature
15 of trials in this country has been an aid to the
16 defense. It's been a protection for the citizen
17 accused. And I would err here on the side of
18 making court documents publicly available where
19 they possibly can be, and certainly there still
20 will be some that cannot, consistent with a fair
21 trial and the Court's obligation.

22 But I think this one reveals nothing
23 that hasn't already been broadcast publicly by
24 FOX 11 TV. So I suggest to the Court that the
25 Motion to Exclude the Manitowoc County Sheriff's

1 Department, and any response from the State,
2 rightly ought to be unsealed.

3 THE COURT: All right. Mr. Kratz and
4 Mr. Fallon.

5 ATTORNEY KRATZ: Judge, I do agree with
6 Mr. Strang's position on that particular motion.
7 Our concern was providing an additional forum for
8 additional pretrial publicity on such a volatile
9 issue, or at least as framed by Mr. Strang. But at
10 this time, as the matter has been brought before the
11 Court, and as the Court is about to receive at least
12 brief oral argument on it, I have no objection to
13 that course.

14 THE COURT: All right. The Court will
15 order then that that motion, and any papers filed in
16 support of or in opposition to it, can be unsealed.

17 The next item I have got is the State's
18 motion concerning third party liability evidence,
19 or a *Denny* motion. Is there any reason that that
20 pleading, and the briefs submitted in support and
21 opposition to it, cannot be unsealed?

22 ATTORNEY KRATZ: It's fine from the State's
23 perspective, Judge.

24 THE COURT: Mr. Strang?

25 ATTORNEY BUTING: Judge, I'm handling that

1 motion. I don't know that it was, actually,
2 originally sealed, but I don't see there is any need
3 to have it sealed, or any of the responses.

4 THE COURT: Okay. Court will order that
5 motion, and the briefs relating to it, unsealed.

6 The next item is -- well, actually, the
7 State I think groups together a number of
8 preliminary motions in limine. The one that I'm
9 looking at to be dealt with next is the motion
10 concerning the admissibility of evidence
11 regarding the defendant's wrongful conviction.
12 This would be designated as item one in the
13 pleading entitled Motion in Limine Series One
14 from the State.

15 Now, there's other related motions made
16 in the same document. I will start out I guess,
17 Mr. Kratz, with you, since you filed it. Is
18 there anything in there that the State feels
19 requires sealing at this point?

20 ATTORNEY KRATZ: Not in paragraph -- I'm
21 sorry, Judge, not in Paragraph 1, no.

22 THE COURT: Well, let's take the entire
23 document. I don't think I can unseal a paragraph.
24 I think there is, later in the document, some
25 evidentiary matters that are set forth in some

1 detail, the admissibility of which is yet to be
2 determined.

3 ATTORNEY KRATZ: Paragraph 5 and 6, Judge,
4 may still be appropriate to be sealed as it
5 requires, at least in part, a balancing test of the
6 Court and seeks a pretrial ruling of the Court. As
7 I told the Court, in chambers, and Mr. Strang,
8 Paragraph No. 7, dealing with out of the court
9 statements of Teresa Halbach, this Court understands
10 the recently decided case of *Davis vs. Washington*
11 decided by the US Supreme Court, June 19th, was very
12 relevant to the analysis the Court must undertake in
13 this regard.

14 The Court had asked for a supplementary
15 memorandum of law to be prepared. I have done
16 that. I have provided that to defense counsel.
17 I at least want to provide the Court the original
18 of that; although, it's not going to be argued
19 until the 19th, that's been completed, Judge.

20 THE COURT: All right. What's the State's
21 position on the sealing or unsealing of the State's
22 Series One Motions in Limine.

23 ATTORNEY STRANG: Defense's position?

24 THE COURT: Defense's position, I'm sorry.

25 ATTORNEY STRANG: This is an appropriate

1 case to use redacting of a public copy rather than
2 sealing. And I think that Paragraph 1 may be made
3 available publicly, that is, not redacted.

4 Paragraph 2 may be made available
5 publicly, not redacted.

6 Paragraph 3, I think is appropriate for
7 public disclosure, not redacted.

8 Paragraph 4, need not be redacted.

9 Paragraph 5, in my view, need not be
10 redacted.

11 All of Paragraph 6 should be redacted at
12 this point.

13 Paragraph 7, need not be redacted. The
14 argument that follows need not be.

15 And, then, Paragraph 8 need not be
16 redacted.

17 THE COURT: So the defense is asking for
18 the document to be unsealed with the exception of
19 Paragraph 6 being redacted, correct?

20 ATTORNEY STRANG: I'm sorry?

21 THE COURT: Paragraph 6 is the only one
22 that you are asking to be redacted.

23 ATTORNEY STRANG: Yes, your Honor.

24 THE COURT: Any objection from the State?

25 ATTORNEY KRATZ: No, Judge, other than

1 there was discussion previously about Paragraph 5,
2 and this Court asking for additional argument as to
3 that may or may not include information that will be
4 made public. Actually, the suggestion, or offer, in
5 Paragraph 5, is probably not something that is all
6 that noteworthy and so I would have no objection to
7 the Court, other than Paragraph 6, allowing this
8 document to be made public.

9 THE COURT: All right. Let's move on then
10 to --

11 ATTORNEY STRANG: May I make a suggestion--

12 THE COURT: Yes.

13 ATTORNEY STRANG: -- about the mechanics of
14 this, which then could apply to any future issue
15 where the document itself would be public, but parts
16 of it may be redacted. My suggestion would be that
17 the author of the document, in this case the State,
18 go back to the word processing system, create a
19 copied over document of this and then just remove
20 Paragraph 6 and put Paragraph 6 redacted, rather
21 than black ink and that kind of thing, which people,
22 then, invariably are holding up to the light and
23 trying to guess about.

24 I think it's just a more effective way
25 to redact. And then the document, as refiled,

1 would clearly say redacted at the appropriate
2 paragraph. And I, of course, would have no --
3 there's every reason why a redacted copy should
4 be treated as filed on the original date of
5 filing, nunc pro tunc.

6 THE COURT: Any objection Mr. Kratz?

7 ATTORNEY KRATZ: My secretary might, Judge,
8 but I don't. We'll try to accomplish that.

9 THE COURT: All right. Let's move on then
10 to the next item to be addressed today. That was
11 actually, let's see, I think an additional part of
12 the same document, which would be Paragraph 3. So
13 that's dealt with there.

14 ATTORNEY BUTING: Judge, the only filings
15 on that motion so far is the State's Motion in
16 Limine Series One that we just discussed, Paragraph
17 3, and then my letter response. I don't think that
18 needs to be sealed.

19 THE COURT: Okay. All right. So -- Well,
20 that's a good point. The written arguments, in
21 support of or in opposition to the request for each
22 of these items, with the exception of Paragraph 6 at
23 this time, I would think could be unsealed or
24 submitted open, if you will, without prior request
25 to and permission of the Court. Fair enough?

1 ATTORNEY STRANG: Right. And in that vein,
2 I filed a memorandum that relates only to
3 Paragraph 6 and the State's argument there. So my
4 memorandum probably just could be sealed.

5 THE COURT: That would remain sealed. Very
6 well. The Court was also going to take up
7 Paragraph 2 of the State's motions in limine today
8 and that's covered by the part that has already been
9 decided to be unsealed.

10 ATTORNEY STRANG: And that's a matter on
11 which I have no doubt we'll reach a substantive
12 stipulation at some point.

13 THE COURT: The State's Motion to Dismiss,
14 I believe is already open. I don't think there's
15 anything left to unseal there; is that correct,
16 Counsel?

17 ATTORNEY KRATZ: The defense motion, I
18 don't think I filed one, Judge.

19 THE COURT: Right.

20 ATTORNEY STRANG: Right, I think that's
21 unsealed.

22 THE COURT: And then there was also a
23 defense motion concerning interference with right to
24 counsel that I was led to believe might be resolved
25 by today, relating to the other person.

1 ATTORNEY STRANG: The cell mate?

2 THE COURT: Yes.

3 ATTORNEY STRANG: It's not even a motion,
4 it's a notice.

5 THE COURT: True.

6 ATTORNEY STRANG: What I'm awaiting from
7 the State, and I'm sure I will get when Mr. Kratz
8 has five minutes, is an explanation of why this
9 gentleman was in the jail at all. CCAP doesn't
10 disclose a reason. I know that Mr. Kratz knows and
11 he's commented about where the gentleman is now. So
12 he has that information.

13 At this point I wanted the State and the
14 Court to be on notice that we have a concern
15 about cell mates and inquiry that may be made of
16 Mr. Avery by cell mates. But as the notice
17 itself says, I think at this point there hasn't
18 been a "messiah problem" that arose as to that
19 gentleman.

20 THE COURT: Mr. Kratz, do you have
21 materials with you today that are hopefully going to
22 resolve that?

23 ATTORNEY KRATZ: I have information.
24 Actually, if the Court anticipates a mid-afternoon
25 break, Mr. Wiegert from the Sheriff's Department can

1 provide that relevant information and I'm sure it
2 will be to Mr. Strang's -- or that it will conclude
3 the matter without further discussion with the
4 Court.

5 THE COURT: All right. The last item up
6 for consideration today is the defendant's motion to
7 reduce bail which was also, I believe, submitted
8 under seal. What's the position of the parties on
9 that particular motion? Mr. Strang?

10 ATTORNEY STRANG: This is Mr. Buting's
11 department.

12 THE COURT: Okay. Sorry, Mr. Buting.

13 ATTORNEY KRATZ: We're just talking on the
14 sealing issue?

15 THE COURT: The sealing issue of the bail
16 motion, correct.

17 ATTORNEY BUTING: Judge, I have no reason
18 that this could not be unsealed.

19 THE COURT: What is the State's position?

20 ATTORNEY KRATZ: Well, Judge, this was what
21 we had alerted the Court that would require some
22 brief testimony. It deals with statements made by a
23 co-defendant, which may or may not be admissible at
24 trial. Quite frankly, Judge, the State doesn't --
25 doesn't mind if it is unsealed and discussed. We

1 can certainly do that in open court.

2 As an officer of the court, however, I
3 need to alert the Court, and I'm sure defense
4 counsel understands, that portions of those
5 statements may or may not be admissible. So I
6 want to at least tell the Court that.

7 If we are getting into those statements,
8 we can certainly do that in open court. That
9 seemed an area, however, that was a little less
10 clear about whether the Court wanted to air that
11 in open court. But we are prepared to do so
12 today, if the Court wishes.

13 THE COURT: Mr. Buting.

14 ATTORNEY BUTING: Again, I'm fine with
15 unsealing it. I don't think there is any reason
16 that it can't be.

17 THE COURT: Very well. The Court will
18 allow that motion to be unsealed. And I will
19 prepare an order regarding the documents to be
20 unsealed, which I will submit for -- to the parties
21 before I sign it, just so everyone is in agreement.

22 ATTORNEY STRANG: There's one more document
23 that's under seal, your Honor.

24 THE COURT: Okay.

25 ATTORNEY STRANG: The -- I filed a motion

1 to suppress Mr. Avery's November 5 statement to a
2 Marinette County detective and any products or
3 fruits of that statement. The motion itself was not
4 under seal, but I filed a supporting affidavit from
5 Steve Glynn that has some pages from the discovery
6 attached to it and, therefore, I sealed -- I filed
7 under seal Mr. Glynn's affidavit, because it was my
8 understanding if we were attaching discovery
9 documents, it should be filed under seal.

10 All that said, I don't think there's --
11 you know, there's nothing all that terribly
12 prejudicial in the document -- in the discovery
13 documents that were attached to Mr. Glynn's
14 affidavit. So I -- I don't feel strongly about
15 keeping it sealed.

16 THE COURT: Mr. Strang -- Mr. Kratz, I'm
17 sorry.

18 ATTORNEY KRATZ: I have no objection to
19 that as well, Judge. There was -- and I didn't know
20 if the Court wanted to deal with the July 19th
21 motions as well. This Marinette issue is to be
22 dealt with, at least contemplated, partly today and
23 partly on the 19th. And I noted the Court did not
24 address other motions, including the other acts
25 motions, which I'm sure should remain under seal.

1 But that having been said, I don't have any
2 objection to the Marinette detective's reports, or
3 at least portions of them included in Mr. Glynn's
4 affidavit, to be made public.

5 THE COURT: Very well. I will include that
6 as part of the order then.

7 ATTORNEY STRANG: Mr. Buting points out
8 that there is one more document that remains under
9 seal, which is the Defendant's Memorandum on
10 Evidence of Wrongful Conviction and Accusations of
11 Prisoners.

12 THE COURT: That sounds like it would fall
13 under Paragraph 6 of the --

14 ATTORNEY STRANG: Some of it does and some
15 of it concerns Paragraph 1. You know, we could -- I
16 don't have a -- I was pretty circumspect in what I
17 have said about the Paragraph 6 material in this
18 memorandum; although, I did file this under seal. I
19 don't have an objection to unsealing it.

20 And, indeed, maybe a good balance to
21 strike here is there's probably about four lines
22 of it that could be redacted with the rest of the
23 document being unsealed. And obviously I, as the
24 author, would handle the word processing task
25 that I described earlier.

1 If the State would prefer that it not be
2 redacted, then I don't have an objection to
3 unsealing it in the entirety.

4 THE COURT: Mr. Kratz.

5 ATTORNEY KRATZ: I don't have a position,
6 Judge. I think Mr. Strang is correct, there isn't
7 anything in there that is so prejudicial that it
8 needs to remain sealed.

9 THE COURT: All right. I will include that
10 as part of the Court's proposed order. Do the
11 parties have a preference as to which motion they
12 wish to present argument on first?

13 ATTORNEY KRATZ: Is the Court contemplating
14 receiving argument on the Change of Venue, Exclusion
15 of the Sheriff's Department and Motion to Dismiss --

16 THE COURT: Yes.

17 ATTORNEY KRATZ: -- altogether, or did the
18 Court want to receive separate argument on those?
19 We certainly can since we -- we meaning defense
20 counsel and the State -- have in one form or another
21 presented the lion's share of the argument to the
22 Court. I expect this Court wishes a very brief
23 summary of the arguments as to those. I have no
24 objection, Judge, to providing them en masse, that
25 is, all three together, since they are interrelated.

1 THE COURT: Mr. Strang, are you going to be
2 arguing these for the defense?

3 ATTORNEY STRANG: I am.

4 THE COURT: Any objection to combining your
5 argument?

6 ATTORNEY STRANG: I don't.

7 THE COURT: All right. You may proceed.

8 ATTORNEY STRANG: I will start with
9 Mr. Avery's Motion to Dismiss the five counts
10 relating to Teresa Halbach. I was clear on the
11 motion, but I will reiterate here that we have not
12 moved to dismiss the felon in possession count,
13 because I don't think the problems of which we
14 complain relate anywhere near as strongly to that
15 Count of the Amended Information.

16 The facts here, largely, are undisputed,
17 your Honor. In terms of what -- what has
18 happened. But I will simply review them as I
19 understand them.

20 There have been eight news conferences
21 of which I'm aware in this case. All eight of
22 them have been set up by the State, presented by
23 the State, as part of a decision, as Sheriff
24 Pagel testified this morning, to disseminate
25 information to the media and, thereby, to the

1 public, and to do so with control of the Calumet
2 County Sheriff and the Calumet County District
3 Attorney who serves here as Special Prosecutor,
4 of course.

5 Each of those eight news conferences was
6 broadcast, in full, by one or more, I think
7 probably all, of the Green Bay television
8 stations. Some of them were covered in full, or
9 in large excerpt, by Milwaukee stations.

10 The defense appeared at none of those
11 and there have been no news conferences called by
12 counsel for the defense at any juncture, either
13 current counsel or, to my knowledge, predecessor
14 counsel, for Mr. Avery.

15 Of the State's eight televised news
16 conferences, four of those came after formal
17 charges, or a formal charge, was filed against
18 Mr. Avery. The Court will have available to it,
19 DVD's of all eight in full, but I will represent
20 to the Court, as an officer, that Steven Avery,
21 by name, and then the Avery family more
22 generally, are discussed in all eight of the news
23 conferences, some of that incidentally, some of
24 it in response to questions from media people,
25 some of it just in the statements of Mr. Kratz or

1 Sheriff Pagel.

2 And, you know, to be clear, obviously,
3 it's conceded by the defense that the locus of
4 much of the investigated activity here was the
5 Avery Auto Salvage property. So I don't cast
6 dispersions or lay motives, in and of itself, to
7 talking about the Averys, or the Avery family, or
8 the Avery property that was the locus of many of
9 the investigative steps here.

10 But it is clear that the Avery name, and
11 Steven Avery's name in particular, was attached
12 immediately in the news conferences, and then
13 consistently in the news conferences, to the
14 information that the State was making public.
15 That included, at the March 1 and March 2 news
16 conferences, the impetus of which we are told was
17 the arrest, and then the plans to charge, and
18 eventually the charging of Brendan Dassey.
19 Impetus that may have been for the March 1 and
20 March 2 press conference but, again, much of the
21 content of both of those concerned Steven Avery.

22 There have been claims of superior
23 knowledge made -- salted throughout these various
24 news conferences by either Mr. Kratz or
25 Mr. Pagel. And I don't remember right now anyone

1 else speaking at them, although, I can't be
2 certain.

3 Well, I take that back, I think
4 Manitowoc County District Attorney Mark Rohrer
5 spoke very briefly at one of them. And I know
6 that others appeared on camera, but I don't
7 recall them speaking, all of them law enforcement
8 officers or representatives of the State. So not
9 at every one of these conferences, but salted
10 throughout, there are references to what the
11 State now knows, or what is now clear.

12 And assurances to the public that law
13 enforcement and the prosecuting authorities were
14 in possession of information beyond that
15 disclosed to the public and that they found, or
16 viewed, the information known only to them as
17 reliable and as informing their conduct and their
18 decisions in the case.

19 One of the press conferences, March 2,
20 2006, was sufficiently graphic, or lurid, or
21 colorful in its details, that Mr. Kratz did
22 something I had not ever seen before, which is at
23 the beginning, urge children under age 15, and
24 friends or family members of Ms Halbach, not to
25 watch. Essentially the State made an effort to

1 impose and R rating on its final televised news
2 conference here on something that it knew was to
3 be broadcast in the media market covering this
4 county and, therefore, the jury pool, during
5 daytime hours.

6 There have been at least two other
7 appearances by law enforcement figures on TV:
8 One, a televised interview of Sheriff Pagel, as I
9 recall. And that was a topic of some brief
10 testimony by him earlier this morning.

11 And then, probably something that's
12 drawn much more focus, a two part series run by
13 WLUK TV, which is FOX 11 out of Green Bay, that
14 featured prominently, although not exclusively by
15 any means, Sheriff Kenneth Petersen from
16 Manitowoc County who, it is undisputed,
17 personally has next to no role in the actual
18 investigation of this case, but who spoke as the
19 chief law enforcement officer at the county level
20 for Manitowoc County. That was aired two nights
21 in a row, May 10 and 11. And I think the Court
22 has already a DVD carrying the 17 plus minutes of
23 those two segments.

24 I note, as well, that one of the early
25 steps that I took, after undertaking

1 representation of Steve Avery, was to move for a,
2 what we call locally, a gag order. The motion
3 had a little bit more elegant title than gag
4 order motion. But the gist of it was, that I was
5 moving to limit public comment.

6 From my recollection, and I'm sure the
7 Court's notes or recollection are to be relied
8 on, at least as much, if not more than mine, and
9 the public record here. But my recollection is
10 that the State did not join in that motion. And
11 the Court, after some prompting to the parties to
12 try to work things out in a reasonable way,
13 eventually denied the motion.

14 The defense also, here, has sought an
15 adjournment of the trial date, initially set for
16 September 5; an October 16 date was proposed.
17 The defense position, in a nutshell, was
18 October 16 was better than September 5, but not
19 sufficient. And that we thought an adjournment
20 date into 2007 was necessary for adequate defense
21 preparation and to permit a diminution in the
22 publicity, and particularly the more inflammatory
23 publicity that has attended this case from the
24 outset, as Sheriff Pagel correctly anticipated
25 back on November 5.

1 The State, as I recall it, agreed that
2 on balance it was appropriate for the Court to
3 adjourn the September 5 trial date, but the State
4 preferred an October 16 trial date. And as we
5 stand here today, it's the October 16 date that
6 the Court has scheduled for trial on this.

7 So, I don't think there is any question
8 that the publicity has been intense here, that at
9 least to the extent of the eight news conferences
10 and a couple of other televised appearances that
11 I have described, that the State has participated
12 actively in that; indeed, made a conscious choice
13 to engage in the dissemination of information
14 that way, publicly, as Sheriff Pagel testified
15 this morning.

16 And that a foreseeable result of that
17 would be to impair or threaten, put at serious
18 risk, Mr. Avery's right to a fair trial at all,
19 because some of this publicity has been statewide
20 or even national, as the testimony acknowledged
21 this morning. More specifically, has imperiled,
22 put at risk, Mr. Avery's right to a trial at
23 which citizens of Manitowoc County would serve as
24 jurors.

25 Both of these are constitutional rights

1 that he has, the fair trial in general being both
2 federal and state constitutions as providing the
3 basis for those constitutional claims. And as to
4 a trial in this vicinage, or a trial venued in
5 Manitowoc County, the Wisconsin Constitution
6 guarantees Mr. Avery that right.

7 Now, I don't disagree with the State's
8 observation in the abstract, that sometimes
9 constitutional rights come into tension with one
10 another. Sometimes, one, a defendant, an
11 accused, is put to a choice in, do I, for
12 example, exercise my constitutional right to be
13 heard at trial, as a matter of due process, by
14 trying -- by testifying at trial, or do I
15 exercise my 5th and 14th amendment and, for that
16 matter, state constitutional privilege against
17 self-incrimination by declining to testify,
18 knowing that the State, then, can't comment on my
19 decision not to testify and meet the charges.

20 That would be the classic dilemma or
21 potential conflict of constitutional rights. The
22 defendant who chooses to testify necessarily
23 gives up the privilege in self-incrimination.
24 The defendant who stands on that privilege,
25 necessarily, then, can't testify in his defense

1 at trial and exercise that aspect of his due
2 process right to be heard.

3 But that's not the kind of conflict of
4 constitutional rights that the Court confronts
5 this afternoon; that is, the constitutional
6 rights we raise here. The right to a fair trial,
7 the right to a trial in the venue in which the
8 crime is alleged to have occurred, are not
9 unavoidably in conflict as are self-incrimination
10 and the right to be heard. And this isn't a
11 situation where mere fate has caused these two
12 constitutional rights to collide, where forces
13 outside anyone's control, or as I say, fate, for
14 shorthand, have put Steven Avery to an unhappy
15 choice.

16 This is not fate, this is the State that
17 has done this. The State has fostered the
18 publicity. The State has contributed to the
19 publicity. The State is not to blame for all the
20 publicity, and I don't suggest for a moment that
21 the State is.

22 Today we're being televised, I assume,
23 or there will be newspaper reports about the
24 proceedings today, and that's not attributable to
25 the State. It doesn't lay at their feet. I

1 haven't attributed any fault, any wrong doing, to
2 the Halbach family. They have entirely separate
3 interests. Those interests are important, they
4 are legitimate. They are not under the State's
5 control.

6 And nobody is complaining here about
7 statements that the Halbach family have made, or
8 when they have been intruded upon by cameras, the
9 way they have handled that. Although, there have
10 been -- there has been other publicity.

11 So the State, you know, the State is
12 responsible only for some of the publicity in
13 this case. But that responsibility is
14 significant.

15 When I looked around at cases, primarily
16 on change of venue, I find references to, you
17 know, one short informational news conference,
18 for example, Briggs (phonetic), the defendant not
19 mentioned by name, purely an informational short
20 news conference. Now, I can't say that there's
21 no reported case in which there's been more than
22 one news conference. I haven't seen one, but
23 there may well be one.

24 Even in the State Courts of Wisconsin,
25 I'm sure if I cast a wider net, nationally or in

1 the federal decisions, I'm sure I would find
2 situations where there have been more than one
3 news conference held by the prosecution, the
4 State, the government, but eight is a great
5 number. They were televised and these were not
6 purely informational.

7 These included a great amount of detail,
8 a fair amount of opinion, assertions of
9 knowledge, as if that epistemologically were
10 absolute, and based on information not to be
11 disclosed to the public. In the case of March 2,
12 the presentation was so graphic and I think
13 effective, to give Mr. Kratz his due, that he
14 himself warned some viewers not to watch.

15 And gave what I thought was a pretty
16 effective opening statement or closing argument,
17 running through a Criminal Complaint that was
18 graphic and highly detailed; a Criminal Complaint
19 that went well beyond what was necessary to
20 establish fair probable cause against Mr. Dassey,
21 in the information that it detailed, and then
22 that Mr. Kratz repeated on television.

23 The participation of Sheriff Petersen
24 hardly needs much further comment. I will go out
25 on a limb and say that we will not find, in

1 reported decisions, another case in which the
2 sheriff of the county in which the alleged crimes
3 occurred opines not just that the defendant is
4 guilty of the charged offense, but opines that if
5 he's acquitted, somehow he will murder someone
6 else in the future, on what possible basis, I
7 have no idea, that assertion would be made.

8 I will venture further that the Court
9 will not find a close analog to the chief county
10 law enforcement officer in the affected county,
11 describing with, or agreeing with a description
12 of an accused person as a psychopath. And then
13 suggesting further, in his own words, in a case
14 having nothing to do with fraud, deception, that
15 sort of wrong doing, that the defendant may be a
16 con man.

17 This was really remarkable. Before we
18 even get to the bizarre discussion of how it
19 might have been easier to kill Steven Avery than
20 to frame him. Off the charts.

21 And the direct participation of the
22 sheriff of this county, his words, his image on
23 TV, two nights in a row, in an interview that he
24 said took about half an hour, that occurred in
25 the second half of April, about five months into

1 the prosecution of this case and at that point
2 almost four full months before the September 5
3 trial date that this Court anticipated. I will
4 add also, the interview being given at a time
5 when the defense already had made clear that we
6 prefer, we want, a jury from Manitowoc County to
7 hear this case.

8 So the conflict here in constitutional
9 rights, the fair trial right, bumping up against
10 the right to a trial in the proper venue, isn't
11 one of fate entirely. There has been significant
12 State action in creating that conflict. It's a
13 choice to which the defendant ought not be put.

14 Because when the State takes action to
15 interfere with any constitutional right, yet
16 alone to bring two constitutional rights into
17 direct contact so one cannot enjoy the one if he
18 claims the other, the State is interfering with
19 the defendant's constitutional rights, his bundle
20 of trial rights assured by a Federal, in part,
21 and the State, in full, Constitution.

22 And that's a denial of due process, it
23 seems to me. I don't know what could be more
24 fundamental to due process and to fair play than
25 the State not interfering with, or impeding, or

1 imperiling the defendant's constitutional rights,
2 particularly when they go directly to where the
3 trial will be held and how fair that trial will
4 be.

5 It is a fundamental denial of due
6 process, in addition to an interference with the
7 specific constitutional right at issue. That's,
8 I think, what we have here. Dismissal is an
9 extreme remedy. Dismissal is an extreme remedy.
10 But we have also seen extreme conduct.

11 And if I thought there was some remedy
12 short of dismissal, I understand -- I understand
13 just how unpalatable that is to the public, how
14 horribly unpalatable that is to the Halbach
15 family, if they believe Mr. Avery guilty.

16 I understand how unpalatable that is to
17 the Court, which sits as a neutral in this, but
18 in all events sits to see that justice is done,
19 which ordinarily means that causes are tried.
20 Allegations are presented to a fact finder and
21 they stand proven or unproven, but they are
22 tried. So I understand this is unpalatable
23 stuff.

24 Maybe I'm not smart enough to think of
25 the lesser remedy that would remove the conflict

1 between the right to a fair trial and the right
2 to a trial in this venue. The only alternative I
3 have come up with, and I stand on, is to adjourn
4 this trial for a number of months, into February,
5 2007, and to couple that adjournment with an
6 order limiting the public disclosure by lawyers
7 in this case and by law enforcement agencies
8 involved in the prosecution of this case.

9 I think the Court has the power to do
10 that. It's unusual to ask for an order limiting
11 disclosure by law enforcement officers, but the
12 Court in general has the right to control what
13 witnesses say. And the Court has the right to
14 preserve the integrity of the proceedings before
15 it and to assure the rights to a fair trial that
16 he enjoys as a matter of the constitution and
17 that the public enjoys as a matter of common
18 sense, as a matter of tradition in this country.

19 And although it's not a constitutional
20 right for the public or the State, it's certainly
21 a tradition, and a hope, and aspiration in this
22 country, that the public too would have a fair
23 trial. So maybe -- maybe an adjournment coupled
24 with an order limiting disclosure, but I don't
25 have more to offer, short of dismissal of the

1 affected charges. And, again, I tried to tailor
2 that as best as I can to the problem.

3 So the first course, the one I prefer,
4 is that the five counts relating to Ms Halbach be
5 dismissed, without prejudice; without prejudice
6 on the hope that at some point, if the State
7 wishes to proceed, again, that that could be done
8 without irreparable harm to the constitutional
9 rights of the accused.

10 As a matter of second preference to
11 adjournment, coupled with a pretty strong order
12 eliminating public disclosure, that order would
13 exclude the Halbach family, they would not be
14 covered by it. And that order would exclude the
15 defendant himself, because I don't think a Court
16 can, or should, mute the accused himself, who has
17 everything at stake in terms of his liberty,
18 anything more than I think the Court should mute
19 or gag the family of someone who's been killed,
20 who's been lost. Because that family has a great
21 deal at stake emotionally and in seeking justice.

22 But I will say this, that I think
23 Mr. Avery has been less voluble since Mr. Buting
24 and I have arrived on the scene. Specifically,
25 none of the Avery family members agreed to

1 comment for the FOX 11 report, for example, as
2 the reporter, Lauren Cook notes at the end of
3 both of those segments. I know that I have tried
4 to keep my tongue in check with the media, not
5 with 100 percent success, but I haven't had any
6 news conferences.

7 And while it wouldn't be proper for the
8 Court to order Mr. Avery to say nothing in
9 asserting his innocence, I will say, if he says
10 anything, he's got his lawyers to explain that
11 to. And he understands we won't be very happy.
12 So those are the alternatives.

13 The third, and to us, least palatable
14 alternative, is to change venue entirely in this
15 case. Our motion is for relief under Section
16 971.22 of the Wisconsin Statutes. It is not an
17 invitation to, or an invocation of, the use of
18 Section 971.225.

19 We think that if venue has to be
20 changed, as a least palatable alternative here,
21 that the entire trial ought be moved to a less
22 tainted county, in the hope that the jury there
23 would not have to be sequestered and that we
24 wouldn't visit that sort of imposition on 12, or
25 14, or 15, or 16, citizens, depending on the

1 number of alternates the Court might pick for a
2 trial that well could go five weeks or
3 conceivably longer.

4 So, I prefer the dismissal. Failing
5 that, an adjournment coupled with the restriction
6 of public comment by law enforcement officers, as
7 well as lawyers. And only last would I address
8 change of venue.

9 Now, I have more to say about the change
10 of venue, but I want to end in -- for the moment,
11 in talking about an adjournment. And this is
12 new, I have something new to say on that. I have
13 not put this in writing and I have struggled with
14 how to say it, when to say it, and whether to say
15 it, but I'm going to say it.

16 The Wisconsin legislature, acting rather
17 rapidly on the last day of a special session, saw
18 fit to decree that on this November's ballot for
19 statewide and federal offices, the citizens of
20 Wisconsin will be asked to give their advice, if
21 you will, to vote, that is, on an advisory
22 referendum on the death penalty.

23 Wisconsin has gone 153 years now without
24 the death penalty. No state in the nation has an
25 unbroken period of that length in administering

1 justice without killing people. That referendum
2 will happen just about the time the State is
3 resting its case, give or take a few days, or a
4 week, in this trial, if this trial remains set
5 for October 16th.

6 And in a state where, for example, in
7 1917 a bomb blew up and killed nine members of
8 the Milwaukee Police Department; in a state that
9 produced Ed Gein in the 1950's; in a State that
10 produced David Spanbauer, in this neck of the
11 woods, in the 1980's; in a state that produced
12 Jesse Anderson, who was cynical enough to blame
13 his own murder of his wife on a young black man
14 figuring that would be the easiest guy to frame;
15 in the state that in the 1990's featured Jeffrey
16 Dahmer; in a state in which this horrible,
17 alleged crime probably isn't even the worst
18 Halloween crime in this part of the state, I
19 guess that honor probably would go, dubious
20 though it is, to Gerald Turner, in the late
21 1970's.

22 In a state with this history, Steven
23 Avery now has become the poster child, the poster
24 boy, for some politicians in pushing the death
25 penalty referendum. Whether they like it or not,

1 to some degree, Teresa Halbach's life and death
2 have been politicized with the death penalty.

3 And I tell you, I don't like it that
4 Steven Avery, for whom I feel responsible for
5 here, has become politicized with the death
6 penalty. But that's how it's playing out.
7 That's what's happening in our state capitol, and
8 that's the reality in terms of the referendum the
9 citizens face this November. And they ought not
10 be going to the polls in the super heated
11 atmosphere that this trial will produce, at least
12 in the Manitowoc County and northeastern
13 Wisconsin area.

14 His own jurors shouldn't be taking a day
15 off to go vote on the death penalty referendum at
16 about the time they have heard the best the State
17 has to offer in this case and probably before the
18 defense has been heard, or heard in full.

19 It's an unfortunate confluence. No one
20 in this room is to blame for any of it. But --
21 And, you know, I hesitated to address it.

22 The one, I feel very strongly about the
23 death penalty in general. And, two, it's just
24 one of these events out there in Wisconsin. But
25 the fact is, and you see this if you go through

1 the media reports that I have assembled for the
2 change of venue motion, the fact is, that
3 politicians, and the media themselves, have
4 linked the death penalty referendum to the
5 prosecution of Steven Avery.

6 Senator Lasse from Depere, the principal
7 sponsor of the death penalty referendum, said in
8 televised interviews that he revised the wording
9 that he had intended. He adjusted course on his
10 referendum proposal because of the Steven Avery
11 case, or the Teresa Halbach case. I don't
12 remember whether he used her name or his, and
13 they are, unfortunately, linked by this case.

14 But it was this set of events, that
15 brings to the courtroom, that caused the
16 principal author, he said on television, to
17 revise his proposal. And this case simply is a
18 link to it. It is not good democracy, in terms
19 of this referendum, and it's certainly not good
20 justice, in this particular case, to have these
21 two things going on at the same time. So, in
22 speaking on behalf of an adjournment, as the
23 second of the three possible alternatives I have
24 proposed here, I will close with that.

25 If we get to the change of venue issue,

1 the Court wanted me to be more specific about
2 what was prejudicial about the publicity, and
3 also to make a full record by submitting what I
4 have gathered on the publicity, and I will do
5 that. But I'm going to yield the floor to
6 counsel for the State on the initial matters I
7 have addressed.

8 THE COURT: All right. Mr. Kratz, will you
9 or Mr. Fallon be addressing?

10 ATTORNEY KRATZ: I will, Judge. Your
11 Honor, I have filed with the Court written argument
12 as to the request by Mr. Strang to dismiss these
13 charges as the appropriate remedy for what he
14 describes as improper pretrial publicity. What
15 Mr. Strang also identifies as the only logical
16 remedy, I'm using his words, Mr. Strang recognizes
17 in citing the 1968 case, the **Schulter** case, that
18 dismissal due to pretrial publicity is not deemed an
19 acceptable remedy, at least in this state, and has
20 not been deemed an acceptable remedy when others are
21 available.

22 The defense has available to it, not
23 only increased care in the voir dire and jury
24 selection process, but also that of change of
25 venue. Both **Schulter** and **Mendoza**, certainly,

1 when read together, suggest just what Mr. Strang,
2 I believe, already knows; that is, when change of
3 venue is, and would be, an appropriate remedy.

4 Even should this Court find the pretrial
5 publicity to be improper, dismissal just is not
6 an appropriate remedy.

7 I do not, Judge, intend to go through
8 the purposes of the press conferences. I think
9 Sheriff Pagel did a good job in doing that. This
10 Court, however, needs to understand that the
11 first half of those press conferences related to
12 a missing persons investigation. Great care was
13 taken never to identify Steven Avery as a
14 suspect.

15 And, in fact, the purpose of those
16 disclosures were to limit information. That
17 sounds a little bit unusual that you would hold a
18 press conference to limit release of information.
19 But that's exactly what was done, was exactly the
20 plan by the State, to disseminate very little
21 information, only that necessary to request
22 assistance of the public and to release
23 information already made public, both which are
24 allowed and prescribed under Rule 3.6 that I
25 cited in my brief as well.

1 Let me also mention that -- things that
2 Mr. Strang did not concede; that is, the
3 admonition by the State when reporting the filing
4 of the Complaints, that accused persons are
5 presumed innocent. Not noting that, I believe,
6 fails to recognize the very serious nature of
7 these press conferences and the serious manner in
8 which the State, particularly in which I, took
9 them.

10 Care was taken not to prejudice
11 Mr. Avery, not to unnecessarily identify him, and
12 to move forward in the criminal prosecution of
13 Mr. Avery with all deference and with all
14 recognition of his constitutional protections.
15 Objective, factual, non-editorial reporting is
16 not prejudicial. That is something I will,
17 however, also save for the change of venue
18 discussion.

19 This Court can't, however, forget the
20 facts of this case. This Court cannot forget the
21 allegations of what happened to Teresa Halbach.
22 And it is those facts, it is the way in which Ms
23 Halbach was abducted, and killed, and mutilated,
24 that has raised the intense media attention.

25 Mr. Strang may blame the State for that,

1 may say it was the State who was bringing the
2 attention upon Mr. Avery, but this gentleman
3 seated furthest to my right, who enjoyed a degree
4 of celebrity, when you talk about a poster child,
5 he enjoyed being the Innocence Project poster
6 child, didn't shy away from media attention.

7 In fact he, together with his supporters
8 and family members, continued to make allegations
9 of being framed, of being set up. And their
10 responsibility exists for members of law
11 enforcement, including prosecutors, under
12 Rule 3.6, to address just such comments made on
13 the other side, to avoid improper publicity and
14 improper inferences being raised.

15 So, Judge, not reiterating, but asking
16 this Court to accept those arguments set forth in
17 our motion, recognizing that the current state of
18 Wisconsin law is to discount the possibility, or
19 remedy, of dismissal of the charges, I'm asking
20 the Court to reject that motion by the defense.

21 Secondly, the continuance of the trial
22 is not an appropriate remedy. Mr. Strang's tying
23 this case to the death penalty referendum is
24 something that is improper. I can see why he was
25 reluctant to mention it, because it has no place

1 in this courtroom. It has no place in this
2 Judge's decision, whether or not to grant a
3 continuance.

4 The final remedy, the change of venue,
5 again, is something that the State is prepared to
6 argue, is something that **Schulter** and **Mendoza**
7 both provide for a Court, as a logical remedy,
8 should the Court find that the publicity prevents
9 a trial within this county for at least from
10 jurors from within this county, and would ask the
11 Court to deny this motion and move on, then, to
12 the change of venue motion. Thank you, Judge.

13 THE COURT: All right. I'm not going to
14 issue a decision from the bench today on the motion
15 to dismiss.

16 With respect to the venue motion I do
17 have a couple of questions. First of all, I know
18 in the original motion, Mr. Strang indicated that
19 if the State opposed the motion, he requested an
20 evidentiary hearing. I'm not sure that we have
21 heard, on the record, yet, the position of the
22 State on the motion, on the defense's motion to
23 change venue, if it came to that. What is the
24 State's position on the defense motion to change
25 venue?

1 ATTORNEY KRATZ: Judge, first, Mr. Strang
2 framed this issue as not inviting the Court to
3 accomplish a change of venue in one manner or the
4 other. That concerned me in addressing my position.

5 In other words, as I read **Fonte**, and the
6 other change of venue cases, if this Court
7 believes that pretrial publicity endangers the
8 defendant's right to a fair trial, and this Court
9 decides that a change of venue is appropriate,
10 it's the Court's decision to decide how to
11 accomplish that, whether to bring a jury from
12 another county, or whether the entire trial
13 moves.

14 By Mr. Strang imposing upon the Court
15 what appears almost to be an ultimatum, that this
16 Court is not invited to use one method or the
17 other, again, is of concern. That's the
18 preference, Judge -- or preface, excuse me, to my
19 position. Should this Court agree with the
20 State, that if pretrial publicity is believed to
21 endanger the defendant's right to a fair trial,
22 and if this Court believes it is the Court's
23 responsibility on how best to accomplish that,
24 the State does not intend to argue or to
25 challenge the motion.

1 If this Court agrees, however, with
2 Mr. Strang, that it is the defense's prerogative
3 to preclude the Court from accomplishing change
4 of venue, in one manner or another, the State
5 very well may put the defense to its burden
6 regarding the publicity and whether or not the
7 change of venue is appropriate.

8 THE COURT: I'm not sure I understand what
9 the State's position is yet. To be sure, it's the
10 Court's decision to determine whether or not there
11 is going to be a change of venue. I'm not sure that
12 prevents the State from taking a position, either in
13 support of or in opposition to the defense's
14 request.

15 The defense is making a conditional
16 request, as I understand it, for change of venue.
17 Its hope is, number one, that the Court will
18 grant the defense's motion to dismiss, or in the
19 alternative, number two, the Court will grant the
20 defense's motion for a continuance of a trial
21 date. But if the Court denies those two motions,
22 I understand the defense to be asking for a
23 change of venue. Is that a correct
24 interpretation, Mr. Strang?

25 ATTORNEY STRANG: That's right.

1 THE COURT: What I'm asking you, Mr. Kratz,
2 if it came to that, and because I'm taking these
3 motions globally and together, today, if it comes to
4 that, what is the State's position on the defense
5 motion?

6 ATTORNEY KRATZ: But Mr. Strang also said,
7 we're only asking for a change of venue if you move
8 the whole trial to a different county. I don't
9 think the defense can do that. And I read the
10 statute as, they either ask for a change of venue or
11 they don't. And it's the judge, then, who decides
12 how best to accomplish that. If that's a correct
13 reading of the law, I have no objection to the
14 change of venue motion.

15 ATTORNEY STRANG: That's fair. I mean
16 there is a legal issue lurking here. I am
17 suggesting that 971.22 does not automatically give
18 the Court the power, over defense objection, to
19 proceed under 971.225. Now, I'm not aware of any
20 case law on the question on -- one way or the other.

21 But Mr. Kratz is right, to this limited
22 extent, we are specifically making a motion, in
23 the alternative, as the Court correctly
24 described, to move the entire trial; that is, to
25 pick a jury from another county, and in that

1 county to conduct the trial.

2 I'm not trying to impose anything on the
3 Court. But I am arguing to the Court, or
4 submitting to the Court, that here, where we have
5 questions about the involvement of the Manitowoc
6 County Sheriff's Department and, indeed, the
7 Sheriff's Department of this county electively,
8 on November 5, recusing itself from lead
9 responsibility in this investigation, I'm asking,
10 in effect, for the Court to hold the department
11 to that, or to continue and keep in place that
12 recusal, that stepping back, by not having the
13 Sheriff's Department participate in contact with
14 jurors here, unsupervised, any more than it
15 participate in the collection of evidence,
16 unsupervised, by other law enforcement agencies.

17 So, if we moved the trial to another
18 county altogether, we would solve that problem.
19 We would be using another county's sheriff's
20 department to provide support to the Court in
21 terms of witnesses, and courtroom security, and
22 superintending the jury, and all the things that
23 the sheriff's department, in the capacity as
24 bailiffs, do.

25 So, yeah, I mean Mr. Kratz is right, I'm

1 not trying to impose anything on the Court. But
2 he views -- he reads the statutes as leaving,
3 entirely to the Court, the decision whether to
4 proceed under 971.22 or 971.225 once the defense
5 has asked, generally, for change of venue.

6 And I'm saying that on these facts here,
7 the willingness of the defense to relinquish its
8 constitutional right to a trial in this venue,
9 hinges on the denial of the first two remedies we
10 seek; and, finally, then, hinges on moving the
11 trial altogether, if in fact we have to use
12 jurors from a county other than Manitowoc. I
13 don't know if that helps clarify or not.

14 THE COURT: So, setting aside for the
15 moment the question of whether the Court alone has
16 the power to utilize 971.225 as an alternative, you
17 are saying, if the defense -- the defense position
18 is, that if the Court does not dismiss the case and
19 does not adjourn the trial, the defendant is
20 requesting a change of venue, but only if the Court
21 actually moves the trial to another county. And
22 that if the Court -- if the Court's position was
23 that it would consider a change of venue, if it only
24 meant bringing jurors from another county here, then
25 the defense would withdraw it's request for a change

1 of venue?

2 ATTORNEY STRANG: Right.

3 THE COURT: Assuming you have the power to
4 do that?

5 ATTORNEY STRANG: Right. That's right.

6 Mr. Avery would not relinquish his right to a trial
7 in this venue under the circumstances the Court just
8 outlined. I mean the Court has described our
9 position exactly correctly.

10 THE COURT: All right. And Mr. Kratz, it
11 appears I unfairly jumped on you. I didn't perceive
12 what the issue was deciding the parties -- or
13 dividing the parties. So the State's position,
14 then, is what?

15 ATTORNEY KRATZ: The State's position is,
16 should the defense request this Court for a change
17 of venue, I have no objection to that change of
18 venue. I'm confident in reading 971.225 that it
19 then becomes the Court's obligation how best to
20 accomplish that. Now that I have 971.225 in front
21 of me, I don't believe -- I'm quite confident the
22 defense doesn't get to place that condition upon its
23 request. They either ask for it, or they don't.

24 THE COURT: All right. Because of the
25 criteria that apply, to evaluate a request for

1 change of venue, I'm not going to hear additional
2 oral argument on that today. I think it depends,
3 not exclusively, but in significant part, on not
4 only the publicity the case has received but the
5 nature of that publicity.

6 And I think the most effective way for
7 me to evaluate your arguments on that issue is to
8 get citations perhaps to specific news media
9 accounts that relate most closely to your
10 arguments and then have a DVD that I can look at
11 to evaluate those arguments.

12 So I'm going to ask, I know the defense
13 does, I'm not sure what the State's position is
14 going to be but, Mr. Strang, to supplement your
15 argument on the venue motion, which I understand
16 to be a contingent or conditional argument,
17 please address it in writing and direct me to
18 those news media accounts which you wish to cite
19 either as examples of a general theme or specific
20 accounts. I don't think I'm going to look at
21 every DVD that's in the box.

22 ATTORNEY STRANG: Right.

23 THE COURT: I think I have a general idea
24 what the publicity has been.

25 ATTORNEY STRANG: Right. And I very easily

1 can do that, your Honor, in fact, since I pulled out
2 several pages of examples and put them down in
3 writing already, I can just change that to a format
4 appropriate for the Court.

5 And the Court is right, the way I
6 approached this was to -- I will give the Court
7 everything I have, and then in writing I can
8 provide examples, some with specific dates, some
9 just more general things to look for, and maybe
10 with exemplars of the general problem. And in
11 writing is just fine. That's no problem at all.
12 Now, I have the boxes of the raw material, which
13 if we have to have a fight over change of venue,
14 I will want, as a matter of making a record.

15 THE COURT: All right.

16 ATTORNEY STRANG: But rather than making
17 the Court search for needles in a haystack, I can
18 give some examples.

19 THE COURT: And with respect to the prior
20 argument on the Motion to Dismiss, I know that the
21 news conferences play a more significant role in
22 that motion, they may also relate to the venue
23 motion as well. As I understand it, at this point
24 there isn't a DVD that has those on, but the parties
25 think they can get one.

1 ATTORNEY STRANG: That's right. And I
2 should take, obviously should take responsibility
3 for that. They used to be online on wfrv.com and
4 between the time I looked at them and watched them,
5 and when Mr. Buting tried to do the same thing, they
6 got taken down. I assume to save band width or
7 something so what I'm going to do is, by subpoena or
8 request to WFRV, or to one of the channels, try to
9 get one or more, probably more than one DVD that has
10 all of that footage, to the Court.

11 THE COURT: All right. Anything further on
12 those three motions?

13 ATTORNEY KRATZ: So I'm clear, and I don't
14 mean to belabor this issue, Judge, is the Court then
15 unwilling to rule on whether or not the defense is
16 legally able to make a conditional change of venue
17 request? And here is why, I don't know how to
18 respond.

19 There are 30 family members sitting
20 behind me, there are 75 cops that are going to
21 testify. I have a room full of evidence that I
22 prefer not to trek over to La Crosse. And that
23 is a very, very candid and very practical
24 approach to how I mean to respond.

25 If the Court believes that the defense

1 has that ability, the Court believes that the
2 defense can say, Judge, you are precluded under
3 971.225, despite saying the Court shall, you are
4 precluded from making that decision. Then the
5 State very well may put the defense to it's
6 burden. Very well may argue that it was not
7 inflammatory.

8 THE COURT: All right. Since the Court
9 hasn't been focused on this particular issue until a
10 few minutes ago, I can tell you for sure, I'm not
11 prepared to rule on it today. I welcome you to
12 submit written argument if you wish. And maybe the
13 question is easy to address and maybe it isn't. I
14 don't know, since I haven't looked at it until now.
15 But you should submit your argument in writing.

16 ATTORNEY KRATZ: Would the Court permit,
17 and Mr. Strang permit, me to argue in the
18 alternative; would that be acceptable?

19 THE COURT: Yes.

20 ATTORNEY KRATZ: All right. Thank you.

21 ATTORNEY STRANG: In terms of getting the
22 written highlights or examples for change of venue
23 purposes, does the Court have a date that I should
24 meet?

25 THE COURT: How long do the parties believe

1 it will take them to submit their arguments to me?

2 ATTORNEY KRATZ: I will need to see the
3 DVD's from Mr. Strang and then we're able to
4 respond. I doubt we can have this ready for
5 decision by the 19th.

6 ATTORNEY STRANG: Okay. Now, what DVD's?
7 I'm sorry, the news conferences or the 24 DVD's
8 about pretrial publicity?

9 ATTORNEY KRATZ: I understood that we were
10 waiting for something from Mr. Strang by way of the
11 news conferences but, also, there was going to be
12 some opportunity that the Court provided the defense
13 to supplement its argument as to change of venue.
14 After I receive that, Judge, I can respond.

15 THE COURT: I think it's fair that the --
16 since the State is at least reserving the right to
17 oppose the change of venue request, that they have a
18 right to see what the basis is for the change. So I
19 think the defense is going to have to go first and
20 the State is going to have to get a chance to reply.

21 ATTORNEY STRANG: I agree.

22 THE COURT: So with that in mind,
23 Mr. Strang, I guess I ask you first, how long do you
24 think it will take?

25 ATTORNEY STRANG: I really think that if I

1 had to, by the end of the week I could submit the
2 written highlights of the publicity. I don't know
3 how long it will take me to get the eight news
4 conferences on to DVD, but I would think, certainly,
5 by the 14th that could be done. That's a reasonable
6 target.

7 THE COURT: All right. So the defense by
8 July 14th, and then, Mr. Kratz, what do you need for
9 response time?

10 ATTORNEY KRATZ: A week is fine, Judge. I
11 can have it by the 21st.

12 THE COURT: State by the 21st. Fair
13 enough. Anything else on those three motions?

14 ATTORNEY KRATZ: No, Judge.

15 THE COURT: If not, we're going to take our
16 afternoon break now and then resume. I think some
17 of the other motions are a bit less time consuming
18 than these were.

19 ATTORNEY KRATZ: I'm sure they are, Judge.
20 Thank you.

21 (Afternoon recess taken.)

22 THE COURT: At this time we'll go back on
23 the record and move on to the next motion, which is
24 the State's motion concerning Third Party Liability,
25 or a *Denny* motion. And it's really in two parts.

1 The first is requesting that if the defense is going
2 to -- or intends to introduce any evidence
3 suggesting that someone else is guilty of the crime,
4 other than Brendan Dassey, that they comply with the
5 requirements of **Denny**, before the Court allows such
6 evidence.

7 And, secondly, that the same standard be
8 applied to any allegedly planted evidence;
9 though, I'm not sure if -- in light of
10 Mr. Fallon's response, if the State is still
11 making that argument or not, that is, that the
12 **Denny** standards be applied to any allegedly
13 planted evidence.

14 First of all, with respect to the motion
15 as it relates to **Denny** type evidence itself, I'm
16 not sure that there's a disagreement between the
17 parties. Counsel?

18 ATTORNEY STRANG: I don't think there is,
19 although, that's Mr. Buting's motion to respond to.
20 But I just want to make sure I have got the batting
21 order, are we skipping over excluding the Manitowoc
22 County Sheriff's Department, for now?

23 THE COURT: Well, let's see. Actually, I
24 thought that the other arguments were including that
25 one. I thought we were dealing with items 1, 2, and

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ATTORNEY STRANG: No.

THE COURT: Well, let's do **Denny** and then we'll go back, as long as we're here.

ATTORNEY BUTING: Judge, as to the first question you had, we recognize that **Denny** is the binding authority on third party evidence and that we would be required to comply with that as to any identified third parties, other than the co-defendant, obviously, Mr. Dassey. So I don't think there's any dispute on that particular point.

The dispute between the parties came on whether **Denny** should apply to any so-called frame-up or planting kind of argument. And I think Mr. Fallon conceded that **Richardson, State vs. Richardson**, now makes it clear that **Denny** does not apply under those circumstances. And then the question becomes: What, if any, rules do apply to that, and whether there needs to be a pretrial motion and any sort of foundation laid. So that would be the area that would still be in dispute.

THE COURT: All right. In reading the arguments of both of the parties and looking at the issue, it struck me that even the planted evidence

1 matter could actually have two sub-issues. I could
2 see how the defense could make such an argument,
3 just as an inference from the evidence as it came
4 in, without any independent evidence, or as in some
5 of the cases -- and I forget which case it was --
6 where they wanted to show evidence that the officer
7 had committed similar offenses, if you will, against
8 other arrested defendants, that there actually would
9 be other independent evidence of planted evidence.

10 Let me deal with the first issue first.

11 If the -- Does the State feel that the defense
12 has to do anything special to argue from
13 evidence, as it comes in from the State, that
14 evidence may have been planted, just as a logical
15 inference from the evidence that the State
16 introduces?

17 ATTORNEY FALLON: Thank you, your Honor.

18 Yes, we do. I think the best way to characterize
19 this issue is in this light. I would submit to
20 Court, and Counsel, that it is an entirely different
21 argument, a far different argument, to say that the
22 constable has blundered and negligently collected
23 the evidence, negligently transported the evidence,
24 negligently cared for the evidence.

25 That's one argument. And I would

1 suggest they are free to make that argument and
2 ask the jury to draw whatever reasoned inference,
3 from that, they choose to draw, during the course
4 of the deliberations.

5 However, the argument that the constable
6 is crooked, is an entirely different argument to
7 be offered, with respect to the presentation of
8 evidence, the collection of evidence, the storage
9 of evidence, the transportation of the evidence
10 and, hence, the actual -- the integrity of the
11 evidence itself.

12 The point of the State's argument is
13 simply this, if that is the argument, if that is
14 the inference the defense chooses to have the
15 jury draw from the presentation of evidence, then
16 we ought to know what that evidence is.

17 It is clearly -- As I argue in the
18 brief, it clearly contemplates consideration of a
19 variety of potential issues: The integrity of
20 the officers, or the citizens, or whomever may be
21 involved in the evidence which is at issue. The
22 Court cannot make a determination of relevance
23 and, hence, balance the competing interest to
24 determine the admissibility of evidence, if we
25 don't know what the evidence is, if we don't know

1 what the issue is.

2 As I suggest in my -- in the written
3 argument, waiting until the trial to deal with
4 objections as to the admissibility of evidence,
5 or the appropriateness of certain arguments
6 relative to inferences drawn from the evidence,
7 waiting to the point of trial is not practical,
8 nor logical. By analogy, any other trial in
9 which evidence of this type, or similar type, is
10 always handled pretrial, there's always a
11 question as to its admissibility.

12 And while, for instance, the State may
13 very well be prepared to concede relevance,
14 depending on what the evidence is and what the
15 argument is and what the theory is, conceding
16 relevance does not in any way mean that the
17 evidence would be admissible. And we're simply
18 asking for the notice, and the opportunity to be
19 heard, relative to that particular type of
20 evidence.

21 So, again, it comes down to, there's a
22 big difference regarding negligent handling of
23 evidence and deliberately contaminating or
24 tampering with the evidence, which goes to the
25 very essence of the trial's goal, which is to

1 search for the truth. So anything that in that
2 way suggests impropriety, challenges the fairness
3 of the trial itself, ought to be handled
4 pretrial.

5 We normally do that in a whole host of
6 whether it's other acts motions, which we will be
7 doing in a couple weeks, whether it's a rape
8 shield issue. There are certain types of
9 evidentiary issues which must be handled
10 pretrial. And the obvious -- or the policy
11 reason is that we have more time to think about
12 the impact of that evidence and those arguments,
13 and weigh the competing inferences and do the
14 balancing test that Section 904.03 suggests.

15 And that's the point of our motion. If
16 you look at **Richardson** and you don't look at the
17 Supreme Court case, **Holmes vs. South Carolina**,
18 even in that case, they dealt with the issue
19 pretrial. And in **Denny** it's a pretrial issue,
20 and in **Scheidell**, which dealt with unknown third
21 party evidence, it's handled pretrial.

22 And when you look at that interplay
23 between the statutes at issue, 901.04, 904.02,
24 904.03, the Court talked at length as to the
25 interplay of that. And the whole idea is to

1 avoid surprise, waste of time, confusion. And I
2 think there's a very distinct possibility of a
3 possible mistrial, if we don't handle that
4 evidence correctly.

5 And it just seems to me that we should
6 deal with that upfront and not in the middle of
7 the trial, and not have an argument and have to
8 delay the trial for a day or two, which is often
9 the remedy, if there's a problem in that regard.

10 So that's the point of our motion, we
11 would just like a little notice. We may very
12 well concede the relevance, and it's possible, we
13 might even concede the admissibility. Possible,
14 but not likely, but that's a possibility.

15 So the question then becomes, what is
16 the evidence, how can we -- how can the Court
17 fulfill its function of applying the rules of
18 evidence to engage in the balancing test, and to
19 provide the parties sufficient notice to prepare
20 the case and present it as smoothly as possible.
21 That's what the whole point of the pretrial
22 motion practice is.

23 THE COURT: All right. Mr. Buting, are you
24 going to handle this?

25 ATTORNEY BUTING: Yes, I am, Judge.

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THE COURT: Fine.

ATTORNEY BUTING: I think the Court, really, in its introductory remarks, distinguishes what is going on here; and that is, that I think the State has sort of muddled the issues together, the question of whether or not the defense can argue reasonable inferences from the evidence that they present, or that the defense themselves presents, versus whether the defense can introduce extrinsic evidence of other -- perhaps other cases where officers committed misconduct.

That was the case, I believe Missouri -- ***State vs. Missouri***, a recent Court of Appeals case, where the defense was that the officer was biased against Missouri, the defendant, as evidenced by his bias and racial bias in numerous other cases. And the Court of Appeals said, that comes in.

Not only can they challenge his bias towards this individual defendant, but that they could use extrinsic evidence from his past cases to support the bias on this case. That's very different than what the State seems to be arguing though.

What they seem to ask for is something

1 much more radical than **Richardson**. **Richardson**
2 dealt with extrinsic evidence. First of all, the
3 State filed a motion in limine, as I understood
4 the procedural history, to exclude two collateral
5 pieces of extrinsic evidence. Not to prevent any
6 argument that the defendant may make that he was
7 being framed by his ex-wife, but to prevent
8 testimony from the ex-wife, or the divorce
9 attorney that she had called and made some kind
10 of accusation. And the other item was that the
11 defendant had successfully obtained a child abuse
12 injunction against the ex-wife.

13 Well, the Court said that **Denny**, first
14 of all, did not apply to those kinds of requests
15 for evidence, and then the Court went through
16 this 901.04 or .03, I think, type of analysis
17 and -- because it was extrinsic evidence. And in
18 that case, they said it was very much collateral
19 because there was -- And, actually, there's one
20 paragraph in that decision that troubles me that
21 may, frankly, be overruled by **Holmes vs. South**
22 **Carolina**. And that's Paragraph 27 of **Richardson**,
23 where they sort of do a weighing of the State's
24 evidence when they are trying to determine what
25 is the probative value of the defense proffered

1 evidence.

2 They go through the whole State's case,
3 including the fact that this young girl had
4 physical evidence of a sexual assault, that there
5 was semen, that there was three or four other
6 things that certainly made it look like his claim
7 was -- was of little probative value, his claim
8 that the ex-wife was framing him who, by the way,
9 was not even the mother of the child who was
10 accusing him. So he had a rather tenuous
11 argument there.

12 I think under *Holmes vs. South Carolina*,
13 that whole analysis is, frankly, very
14 questionable. Because they say you can't do
15 that, you can't analyze, just look at the one
16 side to determine if there is strong forensic
17 evidence, or if there's strong whatever kind of
18 evidence, that somehow that affects the
19 admissibility of the defense.

20 But, again, *Richardson* was very, very
21 different, because it really was not talking
22 about whether or not the defense needs to provide
23 notice to the State if they are going to
24 challenge the State's evidence. I have said it
25 as clearly as I can say it in our response and

1 we're giving them notice now. Mr. Avery is
2 challenging the State's evidence, including the
3 forensic evidence. And we're going to put them
4 to their proof.

5 And as a party to a litigation, we have
6 a right to challenge the authenticity of
7 evidence, first, to see if it could even come in;
8 chain of custody, whether its been properly
9 maintained; and then even if it does come in and
10 is relevant, we have a right to challenge its
11 reliability, its integrity, the credibility of
12 the officers who seized it.

13 All of that is fair game. That is
14 direct physical evidence in this case. It's not
15 extrinsic. It's not some other case, or some
16 tangential argument. So, what they are asking
17 is -- is an absurdly high burden.

18 They want us, the defendant, in his own
19 case, to be able to apparently show who -- if
20 there is any evidence of a frame-up, or any
21 argument, or innuendo, or inference to be made,
22 that first the defense has to be able to show who
23 did it, how they did it, how many people are
24 involved, who else knows about it.

25 Now, how could a defendant possibly do

1 that, in any case, if the allegation is that the
2 misconduct is on the part of the police. That
3 may or may not be the allegation that's raised
4 here.

5 The integrity of the evidence that
6 appears to indicate Mr. Avery's involvement is
7 very much going to be in play, whether it's
8 something the police did or something someone
9 else did. But we are free to argue any
10 reasonable inference that comes from the evidence
11 presented, as to how that evidence was found,
12 seized, and secured, from that point forward, and
13 tested, if it's forensic evidence.

14 Indeed, nowhere, I was able to find no
15 case anywhere in this country that has ever --
16 and the State has certainly cited none -- that
17 has ever held what they are asking, to somehow
18 prevent an entire defense argument, from
19 reasonable inferences of physical evidence in the
20 defendant's own case, to somehow go through this
21 whole relevance and balancing test.

22 The Court doesn't have to go through
23 that whole balancing test if we're talking about
24 arguments from the evidence or inferences from
25 the evidence. There are no cases that talk about

1 that, because that's not required.

2 That would be required if we were
3 seeking to introduce extrinsic evidence, such as,
4 for instance, that one of the officers in this
5 case had committed some misconduct in the past
6 that was related to this. Then we would be
7 filing a motion, and we would go through that
8 sort of analysis, and the Court would have to
9 weigh and go through the balancing test.

10 But they are, as I understand the
11 State's motion, at least it's written motion,
12 going way, way, way beyond that. And I think the
13 Court accurately distinguished those two issues
14 in its initial comment. So if we intend to
15 introduce extrinsic evidence of some misconduct
16 in other cases, then I anticipate we would be
17 filing a motion.

18 But we do not need to file any motion,
19 or give any further notice than we have today, to
20 the State, that we intend to challenge all of
21 their evidence they marshal against Mr. Avery.

22 THE COURT: All right. Mr. Fallon, let me
23 ask you a question. Because I -- There might be one
24 argument being made one way, or a different answer
25 being given the other way. To go back to the prelim

1 in this case, I just recall it vaguely, but the car
2 key was found on the carpet, and I think the
3 testimony was that there had been a couple police
4 run-throughs through the room where the key was
5 found. And on the third time they found it.

6 And I think -- Let's say the defense
7 wants to argue that, well, since the key wasn't
8 found the first couple times, that one logical
9 reading is that somebody from the police
10 department planted the key and that's how they
11 found it the third time.

12 If that's what happened, if the State's
13 evidence would come in as it did at the prelim,
14 and the defense didn't introduce any other
15 evidence on the issue, but simply made that
16 argument, are you saying that they have to meet
17 some burden, or produce something, or notify the
18 parties and the Court ahead of time, that they
19 are going to make that argument? Or is it just
20 if they -- if they want to argue, as Mr. Buting
21 said, that they had some evidence that some
22 member of the police department had been guilty
23 of planting evidence in the past, say, and put
24 that in?

25 I think they are admitting that if they

1 want to introduce any extrinsic evidence they
2 would have to provide advance notice, but I think
3 the question comes down to, aren't there times
4 when they just want to argue, based on the
5 evidence as it's come in, that some evidence was
6 planted. What do they have to give a notice of?

7 ATTORNEY FALLON: If you are going to make
8 the argument -- If you are going to make the
9 argument that somebody put that key there, then it
10 seems to me the State should have the opportunity to
11 examine and question. It's a lot easier to make an
12 allegation of police misconduct than there is to
13 prove it.

14 And what we're trying to avoid, is this
15 trial becoming a whole series of allegations of
16 police misconduct which are not supported by
17 fact. I suppose you could make the argument that
18 that's a "reasoned" inference; although --
19 reasoned is in quotes -- from those particular
20 facts. But I have already obtained -- We have
21 already obtained one concession right now,
22 because the defense is clearly saying that any
23 extrinsic evidence that would require a motion.
24 That's fine, then we're half way home. That's
25 exactly what we're looking for. If they are

1 acknowledging the fact that they are going to
2 bring in any type of extrinsic evidence, that's
3 fine.

4 But, okay, the key is planted there.
5 Well, who was there? Well, we know the officers
6 who were involved in the search and we know the
7 officer who uncovered the key. So, is there then
8 -- Are we led to believe there's a conspiracy?
9 Seems to me the conspiracy, for instance, is a
10 reasonable inference. And if we're going to have
11 inferences alleging conspiracy, conspiracy is one
12 of those things that always requires a pretrial
13 motion. Obviously, it's usually the State which
14 is seeking to introduce evidence of conspiracy,
15 but not always. It's sometimes offered by the
16 defense as a theory.

17 And in *Richardson*, that involved
18 somewhat of an extrinsic evidence, but it clearly
19 set forth the analysis, that if you're going to
20 reach to make an argument, or an inference, then
21 you have to have a reason to make that reach,
22 that argument, that inference. And, again, I
23 come down to, it's a far different argument that
24 the constable is crooked than the constable
25 blundered.

1 They can make whatever argument. I
2 don't challenge their ability to question every
3 bit of evidence we produce, the manner in which
4 it was collected, preserved, maintained,
5 transported. They are free to do that.

6 But I take issue with the fact that we
7 can willy nilly walk in an accuse police officers
8 of misconduct. To me, before that evidence is
9 submitted to the jury and argued to the jury,
10 there ought to be a reason for that, for not
11 every argument and not every inference, although
12 relevant, should be heard.

13 THE COURT: All right. Well, in the
14 example I gave, I mean, are you arguing that they --
15 What you are really arguing, I think, and I don't
16 want to put words in your mouth, so I will give you
17 a chance to respond. But are you really arguing
18 that the defense should have to provide notice of
19 the argument it is going to make -- or that the
20 defense is going to make, from the facts as they
21 come in? Because there could easily be a scenario
22 where the defense has no more facts than the State
23 introduces, they just argue that there's a different
24 inference from those facts.

25 In the example I gave, I think as I

1 recall the testimony, was that the key fell out
2 or something. I don't want to get into the facts
3 because, number one, my memory isn't that good.
4 But if the defense wishes to make an argument of
5 evidence being planted, simply based on the way
6 the evidence is introduced on examination and
7 cross-examination of the State's witnesses, what
8 do they have to provide notice of?

9 ATTORNEY FALLON: I guess I'm envisioning
10 you are taking one bit of evidence and looking at it
11 in isolation, to draw an argument or an inference,
12 and is that appropriate. And it seems to me that
13 whether you are defending or prosecuting a case,
14 that there are lines of evidence, there are theories
15 of evidence, there are themes, there are
16 admissibility strains, as it were.

17 And it's hard to analyze and accept the
18 Court's proposition of looking at, for instance,
19 the key, in isolation. I mean, there's a lot of
20 other physical evidence that is subject to
21 dispute. And just as an example, there is a fair
22 amount of blood evidence obtained from the
23 vehicle of the victim here. Well, how did that
24 blood evidence get there?

25 And there's a fair amount of other

1 physical evidence collected elsewhere, from the
2 garage of Mr. Avery, for instance, so how does
3 that get there? So, are we just saying that, and
4 can the defense just, willy nilly, say, well, we
5 think that piece was planted and this is not.

6 How do you make the argument? That's my
7 concern. How do you make that argument in
8 isolation? How do you tie it all together? Or
9 is it just, rudimentally, they can make the
10 argument because it is the defense and,
11 therefore, it's admissible? That's a reasoned
12 inference?

13 Because you have to -- I guess the point
14 I'm trying to make, and I'm not being very
15 artful, is that you have to look at the evidence
16 as a total, as it is anticipated to come in.
17 Admittedly, that's difficult. But generally we
18 have a pretty good idea of what the evidence will
19 be in this particular case; although, some of it
20 is still the subject of motion and debate.

21 But I don't think you can make a
22 determination as to whether or not a particular
23 inference is reasoned, under the circumstances,
24 until you consider everything. And if somebody
25 wants to make the argument that there's a

1 planting of evidence, or that Mr. Avery is being
2 framed, it seems to me that there ought to be
3 proof of that.

4 It may be in extrinsic form or, to
5 borrow a phrase, it may be intrinsic. It may be
6 directly related to the case. But if you are
7 going to make that argument, or you are going to
8 introduce evidence of that, then we ought to know
9 what it is. I'm more concerned about the
10 evidence than the argument.

11 THE COURT: But that's a big "or" there,
12 because I think as I hear the defense, they are
13 saying, if they do intend to introduce evidence,
14 that they will provide notice. I don't know,
15 Mr. Buting, maybe now is the time to ask whether I'm
16 reading too much into what you are saying.

17 But that's the way I understood you to
18 say, that if the defense was going to offer any
19 extrinsic evidence relating to the issue of
20 planted evidence, that the defense would provide
21 notice, but that you didn't feel that you had to
22 make any pretrial offer if you were simply going
23 to argue, from the evidence as it came in, that
24 some evidence could have been planted.

25 ATTORNEY BUTING: Yes. Well, if we sought

1 any extrinsic evidence that's not related to the
2 evidence directly in this case, then, yes, we would
3 have to go through that, file a motion, I think --
4 or we would. And then the Court could go through
5 that balancing test. If it relates to the evidence
6 in this case, it's fair game for us to challenge it
7 in any way we can, whether it's by calling our own
8 witness or cross-examining their witnesses.

9 This whole notion, that somehow the
10 Court decides ahead of time what's a reasonable
11 inference that we can argue, is absurd. That's
12 for the fact finder. A party can argue any
13 reasonable inference from the evidence.

14 Now, if our inferences are just totally
15 absurd, then the State will get up there on its
16 rebuttable argument and make that very argument
17 to the jury. And the jury, collectively, will
18 decide whether or not the inferences that the
19 defense is advancing are reasonable or not.

20 And that's -- As I understand it, he
21 seems to be trying to take that away from the
22 defense and put -- making the Court rule in
23 advance what -- whether or not any reasonable --
24 or whether or not any inferences we want to argue
25 from their evidence should even go to the jury.

1 And that's a complete denial of the defense's
2 right to present a defense, a constitutional
3 right to present a defense. And, again, there's
4 no case law anywhere that says that. Because
5 it's clear that the jury is the one that decides
6 whether or not something is reasonable.

7 You know, I don't see anything that
8 unusual about a defendant getting up and
9 challenging the police for misconduct or
10 otherwise. Think about -- Think about drug
11 cases, hand-to-hand deliveries, dropsy type
12 cases. Defendants do that all the time, where
13 the defendant testifies one way, the police
14 officer testifies another.

15 You know, that's not negligence that's
16 being alleged by the defendant in those cases.
17 The defendant is saying, I'm telling the truth
18 and the officer is not. You don't have to file a
19 motion ahead of time to do that, that's
20 fundamental.

21 And so, if somehow the notion that in
22 this case it's different, and that we cannot go
23 off willy nilly accusing the police of something,
24 you know, if the State or its witnesses put
25 themselves in the position in this case where

1 they are subject to that kind of attack, and the
2 jury finds that it's a reasonable inference to be
3 drawn, then we can do that, plain and simple.

4 THE COURT: Mr. Fallon.

5 ATTORNEY FALLON: Again, I'm less worried
6 about whatever argument they choose to make. I'm
7 more concerned about what evidence they choose to
8 introduce in support of that argument, or that
9 inference.

10 The key is one thing, but when you
11 consider the amount of physical evidence, for
12 instance, taken from the vehicle, the vehicle
13 wasn't processed by anyone from Manitowoc County.
14 It wasn't processed even at the scene. It was
15 processed at the Crime Lab in Madison. So if
16 you're going to challenge the evidence, it
17 necessarily involves introduction of extrinsic
18 evidence, almost.

19 What about the other physical evidence
20 that was obtained, in this particular case.
21 Counsel is correct to a degree, he can make
22 whatever argument he wishes to make. And if the
23 jury rejects it out of hand, then they are stuck
24 with that.

25 Again, our concern is, and the motion

1 is, frame-up evidence, not frame-up argument.
2 So, just to be clear on that, and perhaps we got
3 sidetracked on inference and argument as opposed
4 to evidence, the motion is focussed on what
5 evidence is there of a frame-up that's going to
6 be introduced.

7 And that's the question, admittedly.
8 And they have conceded, if they are going to
9 introduce extrinsic evidence, then it would
10 require a motion. That's fine. We're
11 comfortable with that. But it just seems to me,
12 that if that's going to be the tact, we ought to
13 be able to talk about that and determine how that
14 evidence is going to be used. That's the point
15 of the motion, not so much the argument or the
16 inference. So I should be clearer.

17 THE COURT: On the issues that relate to
18 this motion, there was one other one. I think in
19 Mr. Kratz's original argument, he indicated that he
20 felt the *Holmes* case modified *Denny*, but it seems to
21 me that if the result had been different, it might
22 have modified *Denny*, but that the *Holmes* -- that the
23 South Carolina Supreme Court result was reversed.

24 ATTORNEY FALLON: Right.

25 THE COURT: Was it not?

1 ATTORNEY BUTING: But I'm not so sure that
2 **Holmes** does anything for us, other than suggest that
3 this should be discussed pretrial. Because **Holmes**
4 did deal with third party liability. It did deal
5 with an identified, informed third party that was
6 suspected of committing the crime.

7 And the actual focus is whether or not
8 the South Carolina rule of evidence went above
9 and beyond what other courts have held; in other
10 words, above and beyond, say, our **Denny** rule.
11 And I think it clearly did in that case and
12 that's why the United States Supreme Court
13 reversed that conviction and sent it back.

14 So, it didn't deal with frame-up
15 evidence per se, but it is instructive for the
16 proposition, I think, that it's the type of issue
17 that's appropriately discussed pretrial. But I
18 think **Richardson** is the closest we have.

19 THE COURT: All right. I will allow either
20 side to correct me, but I don't really detect that
21 there's a big disagreement between the parties here.
22 I think, number one, both parties agree that **Denny**
23 is still good law, **Denny** applies, and that if the
24 defense wishes to suggest that some third party,
25 other than Mr. Dassey, is involved in the crime, the

1 defense will have to comply with the requirements of
2 *Denny*.

3 Number two, that if the defense wishes
4 to introduce any extrinsic evidence to suggest
5 that evidence was planted, or the defendant was
6 framed, the defense will have to seek the
7 admissibility of that -- of such evidence before
8 the trial and have the matter addressed at that
9 time.

10 But, third, if the defense wishes to
11 argue, that the evidence as it comes in and is
12 offered by the State, subject to
13 cross-examination by the defense, without any
14 extrinsic evidence being offered, that the
15 defense is not prohibited from making such an
16 argument, and the defense can argue that
17 different inferences than those suggested by the
18 State can be accepted by the jury.

19 That's what I'm hearing here. And I'm
20 not -- I'm not detecting that the parties differ
21 on this motion.

22 ATTORNEY FALLON: I accept your explanation
23 and summary of those arguments.

24 THE COURT: Mr. Buting?

25 ATTORNEY BUTING: I think we're clear, if

1 we have the same understanding of extrinsic
2 evidence, I guess. That would be evidence that's
3 not related to this case. If there's evidence that
4 we could present, I can't really think of any
5 analogy right now, but -- so it's probably foolish
6 to speculate at this point.

7 But I -- Again, if it relates to the
8 actual physical evidence in this case, and it
9 somehow relates to authenticity, or chain of
10 custody, I do not accept, by the way, the State's
11 claim that somehow there was no opportunity for
12 this to have been tainted by anyone, that the
13 vehicle could not have been tainted. I don't
14 accept that. And I don't think the evidence will
15 show that.

16 But, certainly, anything that would go
17 to chain of custody, or authenticity, or
18 credibility, or reliability of the State's -- or
19 bias -- of any of the State's evidence, or
20 witnesses presenting the evidence, is fair game,
21 and is not extrinsic. In fact, it is very clear,
22 bias is not extrinsic to a case, authenticity is
23 not. All of those fundamental building blocks is
24 what I'm talking about.

25 THE COURT: Mr. Fallon.

1 ATTORNEY FALLON: To the extent of the
2 comments on bias, and those other things, that's
3 fair game. But I do foresee a possible argument on
4 the scope of extrinsic. But as counsel has stated,
5 those comments there, we can live with that.

6 THE COURT: All right. The Court will
7 prepare its own ruling, written decision, on this
8 motion.

9 All right. Then moving back to the
10 defense motion to exclude members of the
11 sheriff's department from testifying and
12 overseeing jurors. Mr. Strang, are you handling
13 this one?

14 ATTORNEY STRANG: I am. Or trying to.
15 There's conceptually two parts to this motion: One,
16 supervision of jurors, or contact with jurors. And,
17 two, exclusion as a witness from the State's
18 case-in-chief. Let me address supervision of jurors
19 first.

20 We learned today, that on November 5,
21 the Manitowoc County Sheriff's Department decided
22 to turn over responsibility for the investigation
23 to other departments and to play a background
24 role. And then we learned that the Calumet
25 County Sheriff, according to the policy of having

1 someone from another department look over the
2 shoulder, so to speak, of any Manitowoc County
3 Sheriff's Department employee who's involved in
4 the investigation.

5 Really, what we're asking for here is a
6 continuation of that decision by the Manitowoc
7 County Sheriff's Department and, in a sense, that
8 policy that the Calumet County Sheriff
9 implemented. There is, you know, a department
10 that was concerned enough about a conflict of
11 interest, or the appearance of a conflict, to
12 take itself out of investigative responsibility
13 and turn it over to two other departments that
14 then were concerned enough about potential
15 conflict of interest, or the appearance of a
16 conflict, that, you know, they provided a
17 chaperone, or an accompanying officer, from
18 another department, any time a Manitowoc County
19 Sheriff's Department employee was involved at the
20 scene.

21 Certainly, I think ought to be -- I'm
22 not sure why you would oppose, then, implementing
23 that same thinking when you are not talking about
24 an investigation, and a scene, and collection of
25 evidence, but rather talking directly about

1 contact with the fact finders in the case.

2 And if -- if we simply extend this
3 recusal, or sort of turning over of
4 responsibility from the scene, to the jury, and
5 the fact finding process in this case, we would
6 have law enforcement officers, other than the
7 Manitowoc County Sheriff's Department, serve as
8 bailiffs, move the jury to and fro, move the
9 defendant to and fro, if he were to remain in
10 custody.

11 It's -- I think it's really not much
12 different. Indeed, the argument for it is more
13 compelling when you are talking about dealing
14 directly with jurors, because they are the fact
15 finders rather than just talking about the
16 assembly of evidence, or the processing of
17 potential evidence at a scene.

18 The fact is, that in any trial, the
19 Court is left to rely on court officers,
20 bailiffs, you know, usually Sheriff's Department
21 personnel in this State, but I will call them
22 court officers here. You have to rely on them
23 heavily. They are the point of contact with the
24 jury, at the beginning of the day, at the end of
25 the day, lunch, if a jury is sequestered.

1 These people are housed in the hotel
2 with the jurors. They are transporting the
3 jurors. They are supervising what jurors can see
4 and who they can talk to. And there isn't
5 anybody looking over their shoulder. There is no
6 one from an independent law enforcement agency to
7 look over their shoulder.

8 Now, I don't have any question about the
9 ability of the Manitowoc County Sheriff's
10 Department to do that, in the ordinary case, just
11 as they would investigate the ordinary crime in
12 Manitowoc County, rather than recusing themselves
13 because of concerns about a conflict, or the
14 appearance of one.

15 But in that sense, this case was tabbed
16 on November 5, by the Manitowoc County Sheriff,
17 well, or more accurately, by his under sheriff,
18 as not the ordinary case, as requiring a
19 different response. And that -- that really
20 ought to extend to contact here with the jury,
21 particularly if we -- if we have got a
22 sequestered jury.

23 The trial, obviously, should be fair and
24 it also should appear to be fair to the public,
25 and to the defendant, and everybody else who is

1 interested in it. I think it's an unusual case.
2 It's an unusual request. But it's pretty well
3 matched to the situation which we find ourselves,
4 where the department itself decided that it ought
5 not be the front line in the investigation and
6 the collection of evidence.

7 So, as to that first part, I guess to
8 some degree I'm adopting the reasoning that we
9 have already seen Sheriff Petersen describe to
10 his under sheriff, and seen Sheriff Pagel
11 implement at the scene.

12 As to the second part, excluding
13 Manitowoc County Sheriff's Department witnesses
14 from the case-in-chief, Mr. Fallon, who is a very
15 good lawyer, and a neat colleague and, you know,
16 I enjoy his company and his work, but he's very
17 deftly turned this and redefined this as a
18 defense request for suppression.

19 It's not. Not looking to suppress any
20 physical evidence. Not looking to suppress any
21 testimony, actually. What I'm looking for, what
22 I'm asking the Court to do, is to exclude
23 particular witnesses as a limited sanction, only
24 from the State's case-in-chief, so the defense
25 could call them, or the defense could open doors

1 on cross-examination during the State's
2 case-in-chief.

3 It would permit, then, the State to call
4 in members of the Manitowoc County Sheriff's
5 Department in rebuttal. And if, indeed -- if,
6 indeed, Sheriff Pagel is right, and at least as
7 of November 5 this policy of always having an
8 independent law enforcement agency person
9 accompanying any Manitowoc County law enforcement
10 officer, if that indeed was complied with, was
11 made practice, not just policy, then I don't know
12 how the State even would be impeded in presenting
13 it's case-in-chief, by the relief that I'm
14 requesting.

15 Because there always would be somebody
16 from DCI, or somebody from the Calumet County
17 Sheriff's Department, or someone from the State
18 Patrol, or some other agency, to testify to what
19 was happening when a Manitowoc County Sheriff's
20 Department employee was present. It's a little
21 hard to know why -- why the State even would
22 object to the exclusion, but they are, the State
23 is.

24 And this is really, I think, not akin to
25 suppression, but something much closer to the

1 kind of sanction a Court might impose on a party
2 in a civil case, when that party fails timely to
3 disclose witnesses, fails timely to respond to
4 interrogatories, or requests for production of
5 documents.

6 It's the sort of sanction that is used
7 for a failure of timely disclosure, or timely
8 action in civil cases, regularly. Used
9 occasionally, at least, in criminal cases for the
10 same sort of disciplinary reason on lawyers who
11 may be dilatory, or not following the rules.

12 And here the -- you know, the remedy is
13 even more closely matched to the problem, in the
14 sense that the Manitowoc County Sheriff, I think,
15 conducted himself very poorly, to put it mildly,
16 on FOX 11. Made highly inappropriate and
17 inflammatory comments directed, by name, at
18 Steven Avery. I went through some of them
19 before.

20 I didn't touch on, you know, the sheriff
21 dredging up and discussing on television, prior
22 criminal acts and convictions dating back more
23 than 20 years. It's the kind of stuff, he's been
24 around long enough to know, juries aren't suppose
25 to hear and, ordinarily, don't hear. It's at

1 least potentially inadmissible and highly
2 prejudicial information.

3 So, you know, there -- this wasn't one
4 stray comment at issue here. And he is the man
5 who leads the department. He is the man who sets
6 the tone. He is the man who makes the
7 directions. He's the principal, if you will, and
8 the others under him in that department are
9 agents. And so this, I think, is a remedy that's
10 pretty well tailored to the problem, as to
11 exclusion of witnesses, on the basis that I have
12 sought.

13 THE COURT: Mr. Fallon. By the way, I have
14 read your written arguments and I will read them
15 again. So you don't have to be repetitive.

16 ATTORNEY STRANG: That's a very kind way of
17 saying that I'm long winded.

18 ATTORNEY FALLON: Thank you, Judge. I just
19 want to make a couple of points. First and
20 foremost, remedies should be connected to the wrong.
21 And in this particular case, the defense seeks to
22 exclude from participation in the administration of
23 the jury selection process, and court security, the
24 Manitowoc County Sheriff's Department without, in
25 any way, shape, or form, connecting the comments of

1 Sheriff Petersen to concerns that somehow members of
2 his staff can't follow your instructions, can't
3 follow the common sense, and what is, in effect, a
4 policy that, from even Sheriff Petersen's comments
5 this morning, run itself.

6 He's given no orders, no instructions,
7 no information to his staff, per him, other than
8 do what you guys usually do, make it safe,
9 etcetera; in other words, follow the policies
10 that we have. There is no connection between the
11 comments and a concern that somehow members of
12 his staff are going to contaminate the jury pool.

13 That's outrageous. There is not a single shred
14 of information that connects those two.

15 If the defendant has concerns about
16 security for himself, or courtroom security, and
17 wants the Calumet County Sheriff's Department to
18 continue, as it were, and take over all facets of
19 this particular case, then we might as well have
20 the trial in Calumet County.

21 Are we going to bring the entire Calumet
22 County Sheriff's Department here and let them set
23 up camp across the courtyard here, and tell the
24 Manitowoc folks how to run the jail, how to walk
25 the prisoner over, and don't talk to the jurors,

1 don't say anything about the case, don't even
2 talk about the weather. Do we need Sheriff Pagel
3 to do that?

4 Again, let's have the trial in Calumet
5 County, if we're going to rely on everything else
6 Calumet County has to resolve. And in that
7 regard, depending on what this Court chooses to
8 do relative to the motion to dismiss
9 (sic)/adjourn/change of venue, depending on how
10 you resolve that issue, the change of venue may
11 very well moot this issue out.

12 With respect to exclusion and
13 suppression, rather than trade compliments with
14 counsel on deftability to craft an argument, I
15 will simply make this observation. If you say
16 that a witness can't testify, then it may very
17 well make it difficult for information collected
18 by that witness, to present it in court. So if
19 the witness can't testify, then perhaps some
20 further pretrial motion practice and perhaps some
21 testimony, not perhaps, definitely, some
22 testimony at the trial will be affected.

23 Perfectly example, Detective Remiker was
24 the one -- was the first law enforcement officer,
25 I believe, on the scene, to verify the location

1 of Teresa Halbach's car, on Mr. Avery's property.
2 Now, that's obvious, because he's here in
3 Manitowoc County, where as the folks in Calumet
4 County have to get in their car and drive here.
5 So, it only stands to reason that the first
6 person here is going to be someone from Manitowoc
7 County.

8 So, if we're saying, for instance -- and
9 this is a for instance -- Detective Remiker can't
10 testify, then that certainly creates some issues
11 regarding the circumstances, regarding the
12 preservation of the evidence and the scene, until
13 the official takeover takes place. So, in terms
14 of deftness or clever, you can certainly make the
15 argument that, well, we're not asking for the
16 suppression of evidence, we're just asking for an
17 exclusion of a witness. Well, that may very well
18 impact the nature and the presentation of the
19 evidence.

20 And, finally, to say that it's not
21 suppression is a rather interesting issue. For
22 instance, if the statement of an accused in a
23 case is suppressed, for reasons of a Miranda
24 violation, that testimony may still be heard,
25 perhaps in rebuttal, or in an impeachment form,

1 should that given witness take the stand.

2 But it's still referred to as
3 suppression. It's not necessarily referred to as
4 exclusion. So whether or not you characterize it
5 as exclusion or suppression, I think it doesn't
6 matter. The real connection is, is that the
7 appropriate remedy.

8 In *Hudson vs. Michigan* and *State vs.*
9 *Ward*, clearly tell us it's not. And the reason
10 it's not is because the harm, i.e., the comments
11 of Sheriff Petersen are entirely unrelated to,
12 not connected to, the evidence which is sought to
13 be excluded.

14 And if, for instance, we are not to be
15 impeded, and this is not that big a deal, I can't
16 imagine why the State is troubled, your Honor,
17 then my question is, if it's not meant to impede
18 us, then why bring it. It makes no sense. The
19 remedy must be connected to the wrong. And in
20 this case, it's not.

21 THE COURT: Mr, Strang, anything else?

22 ATTORNEY STRANG: Yeah. As he did on
23 brief, Mr. Fallon expresses a good deal of concern
24 and distress with me that I have not connected
25 Sheriff Petersen to the people under him in the

1 department. And, indeed, I'm not trying to impugn
2 the gentleman sitting here, or anybody else in the
3 department. I'm simply following Petersen's lead,
4 and Pagel's.

5 I mean, the Court wouldn't know this,
6 but in his deposition, Sheriff Petersen testified
7 that he's the last remaining member of the
8 Manitowoc County Sheriff's Department who was
9 involved in the 1985 case against Steven Avery.
10 Last one, who was around in 1985. Most of the
11 deputies, I imagine, in this department, were in
12 Junior High School in 1985.

13 None of the current Manitowoc County
14 Sheriff's Department personnel were named as
15 parties in the civil lawsuit that occasioned this
16 concern about a conflict of interest. As far as
17 I know, nobody had any specific concerns about,
18 you know, Detective Remiker, or Sergeant Jost or
19 anybody else on the Sheriff's Department, and yet
20 all of them, by the department, were taken out of
21 lead responsibility, for an investigation of
22 crimes that occurred in Manitowoc County and
23 ordinarily would be within their jurisdiction.

24 So, I'm just simply picking up on the
25 same connection, as a matter of agency law, that

1 the under sheriff and Sheriff Pagel themselves
2 drew here. As I say, I don't know if there was
3 any specific concern on their part about the
4 reliability of, or integrity of, this or that
5 specific deputy, or sergeant, or detective.

6 But the concern about a conflict of
7 interest, by its nature, pervades the
8 organization. And that concern is at least as
9 great when we're talking about direct contact
10 with the people who will decide the facts, as
11 opposed to simply direct contact with the items
12 of evidence that ultimately may be introduced to
13 assist a jury in finding the facts.

14 So that's -- I can be flayed for the
15 want of a connection, but Sheriff Petersen and
16 Sheriff Pagel would fall under the same switch.

17 THE COURT: All right. Also on the agenda
18 today is the State's preliminary motion in limine
19 regarding the jury hearing evidence concerning the
20 defendant's 1985 wrongful conviction. I will hear
21 argument on that motion at this time. It's the
22 State's motion, who's going to argue that?

23 ATTORNEY KRATZ: Thank you, Judge. Judge,
24 this is a straight relevance argument. Both 904.01,
25 .02, and .03 if a balancing test is to be performed,

1 relevancy, of course, being defined as having any
2 tendency to make the existence of a fact of
3 consequence more or less probable. The State argues
4 that the defendant's wrongful conviction, or the
5 fact that the defendant was convicted and spent some
6 time in prison, has absolutely no relevance in this
7 case, does not implicate any fact at consequence.

8 In other words, it would not be offered
9 to prove, or disprove, or assist the jury on any
10 element of the offense or other matter of
11 consequence, but simply would be, in the State's
12 opinion, offered for an impermissible purpose.
13 Sympathy is not something for a jury to consider.
14 Feeling sorry for Mr. Avery that he spent time,
15 for a crime that he was later exonerated for, is
16 the exact kind of evidence that should not be
17 allowed.

18 I appreciate the response by the defense
19 suggesting bias on the part of investigating
20 officers, but the State argues, still, that when
21 compared with, or when balanced against, the risk
22 of impermissible reasons, the whole discussion of
23 the defendant being previously wrongfully
24 convicted, has no place in this trial.

25 Importantly, Judge, I believe it's

1 instructive to consider the other side of the
2 coin, to consider why evidence of prior
3 convictions are precluded. It's impermissible
4 for the State to inflame a jury, to indicate that
5 a defendant has previously been convicted of a
6 crime, again, absent some permitted purpose under
7 904.04.

8 But the fact that the defendant was
9 previously convicted of a felony, we know is
10 inadmissible. It conjures bias and it conjures
11 prejudice -- prejudice, excuse me, and the State,
12 therefore, argues that a prior exoneration would
13 equally be impermissible.

14 Lastly, Judge, when we talk about
15 904.04, we talk about other acts. We're talking
16 about behaviors. We're not talking about prior
17 convictions, or prior exonerations, or prior not
18 guilty findings. We're talking about behaviors.
19 And when relevant for intent, or identification,
20 motive, or those other permissible reasons, we
21 are talking about behaviors.

22 Prior exoneration does not mean that the
23 defendant is more likely to be exonerated in this
24 case, or more likely to be not guilty of this
25 particular offense, which is exactly what the

1 defense would be offering this kind of evidence
2 for. So the risk -- the very high risk of unfair
3 prejudice to one of the parties, which is the
4 State, which this equally applies to, that is,
5 the relevance standard equally applies to
6 evidence offered on behalf of the State as well
7 as the defense and should be applied in this
8 case. We're asking that the Court exclude that
9 evidence. Thank you, Judge.

10 THE COURT: All right. Mr. Strang.

11 ATTORNEY STRANG: Evidence of Mr. Avery's
12 prior wrongful conviction, and the ensuing lawsuit
13 against Manitowoc County, is what the State seeks to
14 exclude, absolutely, as I understand the motion.
15 Now, like any other evidence, if this is proper at
16 all, as I have argued on brief that it is, there is,
17 concededly, a role for the Court under Section
18 904.03.

19 How much do we get into the 1985
20 conviction? How much do you get into the 1983
21 lawsuit -- Section 1983 lawsuit, from whom, what
22 kind of details. All of this raises 904.03
23 questions. And the Court had a good idea in
24 chambers, that I will act on, which is to file a
25 motion in limine here, ourselves, as to what

1 specific evidence do we wish to offer of the
2 wrongful conviction and the prior lawsuit.

3 But the absolute position just can't
4 prevail here, in the end. I have argued on
5 brief, and I won't repeat here, the bias and the
6 credibility value of this evidence, explaining
7 why the Manitowoc County Sheriff's Department,
8 and other officers, may have acted as they did;
9 explaining, if he becomes a witness, why
10 Mr. Avery may have acted as he did, or helping
11 the jury to understand and evaluate his
12 credibility if he testifies at trial. I will
13 stand on my brief on all of that.

14 I do want to add here, briefly, without
15 repeating the arguments in the brief, that it's
16 awfully hard for the State, fairly, to say we
17 need to introduce evidence of what Mr. Avery said
18 to three men in prison, and the pictures he drew
19 for them in prison; and we want to introduce
20 evidence, if we have Mr. Dassey testify, that,
21 gee, Steve Avery wanted to go back to prison
22 because life on the outside was tough; and then
23 not allow the defense at least some room to
24 explain that he shouldn't have been in prison in
25 the first place, and spent 18 years trying to get

1 himself out, saying he was innocent. At a bare
2 minimum, that kind of context is necessary, if
3 the State is to offer the evidence that it has
4 sought to offer, and pursues.

5 I agree with Mr. Kratz wholly, that if
6 the issue were sympathy for Mr. Avery, that's not
7 a proper purpose for this. It happens to be not
8 why we're offering it, but it's not a proper
9 purpose, simply to make a pitch for sympathy.
10 The same, of course, would be true for Teresa
11 Halbach's life history, which the State proposes
12 to offer.

13 Had that no purpose other than
14 generating sympathy for her, or her family, it
15 would be improper and, indeed, that's why there's
16 a pattern jury instruction in this state, in
17 which this Court, I'm confident, will instruct
18 the jury that it is not to decide this case on
19 the basis of bias, or prejudice, or sympathy, for
20 one party, or for anyone, for that matter.

21 So that can be handled very well with a
22 jury instruction. And just as Ms Halbach's life
23 history evidence invariably will present a 904.03
24 question for this Court, how much is right, how
25 much is too much, how much distracts, or

1 confuses, or misleads, or wastes its time; I
2 think the same is true of the wrongful conviction
3 and the lawsuit.

4 It's clearly a Section 904.03 issue. It
5 should be addressed before trial, an absolute
6 position by the State on this, particularly if
7 it's offering other evidence informing the jury
8 that Mr. Avery was in prison. It just goes too
9 far. Just as I think an absolute position by the
10 defense, that nothing about the life or history
11 of Teresa Halbach can come in, also would be
12 mistaken and would go too far.

13 So we're going to be into, it seems to
14 me, a balancing area. And I will try to assist
15 the Court by filing a motion in limine here by
16 July 14, talking about just exactly what we hope
17 to get into, with whom, and how.

18 THE COURT: Question for Mr. Strang, with
19 respect to the bias basis for getting the evidence
20 in, what -- what witness, or witnesses, of the
21 State, is the defense seeking to argue that the
22 wrongful conviction and the attendant lawsuit would
23 show bias on the witness's part?

24 ATTORNEY STRANG: Anyone from the Manitowoc
25 County Sheriff's Department. Now, in practice in

1 this trial, that's likely to turn out to be, I can't
2 rank order these, but it's likely to turn out to be
3 Detective Remiker, it's likely to be Lieutenant
4 Lenk, Sergeant Colborn, you know, anybody. Those
5 are likely to be the main players.

6 But, you know, when you work for a
7 department, or a firm, or a company, and you are
8 getting sued for \$36 million, your department
9 is -- and it's been an embarrassment, it's been
10 public, you know, somebody who shouldn't have
11 been in prison was -- I think that's likely to
12 effect the morale, the bias. May be
13 sub-conscious, but it really is likely to have a
14 human effect on the people in the department.
15 There can't have been warm feelings about Steven
16 Avery, or even neutral feelings, about Steven
17 Avery, at the time this was going on.

18 THE COURT: Mr. Kratz, if the State
19 allowed -- or if the Court allowed into evidence,
20 any of the statements that would, by their nature,
21 suggest that Mr. Avery was in prison at the time,
22 wouldn't it be fair to let the jury know that he was
23 not there serving a sentence for a crime that he is
24 still convicted of?

25 ATTORNEY KRATZ: I'm not sure that we

1 would -- excuse me -- I'm not sure that we would
2 have to include where the statements were made or
3 under what context. And I appreciate Mr. Strang's
4 concern in that regard, and I may need to fashion a
5 explanation as to how, or in what context those
6 statements may have been made, but I'm sure it could
7 be done. I don't think that we have to include that
8 these were statements that were made by Mr. Avery in
9 prison. Let's not forget, that the first six years,
10 Mr. Avery was not there for some un -- or
11 impermissible reason.

12 THE COURT: I understand that, but I think
13 it is significant that, at the time the statements
14 were made, he wasn't supposed to be there.

15 What about the -- What's the State's
16 response to the bias argument? As I understand,
17 and I don't have, obviously, first hand
18 familiarity with the lawsuit, but the argument is
19 that the -- not only was the defendant cleared of
20 the crime, but that the -- another police agency
21 had provided the Sheriff's Department with
22 information about the person who was really
23 responsible.

24 And the sheriff, on the stand here
25 today, indicates he still doesn't really accept

1 the fact that the defendant wasn't guilty of that
2 offense, does not show bias on the part of at
3 least the sheriff himself, if not other members
4 of the department?

5 ATTORNEY KRATZ: Here's where I agree with
6 the defense, that the balancing test under 904.03
7 has to come into play, but then this Court has to
8 decide whether or not it's relevant. This Court has
9 to decide whether it's reasonable that police
10 officers would try to set up Mr. Avery, because of a
11 civil lawsuit, whether they would pick some
12 unsuspecting woman and kill her, if in fact that's
13 going to be the argument, that bias went to that
14 extent, and dispose of her body, because of this
15 lawsuit.

16 So, it's in those kinds of suggestions
17 of bias, and how far they extended, whether or
18 not this is for a permissible bias reason, or
19 whether or not it goes beyond that into something
20 that we're talking more about sympathy, or an
21 impermissible reason, rather than appropriate
22 bias.

23 ATTORNEY STRANG: I can -- I can say a
24 couple things. First of all, the Court -- and the
25 Court doesn't sit to decide the reasonableness of

1 the inference of bias, the jury does. That said, I
2 can't imagine that anybody at this table is going to
3 argue that someone in law enforcement murdered
4 Teresa Halbach. I just don't expect that to be an
5 argument.

6 Will there be questions about the
7 fairness and integrity of the investigation, and
8 how they came to focus on Steven Avery? You bet.
9 Will there be questions about the reliability of
10 physical evidence? Yes. Will there be questions
11 about the reliability of testimony? Yes.

12 THE COURT: All right. The next motion I
13 have was the motion relating to the State's motion
14 to offer -- let's see -- evidence concerning the
15 victim's life history. I know I got a letter from
16 Mr. Buting, I think yesterday or the day -- I guess
17 it was, technically, the 3rd, indicating that it was
18 premature to address this motion until the
19 information proposed was offered with a little more
20 specificity. And I got as far as getting your
21 pleading on my bench here, Mr. Kratz. I'm not sure
22 what --

23 ATTORNEY KRATZ: Judge, that pleading has
24 to do with statements of Ms Halbach.

25 THE COURT: Oh.

1 ATTORNEY KRATZ: That's number seven.

2 THE COURT: All right.

3 ATTORNEY KRATZ: That's to be addressed on
4 the 19th.

5 THE COURT: I'm not sure that I can address
6 your request in the abstract without knowing exactly
7 what it is. I mean, I'm certain that, to put
8 anything into context, some background information
9 is always appropriate. But I think, as Mr. Buting
10 points out, there could be a lot more evidence that
11 would be appropriate at the time of sentencing, that
12 wouldn't necessarily get in at the trial. So, I'm
13 not sure that the Court can issue any meaningful
14 decision on the request, as it's currently framed.

15 ATTORNEY KRATZ: If I may, Judge, I don't
16 know that Mr. Buting and I are very far apart. We
17 understand that, in a homicide case, when taking of
18 a human life is at issue, some aspects of the
19 victim's life becomes relevant, her contacts with
20 Avery, her employment, her family relationships,
21 those things that intersect, if you will, her life
22 with that of Mr. Avery.

23 That being done through at least some
24 photographs of the victims, or some evidence of
25 those characteristics, or part of Teresa's life

1 that, again, puts her in contact with Mr. Avery,
2 will be relevant. State has no intent to
3 overstep its authority or to offer any of this
4 evidence for sympathy or other reasons, just
5 those that are relevant.

6 It's my, perhaps, clumsy attempt to
7 obtain pretrial rulings when I can so that we
8 don't have to stop the trial, or have those
9 discussions in the middle. I intend, Judge, and
10 I think perhaps this is best addressed by sharing
11 it with the defense, if there are going to be
12 photographs, if there are going to be kinds of
13 evidence that, again, are relevant as to Ms
14 Halbach, and especially as they intersect with
15 Mr. Avery, and as I previously mentioned, I don't
16 think that Mr. Buting and I, when I read his
17 response, are very far apart at all.

18 THE COURT: All right, Mr. Buting.

19 ATTORNEY BUTING: I guess I would just
20 suggest that perhaps they do the same thing that
21 we're doing on -- or that the Court's asked us to
22 do, which is to file a motion in limine on how we
23 would use the wrongful conviction. If the State
24 wants to identify, certainly, any way that Teresa's
25 life intersected with Mr. Avery, I think is going to

1 be fair game, just to set the context.

2 I'm not sure about relationships with
3 her family and all those kinds of things. But I
4 think if the State wants to do that, they can
5 file a motion and, then, before trial, share his
6 concern about all these things coming up in the
7 middle of the trial. But I think a motion in
8 limine before trial, where he can lay out the
9 limits and the parameters of this kind of
10 evidence, is the way to go.

11 THE COURT: All right. I'm going to trust
12 Mr. Kratz to do that. I don't know that it's
13 necessary, in every case, that the State provide the
14 defense with a summary of background victim
15 information, but given the length that the parties
16 are anticipating for this trial, and the fact that
17 wherever we have a jury, they are going to be
18 around, take a sizeable chunk of time out of their
19 lives, I think to the extent that we can resolve
20 matters ahead of time we should do so.

21 There's another motion filed by the
22 State regarding prior criminal convictions of the
23 defendant. And it's my understanding the parties
24 were going to work together to resolve that.

25 ATTORNEY KRATZ: We will, Judge. We will

1 reach a stipulation on that, and we'll attempt to
2 reach stipulations on any witness, whether called by
3 the State or the defense, prior to trial.

4 If we have issues that the Court needs
5 to resolve, whether it's issues of remoteness or
6 relevance, we will bring those to the Court. But
7 I'm quite confident, with the number of years of
8 experience between all of us, we should come
9 pretty close to coming up with correct numbers.

10 ATTORNEY STRANG: Right. This will
11 probably get worked out. We can raise our hands if
12 it doesn't.

13 THE COURT: Okay. I think that takes us to
14 the motion for bail reduction. I believe everything
15 else has been addressed, unless I have missed
16 something.

17 ATTORNEY KRATZ: There was the issue of the
18 Marinette detective, and we do recognize, Judge,
19 with the Court's previous ruling on the change of
20 venue, that it's quite clear that a third hearing is
21 to be set in this case. There was, as the Court
22 knows, an audiotape recording of Mr. Avery's
23 interviews with the Marinette detective.

24 We felt it fair to at least suggest to
25 the Court that that be provided before they have

1 an opportunity to cross-examine the detective.
2 And so we plan to do that. And anticipating, we
3 will set a date before we leave here today. We
4 suggest, at least the State suggests, that that
5 entire motion, then, be dealt with on that third
6 motion date that we are contemplating.

7 THE COURT: Any objection?

8 ATTORNEY BUTING: No, Judge.

9 THE COURT: So I will hear the bail motion
10 today and we'll set another hearing date then for
11 the other motion.

12 ATTORNEY STRANG: I'm sorry, do we have his
13 schedule?

14 ATTORNEY FALLON: He's still here. Would
15 it be possible?

16 THE COURT: We can set the date now. How
17 about Thursday, August 3rd; what does that look like
18 for the parties.

19 ATTORNEY BUTING: Judge, that's the week
20 I'm going to be out of town and out of state.
21 Mr. Strang, I think, is gone the week before, but
22 the week after that perhaps.

23 THE COURT: Wednesday, August 9th.

24 ATTORNEY FALLON: That's fine with us.

25 ATTORNEY BUTING: That's good.

1 ATTORNEY STRANG: That's good.

2 THE COURT: All right. 9:00 on the 9th.

3 ATTORNEY KRATZ: And so that we're clear,
4 Judge, that is, at least, the change of venue
5 motion, and the statement of the Marinette detective
6 and, perhaps, whatever we don't accomplish on the
7 19th; does that sound fair?

8 THE COURT: Everybody agree with that?

9 ATTORNEY BUTING: Change of venue in the
10 sense of argument and decision or?

11 THE COURT: Well, let's see, I'm going to
12 have -- I'm anticipating it would be a decision at
13 that time because I'm going to get some written
14 submissions from the parties, correct?

15 ATTORNEY KRATZ: That's fine.

16 THE COURT: Between the written submissions
17 and the media reports I'm going to have to review, I
18 think that's fair. I don't believe any further
19 argument or evidence is necessary, is it?

20 ATTORNEY BUTING: Right.

21 THE COURT: Very well.

22 ATTORNEY STRANG: On the change of venue,
23 here's the -- here are the two boxes.

24 THE COURT: Okay.

25 ATTORNEY BUTING: Should we mark them?

1 THE COURT: The Clerk will happily take
2 them to the Clerk's Office when we're done today,
3 I'm sure.

4 ATTORNEY STRANG: I'll be happy to help.

5 THE COURT: Maybe you can help her out.

6 ATTORNEY STRANG: I can carry them,
7 physically. What I'm -- For the record, what I'm
8 tendering her, two bank boxes, to include thousands
9 of pages of the copies -- photo copies I described
10 earlier, and 24 DVD's of television clips concerning
11 this investigation and the prosecution.

12 THE COURT: Very well. All right. At this
13 time, then, I will hear argument on the bail motion.
14 Mr. Strang, will that be you or Mr. Buting?

15 ATTORNEY BUTING: It's going to be me,
16 Judge. Judge, we filed a motion for reconsideration
17 of the bail -- our motion to reduce bail, I believe
18 on June 2nd. June 1st is the date here that we
19 signed it. I think it was filed in this court on
20 June 2nd. This is our first chance to argue it.

21 There have been some changes since that
22 date, in what we would have put in the motion, or
23 presented to the Court. But when we last
24 discussed bail it was on March 17th, and it was
25 in conjunction with the State's motion to amend

1 the Criminal Complaint, adding additional counts
2 against Mr. Avery, based upon the statements,
3 alleged reliable, credible statements of
4 Mr. Dassey, the 16 year old nephew.

5 And we argued at that time, and provided
6 whatever case law we could, that Mr. Dassey's
7 statements were simply not reliable and shouldn't
8 be admissible, or considered, to establish
9 probable cause in the Criminal Complaint. And
10 the Court disagreed and found that they were
11 reliable for that purpose.

12 The State then objected to our motion to
13 reduce bail. And, in fact, filed their own
14 motion to increase the bail, based, again, upon,
15 solely, the statements of 16 year old Brendan
16 Dassey, which were set forth in lurid detail in
17 the Criminal Complaint. And on that basis, the
18 Court found that, because of those statements,
19 and only those statements, Mr. Avery's bail
20 should be increased from 500,000 to 750,000.

21 Now, since that time, substantial
22 evidence has disproved -- certainly called into
23 question -- the reliability of that young man's
24 statements that are in this Complaint. As a
25 matter of fact, the majority of the story, of how

1 Teresa Halbach supposedly lost her life at the
2 hands of these two individuals, has been proven
3 to be incorrect, either lies or guesswork made up
4 by Mr. Dassey at the urging, coaching, of his
5 interrogators, some of which we placed in our
6 written motion.

7 He claimed, for instance, that she was
8 handcuffed to the bed when he saw her for the
9 first occasion. The Crime Lab tested those
10 handcuffs. Her DNA was not found on the
11 handcuffs. But, suggesting that they were not
12 wiped off or wiped clean, Mr. Avery's was found
13 on the handcuffs, as well as another individual,
14 not Mr. Dassey, again, suggesting that these
15 handcuffs were not used, that she was not
16 retrained by handcuffs as Dassey claimed.
17 Because if she was, one would certainly expect
18 the poor woman, struggling, would have left at
19 least as much DNA as somebody else, like
20 Mr. Avery or the other unknown individual would
21 have, just handling them.

22 So, that immediately called into
23 question the credibility and reliability of
24 Brendan Dassey's version of what happened. But
25 then there were some other things that developed.

1 His statement also claimed that they cut off
2 3-inches of her hair, I believe it was. And the
3 Crime Lab ripped up all of the carpet from
4 Mr. Dassey's -- I'm sorry, Mr. Avery's trailer.
5 And they took all of the wood paneling off of the
6 walls as well. They found no hair.

7 He also claimed that she was brutally
8 stabbed, her throat cut in a horrific
9 description, pure fantasy, of how that woman
10 supposedly died at Mr. Avery's hands, in a manner
11 that would have obviously left blood on the
12 mattress, soaked through the bedding. Even if
13 the bedding had been disposed of, the mattress
14 would have had evidence.

15 Everybody was talking about it, even on
16 the street, well, where's the evidence of this,
17 wouldn't there be blood on the mattress. Well,
18 sure enough, they took the mattress, and it's the
19 same mattress, and there was not a speck of blood
20 on it.

21 And he also claimed that Mr. Avery,
22 then, after she had been brutally stabbed and
23 bleeding all over the mattress, then carries her
24 over his shoulder, out into the garage, obviously
25 would have been dripping blood all the way,

1 again, not a speck of blood anywhere on the
2 carpet, or on the steps, or anywhere leading out.

3 And as a matter of fact, with all the
4 tests that they have done, of all the stuff in
5 his trailer, not one speck of Teresa Halbach's
6 blood or DNA has been found in Mr. Avery's
7 trailer, directly contrary to what they claim in
8 this Complaint to be reliable, credible evidence,
9 sufficient to have this Court increase his bail.

10 Now, recognizing that, the interrogators
11 went back to Mr. Dassey, on May 13th, I believe,
12 and did another interview of him, once again,
13 coaching, leading, trying to change his story to
14 fit their theory of what happened in this case.
15 And thank God for *State vs. Jerrell*, because it's
16 recorded, for you to see, or anyone else to see,
17 eventually, in this case, or in his case.

18 And the manner that they questioned him
19 is -- it would be laughable, if it wasn't a real
20 case with real people's lives at stake. He is
21 fed information to change his story. Now, it
22 turns out, according to this young man, that the
23 whole story about him getting off the bus,
24 finding a letter of Mr. Avery's, and going down
25 and hearing this poor woman screaming, was

1 totally made up.

2 He hears no screaming outside the
3 trailer. He claims that he goes in the trailer
4 and, yes, she's there. But, again, the entire
5 time he's there she's never screaming, which is,
6 frankly, rather preposterous. He now, because he
7 knows, with his lawyer, and what's been made
8 public, that there's no DNA on the handcuffs.

9 It's like, oh, I was wrong about that.
10 It was rope, her arms were bound by rope, to the
11 headboard. So they test the headboard and
12 there's no rope fibers on it. They swab it
13 specifically for that purpose. No evidence, once
14 again.

15 And his interrogators press him about
16 that and they say, well, was that a lie? And he
17 says, yes. Did you cut off her hair? No, that
18 was a lie. Why did you tell us these things?
19 Where did you come up with these things? Just
20 guessing, is his response.

21 Recognizing that there's no blood or DNA
22 in his trailer, it is now obvious this young
23 woman was not killed in his trailer. So the
24 interrogators get him to try and move the
25 location. Again, not accepting the possibility

1 that Brendan Dassey's entire story is wrong.
2 They just want to change it and somehow make it
3 fit the physical evidence.

4 And so, now, she is supposedly killed in
5 the garage. And there's one piece of evidence
6 that they have found, that in some way might
7 support part of his story. Allegedly, there is a
8 very small amount of her DNA that was found on a
9 bullet somewhere in the garage; although, it
10 wasn't found until after March some time, when
11 they re-searched the garage.

12 But, as we put in our written motion,
13 it's a garage that is fairly accessible to many
14 people, not just Mr. Avery. And, of course, it
15 wasn't found until five months after Mr. Avery
16 has been in custody. So, many people had access
17 to it during that period of time.

18 But other than that, again, and -- and
19 they -- and they challenge him, frankly, it's
20 pretty obvious. And, frankly, I have a copy of
21 it. I can offer it to the Court, introduce it if
22 you would like to look at -- listen to this. But
23 you can tell that the interrogators don't even
24 believe most of what he's saying, until they get
25 him to say what it was -- what they want to hear,

1 that they think might somehow fit the evidence.
2 But they say, well, where's the blood? Where's
3 the knife? They never found any knife. There
4 was no evidence that there was ever any stabbing
5 of this woman. He's got no explanation for it.

6 And they say, well, one would think that
7 there would be blood because, again, now the
8 killing is supposedly in the garage. And it's
9 not just a gunshot. In fact, originally it was
10 10 times that he shot her, now he's changed it to
11 five. But there's still the stabbing that's
12 going on, with her now in the garage. There's no
13 blood to support it.

14 And they are relying, now, on, oh, well,
15 they cleaned it up with bleach and gasoline, and
16 all that stuff. Well, in truth, there was blood
17 stains found -- or there were blood stains found
18 on the floor of the garage, Mr. Avery's. The man
19 works on cars in there for -- every day. He cuts
20 himself repeatedly. His blood is found in
21 numerous places, but not hers. If it's all
22 cleaned up with bleach, why is his blood found
23 anywhere. Again, it doesn't fit.

24 In essence, he has now retracted almost
25 everything. This dramatic press conference

1 statement that people -- the children should not
2 listen to this, it's so terrible to hear, was
3 pure fantasy, unsupported by any other physical
4 evidence, and now retracted by the guy who
5 supposedly told it.

6 I feel sorry for the Halbachs, that they
7 think all these horrible things happened to their
8 daughter and sibling. Now, we know that's not
9 even true, but that's, unfortunately, the
10 reality. I can go on and on. Did he punch her,
11 or did she -- did Avery punch her in the mouth?
12 Now, he's like, no, he never hit her at all.

13 Not only that, he now retracts any --
14 any knowledge that he has that Mr. Avery ever had
15 any sexual assault. He's still on his newest
16 statement, newest I'm aware of, admits that he
17 had sex with her; although, the way he admits it
18 is certainly suspect. But he says, no, I didn't
19 see Avery have sex with her. No, he didn't tell
20 me he had sex with her.

21 So the whole sexual assault charge
22 against Mr. Avery that's in this Criminal
23 Complaint, and for which his bail went up, is now
24 going to be out the window.

25 In Mr. Dassey's own bond hearing, the

1 prosecution revealed -- and by the way, I think
2 the description of Sheriff Pagel's, the purpose
3 of these press conferences was to control the
4 information that went out, is a very good
5 description of what's been going on in this case,
6 in the public's eye all along; which is, the
7 prosecution has controlled the evidence that the
8 public hears, and construed it in a way that
9 makes it look like this guy should be the poster
10 boy for the death penalty, when, in fact,
11 everything that they construed is one sided. It
12 leaves out all kinds of other things.

13 Looking at that press conference, you
14 would have expected that that young boy, who was
15 holding this in for months and just had to
16 unburden himself with this terrible story that he
17 had -- experience that he had, was emotionally
18 upset and came out with this whole, long story
19 when, in fact, there is not an iota of emotion
20 expressed by the guy.

21 He never cries, he's not upset at all,
22 he's not coming out with any narrative. It's one
23 sentence or one word responses to their
24 questions, the entire way, all the way through
25 that first statement. And the second statement

1 is more of the same. There is no emotion. If
2 this kid had any involvement with it, he
3 certainly hasn't described what happened, or what
4 his involvement really was, because there's no
5 emotional connection or affect there.

6 But back to the bond hearing, the
7 prosecutor announced, oh, well, now we have new
8 information that this was a planned murder and
9 that they selected Teresa Halbach several days
10 earlier. And, again, I suggest to the Court,
11 look at that statement. Brendan Dassey says
12 nothing about any planning until they suggest it,
13 as the only explanation they can come up with for
14 why there isn't more evidence.

15 And after he's -- he's badgered with
16 this, he finally starts, well, yeah, I suppose;
17 again, guessing, answering their questions. But
18 when they press him about, okay, what was the
19 plan; there is no plan. There's no discussion
20 about who is going to do what, how it's going to
21 be carried out. No plan to have sex. No plan on
22 why Teresa Halbach.

23 When they start pressing him on -- on
24 the obvious questions, he can't answer any of
25 them, because it's, again, it's just fantasy.

1 It's not the truth. And, then, when they ask
2 him, well, why -- why would Steven Avery have
3 planned this, why would he have done this, again,
4 there's long pauses in all these answers. And he
5 comes up with, well, he wanted to go back to
6 prison, because he missed it.

7 And even their own interrogator throws
8 up his hands and says, He didn't say that, did
9 he? Come on, start telling us the truth. And
10 then there's a long sequence where they start
11 badgering him about how he has got to help
12 himself, and he is not being honest with them.
13 On and on and on. So they don't even buy that
14 story, yet they offer it, in Mr. Dassey's own
15 bond hearing, and probably would do so here too.

16 So, in short, the Criminal Complaint is
17 no longer credible and that all of the evidence
18 that they have done, all the testing that they
19 have done so far, has disproved Mr. Dassey's
20 credibility, and his involvement, and, therefore,
21 the involvement of Steven Avery in the murder,
22 and any other offenses that go along with that,
23 of Teresa Halbach.

24 What we're asking is the Court to,
25 therefore, reconsider the bond, to once again

1 consider, first, reducing the bond back down to
2 the 500,000 that was originally set, before this
3 Brendan Dassey fantasy was filed. And, then, to
4 once again, consider a property bond posted by
5 Mr. Avery's family.

6 He's shown no evidence of a risk of
7 flight. He's fought for 18 years to get himself
8 out of prison. He intends to -- He's conducted
9 himself in jail, and in this courtroom, with
10 perfect decorum, and showing no evidence of being
11 a disruptive individual who's a risk of flight.

12 Yes, he's facing serious charges, with a
13 great deal of prison time, but that's the purpose
14 of monetary bail, or property bond bail, to
15 ensure that he will return. Five hundred
16 thousand dollars is a lot. It's his parent's
17 entire property, his brother's and sister's
18 entire property. He's not going to risk
19 forfeiture of that by failing to reappear in
20 court.

21 So for those reasons I would ask the
22 Court to reconsider and reduce the bail to what
23 was originally asked on March 17th. Thank you.

24 THE COURT: All right. Mr. Kratz, or
25 Mr. Fallon, which one will be addressing?

1 ATTORNEY KRATZ: I will, Judge. And I'm --
2 I must say, I'm surprised that somebody, you know,
3 we have given a lot of compliments around here,
4 somebody with Mr. Buting's reputation, would come
5 into this court, and express to this Court that he
6 knows for certain, or that he has some personal
7 opinion that this statement by Brendan Dassey is
8 fantasy, or that it's made up, or that there are
9 such inconsistencies in this statement that it
10 should be disregarded.

11 Mr. Buting doesn't know that.
12 Mr. Buting can discuss inconsistencies of
13 Brendan's statements, but what Mr. Buting hasn't
14 expressed to the Court, at least what the State
15 would argue, in a factual or proper manner, are
16 the consistencies that Brendan did provide in his
17 second statement.

18 Brendan Dassey, in his second statement,
19 which, by the way, was at the invitation of a
20 defense attorney, after his statement was not
21 rejected by Judge Fox, does include
22 consistencies. The consistencies that it was he
23 and Steven Avery who killed Teresa Halbach. That
24 it was Steven Avery who stabbed Teresa Halbach.
25 That it was Steven Avery that shot Teresa

1 Halbach. That it was the shooting that occurred
2 in the garage. That it was he and Steven Avery
3 who mutilated the body of Teresa Halbach, hid her
4 car and, thereafter, tried to clean up or destroy
5 evidence. All of that information was included
6 in Brendan's second statement.

7 What Mr. Buting did indicate in kind of
8 an, oh, by the way, manner, was that there was a
9 bullet now found in that man, Steven Avery's,
10 garage, that had the victim, Teresa Halbach's,
11 DNA on it. That is not insignificant, Judge.
12 That is additional evidence that this Court did
13 not have, since the March 1st statement that was
14 given, and should not be given such a short
15 shrift.

16 What Mr. Buting, perhaps, forgot to tell
17 the Court was that Mr. Avery's DNA was also found
18 on the hood latch of the SUV of the victim, since
19 the first statement by Brendan Dassey. And
20 because of Brendan Dassey's first statement, that
21 Steven was fooling around with and opened up the
22 hood of the victim's vehicle, the hood latch was
23 swabbed and a full DNA profile match of Mr. Avery
24 was, in fact, developed. That's been provided to
25 the defense and, again, maybe Mr. Buting forgot

1 to tell the Court that.

2 Mr. Buting and Mr. Strang also know that
3 additional admissions have been made by this
4 young man, admissions to family members, that not
5 only was he involved in the murder of Teresa
6 Halbach, but very clearly that Steven Avery was
7 responsible for her death. The defense, now,
8 also knows that the victim's PDA Palm Pilot was
9 found with the cell phone and camera, on the
10 Avery property.

11 So, together with the inconsistencies,
12 there have been additional, not only consistent
13 statements made, but additional physical
14 evidence, which has been developed. I also wish
15 to alert the Court, or direct the Court, to my
16 previous bond arguments. All of the previous
17 evidence about the degree of violence; the prior
18 record of this man; the ties, or lack of ties, to
19 the community; flight risk; the penalties that he
20 faces; and the gravity of the offense, apply
21 today, equally, as they did previously. I'm
22 asking this Court deny the motion for the
23 reduction of bond. That's all I have, Judge.
24 Thank you.

25 THE COURT: Mr. Buting, anything in

1 rebuttal?

2 ATTORNEY BUTING: No, your Honor.

3 THE COURT: All right. The Court, in
4 addition to the oral argument today, I, before
5 today, read the written argument in support of the
6 motion. And I gather that, from what I know, there
7 appear to be at least some inconsistencies in
8 Mr. Dassey's version of events that was originally
9 given to the police, versus what he said recently.

10 The significance of those
11 inconsistencies is in dispute here today. We're
12 only at the bail stage. The Court is not in a
13 position to weigh credibility of the parties, or
14 make determinations as to who's telling the truth
15 and who isn't. That's the province of the jury.

16 When the Court last reviewed bail on
17 March 17, I did consider the fact, at that time,
18 that the State's case appeared to have been
19 strengthened from what it had been earlier, to
20 the extent that it was no longer based on purely
21 circumstantial evidence, but that another person
22 claiming to be an eye witness and, in fact, a
23 co-defendant, had been identified, and made
24 statements incriminating himself, along with
25 Mr. Avery.

1 While different statements that he's
2 given since then may have some affect on the
3 credibility of the version of events he gave,
4 that's still the case; that is, there's still
5 another person who's made incriminating
6 statements identifying himself and Mr. Avery.
7 The nature of those statements seems to be such
8 that -- they are at least not obviously, on their
9 facts, or on their face, designed to shift blame
10 to someone else, because they are heavily
11 incriminatory of himself, namely Mr. Dassey.

12 I would also point out that it's not
13 true that the Court, at the last hearing, only
14 based its decision on the statements of
15 Mr. Dassey. Of at least equal significance was
16 the fact that the defendant's financial situation
17 had changed considerably; specifically, it
18 settled a lawsuit for \$400,000.

19 The facts, as they existed back on March
20 17, are largely still present today, even if the
21 defense may have some additional argument to
22 discredit Mr. Dassey's version of the events.

23 For purposes of this bail hearing, I do
24 not find that there's been any measurable change
25 in circumstances. And so for the reasons that I

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gave on March 17, and as I have reiterated them today, the Court is not going to modify bail. I will leave it at \$750,000 cash. The motion to modify bail is denied.

Counsel, is there anything further to address before our next hearing on the 19th?

ATTORNEY BUTING: Not from our standpoint, Judge.

ATTORNEY KRATZ: I don't think so, Judge. We'll see you on the 19th. Thank you.

THE COURT: Very well. We'll see you on the 19th. We're adjourned for today.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 18th day of July, 2006.

Diane Tesheneck, RPR
Official Court Reporter

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, MOTION HEARINGS

5 vs.

6 Case No. 05 CF 381

7 STEVEN A. AVERY,

8 DEFENDANT.

9 **DATE:** JULY 19, 2006

10 **BEFORE:** Hon. Patrick L. Willis
11 Circuit Court Judge

12 **APPEARANCES :**

13 KENNETH R. KRATZ
14 Special Prosecutor
15 On behalf of the State of Wisconsin.

16 THOMAS J. FALLON
17 Special Prosecutor
18 On behalf of the State of Wisconsin.

19 DEAN A. STRANG
20 Attorney at Law
21 On behalf of the Defendant.

22 JEROME F. BUTING
23 Attorney at Law
24 On behalf of the Defendant.

25 STEVEN A. AVERY
Defendant
Appeared in person.

TRANSCRIPT OF PROCEEDINGS

Reported by Diane Tesheneck, RPR

Official Court Reporter

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1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Stephen Avery. It's Case No.
3 05 CF 381. We are here this morning to take
4 evidence on some of the pretrial motions that have
5 been filed. Will the parties state their
6 appearances for the record, please.

7 ATTORNEY KRATZ: State appears by Calumet
8 County District Attorney Ken Kratz appearing as
9 Special Prosecutor. Also appearing for the State is
10 Tom Fallon from the Department of Justice.

11 ATTORNEY BUTING: Buting and Williams by
12 Attorney Jerome Buting, appearing on behalf of
13 Mr. Avery. Also present, Attorney Dean Strang.

14 THE COURT: All right. We did meet in
15 chambers, briefly, before beginning today. I
16 believe the parties agreed that the first evidence
17 to be presented would be on the defense motion to
18 suppress statements made to media, and the State was
19 going to begin. Mr. Fallon, are you going to be
20 handling this portion?

21 ATTORNEY FALLON: Yes. Yes, your Honor, I
22 will be conducting the evidentiary portion and
23 argument, if any, relative to this issue.

24 THE COURT: All right. You may call your
25 first witness.

1 ATTORNEY FALLON: The State would call
2 Emily Matesic.

3 ATTORNEY BUTING: Judge, could we just ask
4 for a sequestration order of any other witnesses
5 that are anticipated?

6 THE COURT: Are there any?

7 ATTORNEY FALLON: There is one other media
8 person, who I have not had an opportunity to talk
9 to, who interviewed the defendant on two entirely
10 different occasions.

11 ATTORNEY STRANG: And there's the Jail
12 Administrator --

13 ATTORNEY FALLON: And there's the Jail
14 Administrator.

15 ATTORNEY STRANG: -- to Calumet County who
16 should be sequestered.

17 THE COURT: All right. Any objection to
18 having those folks excluded from the courtroom?

19 ATTORNEY FALLON: No, I have no objection.
20 Ms Kolbusz, I guess you will have to step out, and
21 Mr. Byrnes. Very good.

22 ATTORNEY STRANG: Before we begin with Ms
23 Matesic, I'm informed by counsel that she provided
24 some documents today, two of which I think we should
25 get copied before.

1 ATTORNEY FALLON: That's correct. The
2 witness did provide some additional information, and
3 I have asked one of our assistants to make a couple
4 of copies. So it will just be another moment or two
5 before those copies appear. They are very short,
6 two or three pages apiece. So, it will be just
7 another minute or two and counsel will have those.

8 THE COURT: Okay. The clerk can swear the
9 witness at this time.

10 **EMILY MATESIC**, called as a witness
11 herein, having been first duly sworn, was
12 examined and testified as follows:

13 THE CLERK: Please be seated. Please state
14 your name and spell your last name for the record.

15 THE WITNESS: Emily Matesic M-a-t-e-s-i-c.

16 THE COURT: Mr. Strang, do you object to
17 questioning beginning?

18 ATTORNEY STRANG: No, on the understanding
19 I will have these in a couple minutes, we can go
20 ahead.

21 ATTORNEY FALLON: All right. Very well.

22 **DIRECT EXAMINATION**

23 BY ATTORNEY FALLON:

24 Q. What do you do for a living?

25 A. I'm a television news reporter.

1 Q. And for whom are you a reporter?

2 A. WBAY-TV.

3 Q. How long have you been a reporter for that
4 entity?

5 A. Almost 11 months.

6 Q. All right. And are you currently assigned to any
7 particular duties as a reporter with that news
8 outlet?

9 A. Just a general assignment reporter.

10 Q. All right. And specifically, then, directing
11 your attention to November, 2005, did you have an
12 opportunity to interview the defendant in this
13 case, Steven Avery?

14 A. Yes.

15 Q. And first of all, would you describe for us how
16 it came to be that you interviewed Mr. Avery; in
17 other words, how did it start?

18 A. Which interview?

19 Q. I'm talking about the first interview, on
20 November 12th, in fact, that's a good question.
21 So let me ask you this, how many times did you
22 interview Mr. Avery?

23 A. A couple, twice.

24 Q. All right. And in what format was he
25 interviewed?

1 A. The first one was in person, on camera, and the
2 second one was over the phone.

3 Q. All right. And so the focus of our hearing
4 today, so it's clear in your mind, would be for
5 the first interview, which was on camera.

6 A. All right.

7 Q. With respect to that particular interview, do you
8 recall when that occurred?

9 A. I believe it was November 12th.

10 Q. Tell us how it happened.

11 A. The case had been going on for a couple of weeks.
12 And I was with some co-workers on the night of
13 the 11th and we were just kind of talking about
14 everything that day. There had been a news
15 conference that Steven Avery would be charged
16 with Teresa Halbach's murder the following week.

17 And we were just sitting around talking
18 about it. And he had been talking to the media
19 throughout this whole investigation and we -- and
20 so I -- I got into work on Saturday morning and
21 called the Calumet County Jail to see if he would
22 be willing to do an interview with us.

23 Q. Tell us about the call.

24 A. I called the jail and told whoever answered the
25 phone who I was and what I was interested in, and

1 asked if Steven Avery would be interested in
2 doing another -- doing an interview with us. And
3 they said, hold on, we'll go ask him. Put me on
4 hold. A couple minutes later, came back and
5 said, yes, he will talk to you.

6 Q. And was there any other instructions, or any
7 other feedback, or comments from the
8 administrator at the jail, or whomever it was
9 that you spoke to, any other instructions or
10 comments, requests?

11 A. No.

12 Q. All right.

13 ATTORNEY STRANG: I'm going to object.
14 Move to strike the prior question, or at least the
15 answer, as inadmissible hearsay, as to the person on
16 the phone.

17 ATTORNEY FALLON: I would object for two
18 reasons: One, I don't believe the evidentiary rules
19 are applicable, in terms of a motion in limine like
20 this, to determine the admissibility of evidence.
21 And number two, it does have a substantial, quote,
22 "affect on the listener", closed quote, as to the
23 course of conduct to be embarked upon. So under
24 either theory, this statement would be admissible.

25 ATTORNEY STRANG: Well, I think under

1 911.01 the rules of evidence do govern this
2 proceeding, one. And, two, clearly the
3 representation of what Mr. Avery said is offered for
4 the truth here, not just for the state of mind of Ms
5 Matesic, which wouldn't be relevant anyway.

6 THE COURT: Okay. Your objection is going,
7 now, to which question and answer?

8 ATTORNEY STRANG: What happens when she's
9 talking to the administrator, and leaving the phone,
10 and coming back, and purportedly relaying Mr.
11 Avery's statement. So we have two levels of hearsay
12 there. His would be admissible under 908.01, but
13 the person on the phone is an inadmissible level of
14 hearsay and it's offered for its truth.

15 THE COURT: I think it's acceptable to at
16 least explain why she came to the interview, so I'm
17 going to allow it.

18 ATTORNEY FALLON: Thank you.

19 Q. (By Attorney Fallon)~ After this conversation,
20 what did you do?

21 A. My photographer and I got in the car and drove to
22 the Calumet County Jail.

23 Q. All right. What occurred when you arrived at the
24 jail?

25 A. We signed in at the front desk and they said

1 we'll take you into the room, we'll let you get
2 set up, and then we'll bring Mr. Avery in.

3 Q. All right. And describe the room for us.

4 A. Very small room, there's just a small table and
5 either two or three chairs.

6 Q. All right. Was there any -- How many doors to
7 the room?

8 A. There were two doors.

9 Q. Any windows to the room?

10 A. Both doors had windows.

11 Q. All right. And in terms of the walls, any
12 windows there?

13 A. No.

14 Q. All right. Who arrived in the room first, you
15 and your cameraman, or Mr. Avery?

16 A. Mr. Avery was sitting in there when we walked in.

17 Q. All right. When he was sitting there, was there
18 any conversation, that you recall, between
19 yourself and Mr. Avery, prior to going on camera?

20 A. I think just small talk, hello, that sort of
21 thing.

22 Q. All right. In your meeting with Mr. Avery at
23 that time, did he give you any indication,
24 whatsoever, that he did not want to participate
25 in such an interview?

1 A. No.

2 Q. As you recall now, thinking back on that moment,
3 can you describe his demeanor for us?

4 A. Just -- He was just relaxed, just kind of sitting
5 there.

6 Q. All right. Once the -- Who else was in the room?

7 A. My photographer.

8 Q. Was there any member of the Calumet County
9 Sheriff's Department in the room with you, as you
10 were setting up to conduct this interview?

11 A. I believe they were in there when they walked us
12 in. I don't remember how long they were in there
13 while we were setting up.

14 Q. All right. During the course of the interview
15 itself, was there any member of the Calumet
16 County Sheriff's Department present?

17 A. No.

18 Q. All right. In terms of the windows you have
19 previously described in the door, were there any
20 members of the Sheriff's Department posted
21 outside the doors?

22 A. Yes.

23 Q. All right. Which door, or both doors?

24 A. I believe there were both doors, one was behind
25 me, so I couldn't see that one.

1 Q. Right. All right. Prior to engaging in a
2 discussion with Mr. Avery, did you or your
3 cameraman, and that being him in your presence,
4 have any discussions with any member of the
5 Calumet County Sheriff's Department regarding the
6 nature of your interview?

7 A. No.

8 Q. Did you have any discussions with them with
9 respect to what topics would be covered in the
10 interview?

11 A. No.

12 Q. Did they suggest any questions to ask of
13 Mr. Avery during the course of the interview?

14 A. No.

15 Q. Your best estimate, approximately how long did
16 the interview of the defendant take?

17 A. We were probably there between 20 and 30 minutes.

18 Q. All right. Were you given any instructions as to
19 how to conduct the interview, or for the length
20 of the interview, by members of the Sheriff's
21 Department? In terms of -- when I say conduct, I
22 mean, for instance, turning the camera on,
23 turning the camera off, positioning of the
24 person, or anything like that.

25 A. No.

1 Q. All right. And in terms of the length, was that
2 regulated at all by the members of the Sheriff's
3 Department?

4 A. No.

5 Q. All right. Now, Ms Matesic, this morning,
6 immediately prior to going on the record, my
7 assistant provided us some documents that you
8 brought along, and I would like to have you just
9 identify them for purposes of the record.

10 ATTORNEY FALLON: And if I may approach the
11 witness and have an exhibit marked?

12 THE COURT: Yes. The clerk can mark the
13 exhibit.

14 ATTORNEY FALLON: Thank you.

15 (Exhibit 1, 2, and 3 marked for identification.)

16 Q. (By Attorney Fallon)~ Ms Matesic, I'm showing you
17 what has been marked for identification purposes,
18 for this hearing, as Exhibit No. 1. First of
19 all, we'll start with that, what is Exhibit
20 No. 1?

21 A. It's a VHS copy of five stories, I think. Yeah,
22 five stories involving interviews that I did with
23 Mr. Avery.

24 Q. All right. And with respect to the interview
25 which is at issue today, the November 12th

1 interview, is there a videotape of that
2 particular interview?

3 A. Yes -- Not of the interview, of the stories that
4 aired on our station.

5 Q. Just of the stories that aired?

6 A. Correct.

7 Q. Very well. All right. And as far as you know,
8 as the stories aired, is this a true and accurate
9 video recording of those stories that were aired,
10 relative to your interviews with Mr. Avery?

11 A. Yes.

12 Q. Very good. With respect to Exhibits 2 and 3,
13 could you identify these documents for us,
14 please.

15 A. Those are the scripts from the two interviews --
16 or the two stories I did on the 12th.

17 Q. Okay. And scripts, would it be fair to say that
18 scripts are what you use for purposes of
19 broadcasting a story?

20 A. Yes.

21 Q. And likewise, these do not contain the full
22 content of the interview with Mr. Avery, relative
23 to November 12?

24 A. No.

25 Q. Okay. So they are the media broadcast accounts?

1 A. Correct.

2 Q. Very good. Thank you. As far as Exhibits 2 and
3 3, are they true and accurate scripts, relative
4 to the broadcasts of the story, relative to the
5 interview on November 12th?

6 A. Yes.

7 Q. Very well. Thank you.

8 ATTORNEY FALLON: Subject to Counsel's
9 cross, would move to the introduction of those
10 exhibits.

11 ATTORNEY STRANG: I have no objection to 1,
12 2, or 3.

13 THE COURT: All right. Exhibits 1, 2, and
14 3 are admitted.

15 Q. (By Attorney Fallon)~ What occurred upon your
16 conclusion of the interview?

17 A. We finished up the interview. I thanked
18 Mr. Avery for talking to us. And at that point a
19 deputy from the jail had come back into the room,
20 because we were finished. And I said, can I
21 leave him my card, and he said -- the deputy
22 said, I can take it. I couldn't actually give it
23 to Mr. Avery.

24 Q. All right. And at any point during the -- I
25 think you said 20 to perhaps 30 minutes that you

1 spent with him -- at any time during that
2 particular interview, did Mr. Avery express to
3 you that he did not wish to participate in the
4 interview?

5 A. No.

6 Q. How would you characterize his willingness to
7 participate in an interview, which was on camera?

8 A. He continued to ask my questions.

9 Q. I'm sorry?

10 A. He continued to ask -- answer my questions.

11 Q. All right. Prior to beginning the interview, did
12 you explain to Mr. Avery what the nature or
13 purpose of your coming to interview him was?

14 A. I don't really recall.

15 Q. All right. How did the interview begin, what did
16 you tell him, in terms of why you were there,
17 perhaps?

18 A. I think I -- if my memory serves me correctly --
19 just said, you know, don't know if you're aware,
20 but they announced you are going to be charged
21 with Teresa Halbach's murder, and we just sort of
22 started the interview.

23 Q. All right. Do you recall, at this particular
24 time, the general framework of any of the
25 questions that you asked him, in terms of leading

1 into the interview; do you remember how it
2 started?

3 A. I don't.

4 Q. Do you have any specific recollection as to
5 whether -- Well, let me rephrase that question.
6 Was it made clear to Mr. Avery that the interview
7 was likely to be broadcast, or parts of the
8 interview would be broadcast on television?

9 A. I don't think I ever said anything like that, but
10 I guess you assume, when you go in with a camera
11 and a microphone, that you are eventually going
12 to use the interview for a story.

13 Q. Did you identify yourself to him?

14 A. Yes.

15 Q. And how did you identify yourself to him; do you
16 recall?

17 A. I said, I'm Emily Matesic from Channel 2.

18 Q. And did he seem to recognize either who you were
19 or perhaps your news station?

20 A. That I don't recall.

21 Q. Okay. At any point during the interview, did he
22 ask that the camera be turned off?

23 A. No.

24 Q. At any point in the interview, did he refuse to
25 answer any of your questions?

1 A. No.

2 ATTORNEY FALLON: I will pass the witness.

3 THE COURT: Mr. Strang.

4 **CROSS-EXAMINATION**

5 BY ATTORNEY STRANG:

6 Q. Ms Matesic, if I understood you correctly, you
7 began working at WBAY in August, 2005?

8 A. Correct.

9 Q. You previously had not worked in Wisconsin?

10 A. No.

11 Q. The first time you heard the name Steven Avery
12 would have been shortly after November 3, 2005?

13 A. That I don't recall.

14 Q. First time you heard the name Steven Avery was in
15 connection with Teresa Halbach's disappearance?

16 A. I believe so.

17 Q. You were assigned to that story as a general
18 assignment reporter?

19 A. Yes.

20 Q. You explained to Mr. Fallon, on direct
21 examination, your belief that on November 11,
22 when you were chatting with one or more
23 co-workers, whatever it was, that the case had
24 been going on for a couple of weeks at that
25 point; do you recall that?

1 A. Yes.

2 Q. By that, you mean the public awareness of the
3 disappearance of Teresa Halbach?

4 A. Yes.

5 Q. Mr. Avery, himself, was under arrest, you knew,
6 by November 11?

7 A. Correct.

8 Q. You had been following the news conferences that
9 Mr. Kratz and Sheriff Pagel, principally, had
10 been holding?

11 A. Yes.

12 Q. Had you attended those?

13 A. A few of them.

14 Q. Not all of them, but some of them you had
15 attended, personally?

16 A. Yes.

17 Q. You had introduced yourself to Sheriff Pagel at
18 some point?

19 A. I believe -- Yes.

20 Q. Sure. Introduced yourself to Mr. Kratz at some
21 point before November 11?

22 A. Probably.

23 Q. Had you met other members of the Calumet County
24 Sheriff's Department, let's say during or at
25 about the time of those news conferences?

1 A. You would see them and just say hello. I don't
2 know if I was on a first name basis with any of
3 them, or given my name.

4 Q. That included Detective Mark Wiegert?

5 A. Possibly.

6 Q. Okay. When did you become on a first name basis
7 with any of the members of the Calumet County
8 Sheriff's Department?

9 A. I don't think I was ever on a first name basis
10 with any of them. Sheriff Pagel was the one that
11 I had any sort of conversation with.

12 Q. All right. And November 11, you're having this
13 discussion. I missed it, I don't know how many
14 co-workers it was, or if that matters, but you
15 are talking with them about Avery?

16 A. Yes.

17 Q. Or the case. Tell me a little bit more about
18 that conversation, who says what.

19 ATTORNEY FALLON: I'm going to ask for a
20 little foundation as to when and where this
21 foundation -- or this conversation took place.

22 Q. (By Attorney Strang)~ I think you described only
23 one, it was on November 11, and you were at work;
24 am I correct?

25 A. We weren't at work.

1 Q. You weren't at work. All right. Would it be
2 polite to tell me where you were, even if it's
3 not polite to ask?

4 A. We were having a couple of cocktails in a bar.

5 Q. All right. Reporters will do that. So you are
6 having a couple of cocktails at the bar; how many
7 co-workers?

8 A. I think there were three of us that worked at the
9 station together, but I don't remember, there
10 might have been a couple other people there. We
11 don't all just hang out together, we have other
12 friends.

13 Q. You have friends. Okay. All right. That's
14 good.

15 ATTORNEY STRANG: You don't need the name
16 of the bar for foundation; do you, Mr. Fallon?

17 ATTORNEY FALLON: Nope.

18 ATTORNEY STRANG: Thank you.

19 Q. (By Attorney Strang)~ This was only one
20 conversation, on November 11, if I understood you
21 correctly?

22 A. Yes.

23 Q. All right. So, you know, I wasn't there. I
24 don't drink cocktails. And it was -- I would
25 have no way of knowing who said what. But how

1 did the subject of Steven Avery come up?

2 A. I think it had been a story that we had been
3 covering for a couple weeks, and the news
4 conference from that day kind of sparked our
5 conversation. I think we were -- it was the
6 first time we were all together and just kind of
7 rehashing the day.

8 Q. And who had the idea that, hey, let's go try to
9 talk to Mr. Avery?

10 A. That I don't remember.

11 Q. Had -- Was there any discussion about, you know,
12 whether the Calumet County Sheriff's Department
13 would, or would not, allow that to occur in the
14 jail?

15 A. I think someone did mention, or I mentioned, and
16 I said, I wonder if we would be allowed in to
17 talk to him.

18 Q. Okay. And what was the response to that?

19 A. I don't know, we'll make a phone call in the
20 morning.

21 Q. All right. And that's exactly what you did?

22 A. Yes.

23 Q. About when in the morning?

24 A. I'm scheduled to be into work at 9:30, so
25 sometime around there.

1 Q. All right. And you called, what, the general
2 number for the Calumet County Jail, or what --

3 A. Yes.

4 Q. -- or what did you do? And was it the person who
5 answered the phone to whom you addressed the
6 inquiry, hey, can we come down and interview
7 Mr. Avery?

8 A. Yes.

9 Q. All right. Do you know who that person was?

10 A. I don't.

11 Q. Do you remember if it was male or female?

12 A. That I don't even remember.

13 Q. And if I understood you, you said, on direct
14 examination, that the person said something like,
15 I don't know, we'll ask?

16 A. Yes.

17 Q. You were put on hold, or the phone was put down
18 in any event?

19 A. Yes.

20 Q. All right. And how much time passed before a
21 voice came back on the jail end of the telephone?

22 A. A minute or two, not very long.

23 Q. At most, two minutes?

24 A. Probably, I really am not 100 percent sure.

25 Q. Okay. But a short time?

1 A. Yes, I wasn't on hold for a half hour or anything
2 like that.

3 Q. All right. And was it the same person, if you
4 recognized the voice, who came back?

5 A. That I don't remember. I'm assuming it was the
6 same person, or at the time I assumed. I don't
7 know for sure.

8 Q. Okay. Whether it was someone new, or the same
9 person?

10 A. Right.

11 Q. And that person said, as best as you recall,
12 what?

13 A. He agreed to do the interview.

14 Q. And what was left for you, then, to discuss with
15 the person on the phone from the jail?

16 A. I said, what do I need to do. And they said,
17 just come down here and we'll take you into a
18 room for the interview.

19 Q. Did they ask when you were coming?

20 A. I think I asked what time, and they said
21 whenever. I said, okay, we'll leave in a few
22 minutes.

23 Q. All right. So the response from them was, you
24 can come whenever you like?

25 A. Yes.

1 Q. Did you ask, would there be a time limit on how
2 long we could see Mr. Avery?

3 A. No.

4 Q. And they didn't volunteer that there would be a
5 time limit?

6 A. No.

7 Q. In fact, there turned out not to be anyone
8 knocking on the door, saying times up, or trying
9 to regulate the amount of time you spent?

10 A. No.

11 Q. So, you said, we'll hop in the car, we'll come
12 down. I can show you the sign-in registry if you
13 want, but if I suggest to you, that at least what
14 you wrote signing in was 11:15 in the morning, on
15 Saturday, November 12, does that sound about
16 right?

17 A. I guess, yeah, it was in the morning. It was in
18 the morning. I believe you, on the sign in
19 sheet.

20 Q. Okay. You are welcome to see it if you want.

21 A. That's probably about right.

22 Q. About 11:15 in the morning. All right. And did
23 you have any conversations with anyone from law
24 enforcement? You know, by that, I would include
25 the District Attorney's Office, the Calumet

1 County Sheriff's Department, certainly the
2 Calumet County Jail, or any other law enforcement
3 agency, before you arrived at the jail, just
4 before 11:15?

5 A. Nothing, other than the phone call to the jail.

6 Q. All right. You came down with one cameraman?

7 A. Yes.

8 Q. Now, your purpose in interviewing Steven Avery,
9 was to ask him about the events that you had seen
10 discussed on the news conferences?

11 A. Yes.

12 Q. Ask him, in general, about the Halbach
13 disappearance and the charges arising from her
14 disappearance?

15 A. Yes.

16 Q. You had no other reason to want to interview
17 Steven Avery?

18 A. No.

19 Q. You weren't interested in his opinions on other
20 topics?

21 A. No.

22 Q. Didn't regard him as newsworthy, on November 12,
23 2005, other than for his connection to the
24 charges that, then, had been filed against him,
25 and the events surrounding Teresa Halbach's

1 disappearance?

2 A. Correct.

3 Q. Did you explain to the person who answered the
4 phone, in the jail, when you called shortly after
5 9:30, that you wanted to talk to Mr. Avery about
6 the Halbach case, or about the charges against
7 him?

8 A. Yes.

9 Q. How many times have you been in the Calumet
10 County Jail, total?

11 A. Once, in the jail.

12 Q. All right. And how many times in the Calumet
13 County Sheriff's Department, total?

14 A. Once in the Sheriff's Department.

15 Q. Are we talking about the same time, November 12?

16 A. No.

17 Q. No. Separate times?

18 A. Yes.

19 Q. All right. And the Sheriff's Department was
20 when?

21 A. That I don't recall.

22 Q. Before or after the November 12 televised
23 interview of Mr. Avery?

24 A. It was before.

25 Q. And that was to see whom?

1 A. Sheriff Pagel.

2 Q. To interview him, or for some other purpose?

3 A. For a different -- To interview him for a

4 different story in the county.

5 Q. Unrelated to --

6 A. Unrelated to the Avery --

7 Q. -- to Teresa Halbach?

8 A. Yes. Unrelated to that, completely unrelated.

9 Q. Okay. And in fact, do you recall, was that

10 interview with Sheriff Pagel before you were

11 aware that Ms Halbach had been reported missing?

12 A. Well before, I believe, yes.

13 Q. Okay. So -- I mean, it couldn't have been before

14 August 2005?

15 A. Correct.

16 Q. But late summer, fall, before Ms Halbach

17 disappears?

18 A. Yes.

19 Q. All right. I'm actually going there because I'm

20 going to try to ask you about the jail layout,

21 and if you have only been there once, it would be

22 fair if you don't recall. But let me ask, okay.

23 There's a heavy metal security door to the left

24 of the bullet proof window where you first see a

25 jail receptionist; do you recall that?

1 A. I don't remember the door to the left. I believe
2 we went in a door to the right.

3 Q. To the right. Okay. Did you have to be buzzed
4 in?

5 A. Yes.

6 Q. Security door. All right. And then do you
7 remember where you signed the book, where you
8 wrote your name, and the time in, and the date?

9 A. Outside of that window, before we were escorted
10 into the jail area.

11 Q. Before you're within the secure area?

12 A. We walked in the door and that window is right
13 there, that's where we signed in.

14 Q. Oh, okay. And then you think you went into a
15 door to the right and now you are in the secure
16 area of the jail.

17 A. I believe so, yes.

18 Q. All right. The small room that you described
19 doing -- you know, in which you did the
20 interview, is that the -- sort of the first room,
21 on the left, in the hallway?

22 A. Yes. I don't know if it's the first room, but it
23 was at the beginning of that hallway.

24 Q. When you went in to get to the interview room and
25 went through that first secure door, did you go

1 through an area that had some desks, people
2 sitting out and some offices against the back?

3 A. No, I don't remember that at all.

4 Q. You just went straight into a hallway?

5 A. Into a hallway.

6 Q. All right. And the room, you think, was the
7 first one on the left?

8 A. It was on the left. I don't know if it was the
9 first room.

10 Q. Okay. Fair enough. You were aware of a deputy
11 posted outside each door, while you were in the
12 room?

13 A. Yes.

14 Q. You could see them through the windows on the
15 door?

16 A. I could see the one, because the one door was
17 behind me. So, I don't have eyes in the back of
18 my head, but I could see the one, you know.

19 Q. How did you know there was somebody standing
20 behind you, behind that door?

21 A. The deputy that walked us in said that there
22 would be a deputy at each door.

23 Q. All right. And the deputies were uniformed?

24 A. Yes.

25 Q. They were standing immediately at the door?

1 A. The one that I could see wasn't right at the
2 door, a little bit away from the door.

3 Q. Looking in, or watching?

4 A. That I don't know. My eyes weren't focused on
5 the deputy while I was in there.

6 Q. Right. But you were able to see him yourself?

7 A. Yes.

8 Q. So it follows that he could see you?

9 A. Yes.

10 Q. All right. You conducted the interview --

11 A. Yes.

12 Q. -- with Mr. Avery, 20 or 30 minutes, correct?

13 A. Yes.

14 Q. Setting aside small talk, and I'm Emily Matesic,
15 nice to meet you, that kind of stuff, the
16 entirety of the interview was committed to Teresa
17 Halbach, and the charges against Mr. Avery?

18 A. Yes.

19 Q. You did not go into other topic areas with
20 Mr. Avery?

21 A. No.

22 Q. Did you -- Did you buzz to let -- to ask that the
23 deputy then come in at the end of interview, or
24 did the deputy simply let himself, or herself, in
25 as the interview appeared to be wrapping up?

1 A. Before the interview started, the deputy said
2 when you are done, or you need us at any time,
3 just raise your hand. And when we were done, I
4 raised my hand.

5 Q. Okay. And, obviously, again, then one of them
6 was -- at least one was positioned such where he
7 could see you raise your hand?

8 A. Yes.

9 Q. And they came, correct?

10 A. Yes.

11 Q. They took Mr. Avery?

12 A. Yes.

13 Q. And then you and the cameraman were escorted out?

14 A. Yes.

15 Q. Did you talk to anyone from the Calumet County
16 Sheriff's Department before leaving that property
17 to return to Green Bay?

18 A. Nothing, other than thank you and goodbye.

19 Q. Did you make arrangements at any point, at any
20 time, to provide a videotape, or a DVD, or
21 anything of the interview, to anyone from law
22 enforcement?

23 A. No.

24 Q. Were you asked to bring the videotape today?

25 A. Yes.

1 Q. By whom?

2 A. By Mr. Fallon.

3 Q. Okay. And you were able to accommodate
4 Mr. Fallon's request?

5 A. I referred him to my news director. I referred
6 him to my news director. I'm not the one that
7 makes those decisions.

8 Q. Sure. But in any event, you were given the tape
9 to bring today, by someone at WBAY?

10 A. A tape only of the stories that aired from my
11 interview, not the complete interview itself.

12 Q. So you're aware of that little dispute that's
13 ongoing about the raw footage versus the aired
14 footage?

15 A. Yes.

16 Q. Okay. What's on the raw footage that is not on
17 the aired footage?

18 A. The entire interview is on the raw footage, and
19 the tape I brought today has the stories that I
20 did, containing little bits of the interview.

21 Q. But, again, just to be very clear about this, if
22 we had -- if we could see the raw footage, all
23 the film that your cameraman shot in that room,
24 other than true small talk, the entire discussion
25 would have been about Teresa Halbach, or the

1 allegations in the original Criminal Complaint,
2 against Mr. Avery?

3 A. Yes.

4 Q. You referred, as well, to a second interview with
5 Mr. Avery, that occurred over the telephone?

6 A. Yes.

7 Q. Do you remember about when that was?

8 A. I believe it was in December.

9 Q. How did that come to be?

10 A. The interview, I sent a fax to the Calumet County
11 Jail requesting an interview.

12 Q. To whom did you address the fax?

13 A. To Steven Avery.

14 ATTORNEY FALLON: Object to this line of
15 inquiry as being irrelevant, based on the pleadings
16 and focus. If we're concerned solely with the on
17 camera interview, as opposed to initiated telephone
18 conversations, that was my understanding as to our
19 limited focus today, so it seems to me that this
20 would be irrelevant.

21 ATTORNEY STRANG: Well, it's a fair point,
22 but as I understand the scope of our motion and
23 intend the scope of the motion, your Honor, I am not
24 seeking to suppress, or exclude, any statement to
25 media representatives that Mr. Avery initiated.

1 Now, I was not aware of this telephonic
2 interview with Ms Matesic, and to the extent that
3 she initiated it, it is within the intended scope
4 of this motion. I certainly could re-plead the
5 motion, but the division line here is if he
6 initiated it, I don't see it as being subject to
7 the Sixth Amendment claim. If someone else
8 did--

9 THE COURT: I'm not sure I have got a copy
10 of the motion handy. It was filed on June 16th.
11 It's a motion -- Do one of you have a copy of the
12 motion handy?

13 ATTORNEY STRANG: I do. I don't want to
14 suggest that I addressed this, because I didn't. I
15 didn't no about this particular one.

16 ATTORNEY KRATZ: Here you go.

17 THE COURT: So, Mr. Fallon, your objection
18 relates to the description of in person interviews?

19 ATTORNEY FALLON: It is my understanding
20 that that was the focus, otherwise I would have gone
21 into more questioning on my direct examination of
22 the witness relative to the telephone interviews
23 occurring a couple of weeks after the interview at
24 issue here.

25 As I understand it from the pleading, it

1 says on page two, Mr. Avery does not seek
2 suppression of statements he made in telephone
3 calls that he placed from the jail to members of
4 the news media. So this motion addresses only in
5 person interviews with the media, in the jail.
6 So that's why, that's the basis for my objection.

7 THE COURT: You seem to be talking about a
8 third category here, that's not an in person
9 interview at the jail, but also not a telephone call
10 that was originated by the defendant.

11 ATTORNEY STRANG: Right. And I have no
12 objection to breaking my cross and allowing a
13 resumption of direct. I mean, that's a fair point.
14 I'm learning here for the first time that she
15 initiated it.

16 THE COURT: You can have this back. Why
17 don't you finish your cross and I'll let Mr. Fallon,
18 on redirect, start from scratch, if he wishes here.

19 ATTORNEY FALLON: That's fine. I suspect,
20 on further cross-examination by counsel, the issue
21 may disappear, or become far more ripe for argument.
22 Go ahead.

23 THE COURT: You may proceed, Mr. Strang.

24 Q. (By Attorney Strang)~ You faxed a letter, or
25 something, to the jail, addressed to Steven

1 Avery?

2 A. Yes.

3 Q. Did you follow that with a phone call to the
4 jail?

5 A. I believe I placed a phone call first, and then
6 was told I couldn't make my request over the
7 phone, so I sent the fax.

8 Q. You had made the request over the phone on
9 November 12?

10 A. Yes.

11 Q. The answer, though, was different this time?

12 A. Yes.

13 Q. Were you given an explanation for why the answer
14 had changed?

15 A. No.

16 Q. Were you ever told that Mr. Avery had written out
17 a statement saying that he did not want to be
18 interviewed, in jail, by members of the media,
19 including TV reporters?

20 A. No.

21 Q. Nobody at the jail ever told you that?

22 A. No.

23 Q. What did they tell you after saying, no, you
24 can't make this request over the phone?

25 A. That it needed to be in writing.

1 Q. All right. And did they tell you to whom to
2 address the writing?

3 A. To him, I believe. I'm not sure.

4 Q. Okay. That's fine, if you don't remember. Do
5 you have that letter or fax?

6 A. I don't, no.

7 Q. What happened to it?

8 A. I threw it out.

9 Q. Did anybody, you know, explain to you how a fax
10 would get to Mr. Avery, in the jail?

11 A. No.

12 Q. But they gave you a fax number?

13 A. I believe I asked for the fax number.

14 Q. And you were given the fax number?

15 A. Yes.

16 Q. All right. And off you sent this fax?

17 A. Yes.

18 Q. Was it a letter to Mr. Avery, is that your best
19 recollection?

20 A. Yes, just a short letter.

21 Q. What did you next hear from either Mr. Avery or
22 someone in the Calumet County Jail?

23 A. Mr. Avery called me.

24 Q. When did he call you?

25 A. Shortly after the fax was sent.

1 Q. All right. And was that a collect call?

2 A. Yes.

3 Q. You had provided your telephone number in the

4 fax?

5 A. Yes.

6 Q. It had invited him to call collect?

7 A. Yes.

8 Q. Did you tell him, in the letter, what it was you

9 wanted to talk about?

10 A. I don't recall.

11 Q. Okay. That's fine. You do recall, that in your

12 mind, again, the topic of interest as to

13 Mr. Avery was the charges against him, relating

14 to the disappearance and death of Teresa Halbach?

15 A. Yes.

16 Q. You weren't interested in his opinion of what was

17 going to happen to the Nasdaq in 2006, or

18 anything like that?

19 A. No.

20 Q. All right. That interview lasted about how long?

21 A. Probably about 20 minutes.

22 Q. Did you tape it?

23 A. Yes.

24 Q. Did you know, at that time, that the jail would

25 be taping you as receiving an outgoing call from

1 the jail?

2 A. No.

3 Q. When did you first learn that you were on tape,
4 on the jail end, when you were talking to an
5 inmate of the jail?

6 A. I think during the course of the interview, there
7 was a recording, or something, that comes up on
8 the phone, that -- I think it says -- it says
9 something, I'm -- I don't remember what, but at
10 that point, I guess, is when I kind of realized
11 that we were probably being taped.

12 Q. Right. It's a tape that says something like this
13 call was placed by an inmate from the Calumet
14 County Jail, something to that effect?

15 A. I will have to take your word for it, I don't
16 really remember.

17 Q. But some voice --

18 A. Yes.

19 Q. -- on what you took to be a taped message?

20 A. Yes.

21 Q. Did you hear it more than once?

22 A. Yes.

23 Q. So on some cycle, this voice comes on the line?

24 A. Yes.

25 Q. All right. And you assumed at that point, that

1 you were being taped?

2 A. Yes.

3 Q. You had no objection to that?

4 A. No.

5 Q. Because you were also taping on your end?

6 A. Correct.

7 Q. And the point was to get all of this on tape?

8 A. Right.

9 Q. Was that interview then broadcast, or aired?

10 A. Parts of the interview and stories that I had
11 written.

12 Q. So that one, again, you sort of chopped, or
13 edited, and assembled into a story, rather than
14 running the raw interview tape?

15 A. Yes.

16 Q. Look, I don't want to get off track here, but I'm
17 curious, because I just don't know. Does any of
18 the two interviews that we're talking about,
19 would segments of those have run on the WBAY
20 website, if you know?

21 A. No.

22 ATTORNEY FALLON: Objection, relevance.
23 And I will renew my previous objection. It's clear
24 that Mr. Avery initiated the phone contact, so this
25 matter is not the subject of the motion, unless

1 counsel is amending his motion.

2 THE COURT: Well, in a sense he initiated
3 it, in that he made the call, but it also was in
4 response to a fax that was sent by the witness. So
5 I'm going to give the defense some latitude here. I
6 will overrule that part of the objection.

7 ATTORNEY FALLON: Just for the record, the
8 basis of my motion on that is a case called **State**
9 **vs. Pischke**, P-i-s-c-h-k-e, regarding initiation.
10 And I think the argument can be made, although the
11 case is not directly on point, that Mr. Avery was
12 the one who initiated the contact here. So, just
13 for the record.

14 THE COURT: All right. I'm not -- Let me
15 make sure if my ruling is understood here. I'm not
16 saying that the manner in which the defendant
17 returned the call doesn't have some legal
18 significance as to the substantive portion of the
19 motion. I'm just saying, for evidentiary purposes,
20 I'm going to allow the questioning.

21 ATTORNEY FALLON: Very well. Thank you.

22 Q. (By Attorney Strang)~ But there was another
23 objection to that and that was to what the
24 website runs. And I don't even know if you know
25 the answer to my question.

1 A. I believe the only thing that would have run on
2 the website was my story that aired on our
3 station.

4 Q. But that may have been on the website both times?

5 A. The entire interviews?

6 Q. No, the stories.

7 A. The stories, yes.

8 Q. Okay. Were there any other attempts, by you, to
9 interview Mr. Avery since he's been in custody?

10 A. One other time, I believe, yes.

11 Q. When was that?

12 A. I think it was in March.

13 Q. You initiated that with a fax?

14 A. With a phone call to the jail, at first. I was
15 told it needed to be in writing, and asked if I
16 could send a fax, and it was, no, it had to come
17 through the mail.

18 Q. Oh.

19 A. The request had to be --

20 Q. So it changed again?

21 A. Yes.

22 Q. So this time you couldn't fax it. Did you mail a
23 request?

24 A. No.

25 Q. Why?

1 A. It would take a day or so for the letter to get
2 there, and by that time it wouldn't be very
3 timely.

4 Q. I see. And you didn't hear, then, from
5 Mr. Avery, at any time after this December
6 telephonic interview that you described?

7 A. No.

8 Q. You are aware of no other attempt by him to call
9 you collect?

10 A. No.

11 Q. Aware of no other attempt by him to call anyone
12 at WBAY-TV, collect?

13 A. No.

14 ATTORNEY STRANG: That's all I have. Thank
15 you.

16 THE COURT: Mr. Fallon.

17 ATTORNEY FALLON: Yes, just to complete the
18 record.

19 (Exhibits 4, 5, and 6 marked for identification.)

20 ATTORNEY FALLON: May I approach?

21 THE COURT: Yes.

22 **DIRECT EXAMINATION**

23 BY ATTORNEY FALLON:

24 Q. Ms Matesic, I show you what's been marked for
25 identification purposes as Exhibits 4, 5, and 6,

1 can you take a moment to look at those and tell
2 us what they are.

3 A. These are the scripts from the stories I did with
4 the telephone interview of Mr. Avery.

5 Q. All right. And these are the scripts relative to
6 the telephone interviews that were the subject of
7 Counsel's cross-examination a few moments ago?

8 A. Yes.

9 Q. And these are the outtakes, or broadcasts,
10 comments, and not the entire substance of the
11 interview; is that correct?

12 A. Correct.

13 ATTORNEY STRANG: I'm sorry, I'm not sure I
14 understand the question. You said these are the
15 outtakes, not the substance of the --

16 ATTORNEY FALLON: Not the entire interview.
17 These are what was broadcast.

18 ATTORNEY STRANG: So they are not outtakes?

19 THE WITNESS: They were taken out of the
20 interview, bites that were taken out of the
21 interview.

22 ATTORNEY FALLON: Okay. Choice of words.

23 Q. (By Attorney Fallon)~ And as far as you know,
24 these are true and accurate reflections of what
25 was actually broadcast, relative to these

1 telephone interviews.

2 A. Yes.

3 Q. Okay. Thank you.

4 ATTORNEY FALLON: We would move for
5 introduction of Exhibits 4, 5, and 6. For the
6 record, it's marked by the duration, apparently; 133
7 is Exhibit No. 4, duration 137 is Exhibit 5; and
8 duration 157 is Exhibit 6. And I don't believe
9 there will be an objection from counsel.

10 ATTORNEY STRANG: No. No, these can be
11 admitted, your Honor.

12 THE COURT: All right. Those exhibits are
13 admitted.

14 ATTORNEY FALLON: That's all I have for
15 this witness, I'm not going to do any redirect.

16 THE COURT: All right. The witness is
17 excused.

18 ATTORNEY FALLON: State would call it's
19 next witness, Jennifer Kolbusz.

20 THE COURT: Is somebody bringing the next
21 witness in?

22 ATTORNEY FALLON: I believe so.

23 THE COURT: Okay.

24 THE CLERK: Please raise your right hand.

25 **JENNIFER KOLBUSZ**, called as a witness

1 herein, having been first duly sworn, was
2 examined and testified as follows:

3 THE CLERK: Please be seated. Please state
4 your name, spell your last name for the record.

5 THE WITNESS: Jennifer Kolbusz,
6 K-o-l-b-u-s-z.

7 **DIRECT EXAMINATION**

8 BY ATTORNEY FALLON:

9 Q. What do you do for a living?

10 A. I'm a reporter at Channel 5.

11 Q. And where is Channel 5 located?

12 A. In Green Bay.

13 Q. How long have you been employed with Channel 5?

14 A. It will be two years in September.

15 Q. Do you have a current assignment, or detail, for
16 the type of reporting you do at this time?

17 A. I'm a general assignment reporter.

18 Q. And have you been a general assignment reporter
19 for the entire two years at Channel 5?

20 A. Yes, I have.

21 Q. Directing your attention to November and December
22 of the year 2005, starting first with November;
23 did you have an opportunity to interview an
24 individual by the name of Steven Avery?

25 A. Yes.

1 Q. And with respect to Mr. Avery, tell us where that
2 interview took place?

3 A. In the Calumet County Jail.

4 Q. Do you recall the date of your first interview
5 with Mr. Avery?

6 A. Yes, it was November 18th.

7 Q. Describe for us, if you will, how that interview
8 came to be?

9 A. On the morning of November 18th, I called the
10 Calumet County Jail from my apartment, and I
11 asked what the visiting hours were at the jail.

12 Q. And what information did you receive in response
13 to that request?

14 A. The woman who answered the phone told me there
15 were specific days and times. I don't recall
16 what she said; however, it differed from what I
17 had heard from other reporters who I work with.
18 So, at that point, I questioned her further and
19 she asked if I would like to speak to a
20 supervisor.

21 Q. All right. And did you in fact speak to a
22 supervisor?

23 A. Yes, I did. She transferred me to John Byrnes.

24 Q. And before we get into that, my question would
25 be, did you identify yourself as a news reporter

1 during this first conversation with the woman?

2 A. Yes, I did.

3 Q. All right. And did you indicate the reason for
4 your inquiry?

5 A. Yes.

6 Q. All right. And the best you can recall, what did
7 you tell the person who answered the phone, in
8 terms of the reason for your inquiring as to the
9 visiting hours?

10 A. I said that I would like to interview Steven
11 Avery in the jail.

12 Q. All right. Subsequent to this woman answering
13 the phone, you indicated you spoke with one of
14 the supervisors?

15 A. I'm sorry?

16 Q. I'm sorry. You did speak to a supervisor?

17 A. After, right. After I talked to that woman.

18 Q. All right. And to whom did you speak?

19 A. John Byrnes.

20 Q. And what did you ask of Mr. Byrnes?

21 A. Well, again, I told him, I'm a reporter and that
22 I wanted to see if I could do an interview with
23 Steven Avery. And I asked him how I could go
24 about doing that.

25 Q. All right. And what instructions were you given?

1 A. He said I could mail a letter to Steven Avery,
2 that was one option.

3 Q. All right. Any other options?

4 A. Yes, I in fact said, well, I was trying to see if
5 I could interview him that day. And he said I
6 could write a letter and then hand deliver it to
7 the jail, just ask for John Byrnes, when I got
8 there, and he would hand deliver the letter to
9 Steven Avery.

10 Q. All right. And did you in fact hand deliver such
11 a letter?

12 A. Yes, I did.

13 Q. At this particular point, do you know if that
14 letter still exists?

15 A. I don't.

16 Q. Do you -- Did that letter that you wrote ever
17 come back to you?

18 A. No.

19 Q. All right. Tell us what happened, specifically,
20 when you arrived at the Sheriff's Department that
21 day?

22 A. We went to the jail, the photographer I was
23 working with, and I asked to speak to John
24 Byrnes. John Byrnes, then, came out to the area
25 where we were, and I introduced myself, and I

1 gave him the letter that I had handwritten in the
2 car ride over to the jail.

3 Q. All right. And as best you can recall now, can
4 you tell us the contents of that letter?

5 A. Yes, I identified myself as Jennifer Kolbusz, who
6 works for Channel 5, and said that I would like
7 to do an interview with him. And I said that I
8 had no intention of convicting him on television,
9 or had no agenda, but rather just wanted to hear
10 his side of the story.

11 Q. All right. And when you came to the Sheriff's
12 Department, to whom did you give that letter?

13 A. John Byrnes.

14 Q. And when you handed him that letter, what
15 occurred?

16 A. He looked it over, but at the same time, had also
17 turned his back and started walking back into the
18 jail. And my understanding is that he delivered
19 it to Steven Avery.

20 Q. All right. And what led you to believe that it
21 was actually delivered to Mr. Avery?

22 A. He said he was going to deliver it to him, and
23 then, also, a few minutes later, another member
24 of the jail staff opened the door and said that
25 Steven Avery had agreed to let us in.

1 Q. All right. And what occurred then?

2 A. That jail staff member took our identification,
3 had us sign in, and then we were led into a room,
4 and then Steven Avery was led in a few minutes
5 later.

6 Q. All right. Could you describe, first and
7 foremost, the room in which you were sent to?

8 A. It was located just right there from the door
9 that I initially entered. It wasn't far into the
10 jail at all.

11 And it was just a plain room with a
12 small table. A small plain room. And there were
13 some windows on the doors, so I could see the
14 guards through both sides, I believe, as we were
15 talking to Steven.

16 Q. All right. And how many doors were in the room?

17 A. Two.

18 Q. And these windows, were they the only windows in
19 the room?

20 A. I believe there were other windows, I'm not
21 positive.

22 Q. All right. Who accompanied you into the room?

23 A. The photographer I work with.

24 Q. Did any member of the Sheriff's Department
25 actually walk into the room with you?

1 A. I don't remember.

2 Q. Was there any conversation with either
3 Mr. Byrnes, or the person who opened the security
4 door for you, regarding Mr. Avery?

5 A. They said he would be in shackles, and that was
6 it.

7 Q. All right. Prior to commencing the interview
8 with Mr. Avery, did you have any discussions,
9 whatsoever, with Mr. Byrnes, as to the nature and
10 content of your interview with Mr. Avery?

11 A. No.

12 Q. Did Mr. Byrnes, or any other member of the
13 Sheriff's Department, put any restrictions on the
14 topics that were to be covered in the interview?

15 A. No.

16 Q. Were you suggested -- excuse me -- let's rephrase
17 that. Were any questions suggested to you that
18 should be asked of Mr. Avery?

19 A. No.

20 Q. In terms of the interview, during -- describe for
21 us, if you will, Mr. Avery's appearance when he
22 came into the room?

23 A. When he came into the room, he had shackles
24 around his ankles and he was handcuffed.

25 Q. All right.

1 A. And he had, I believe, recently had a haircut.
2 And he just simply came in and sat down.

3 Q. All right. Describe his demeanor for us, if you
4 will.

5 A. I would say casual. He was pleasant. I would
6 just say, fairly neutral.

7 Q. All right. Well, would you say he was excited,
8 relaxed, cordial, angry; how would you describe
9 him?

10 A. I would describe him as relaxed.

11 Q. All right. When he came into the room, did any
12 of the Sheriff's Department personnel remain in
13 the room with you, and your cameraman, and
14 Mr. Avery?

15 A. No.

16 Q. All right. As best you can recall, how did --
17 what were the first words spoken upon his arrival
18 in the room, by you?

19 A. What did I say first?

20 Q. What did you say first?

21 A. I said thank you for speaking with us.

22 Q. And what response, if any, did you receive from
23 him?

24 A. You're welcome.

25 Q. All right. At any point at the beginning here,

1 did he suggest to you that he did not wish to be
2 interviewed?

3 A. No.

4 Q. At any point, did he tell you, that he had told
5 members of the Sheriff's Department, that he did
6 not want to have any media interviews?

7 A. No.

8 Q. At this particular point, did you then tell him
9 what you wanted to do, in terms of the interview?

10 A. Yes.

11 Q. All right. And as best you can recall, tell us
12 what you told him, as to what your plan was for
13 the interview?

14 A. I said I just wanted to hear his side of the
15 story.

16 Q. All right. And how did he respond to that
17 comment?

18 A. He just said, okay. And then, as I proceeded to
19 ask questions, he answered them.

20 Q. All right. At what point, if you recall, was the
21 camera turned on, as it were, for purposes of
22 recording this interview?

23 A. Probably within a minute of Steven Avery taking a
24 seat.

25 Q. All right. Is the camera which was utilized by

1 your cameraman -- is there a light on that camera
2 that would suggest to someone observing that the
3 camera was on, and/or recording?

4 A. Yes.

5 Q. All right. During the course of the interview,
6 did you indicate to Mr. Avery, if you can recall,
7 whether the content of the interview might
8 actually be broadcast to the public at large?

9 A. I never said that specifically, but my
10 understanding was that it was implied.

11 Q. All right. And just so that we're clear, what
12 was it about the circumstances that led you to
13 conclude that he was aware that it could very
14 well be broadcast?

15 A. Well, I identified myself as a reporter for
16 Channel 5, and I entered the room with a
17 photographer.

18 Q. All right. During the entire interview with
19 Mr. Avery, at any point, did any member of the
20 Calumet County Sheriff's Department come into the
21 room?

22 A. No.

23 Q. At any point during the course of the interview,
24 did Mr. Avery indicate to you that he did not
25 wish to be interviewed any longer, in other

1 words, he didn't want to answer any more
2 questions?

3 A. No.

4 Q. At any point during the course of the interview,
5 did he indicate to you that he didn't want the
6 interview publicly aired or broadcast, during the
7 course of the interview?

8 A. No.

9 Q. Tell us how -- your best estimate of how long
10 this interview lasted?

11 A. I would say probably about a half hour.

12 Q. How did the interview terminate?

13 A. I would say that it ended on cordial terms.

14 Q. All right. Did you make any requests of
15 Mr. Avery, at the conclusion of the interview,
16 that you recall at this time?

17 A. I said that chances are I would try to contact
18 him again and do another interview.

19 Q. Okay. How did he respond to that?

20 A. He said, okay.

21 Q. All right. Did he make any requests of you, or
22 your cameraman, relative to the interview
23 process, at the conclusion of the interview?

24 A. No.

25 Q. How did you let members of the Sheriff's

1 Department know that the interview was concluded?

2 A. We stood up, and I'm assuming that they just
3 knew, at that point, we were done, because we
4 were collecting our equipment.

5 Q. All right. And as you were doing that, did the
6 deputies enter the room, or did you open the door
7 and ask them to come in?

8 A. They opened the door, and then escorted Steven
9 Avery out one door, and then we were led out of
10 the other door.

11 Q. Who left the room first, Mr. Avery, or you and
12 your cameraman?

13 A. I believe Steven Avery did, but I'm not sure.

14 Q. All right. Did you have any additional
15 discussion, that you recall at this time, with
16 the deputy sheriff who escorted you from the
17 room, back to the general public waiting area?

18 A. No.

19 Q. When you -- During the course of that, I think
20 you said it was a brief walk, did you have any
21 encounters with Mr. Byrnes?

22 A. No.

23 Q. Upon your leaving the secure area of the jail and
24 going into the general reception area, did you
25 have any additional discussion with Mr. Byrnes at

1 that time?

2 A. No.

3 Q. Did you have any discussion with any member of
4 the Calumet County Sheriff's Department regarding
5 the nature and content of the interview you had
6 just conducted with Mr. Avery?

7 A. No.

8 Q. Were there any requests made for copies of the
9 video or audio parts of that interview?

10 A. No.

11 Q. All right. I believe you indicated there was a
12 second interview that occurred with Mr. Avery.

13 A. Yes.

14 Q. Your best recollection, approximately when did
15 that second interview take place?

16 A. On December 14th.

17 Q. Tell us how that interview came to pass?

18 A. That interview, I had not contacted the jail that
19 morning. I had said in our afternoon news
20 meeting that I would like to try talking to
21 Steven Avery again. And our staff agreed that I
22 should try. And we just -- my photographer and
23 I -- again, the same photographer -- just drove
24 to the Calumet County Jail.

25 And, once again, I hand wrote a letter.

1 And when I got into the jail, I asked for John
2 Byrnes, and he came out. And, once again, took
3 that letter back to Steven Avery.

4 Q. Okay. And, again, your best recollection --
5 Well, first of all, let me ask, did you ever see
6 that letter again?

7 A. No.

8 Q. All right. Your best recollection, could you
9 tell us what you put in the letter this time, for
10 the December 14th interview?

11 A. Yes. I said, my name is Jennifer Kolbusz. We
12 talked about a month ago. And there have been
13 some recent developments in the case and I would
14 just like an opportunity to talk to you again,
15 about those developments and, once again, give
16 you an opportunity to share your side of the
17 story.

18 Q. All right. When you encountered Mr. Byrnes this
19 time, was there any additional discussion between
20 you and him, or did you simply just present the
21 letter to him?

22 A. I just gave him the letter.

23 Q. All right. And what response, if any, did you
24 receive from him?

25 A. None. He just looked it over, once again, and

1 turned and walked into the jail.

2 Q. Approximately how long, or how much time passed,
3 before you saw him again, Mr. Byrnes?

4 A. I don't believe I did see him again. The next
5 person I saw was a different member of the staff.

6 Q. All right. And do you recall who that may have
7 been?

8 A. No.

9 Q. All right. Male or female?

10 A. Male.

11 Q. All right. And what did this person -- Well,
12 what happened when they appeared?

13 A. They opened the door and said that Steven Avery
14 agreed to let us in.

15 Q. All right. And is this the same door that you
16 entered on November 18th?

17 A. Yes.

18 Q. When the door opened, and the person escorted you
19 through the door, where did you go?

20 A. Once again, we were asked to give our ID's, and
21 we signed in, and then we were led into the same
22 room we were in a month before.

23 Q. All right. And when you arrived in that
24 particular room, was Mr. Avery already there, or
25 did he come in later?

1 A. He came in later.

2 Q. When Mr. Avery came in, how did he appear on this
3 particular date, December 14th?

4 A. I know this time his hands were not in cuffs.
5 And he seemed, actually, to be in quite a good
6 mood. He was smiling, and he extended his hand,
7 and said, good to see you, and we shook hands.

8 Q. Did he greet the photographer as well, or just
9 you?

10 A. I don't remember.

11 Q. All right. After the greeting or -- excuse
12 that -- While the greeting was occurring, were
13 members of the Sheriff's Department present, or
14 had they left the room?

15 A. They had left the room.

16 Q. So, at this particular time, there were only
17 three of you in the room?

18 A. Yes.

19 Q. All right. After the greetings were exchanged,
20 tell us what occurred next, or how you began?

21 A. I don't remember the exact content of the
22 conversation, but I know I started with, more or
23 less, small talk. And I asked him if he had been
24 following the news, reading the newspapers, and
25 he said, somewhat. I did say to him, you seem

1 like you are in a good mood, because he was
2 smiling.

3 Q. All right. And how did he respond to your
4 comment?

5 A. He just kind of shook his smile off. And I would
6 say he got fairly serious at that point.

7 Q. All right. And at this particular point, did he
8 express to you any unwillingness to participate
9 in another on camera interview?

10 A. No.

11 Q. At any point, did he alert you to the fact, or
12 tell you that he had declined other news media
13 interview requests?

14 A. No.

15 Q. As you proceeded during the course of this
16 interview, at any time, was there any indication
17 from Mr. Avery that he just did not want to
18 participate in the interview with you?

19 A. No.

20 Q. At any point during the course of the interview,
21 did he refuse to answer any of your questions?

22 A. No.

23 Q. At any point in the interview, did he appear
24 confused as to the nature or purpose of the
25 interview?

1 A. No.

2 Q. Were his responses to the questions posed by you
3 coherent?

4 A. Yes.

5 Q. Were they actually in response or -- to the
6 particular question that had been asked?

7 A. Yes.

8 Q. All right. During the course of the interview,
9 did any member of the Calumet County Sheriff's
10 Department enter the room?

11 A. No.

12 Q. Prior to the interview taking place, did any
13 member of the Calumet County Sheriff's Department
14 discuss with you the nature or content of the
15 interview?

16 A. No.

17 Q. Did anyone suggest to you certain questions that
18 could, or should, be asked?

19 A. No.

20 Q. Did anyone suggest to you certain areas which
21 should not be discussed during the course of the
22 interview?

23 A. No.

24 Q. Would it be fair to say that you had complete
25 license, as it were, to conduct the interview as

1 you saw fit, as a reporter?

2 A. Yes.

3 Q. In any way, did you feel constrained, or
4 restricted, by any member of law enforcement, for
5 purposes of conducting the interview?

6 A. No.

7 Q. Your best estimate, approximately how long did
8 this second interview, on December 14th, last?

9 A. About a half hour.

10 Q. How would you characterize Mr. Avery's demeanor
11 during that half an hour?

12 A. Relaxed.

13 Q. How did the interview end?

14 A. I wrapped it up, once again, with lighter
15 conversation. We were approaching Christmas and
16 I asked him if his family planned on visiting him
17 for Christmas.

18 Q. All right.

19 A. He also mentioned that it was almost time for
20 them to eat dinner, at the jail. And I asked him
21 what kind of food they served.

22 Q. All right. So would it be fair to say that this
23 interview occurred late afternoon?

24 A. Yes.

25 Q. All right. How did the deputy -- Strike that.

1 Let me ask you this, during the course of the
2 interview, were there members of the Sheriff's
3 Department standing outside of each of the doors?

4 A. Yes.

5 Q. All right. And how did you let them know that
6 the interview was concluded?

7 A. Once again, I stood up, and Steven did shake my
8 hand again, and I just assumed, that they
9 assumed, we were finished.

10 Q. All right. And when you stood up, he stood up,
11 you shook hands; did anyone from the Sheriff's
12 Department enter the room at that point?

13 A. I believe that at that point they opened the
14 door.

15 Q. All right. All right. And what occurred then?

16 A. They escorted Steven Avery out of the room.

17 Q. And then what occurred?

18 A. And then my photographer and I left, the other
19 door.

20 Q. All right. As you proceeded out the other door,
21 were you escorted by any member of the Calumet
22 County Sheriff's Department?

23 A. Escorted, in the sense that there was somebody
24 who opened the door for us.

25 Q. All right. And did they at least direct, or

1 point you to the way out, or did you already know
2 that from past experience?

3 A. We already knew where we were going. It was such
4 a short distance, we just showed ourselves out.

5 Q. All right. During that short distance, were you
6 approached by any member of the Sheriff's
7 Department regarding the nature or content of
8 your interview?

9 A. No.

10 Q. After the interview was completed and after you
11 left the secure area, did you have any additional
12 conversations with John Byrnes, for instance?

13 A. No.

14 Q. Before leaving the Calumet County Sheriff's
15 Department and Jail that day, did anyone from the
16 Sheriff's Department make any requests of you
17 with respect to obtaining copies, for instance,
18 of the interview that you had just conducted?

19 A. No.

20 Q. Did anyone approach you at all, for that matter,
21 after completion of the interview, before you
22 left?

23 A. No.

24 Q. Were you required to sign out, or did you just
25 walk out the door and keep going?

1 A. I believe we just walked out the door.

2 Q. All right.

3 A. I don't recall, though.

4 Q. Just a concluding question, what motivation, if
5 any, did you have to approach Mr. Avery on both
6 November 18th and December 14th? I mean, what
7 was your thinking?

8 A. It's my job as a reporter.

9 Q. All right. Were you aware of the fact of any
10 other media interviews which may have occurred,
11 since the time of his arrest until the time that
12 you interviewed him on November 18th, for
13 instance? Were you aware of other media
14 interviews?

15 A. Yes.

16 Q. All right. And with respect to the time frame
17 from November 18th to December 14th, were you
18 aware of other media attempts to interview
19 Mr. Avery?

20 A. Attempts, yes.

21 Q. All right. And being a news reporter, is there a
22 certain amount of competition out there, amongst
23 reporters, to get a story?

24 A. Yes.

25 Q. All right. So that also played a factor in your

1 attempt to obtain an interview of Mr. Avery,
2 because you would like to have gotten the story,
3 correct?

4 A. Correct.

5 Q. Okay.

6 ATTORNEY FALLON: That's all I have for the
7 witness. I will pass the witness for
8 cross-examination.

9 ATTORNEY STRANG: Were you --

10 THE COURT: Mr. Strang.

11 ATTORNEY STRANG: I'm sorry. Thank you. I
12 apologize.

13 THE COURT: Go ahead.

14 **CROSS-EXAMINATION**

15 BY ATTORNEY STRANG:

16 Q. Were you new to Wisconsin, in September, 2006,
17 when you joined WFRV?

18 A. I'm sorry, can you repeat that?

19 Q. In September, 2004, when you joined WFRV, if I
20 understood you right, were you new to Wisconsin?

21 A. Yes.

22 Q. Steven Avery was a new name to you in the fall of
23 2005, when you first began working on this story?

24 A. I had heard of who Steven Avery was, before this
25 case ever started.

1 Q. What had you heard?

2 A. I had heard that he was wrongfully convicted of a
3 rape and was released from prison a couple of
4 years ago.

5 Q. Okay. And so when this story started, you are
6 referring to the disappearance of Teresa Halbach?

7 A. Yes.

8 Q. The name Steven Avery, at that point, rang a bell
9 with you?

10 A. Yes.

11 Q. His release from prison in 2003 was not, at that
12 point, fresh news?

13 A. No.

14 Q. But the disappearance of Ms Halbach was?

15 A. Yes.

16 Q. So was Mr. Avery's possible connection to that?

17 A. Yes.

18 Q. You were assigned to this story when, the general
19 story, I mean, the Halbach/Avery story?

20 A. The first time I covered this story was a
21 Saturday, the Saturday that investigators had set
22 up a perimeter on the Avery property.

23 Q. Okay. That is, that's when you were first
24 assigned?

25 A. Yes.

1 Q. You went to the Avery property, or to the
2 perimeter?

3 A. Correct.

4 Q. Were met there by law enforcement officers?

5 A. There weren't any law enforcement officers right
6 there by the media, at the time, but eventually
7 someone did come out to the media to release a
8 statement.

9 Q. Okay. Who was that?

10 A. I don't know.

11 Q. Okay. What I'm interested in, that's Saturday
12 November 5?

13 A. Mm-hmm.

14 Q. At least, I will suggest that to you and I think
15 I'm right. Did you meet any members of the
16 Calumet County Sheriff's Department that day?

17 A. I don't -- I don't even know if the person that
18 we talked to was with the Calumet County
19 Sheriff's Department.

20 Q. Fair enough. And that was the only law
21 enforcement person with whom you had contact?

22 A. Yes.

23 Q. You then followed the news conferences?

24 A. Yes.

25 Q. Did you attend some of news conferences?

1 A. Yes.

2 Q. And do you remember how many, or just that you
3 attended some of them?

4 A. Throughout the whole course of this case, I have
5 attended two of those news conferences, that one
6 on Saturday, and then one, I don't recall the
7 date.

8 Q. But in an inside room?

9 A. Yes.

10 Q. The Saturday one was outdoors?

11 A. There was one that was held -- There was one that
12 was held in the fire department, indoors.

13 Q. That you attended?

14 A. Yes.

15 Q. That Saturday?

16 A. Yes.

17 Q. And then a second?

18 A. Yes.

19 Q. All right. During those two interviews, have you
20 made the acquaintance of Sheriff Pagel?

21 A. Not directly.

22 Q. Have you made the acquaintance of anyone else
23 from the Calumet County Sheriff's Department?

24 A. No.

25 Q. When you called on November 18, 2005, to the

1 jail, you identified yourself as a reporter, to
2 the woman who answered the phone?

3 A. Yes.

4 Q. Said that you wanted to interview Steven Avery?

5 A. Correct.

6 Q. Asked about the visiting hours, and the
7 opportunity to do that?

8 A. Yes.

9 Q. If I understood you correctly, she then gave you
10 information that was at odds with, or varied,
11 from the information you had gotten from other
12 reporters?

13 A. Yes.

14 Q. That is, she said you could not come to interview
15 Mr. Avery?

16 A. She said that the visiting hours were, as she had
17 stated.

18 Q. Certain days for certain last names?

19 A. Something like that.

20 Q. Mm-hmm. And certain hours?

21 A. Right.

22 Q. And you understood, that that day was not a
23 permissible visiting day under the set of rules
24 that she was describing to you?

25 A. Correct.

1 Q. Because of the news, the time cycle on news, you
2 wanted to accomplish the interview that day?

3 A. Yes.

4 Q. Had, at any point, you met the Calumet County
5 District Attorney, Ken Kratz, by that time?

6 A. No.

7 Q. Had seen him at news conferences, but not been
8 introduced to him?

9 A. Correct.

10 Q. All right. Did you ask for someone in specific,
11 at the jail, when the woman with whom you were
12 speaking proposed that you talk with the
13 supervisor?

14 A. No.

15 Q. Did you ask for, by description, I want to talk
16 to the top person, or the captain, or, you know,
17 what did you say?

18 A. Well, I never asked to speak to anyone, she said
19 would you like to speak to my supervisor, and I
20 said yes.

21 Q. Why was it -- Well, you couldn't know that. What
22 had you said immediately before her proposing
23 that you speak to a supervisor?

24 A. I said that I had heard differently, what the
25 hours were for visitation, and we were just

1 discussing that. And I think that in a situation
2 of being sort of flustered, she just asked if I
3 would like to speak to the supervisor.

4 Q. All right. So while you were polite to her?

5 A. Yes.

6 Q. Correct. You expressed some irritation, or
7 disappointment that you were getting the answer
8 that you were?

9 A. Yes.

10 Q. Who told you what to expect, in terms of visiting
11 hours?

12 A. A reporter at my station.

13 Q. Who?

14 A. Olga Halaburda.

15 Q. All right. Had she been in to interview Mr. Avery
16 in the jail herself?

17 A. No.

18 Q. How -- Did you ask her, how do you know the jail
19 visiting hours down in Chilton?

20 A. She said that she had called.

21 Q. Okay. And gave you the information, and now this
22 woman's information didn't square with that?

23 A. I'm sorry, can you repeat that.

24 Q. The woman's information didn't square with what
25 Olga Halaburda had given you?

1 A. Correct.

2 Q. How long before Mr. Byrnes got on the phone,
3 roughly?

4 A. A matter of seconds.

5 Q. As if he was somewhere standing nearby?

6 A. My understanding is that it was a phone that was
7 transferred.

8 Q. Okay. So, but it was just a matter of
9 transferring a phone call, just a few seconds.

10 A. Yes.

11 Q. Did he identify himself to you?

12 A. Yes.

13 Q. How?

14 A. He said that his name is John Byrnes, and that
15 he's the jail supervisor.

16 Q. You understood him to be in charge of the jail?

17 A. Correct.

18 Q. You then repeated your request?

19 A. Yes.

20 Q. For an interview?

21 A. Yes.

22 Q. With Mr. Avery?

23 A. Yes.

24 Q. You told him that you wanted to talk with
25 Mr. Avery about the pending Criminal Complaint,

1 the charges against him?

2 A. Yes.

3 Q. You said that you wanted to do it that day?

4 A. Yes.

5 Q. He initially told you that you would have to
6 write a letter?

7 A. Yes.

8 Q. But it was he, then, after hearing you wanted to
9 accomplish the interview that very day, it was he
10 who suggested that you could hand deliver a
11 letter to the jail?

12 A. I asked if I could hand deliver it.

13 Q. All right. And he agreed?

14 A. Yes.

15 Q. Did he tell you to ask for him?

16 A. Yes.

17 Q. That he would meet you?

18 A. Correct.

19 Q. Did he tell you that he would personally take the
20 letter to Mr. Avery?

21 A. Yes.

22 Q. Do you remember about what time of day you are
23 having this conversation on November 18, with
24 Mr. Byrnes?

25 A. It was in the morning, my guess is that it was

1 around 10 o'clock in the morning.

2 Q. All right. Now, I have the sign in sheet, and
3 I'm happy to show it to you if you would like to
4 see it. At least it looks like a fellow named
5 Dave Duchan --

6 A. Duchan.

7 Q. -- and Jennifer Kolbusz, signing into the jail at
8 2:05 p.m.?

9 A. Mm-hmm.

10 Q. Does that sound about right?

11 A. Yes.

12 Q. Okay. So some time passed between this
13 conversation with Mr. Byrnes and your arrival,
14 obviously?

15 A. Yes.

16 Q. More time than necessary to drive down from the
17 Green Bay area, from where you were coming?

18 A. Yes, I wasn't at work yet. I was calling on my
19 own time, from my apartment.

20 Q. All right. So did you talk to anyone at all at
21 the jail, or in law enforcement, between your
22 conversation with Mr. Byrnes and arriving at the
23 jail around 2:00 that day?

24 A. No.

25 Q. Hand wrote a letter to Mr. Avery in the car?

1 A. Yes.

2 Q. Asked for Mr. Byrnes at the receptionist window,
3 outside the jail?

4 A. Yes.

5 Q. How long did it take him to come?

6 A. About a minute.

7 Q. Again, as if he was nearby?

8 A. I guess.

9 Q. Had you told him what time to expect you?

10 A. No.

11 Q. Had he said anything to you about, you know, gee,
12 you have to avoid this mealtime, or that shift
13 change, or any sort of restrictions like that?

14 A. No.

15 Q. Did he tell you you could come any time at all?

16 A. No.

17 Q. Was there any discussion at all about when you
18 were coming that day?

19 A. I said that, I think I'm going to come today, but
20 I would have to go in to work and discuss it with
21 other members of our news staff.

22 Q. That's where you left it with Mr. Byrnes?

23 A. Yes.

24 Q. So, your understanding, at least of his
25 conversation with you, was the only he had, is

1 that about 10 in the morning, he's told by a
2 reporter on the telephone, she thinks she's
3 coming today, but there's a contingency to that?

4 A. Correct.

5 Q. He then disappears into the jail, or somewhere,
6 with the letter you handed him?

7 A. Yes.

8 Q. And Mr. Avery appears, then, in the company of
9 some other uniformed member of the Calumet County
10 Sheriff's Department?

11 A. Right, after we were led into that other room.

12 Q. Roughly how much time passes between when Byrnes
13 leaves with your letter and Avery and the other
14 deputy show up?

15 A. Five minutes.

16 Q. I understand that the letter was handwritten, you
17 prepared it in the car. You didn't make a copy
18 of the letter, obviously?

19 A. No.

20 Q. It was on WFRV letterhead?

21 A. No, it was just on a legal pad.

22 Q. Okay. But you explained that you were from
23 WFRV,--

24 A. Yes.

25 Q. -- to Mr. Avery. And if I understood you on

1 direct examination, you think that you said, in
2 the letter, something like, I have no intention
3 of convicting you?

4 A. Correct.

5 Q. I just want to hear your side of the story?

6 A. Yes.

7 Q. So, this was, you were intending to be welcoming,
8 correct?

9 A. Yes.

10 Q. Intending to encourage Mr. Avery to speak freely?

11 A. Yes.

12 Q. Presenting yourself as a neutral?

13 A. I presented myself as a reporter --

14 Q. Right.

15 A. -- without a bias.

16 Q. That is, you know, suggesting, whether in words
17 or effect, that every story has two sides and you
18 know, I would like to hear your side of it?

19 A. Yes.

20 Q. The small talk in the interview room started with
21 that kind of pattern as well, correct?

22 A. Yes.

23 Q. Thank you for talking with us, we want to hear
24 your side of the story, that sort of thing?

25 A. Yes, there was some other small talk.

1 Q. That was intended, by you, to try to put
2 Mr. Avery at ease?

3 A. Both of us at ease.

4 Q. Sure. He seemed to be at ease when he sat down
5 for the interview?

6 A. Yes.

7 Q. Now, I want to -- I think I understood you, but
8 you described two uniformed members of the
9 Sheriff's Department, they were immediately
10 outside the doors to this interview room?

11 A. I believe so.

12 Q. They are not in the room during the interview?

13 A. No.

14 Q. Okay. But you could see them through the glass
15 in the doors?

16 A. Yes.

17 Q. Within a couple of feet of the doors?

18 A. Yes.

19 Q. Now, the interview itself, you estimated at about
20 30 minutes?

21 A. Correct.

22 Q. Setting aside small talk, okay, introductions,
23 and how are you doing today, that kind of thing,
24 the substance of the interview concerned the
25 charges against Mr. Avery?

1 A. Correct.

2 Q. Concerned Ms Halbach and the allegations related
3 to her?

4 A. Yes.

5 Q. The camera was running during the entire
6 substantive portion of the interview?

7 A. Yes.

8 Q. So, when you say the interview lasted for about
9 30 minutes, you would expect that there would be,
10 again, about 30 minutes of tape of that
11 interview?

12 A. There might have been a few more minutes than
13 that, because after we're done doing the
14 interview, the photographer tries to get what we
15 call cut-away shots, just wider shots of us
16 talking.

17 Q. I see, to sort of fill in for visual --

18 A. Correct.

19 Q. -- presentation on the story?

20 A. Yes.

21 Q. All right. Would the small talk have been
22 filmed, or taped, whatever it is -- it's probably
23 digital image these days -- but the camera had
24 been on for the small talk portion of this?

25 A. Some of it.

1 Q. This story itself, then, ran that evening?
2 A. Correct.
3 Q. It was shorter than 30 minutes?
4 A. Correct.
5 Q. Do you know how long that story was, as run on
6 air?
7 A. I believe it was slightly over two minutes.
8 Q. Probably ran at 5, and 6, and 10, or that kind of
9 thing, on the broadcast?
10 A. Parts of it ran at 5, and 6. And then the longer
11 version, which was more than two minutes, ran at
12 10 o'clock.
13 Q. How long was the longer version?
14 A. At 10 o'clock it was about two -- a little over
15 two minutes.
16 Q. And 5, and 6, a little bit under two minutes?
17 A. Correct.
18 Q. You edited the 30 minutes, roughly, of film that
19 you had?
20 A. I didn't personally edit it, but I logged it and
21 selected what pieces of it would be used.
22 Q. And my clumsiness, that's really what I meant.
23 You made the selection --
24 A. Correct.
25 Q. -- of what snippets, or segments of that

1 interview to use in your story?

2 A. Correct.

3 Q. And then you wrote some text to fill in and make

4 it flow into a story?

5 A. Yes.

6 Q. Somebody else actually did the clipping, or the

7 editing?

8 A. Correct.

9 Q. All right. But the design, then, was to make --

10 to render about 30 minutes down into about two

11 minutes of good news cast material?

12 A. Well, just to tell what happened during the

13 interview.

14 Q. Right. And something that would be interesting

15 to the viewers, right?

16 A. Provided that it was an accurate representation

17 of what happened.

18 Q. Well, sure. I mean, I assume the camera takes

19 down accurately what's being said and done,

20 correct?

21 A. Correct.

22 Q. And you want to present a balanced story, true?

23 A. Yes.

24 Q. And unbiased story?

25 A. Correct.

1 Q. But the accuracy of the actual film is not in
2 issue, correct?

3 A. I'm sorry?

4 Q. The accuracy of the actual film isn't an issue,
5 correct?

6 A. No.

7 Q. There's selection decisions on how to present it,
8 true?

9 A. Yes.

10 Q. And you want it to be interesting?

11 A. Yes.

12 Q. You want it to attract viewers, rather than cause
13 them to switch over to FOX 11, right?

14 A. Well, it depends on what you mean by good, and
15 interesting. But the idea, yes, is to do a story
16 that's fair and accurate, but at the same time,
17 not boring.

18 Q. Sure. And that's what I mean, will help to cause
19 someone to decide to watch Channel 5, rather than
20 Channel 2, or Channel 26, or Channel 11, correct?

21 A. That's not my primary motivation when I do a
22 story, but I guess you could say that.

23 Q. Sure. I'm not suggesting that it's your primary
24 motivation, but it's a consideration.

25 A. Sure.

1 Q. Have you been asked to produce the balance of the
2 roughly 30 minutes of film from November 18?

3 A. No.

4 Q. Are you willing to do that?

5 A. I don't know whether or not I would have to. I
6 would just wait for direction from my supervisor.

7 Q. That is, in the scheme of things, you don't get
8 to make that decision?

9 A. I don't know.

10 Q. You don't know if you get to make the decision?

11 A. About whether or not the tape is released?

12 Q. I'm asking for all 30 minutes, what's your
13 answer?

14 A. Oh, I know it's not my decision.

15 Q. Okay. After the November 18 interview ended, did
16 you -- did you have any further communication, of
17 any kind, with Mr. Byrnes, before December 14th?

18 A. No.

19 Q. What caused you simply to hop in the car on
20 December 14 and drive down to Chilton with a
21 cameraman?

22 A. There had been more developments in the case, as
23 there were weekly. And we just decided that a
24 month had passed and it seemed like it was time
25 to attempt to talk to Steven Avery again.

1 Q. What -- What recent developments caused this?

2 A. I don't recall, specifically, what they were. I

3 believe it was that -- something to do with a

4 small cabinet being found, in his trailer.

5 Q. Okay.

6 A. I can't recall, specifically, what --

7 Q. But something excited you, or drew your attention

8 at the time, and you said, let's go back and try

9 to talk to him again?

10 A. Right.

11 Q. All right. The offices in which you work are,

12 physically, in the City of Green Bay?

13 A. Actually, I work out of the Fox Cities Bureau,

14 which is in Little Chute.

15 Q. All right. And as does your cameraman?

16 A. Yes.

17 Q. How long did it take the two of you to drive from

18 the office in Little Chute to the Calumet County

19 Jail in Chilton?

20 A. Probably about an hour.

21 Q. In each direction, obviously?

22 A. Yes.

23 Q. All right. So -- And you work roughly an eight

24 hour shift?

25 A. Correct.

1 Q. You -- Obviously, you have deadlines you have to
2 hit, because at 5 o'clock the newscast will be on
3 air?

4 A. Yes.

5 Q. If I understand you correctly, you had spoken to
6 no one before grabbing a cameraman, or asking the
7 cameraman to accompany you, and taking a one hour
8 car trip to Chilton, spoken to nobody at the
9 Calumet County Jail?

10 A. Correct.

11 Q. Hadn't spoken to Mr. Avery?

12 A. No.

13 Q. As far as you know, Mr. Avery hadn't tried to
14 contact you after November 18, 2005?

15 A. Correct.

16 Q. If you got to this jail and they said, sorry,
17 we're not letting you in, you have now -- you're
18 facing the risk of having wasted two hours of
19 your time and two hours of the cameraman's time,
20 correct?

21 A. Yes.

22 Q. You arrived at the jail that day at 3:40ish,
23 something like that, in the afternoon?

24 A. That's likely.

25 Q. So, if you got turned around right away, you

1 would be back at 4:40, or something like that,
2 true?

3 A. Yes.

4 Q. Twenty minutes before the 5 o'clock newscast?

5 A. Yes.

6 Q. Empty handed?

7 A. Yes.

8 Q. We took a drive to Chilton today, wouldn't make
9 much of a story?

10 A. It happens more than you think.

11 Q. Okay. So you arrived, and did you ask to see
12 Mr. Byrnes immediately?

13 A. Yes, I did.

14 Q. He appeared quickly?

15 A. Yes.

16 Q. Did he ask why you were there?

17 A. Well, I spoke first and said that I would like
18 him to deliver this letter to Steven Avery.

19 Q. And then we have been through what happened,
20 correct?

21 A. Yes.

22 Q. Here, again, about a 30 minute interview?

23 A. Yes.

24 Q. About two minutes, give or take, that gets aired
25 in the story later that evening?

1 A. Correct. The story only aired at 10 o'clock,
2 though. We did not do anything at 5 or 6.

3 Q. All right. Did the raw footage, you know, the 30
4 minutes, approximately, of either November 18 or
5 December 14, ever get posted on, or made
6 available to the public on wfrv.com?

7 A. No.

8 Q. When you -- When you came into the jail on
9 December 14, did any of the jail staff, anybody
10 in a uniform, you know, working there, whether it
11 was Mr. Byrnes or anyone else, say anything at
12 all to you about their schedule, for instance,
13 for meals?

14 A. No.

15 Q. Say anything at all to you about shift change
16 schedules?

17 A. No.

18 Q. Put any time limit on how long you could be with
19 Mr. Avery?

20 A. No.

21 Q. Put any other limitations on what sort of
22 resources you'd be drawing from the jail?

23 A. No.

24 Q. Were there, again, two uniformed deputies posted
25 outside the two doors to this interview room?

1 A. I believe so.

2 Q. As far as you know, did they remain there for the
3 entire course of the roughly 30 minute interview?

4 A. As far as I know.

5 Q. Again, as on November 18, setting aside small
6 talk about Christmas, or food, or family, the
7 substance of this interview was about the
8 criminal allegations against Mr. Avery, pending
9 in Manitowoc County?

10 A. Yes.

11 Q. It was about nothing else?

12 A. Correct.

13 Q. You explained to Mr. Fallon that, well, for
14 starters, that you never actually said to
15 Mr. Avery, we're going to broadcast this
16 interview?

17 A. Correct.

18 Q. But you did come in carrying a microphone, and
19 identifying yourself as a reporter, and with a
20 cameraman, and all this sort of equipment, right?

21 A. Yes.

22 Q. Saying you were from WFRV-TV?

23 A. Correct.

24 Q. And you took it as implied that -- and obviously
25 implied -- that some portion of the interview, at

1 least, would be broadcast?

2 A. Yes.

3 Q. Was it also implied to Mr. Byrnes, in the same
4 way, that you would be interviewing Mr. Avery
5 about the pending criminal allegations?

6 A. Yes.

7 Q. Were you asked, or to your knowledge was anyone
8 else at WFRV asked, to provide either a CD or a
9 DVD, of your November 18, 2005 interview of
10 Mr. Avery, to law enforcement, or to the Calumet
11 County District Attorney's Office?

12 A. I was never asked, and I don't know of anyone
13 else who was.

14 Q. All right. Do you have any idea how the Calumet
15 County District Attorney's Office would have
16 obtained what's described as a CD of that Avery
17 jail interview on November 18, 2005, to then
18 produce to the defense?

19 A. No.

20 ATTORNEY STRANG: I think that's all I
21 have. Thank you.

22 THE COURT: Any redirect?

23 ATTORNEY FALLON: I have no redirect for
24 the witness. She may be excused.

25 THE COURT: All right. You are excused.

1 ATTORNEY FALLON: I do have two requests of
2 the Court. I would ask the Court to take judicial
3 notice of the fact that the Criminal Complaint in
4 this case, charging Mr. Avery with first-degree
5 intentional homicide, was filed, I believe, on
6 November 15th, 2005. And I would further ask the
7 Court to take judicial notice of the fact that the
8 preliminary examination in this case occurred on or
9 about December 6th, 2005.

10 ATTORNEY STRANG: I think it's appropriate
11 for the Court to take judicial notice of anything on
12 the docket, or in the court files, on this case.
13 And, indeed, as we proceed to further briefing, or
14 argument on this, I also may ask the Court to take
15 notice of, you know, certain dates, for example,
16 when the Original Criminal Complaint was filed.

17 THE COURT: All right. The Court will do
18 so. We have got one more witness on this issue?

19 ATTORNEY FALLON: That's correct. We're
20 going to defer to the defense to call that witness.
21 We're going to rest our presentation of evidence.

22 THE COURT: All right. I'm going to take a
23 10 minute break at this time and then we'll come
24 back at that time and hear that witness.

25 (Recess taken.)

1 THE COURT: Mr. Fallon, do I understand the
2 State has no further witnesses on this issue.

3 ATTORNEY FALLON: No, we'll pass the
4 presentation of evidence to the defense.

5 THE COURT: Mr. Strang.

6 ATTORNEY STRANG: We'll call Lieutenant and
7 Jail Administrator, John Brynes.

8 THE CLERK: Please raise your right hand.

9 **LIEUTENANT JOHN BYRNES**, called as a
10 witness herein, having been first duly sworn, was
11 examined and testified as follows:

12 THE CLERK: Please be seated. Please state
13 your name and spell your last name for the record.

14 THE WITNESS: John Byrnes B-y-r-n-e-s.

15 **DIRECT EXAMINATION**

16 BY ATTORNEY STRANG:

17 Q. Mr. Byrnes, tell us just a little bit about how
18 you are presently employed?

19 A. I'm a Jail Administrator for the Calumet County
20 Jail, that's my present position.

21 Q. All right. Jail Administrator, meaning you have
22 general responsibility for all facets of the
23 operation of the Calumet County Jail?

24 A. That's correct.

25 Q. You report directly to Sheriff Pagel?

1 A. Yes.

2 Q. But anyone who actually works in the jail reports
3 to you?

4 A. Correct.

5 Q. In addition to being Jail Administrator, you
6 remain a sworn officer of the Calumet County
7 Sheriff's Department?

8 A. Yes.

9 Q. In that department, you presently hold the rank
10 of Lieutenant?

11 A. Correct, yes.

12 Q. How long have you been in the position of Jail
13 Administrator at Calumet County?

14 A. It's been four years.

15 Q. Continuously?

16 A. Yes.

17 Q. So, for the period, let's say November 9, 2005,
18 through the end of December, 2005, you're the
19 Jail Administrator?

20 A. Correct.

21 Q. Did you bring with you today, any documents?

22 A. Yes. From reading the subpoena, I brought a copy
23 of the visitation policy that's used by the jail.

24 Q. Thank you. May I have that?

25 A. Sure.

1 Q. Thank you, very much. I have got several
2 questions about this. You have given me three
3 pages stapled together, but the first two are two
4 sided, that is, there's typing on both sides?

5 A. Yes.

6 Q. All right. This is an excerpt out of a larger
7 book of jail rules and regulations?

8 A. Yes.

9 Q. But these are all the rules relating to
10 visitation?

11 A. Yes.

12 Q. These rules were in effect, in this form, during
13 the period November and December of 2005?

14 A. Yes.

15 Q. For ease of reference, that's the time frame I'm
16 going to use here, that 60, 61 days here, unless
17 I tell you otherwise, all right?

18 A. Okay.

19 Q. Did you bring more than one copy today?

20 A. No, that's the only copy I have.

21 Q. All right. I'm going to give this back to you --
22 I think what I will do is mark it as an exhibit.
23 Is your Honor's preference that we just mark
24 exhibits sequentially or separate?

25 THE COURT: Yes.

1 (Exhibit 7 marked for identification.)

2 Q. I want to be careful about this Mr. Byrnes,
3 because although I except what you said, that
4 these rules are unchanged and they were in effect
5 as you have been given them to me in Exhibit 7,
6 in November and December of 2005, the last page
7 looks to me like it says they were approved on
8 March 24, 2006?

9 A. That's correct. Many of the policies that I
10 personally worked on, I set them for an annual
11 review, and I take a look at the policy,
12 determine if there needs to be any changes. When
13 I checked my history document, the previous
14 change to the visitation policy was made in 2003.
15 So this policy, although it was examined and
16 reviewed within the past year, it was unchanged.

17 Q. Great. Thank you.

18 A. Sure.

19 ATTORNEY STRANG: Now, I will offer Exhibit
20 7 with that explanation.

21 THE COURT: Any objection?

22 ATTORNEY KRATZ: None.

23 THE COURT: Exhibit 7 is received.

24 ATTORNEY FALLON: No objection.

25 Q. (By Attorney Strang)~ Very quickly introduce the

1 Court, if you would, to the command structure
2 within the Calumet County Jail during the time
3 frame we're interested in.

4 A. The head of the department, of course, is the
5 sheriff. I report to a captain, Captain Paul
6 Rusch. And underneath me would be one sergeant,
7 and then our corrections officers.

8 ATTORNEY STRANG: Should we push the mike
9 just a little bit closer to the Lieutenant?

10 Q. (By Attorney Strang)~ So when you say one
11 sergeant, there's not one per shift, there is
12 only one sergeant of the jail?

13 A. One position, yes.

14 Q. Okay. And that's a daytime position?

15 A. Yes, daytime, evening, generally works 9:30 a.m.
16 until 5:00 p.m.

17 Q. And your general hours are what?

18 A. 6:00 a.m. to 2:00 p.m.

19 Q. Okay. So he is then in charge of the jail from 2
20 to 5:30, roughly?

21 A. Correct.

22 Q. Overnight, what's the authority structure from,
23 you know, 5:30 p.m. to 6 a.m., when you come
24 back?

25 A. There's just corrections officers on duty. And

1 if there would be an issue, they would report to
2 the patrol supervisor.

3 Q. During the -- Between the hours of 9:30 in the
4 morning and 5:30 in the afternoon, again, during
5 the time period of interest, what's the total
6 staff complement in the Calumet County Jail?

7 A. It can vary. Generally, on a weekday, myself,
8 the sergeant, at least two jailers, corrections
9 officers, would be on duty, and perhaps a third.
10 We also may have transport officers. They
11 generally work under the sergeant and I. So we
12 may have transport officers working.

13 Q. Transport officers in Calumet County are
14 temporary duty employees?

15 A. Correct.

16 Q. They don't report to work unless requested, on a
17 particular day at a particular time?

18 A. Correct.

19 Q. So the -- the actual staff of the jail would be
20 either 4 or 5, from 9:30 in the morning until
21 5:30 in the afternoon?

22 A. Yes.

23 Q. When one comes to, what I think of as the
24 reception window near that little historical
25 display in the lobby --

1 A. Yes.

2 Q. -- those people, although they wear uniforms,
3 they are not jail staff?

4 A. Yeah, the window on the right is clerical staff.

5 Q. For the Sheriff's Department?

6 A. For the Sheriff's Department, yes.

7 Q. Not attached to the jail, per se?

8 A. One of the clerical staff is attached half-time
9 to the jail.

10 Q. Fair enough. The 9:30 a.m. to 5:30 p.m. staffing
11 complement that you have described is the same,
12 or different, on the weekends, during this time
13 period?

14 A. On the weekends, it would just be corrections
15 officers.

16 Q. Two or three people on duty?

17 A. Correct.

18 Q. And no transport officers on the weekend?

19 A. Generally not, unless they are called in.

20 Q. You have the original of Exhibit 7 in front of
21 you?

22 A. Yes, I do.

23 Q. Okay. The Calumet County Jail -- Again, all my
24 questions are going to be during the time frame I
25 have described. Calumet County Jail controls

1 access to inmates, true?

2 A. True.

3 Q. Almost self-obviously, members of the public do
4 not have access to the inmates, other than on
5 terms under the control of yourself and the
6 people working for you in the jail?

7 A. Correct.

8 Q. When I say members of the public, that would
9 include lawyers for inmates?

10 A. Yes.

11 Q. Religious advisors, or chaplains, that type of
12 thing, who may wish to see inmates?

13 A. Yes.

14 Q. Alcoholics Anonymous counselors, those kinds of
15 people?

16 A. Yes.

17 Q. Family members?

18 A. Yes.

19 Q. Friends of the inmate?

20 A. Yes.

21 Q. And even law enforcement officers?

22 A. Yes.

23 Q. They would gain access to an inmate in the jail,
24 that is, law enforcement officers would, through
25 you or your corrections staff?

1 A. Correct.

2 Q. That said, there are different rules that apply
3 to some of these different groups I have
4 described, correct?

5 A. Yes.

6 Q. Let's start with lawyers and clergy members. And
7 I think we can group in probation and parole
8 agents there as well, correct?

9 A. Yes.

10 Q. There's a specific rule that applies to the three
11 groups I have just described?

12 A. Yes.

13 Q. Their access will be permitted to the inmate for
14 lawyers, clergy members, probation and parole
15 agents, during reasonable hours?

16 A. Yes.

17 Q. You ultimately decide what those reasonable hours
18 are?

19 A. Yes.

20 Q. Reasonable hours would not include during shift
21 changes?

22 A. Correct.

23 Q. It would not include when you are trying to serve
24 meals?

25 A. Correct.

1 Q. That is, you, as the Jail Administrator, are
2 responsible for the care, feeding, and safe
3 keeping of inmates in your custody?

4 A. Yes.

5 Q. Moving visitors, or dealing with visitors,
6 distracts from -- or requires manpower, I guess I
7 would put it that way, right?

8 A. Yes.

9 Q. So at critical times like a shift change, when
10 one would be leaving and another would be coming,
11 it's not reasonable to expect changing shifts
12 also to juggle professional visitors?

13 A. Generally not. If a visit was started prior to a
14 shift change, they may allow it to continue.

15 Q. But probably not to terminate, requiring movement
16 of the visitor out, and the inmate back to the
17 cell, during the shift change?

18 A. Correct.

19 Q. Same with the mealtime?

20 A. Yes.

21 Q. Might allow the inmate to continue a visit
22 through the meal and maybe you would hold the
23 meal for him, correct?

24 A. Yes.

25 Q. But you aren't going to be doing inmate movement

1 or visitor movement during the actual process of
2 feeding?

3 A. Generally not. Again, if it's important to move
4 an inmate, they will hold a meal. It really
5 depends on the situation.

6 Q. And the guide is reasonableness, as I understand
7 the rule?

8 A. Yes.

9 Q. So we're talking of, generally, the visitors,
10 even the professional visitors we have described,
11 would avoid mealtimes and shift changes?

12 A. If we can, yes.

13 Q. Other than that, do you expect advance notice
14 from, let's say, an inmate's lawyer?

15 A. We prefer it but, again, we understand schedules
16 and, yeah, sometimes they drop in and we do our
17 best.

18 Q. You try to accommodate?

19 A. Yes.

20 Q. But, again, it's a rule of reason?

21 A. Yes.

22 Q. All right. Law enforcement officers are not
23 covered, specifically, in terms of their visits
24 with inmates, in these rules, Exhibit 7, correct?

25 A. I don't believe so.

1 Q. There again, though, the law enforcement officer
2 would have to contact you, or someone working for
3 you, to arrange a visit?

4 A. Yes.

5 Q. Lawyers, probation agents, clergy members, are
6 allowed what's called a contact visit?

7 A. In most cases, yes.

8 Q. And Exhibit 7 refers to that a little bit
9 obliquely in paragraph -- what is it, I'm
10 sorry -- 29.00.30 (g), as in golf, right?

11 A. Yes.

12 Q. By identifying the two visiting rooms that may be
13 used by clergy, lawyers, and probation agents?

14 A. Yes.

15 Q. Those are what's called contact visit rooms?

16 A. Correct.

17 Q. By contact visit, there is no barrier separating
18 the inmate from the visitor?

19 A. Correct.

20 Q. No need to use a telephone to speak through the
21 barrier?

22 A. Correct.

23 Q. Law enforcement officers also are permitted
24 contact visits?

25 A. Yes.

1 Q. Law enforcement officers also can visit at any
2 reasonable hour?

3 A. Yes.

4 Q. Their visits can last for a reasonable duration?

5 A. Correct.

6 Q. So, in many ways, they are treated much like the
7 lawyer, the clergy member, or the probation
8 agent?

9 A. Yes.

10 Q. When we step away from law enforcement officers,
11 the inmate's lawyer, clergy members, and
12 probation agents supervising the inmate, and we
13 get into family members, friends of the inmate,
14 the rules are different?

15 A. Yes.

16 Q. There are more rules?

17 A. There are structured hours that they can visit,
18 yes, and rules limiting the amount of friends
19 that can visit.

20 Q. Rules limiting the length of a visit?

21 A. Yes.

22 Q. In the case of your jail, to 20 minutes?

23 A. Yes.

24 Q. There's no limit on time length of a lawyer's
25 visit, or a clergy member's visit, other than

1 reasonableness, again?

2 A. Correct.

3 Q. So you have got this, you have got the visiting

4 schedule for friends and family members set up

5 Thursday and Sunday evenings?

6 A. Yes.

7 Q. Females from a certain time, male inmates to

8 another time?

9 A. Yes.

10 Q. These are not contact visits?

11 A. No.

12 Q. At least ordinarily?

13 A. Yes. Ordinarily it's a non-contact visit through

14 the phone.

15 Q. And a --

16 A. Glass barrier.

17 Q. -- reinforced glass barrier?

18 A. Yes.

19 Q. Okay. Those visits routinely are tape recorded

20 by the jail?

21 A. Yes.

22 Q. Contact visits are, or are not, tape recorded by

23 the jail?

24 A. Not.

25 Q. Just not at all?

1 A. No, there is no recording device, I'm aware of,
2 in there.

3 Q. Okay. And you would know?

4 A. I would hope to.

5 Q. Okay. Further, the inmate who wishes to have
6 family or friends visit must compile a visitor
7 list?

8 A. Yes.

9 Q. Within the jail?

10 A. Yes.

11 Q. There is a limit on how many names can be on that
12 visitor list?

13 A. Three.

14 Q. And those can be changed, one name can be
15 substituted for another?

16 A. Yes, we allow that on occasion.

17 Q. Right. There again, not willy nilly, whatever
18 the inmate wants?

19 A. Yes.

20 Q. I'm seeing these for the first time, but I also
21 take it that visits by people other than lawyers,
22 clergy members, law enforcement officers, or
23 probation agents, require an identification
24 procedure for the visitor?

25 A. Yes. Family, or friends, or most anybody, we

1 prefer to see an identification. Especially if
2 we don't know the person.

3 Q. Sure. Okay. Now -- And, again, setting aside
4 the four groups, the professionals, so to speak,
5 that I have been talking about, with the family
6 and friend visitors, what is the identification
7 procedure?

8 A. We request a picture ID, if we don't know the
9 person. The information is recorded, and if the
10 visit is allowed, generally there's a check done
11 to make sure there's no wants or warrants for the
12 person.

13 Q. Right. Is a criminal record check done as well,
14 or just to see if there are open wants or
15 commitment wants?

16 A. Generally just a basic wants check.

17 Q. All right. So, that when the person, the
18 visitor, is in a law enforcement environment, and
19 if somebody is wanted by a law enforcement
20 agency, you wouldn't want them to walk in and out
21 unmolested and be out there with an open warrant?

22 A. Correct.

23 Q. The general visitor may not bring recording
24 equipment into the jail for the visit?

25 A. No.

1 Q. The general visitor, the father, the mother, the
2 wife, whomever, can't bring a camera in for the
3 visit?

4 A. We try to limit personal property to a purse.
5 But I don't know that we specify cameras. I
6 would request that they don't. I would request
7 that they don't bring a camera.

8 Q. Sure. And you would have the ability, then, to
9 prevent that person from entering with a camera.

10 A. Yes.

11 Q. You have to leave it out here, or that kind of
12 thing, or leave it in your car?

13 A. Correct.

14 Q. So there's some screening of the visitor in terms
15 of what he or she is carrying with him?

16 A. Correct. Primarily because the room is small and
17 there's -- there can be up to eight people, you
18 know, in the room, or more, so.

19 Q. Right.

20 A. Primarily just for that reason.

21 Q. Fair enough. Are there any rules in Exhibit 7
22 that address members of the media in specific?

23 A. No.

24 Q. Do you have any other rules, written or
25 unwritten, that you apply generally, with respect

1 to visits by reporters, members of the media?

2 A. No.

3 Q. You are familiar with Mr. Avery, two chairs to my
4 right?

5 A. Yes.

6 Q. He is a current inmate of your jail?

7 A. Correct.

8 Q. Has been since November 9, 2005.

9 A. Yes.

10 Q. Other than for a brief time with a
11 hospitalization and a transfer to the Brown
12 County jail, he's been continuously in your
13 custody since that time?

14 A. Yes.

15 (Exhibits 8 & 9 marked for
16 identification.)

17 Q. You can just drop 7 there, and I will give you
18 Exhibit 8 and 9; do you recognize those?

19 A. Yes.

20 Q. What's number 8?

21 A. Number 8 is a -- it's a copy of two separate
22 forms. The first one is the Fifth Amendment
23 Rights Invoked, indicating that Steven Avery has
24 invoked his Fifth Amendment rights and that he's
25 requesting that an attorney be present during

1 questioning. And that was signed by Correction
2 Officer Hansel on 11/9/2005.

3 Q. Hansel is H-a-n-s-e-l?

4 A. Correct.

5 Q. First name is Noel?

6 A. Noel, yes.

7 Q. And the bottom, I'm sorry?

8 A. The bottom is a Notification of Victim Form. If
9 a person is released from the jail and there's a
10 victim, or somebody involved in the case that
11 needs to be notified, this form is to alert the
12 corrections officer to do that.

13 Q. Both of these forms, then, that are copied
14 together on Exhibit 8 are Calumet County Jail
15 forms?

16 A. Correct.

17 Q. They normally would be found in an inmates file?

18 A. These were stapled to the front of the file.

19 Q. Routinely?

20 A. Yes. These two forms are on the front of the
21 file so they are very prominent.

22 Q. In Mr. Avery's case, as in the case of every
23 other inmate?

24 A. Correct.

25 Q. There is a unique file created, or a single file

1 created, for every inmate, for any duration in
2 the jail?

3 A. There is a paper file created, yes.

4 Q. All right. So Exhibit 8 goes on the front, and
5 both of them do, stapled on the front, to be
6 prominent?

7 A. Yes.

8 Q. And Exhibit 9 is what?

9 A. It's a note written by Steve Avery. It indicates
10 that he does not want to talk with any reporters,
11 from any news media. This includes TV,
12 newspaper, radio, internet, magazines, or any
13 other media.

14 Q. Is that dated, Mr. Byrnes?

15 A. It's dated November 12, 2005.

16 Q. When did you first see it?

17 A. I believe I first saw it when I copied the
18 contents of his folder for you, a couple weeks
19 ago.

20 Q. Okay. You found it in the inmate file for
21 Mr. Avery?

22 A. Yes.

23 Q. That file is available to all of the corrections
24 officers staff, you have described for us?

25 A. Yes.

1 Q. Do you not routinely look at an inmates file, as
2 the Jail Administrator?

3 A. On occasion, yes, I will.

4 Q. Maybe we have gone past each other. I asked you,
5 do you not routinely do that?

6 A. I don't make it a habit, but I generally handle
7 most of the files.

8 Q. Okay. So how is it that you first saw Exhibit 9
9 when you set out to copy the Avery file for me?

10 A. I guess -- I guess what confuses me with this
11 exhibit, if I would have seen it, or I believe if
12 my sergeant would have seen it, it would have
13 been date stamped, and it's not date stamped. So
14 I'm not sure when I saw it. I may have seen it
15 before, but I didn't recall reading it.

16 Q. And the question is why, why would you have not
17 seen that until I asked you to copy Mr. Avery's
18 file for this hearing?

19 A. It was probably given to a corrections officer,
20 the corrections officer may have noted it in the
21 jail log and then placed it in the file.

22 Q. You found it in the place it should be, correct?

23 A. Yes.

24 Q. I mean the correct place for this Exhibit 9 to
25 have been filed, is in the inmate's file?

1 A. Yes.

2 Q. Where you found it?

3 A. Yes.

4 Q. You have no reason to think that one of the
5 corrections officers hid it, or misfiled it, or
6 did anything mistaken or improper with it?

7 A. No.

8 Q. You just had not looked for it?

9 A. I didn't recall reading it until I viewed it and
10 made you a copy.

11 Q. Fair enough. And I guess, if I'm hearing you,
12 you may have read it earlier, you just don't
13 recall?

14 A. Yes.

15 Q. Have you talked to your jail sergeant about
16 whether he or she was familiar with it?

17 A. No, I did not.

18 Q. Have you had conversations with anyone at all
19 about Exhibit 9 before today?

20 A. No.

21 ATTORNEY STRANG: I will offer Exhibit 8
22 and 9, your Honor.

23 THE COURT: Any objection?

24 ATTORNEY FALLON: No objection.

25 THE COURT: Exhibits 8 and 9 are admitted.

1 Q. (By Attorney Strang)~ Mr. Byrnes, you are aware
2 of three televised interviews that occurred in
3 the Calumet County Jail, involving Mr. Avery,
4 during November and December of 2005?

5 A. Yes.

6 Q. Are you aware of any more than that, televised
7 interviews now, I'm speaking of?

8 A. No.

9 Q. The first of these would have been November 12
10 with Emily Matesic, of Channel 2, out of Green
11 Bay?

12 A. Yes, I believe so.

13 Q. Was the second, November 18, Jennifer Kolbusz,
14 Channel 5, out of Green Bay?

15 A. Yes.

16 Q. And the third was Ms Kolbusz again, December 14;
17 does that sound right?

18 A. I would agree, that sounds right.

19 Q. Okay. When did you first have any contact, of
20 any kind, with Emily Matesic?

21 A. I'm not sure if I did.

22 Q. Ever?

23 A. No, I'm not sure that I did.

24 Q. Wouldn't know if she walked in the room?

25 A. Well, I believe I saw her when she testified, and

1 did not look familiar.

2 Q. Okay. When did you first have any contact at all
3 with Jennifer Kolbusz?

4 A. I'm not sure if I spoke with her on the phone, or
5 if she came to our lobby, but I was present when
6 she did an interview with Mr. Avery.

7 Q. Do you know whether that was the first or second
8 interview that she did?

9 A. I believe it was the first.

10 Q. What caused you to be present, in the lobby, for
11 that interview?

12 A. I think she asked to speak with somebody in
13 charge, or she explained what she wanted and she
14 was referred to me, and I went out and spoke with
15 her.

16 Q. What did she tell you?

17 A. She indicated that she wanted to conduct an
18 interview with Mr. Avery and requested to see
19 him.

20 Q. Your response?

21 A. At that time, I requested that she write a note
22 to Mr. Avery, and I indicated to her I would show
23 that to Mr. Avery and he could make that
24 decision.

25 Q. Was Jennifer Kolbusz on Mr. Avery's visitor list

1 on November 18, 2005?

2 A. No.

3 Q. Was she his lawyer?

4 A. No.

5 Q. Was she a member of the clergy?

6 A. No.

7 Q. She wasn't his probation agent?

8 A. No.

9 Q. How about law enforcement?

10 A. No.

11 Q. What provision of the jail rules or regulations
12 might we look to for a suggestion that somebody
13 could appear in the lobby, write a letter to an
14 inmate, and the Jail Administrator would take the
15 letter to the inmate?

16 A. There's nothing in policy.

17 Q. You took a letter to Mr. Avery, personally?

18 A. I believe I did, yes.

19 Q. All right. And what -- what was your
20 conversation with him?

21 A. I just explained the situation, that there was a
22 person from the media in the lobby requesting to
23 see him. I handed him the note and waited for
24 his reply.

25 (Exhibit 10 marked for identification.)

1 Q. (By Attorney Strang)~ I show you Exhibit 10.
2 Now, that's just one page out of what I'm sure is
3 a longer document, but maybe you recognize it?

4 A. Yes. It's copies of our jail log entries. The
5 date would be November 12th, 2005. The first
6 entry on this page was made at 9:17 and the last
7 entry at 1933 hours.

8 Q. Thank you. Is Exhibit 10 something that is
9 prepared by Calumet County Jail staff, in the
10 ordinary course of their business duties?

11 A. Yes.

12 Q. Is it prepared at, or about, the time of the
13 events it reflects?

14 A. As close as possible?

15 Q. Prepared by someone with knowledge of the facts
16 or the events that they are entering in the
17 comments line?

18 A. Correct.

19 Q. And is it then maintained and kept, in the
20 ordinary course of business, at the Calumet
21 County Jail?

22 A. Yes.

23 ATTORNEY STRANG: I offer Exhibit 10.

24 THE COURT: Any objection?

25 ATTORNEY FALLON: And Exhibit 10, which is

1 just one page or page two.

2 ATTORNEY STRANG: I just marked the one
3 page as Exhibit 10.

4 ATTORNEY FALLON: I have no objection.

5 THE COURT: Exhibit 10 is admitted.

6 Q. (By Attorney Strang)~ Now, I want to go back to
7 this first entry that you started describing to
8 us in identifying Exhibit 10. There's a code
9 number there, I see No. 801 and, then, for
10 instance, in the next entry, I see a number 700,
11 those numbers refer to people; correct?

12 A. That's correct.

13 Q. Who's Number 801?

14 A. 801 would be Sheriff Pagel.

15 Q. He's got ultimate responsibility for the Calumet
16 County Jail?

17 A. Correct.

18 Q. As well as for the Calumet County Sheriff's
19 Department?

20 A. Yes.

21 Q. And Number 700, is that you, the Jail
22 Administrator.

23 A. Yes.

24 Q. All right. So on November 12, 2005, at 9:17,
25 going on 9:18 in the morning, somebody named

1 Juckem, I guess, receives a call from Sheriff
2 Pagel, correct?

3 A. Yes, that's Corrections Officer Denise Juckem.

4 Q. She's somebody who works for you as a corrections
5 officer?

6 A. Yes.

7 Q. So, what she's telling us, is that Sheriff Pagel
8 called and he states, if the media want to
9 interview Avery, we can allow them to do so,
10 right?

11 A. Yes.

12 Q. Avery refers to Steven Avery?

13 A. Yes.

14 Q. If Avery wants to talk to them, right?

15 A. Correct.

16 Q. This can occur in the conference room, in the
17 jail, right?

18 A. Yes.

19 Q. We are to make sure all the media logs in?

20 A. Yes.

21 Q. Make sure we get the TV station, reporter, and
22 camera person's name?

23 A. Yes.

24 Q. Also, make a copy of their ID?

25 A. Correct.

1 Q. All right. Were you aware of that direction from
2 Sheriff Pagel the morning of November 12th?

3 A. I believe so. I believe we had discussed that
4 within the first couple days that Steven was in
5 the jail.

6 We were getting a lot of requests from
7 media for information, and also to see him. And
8 I did, at one point, approach the sheriff and
9 asked him how he wanted to handle that. And what
10 is written down here was pretty much what we had
11 discussed.

12 Q. Okay. Do you remember if it was November 12 that
13 you approached the sheriff about that?

14 A. I believe it would have been before that,
15 probably the 10th or 11th. It was within the
16 first couple of days that Steven Avery was in the
17 jail.

18 Q. Okay. And the next thing that Denise Juckem
19 does, according to the log, Exhibit 10, is
20 roughly 27 minutes after the phone call from
21 Sheriff Pagel, she makes a 1021, which is just a
22 call, right?

23 A. Yes, a phone call.

24 Q. To you?

25 A. Yes.

1 Q. And tells you what Sheriff Pagel advised, right?

2 A. Correct.

3 Q. And then she asks you questions about,
4 essentially, how -- how you want them to move
5 Mr. Avery back and forth for such a visit?

6 A. Yes.

7 Q. And you then tell her if we need extra help while
8 the media is here, we can call someone in to
9 assist with jail duties; is that what you told
10 her?

11 A. Yes, generally we do have five part-time people.
12 And if they felt they needed help, I had told
13 them they were free to call in some help.

14 Q. Now, November 12, we have had testimony here, I
15 think it was a Saturday morning. I don't expect
16 you to remember that, but I think the calendar
17 will bear me out. So, if you are going to have
18 to call in help on short notice, on any day of
19 the week, you are going to incur some extra costs
20 at the jail, correct?

21 A. Yes.

22 Q. Labor costs, right?

23 A. Pardon me?

24 Q. Labor costs.

25 A. Labor costs, yes.

1 Q. And if it's going to be a Saturday or Sunday,
2 those costs may be higher still?

3 A. No, the hourly rate is the hourly rate.

4 Q. They need a union. But, essentially, if I
5 understand you here, what you -- what you are
6 telling the corrections officer, is the checkbook
7 is open. We'll pay extra labor costs, if we need
8 to, in accommodating the media, if they want to
9 see Mr. Avery?

10 ATTORNEY FALLON: Objection, speculation as
11 to the intent.

12 THE COURT: I will sustain the objection.

13 Q. (By Attorney Strang)~ Did you put in any limits
14 on how much extra help, how often, for how long,
15 on who's say so?

16 A. Not necessarily, but it's always been our policy
17 in the jail, that they are free to call in a
18 part-time staff person for any visiting night,
19 any visiting time. So, it's not unusual to allow
20 them to do that.

21 Q. Well, let's talk about what's unusual. Prior to
22 November 12, 2005, during your entire tenure as
23 Jail Administrator at the Calumet County Jail,
24 can you recall one occasion on which a TV camera
25 crew interviewed an inmate of the jail -- in the

1 jail?

2 A. I couldn't give a specific.

3 Q. No one comes to mind?

4 A. Not off hand.

5 Q. How long have you been with the Calumet County
6 Sheriff's Department?

7 A. Twenty-seven years.

8 Q. In your 27 years with the Calumet County
9 Sheriff's Department, do you remember any other
10 inmate -- I don't need the name -- but do you
11 remember any other inmate who has attracted as
12 much media attention as Steven Avery?

13 A. No.

14 Q. The next entry, and now we have got a corrections
15 officer named Konen?

16 A. Yes.

17 Q. The next entry is at 10:16, roughly, that same
18 morning, November 12. And we have got Channel 2
19 calling, right?

20 A. Yes.

21 Q. And who's -- who's number 714?

22 A. That would be Denise Juckem.

23 ATTORNEY STRANG: Where's my second copy?
24 Your Honor, I realize I'm leaving you in the dark.

25 ATTORNEY FALLON: Never a good thing to do

1 to a Judge.

2 THE COURT: Thank you.

3 ATTORNEY STRANG: Sure. May I share with
4 you? May I share with you?

5 THE WITNESS: Sure.

6 ATTORNEY STRANG: I gave away my last copy
7 to the Judge.

8 Q. (By Attorney Strang)~ So, you know, some 30
9 minutes, not even, or I guess 32 minutes after
10 this discussion that you have about how we're
11 going to move Avery if the media wants to see
12 him, low and behold we get a call from the media,
13 at least according to Exhibit 10?

14 A. We were getting a lot of calls.

15 Q. Okay. And Ms Juckem, or Officer Juckem and
16 Officer Konen go back and, at least according to
17 this, they talk to Avery, ask him if he would
18 speak to the media?

19 A. Correct.

20 Q. And Avery stated -- and here they quote -- "Yeah,
21 for a second."

22 A. Yes.

23 Q. Have you given instructions to corrections
24 officers on when to use quotations in the jail
25 log, quotation marks?

1 A. No.

2 Q. And your understanding, though, would be that the
3 use of quotation marks connotes a verbatim
4 statement from the person being quoted?

5 A. Yes.

6 Q. That's certainly how you would rely on this
7 document, in reading it?

8 A. Yes.

9 Q. And then it looks like, within 30 minutes,
10 there's some further discussion between Officer
11 Konen now and, again, Sheriff Pagel? I'm sorry,
12 go ahead, you take it. 10:46 a.m.?

13 A. Yes.

14 Q. And at least what -- is it Mr. Konen?

15 A. Yes.

16 Q. Officer Konen?

17 A. Yes, Todd.

18 Q. Says is, that Sheriff Pagel advises, corrections
19 officers are to stand outside the conference
20 room, not inside, when above is being interviewed
21 by the media?

22 A. Yes.

23 Q. Did Sheriff Pagel explain to you, at any time,
24 why he wanted the officer standing outside the
25 room?

1 A. At that time, it was the first few days that he
2 was in our jail, and due to what he had been
3 accused of, we wanted to be close, for security
4 reasons, yes.

5 Q. Okay. Why have them outside the room, not inside
6 the room, according to Sheriff Pagel; what did he
7 tell you about that?

8 A. I'm not sure he explained it. But generally,
9 with all professional visits, we don't stay in
10 the room, unless there is an immediate security
11 concern.

12 Q. Sure.

13 A. We allow the conversation in private.

14 Q. When -- When a lawyer visits, for professional
15 visit, contact visit, it would not be the
16 practice to have even one correction officer
17 standing outside the door, would it?

18 A. No.

19 Q. Let alone two.

20 A. No.

21 Q. So this, having two corrections officers outside
22 the door, was an improvised procedure here, to be
23 used with media -- media interviews of Mr. Avery?

24 A. It was a decision based on everyone's safety.

25 Q. And that decision was Sheriff Pagel's?

1 A. Yes.

2 Q. The interview room itself, that was used here,
3 you are familiar with?

4 A. Yes.

5 Q. It has what I would call linoleum floor, or tile
6 floor?

7 A. Correct.

8 Q. The hallway through which the visitor comes and
9 goes, is the same linoleum tile?

10 A. Correct.

11 Q. The hallway through which the inmate passes into
12 the other door, the second door, is a poured
13 concrete floor?

14 A. There's some sort of covering on it but, yeah, it
15 is a hard surface.

16 Q. It's a hard surface. The two doors into this
17 visiting room are heavy metal security doors?

18 A. Yes.

19 Q. With security glass?

20 A. Yes.

21 Q. They are not flush with the floor?

22 A. No.

23 Q. That is, there's a gap of an inch or something
24 under each of those doors?

25 A. Probably, yes.

1 Q. One standing within a couple feet of those doors
2 can hear, with relative ease, what people are
3 saying in a normal conversational tone inside the
4 visiting room?

5 A. It's not been my experience. I disagree, no.

6 Q. You could not hear, if you're standing at the
7 door, what people are saying in a normal
8 conversational tone, in the interview room?

9 A. I don't believe so. As I said, I did stand
10 outside the door during one of the media
11 interviews, and I couldn't hear the conversation.

12 Q. At all?

13 A. No, I may have heard some of the noise, but it
14 wasn't to the point where I could understand the
15 words.

16 Q. Could make out the words, okay.

17 A. Correct.

18 Q. Fair enough. And, yet, the privacy concern, the
19 not being overheard, with lawyers or clergy
20 visiting an inmate, causes you not to station
21 someone near the door?

22 A. Not so much a privacy concern with an attorney
23 visit. It's primarily a security concern with
24 the media, why we wanted someone close. With an
25 attorney, there's generally not that concern

1 about the attorney's safety. It's somebody that
2 -- In most cases. It's someone that the inmate
3 is looking forward to, to help them, so they are
4 usually glad to see them.

5 Q. Okay. You know, I don't disagree with that. Any
6 reason to think that -- here, that Mr. Avery was
7 not glad to see the media?

8 A. No. But I have seen media at times, it depends
9 on their approach. And not knowing Mr. Avery at
10 that time, we didn't want to take a chance.

11 Q. You had a concern, potentially, or at least
12 didn't want to take a chance, on the safety of
13 the two people from the media?

14 A. Correct.

15 Q. That is, he may not have been happy to see them,
16 was your concern?

17 A. He may not have been happy, or they may have done
18 something to provoke him during the interview.

19 Q. You know, I have done lots of things to provoke
20 clients during interviews in a jail, but I have
21 never had a sheriff's deputy standing there for
22 my safety. So what was the concern about the
23 media provoking Mr. Avery?

24 A. I guess, as I said, we weren't sure. Unfamiliar
25 with Steven Avery, we weren't sure what types of

1 questions they would ask, or what they would
2 imply and what his reaction might be.

3 Q. Okay.

4 A. Because they are his professionals, in a way,
5 that I felt there was a duty to protect them.

6 Q. Okay. Giving you back Exhibit 10, it was a busy
7 day for Mr. Avery, because a couple hours,
8 roughly, after Emily Matesic and her cameraman
9 leave, in comes Mr. Avery's lawyer, right?

10 A. Correct, at 1:24 p.m.

11 Q. He meets with Mr. Avery?

12 A. Correct.

13 Q. No corrections officers are stationed outside the
14 doors for that meeting?

15 A. I don't believe so.

16 Q. That would reflect it if there were?

17 A. It probably would.

18 Q. And what's the entry there concerning the note
19 that Mr. Avery writes?

20 A. It indicates the entry was made at 4:04 p.m. It
21 should be noted, that the above subject,
22 Mr. Avery, they are referring to, wrote a note to
23 the jail staff, that he wishes not to speak with
24 any media, newspapers, internet, etcetera. All
25 calls inquiring about subject should be directed

1 to his attorney, Erik Loy, per his note.

2 Q. Erik Loy is an Assistant State Public Defender
3 who's responsible for Manitowoc and Calumet
4 Counties?

5 A. Yes, he was his attorney at that time.

6 Q. That's something you knew at the time?

7 A. Yes.

8 Q. That's something your staff knew at the time?

9 A. Yes.

10 Q. The jail log is maintained for access to you, or
11 access by you?

12 A. Yes, I review it daily.

13 Q. Your jail sergeant reviews it daily?

14 A. Yes.

15 Q. The corrections officers are expected to review
16 it daily?

17 A. Yes.

18 Q. That's an entry, then, you would have seen on
19 Monday, November 14th.

20 A. Correct.

21 Q. You did see that entry on Monday, November 14?

22 A. I believe so, yes.

23 Q. You reviewed the jail log first thing in the
24 morning, essentially?

25 A. Yes.

1 Q. At any time after November 14, 2005, are you
2 aware of Mr. Avery submitting a contrary, or
3 overriding written instruction, to the jail,
4 about his preferences with respect to contact
5 with the media?

6 A. Not that I'm aware of.

7 Q. You searched his file carefully?

8 A. Yes.

9 Q. You personally copied the contents of the entire
10 Avery inmate file?

11 A. Most of it, there were some private letters that
12 I didn't forward to you.

13 Q. Private letters?

14 A. I believe there were letters that were written to
15 Mr. Avery, that for some reason probably weren't
16 delivered. They were denied for some reason and
17 kept in the file.

18 Q. Kept in the file?

19 A. Yeah.

20 Q. Okay. But you saw no document superseding or
21 modifying Exhibit 9, which is in front of you?

22 A. No.

23 (Exhibit 11 marked for identification.)

24 Q. I show you Exhibit 11, which I believe to be the
25 very next page of the jail log that you have

1 described, and that we marked as Exhibit 10?

2 A. Correct.

3 ATTORNEY STRANG: This is Exhibit 11, your
4 Honor.

5 Q. (By Attorney Strang)~ Now we're back to Noel
6 Hansel, who you told us about with respect to the
7 Invocation of Fifth Amendment Rights. He makes
8 an entry at, I think, just about 5 p.m., does he
9 not?

10 A. 1715.

11 Q. Okay. 5:15 p.m.?

12 A. 5:15.

13 Q. Right?

14 A. Yes.

15 Q. What's the -- Why don't you --

16 ATTORNEY STRANG: Well, I will offer
17 Exhibit 11 as well.

18 ATTORNEY FALLON: I have no objection. I'm
19 confident -- I have no objection. I'm confident
20 this is accurate documents provided by the business
21 records from the jail, so that's fine.

22 THE COURT: All right. Exhibit 11 is
23 admitted.

24 Q. (By Attorney Strang)~ What's the entry from
25 Mr. Hansel, at 5:15 in the afternoon?

1 A. Noel would be a female.

2 Q. I'm sorry. I apologize.

3 A. That's all right. I will read the entry. At
4 approximately 1700 hours, Owen Jensen, a reporter
5 for NBC 26, was in the Sheriff's Department
6 lobby. I talked with Jensen. Jensen requested
7 an interview this evening with Inmate Avery.

8 I told Jensen that Inmate Avery has
9 refused, in writing, to speak with the media. I
10 referred Jensen to Inmate Avery's attorney, Erik
11 Loy, per Inmate Avery's written request.

12 Q. Following the directions, or at least consistent
13 with the directions set forth in Exhibit 9 by
14 Mr. Avery, correct?

15 A. Correct.

16 (Exhibit 12 marked for identification.)

17 Q. Showing you Exhibit 12, yet another page from the
18 same jail log?

19 A. Correct.

20 Q. Prepared and maintained under the same
21 circumstances?

22 A. Yes.

23 ATTORNEY STRANG: Offer Exhibit 12.

24 ATTORNEY FALLON: I have no objection.

25 THE COURT: Exhibit 12 is admitted.

1 Q. (By Attorney Strang)~ Let's look at the
2 November 18, 2005, entries. You will recall that
3 as the day we agreed that Jennifer Kolbusz did
4 her first televised interview from the jail,
5 right?

6 A. Correct.

7 Q. Okay. And is there an entry there concerning FOX
8 11?

9 A. Yes, at 9:50 a.m. The entry was made by
10 Corrections Officer Cheryl Mason. I will read
11 it. Mark Leland from FOX 11 called and wanted to
12 give a message to above subject, to call to
13 arrange for an interview. I gave subject the
14 message and he refused to take it, and did not
15 want to call. And stated that all inquiries to
16 be forwarded to his attorney. I called Mark
17 Leland back and advised him what Avery stated and
18 gave him Erik Loy's number.

19 Q. Now, the subject, or the above subject referred
20 to there, is Steven Avery?

21 A. Correct.

22 Q. So this time it appears that a corrections
23 officer, rather than just turning away the
24 inquiry, goes and asks Mr. Avery, correct?

25 A. Yes. And that had been the procedure we had set

1 up.

2 Q. But Avery's letter, Exhibit 9, clearly said, I
3 just don't want to talk to these people, correct?

4 A. Yes, but I guess as a corrections officer, if the
5 sheriff tells me I deliver the message, I would
6 deliver the message.

7 Q. Was Sheriff Pagel involved?

8 A. Well, he had -- the previous orders were to, if
9 there was a message, give it to Mr. Avery.

10 Q. Okay. Do you know whether Sheriff Pagel reviews
11 inmate files at the jail?

12 A. On occasion I have seen him in the jail office.

13 Q. Reviewing an inmate file?

14 A. Possibly, I'm not sure.

15 Q. Does he review the jail log, Exhibits 10, 11, and
16 12, that document, regularly?

17 A. That I couldn't answer.

18 Q. One way or the other?

19 A. I couldn't answer.

20 Q. Is it available to him?

21 A. It's -- This is available on computer terminal.
22 It should be available to him.

23 Q. But in any event, Avery refuses FOX 11 and says,
24 tell them to call my lawyer, or words to that
25 effect?

1 A. Correct.

2 Q. What's the next entry relating to Mr. Avery,
3 after that? And that's at, I don't know, 9
4 something in the morning? Yeah, 9:51,
5 essentially, November 18, we have that entry,
6 right?

7 A. Yes.

8 Q. And then the next entry related to Mr. Avery is
9 when?

10 A. At 2:44 p.m.

11 Q. Same day?

12 A. Correct, made by Corrections Officer Cheryl
13 Mason.

14 Q. Same officer?

15 A. Correct.

16 Q. And what's that?

17 A. Says, interview with news media done. Started
18 approximately 1400.

19 Q. No reference to asking Mr. Avery about that one?

20 A. There is no reference, no reference to which
21 media it was.

22 Q. No reference to anyone walking a letter back to
23 him?

24 A. No.

25 Q. No reference to any action at all by you?

1 A. No.

2 Q. Had you engaged in any action at all on
3 November 18, with respect to admission of
4 Jennifer Kolbusz to the jail, would you expect
5 your actions to be reflected on Exhibit 12?

6 A. Yes.

7 Q. If we assume, for a moment, that a reporter shows
8 up at the jail, unannounced, asks to see you, and
9 hands you a letter, to Mr. Avery -- and maybe we
10 don't need to assume this -- did that happen, on
11 at least one occasion?

12 A. Yes.

13 Q. With whom?

14 A. I believe it was the interview we talked about
15 before, with Channel 5.

16 Q. The last interview, the December 14 interview, or
17 the --

18 A. Yes.

19 Q. Or did it happen twice with Channel 5?

20 A. Could have happened twice.

21 Q. Okay. And I'm not trying to trap you on this,
22 once, twice, it happened?

23 A. I recall -- I mean, I recall talking to the media
24 quite a bit in our lobby, during this time
25 period, and just, specifically, to name a date

1 and time, would be difficult.

2 Q. I agree. And I'm not -- Again, I'm not trying to
3 go there, okay. But you at least -- You remember
4 at least one occasion, and maybe there was more
5 than one, when Jennifer Kolbusz, in specific,
6 gave you a letter -- and showed up unannounced,
7 and gave you a letter, and asked you to give it
8 to Mr. Avery?

9 A. Yes.

10 Q. You did that?

11 A. Yes.

12 Q. And came back, told Ms Kolbusz, essentially, he
13 will see you?

14 A. If he agreed to, yes.

15 Q. You recall, at least, her conducting these two
16 interviews with Mr. Avery?

17 A. I recall the one interview, as I said, where I
18 stood outside the door.

19 Q. All right. And that interview started within
20 minutes after you handed Mr. Avery the letter
21 from Ms Kolbusz?

22 A. Yes.

23 Q. Not time for Erik Loy to drive from Sheboygan, or
24 Manitowoc, wherever his office is?

25 A. No.

1 Q. You have -- After reviewing the entire inmate
2 file for Steven Avery, you have no document
3 suggesting that Mr. Avery requested, or
4 initiated, the November 12, 2005 interview with
5 Emily Matesic, true?

6 A. True, the notes were given to Steven. And I'm
7 not sure what he did with them.

8 Q. Same as to the November 18, 2005 interview with
9 Jennifer Kolbusz?

10 A. Correct.

11 Q. Same with the December 14, 2005 interview with
12 Jennifer Kolbusz?

13 A. Yes.

14 ATTORNEY STRANG: Your Honor, I'm missing a
15 page of a jail log that I had. I wonder whether
16 this would be a good time for a break, and I will
17 get a copy of that page, or I can just take a couple
18 moments now.

19 THE COURT: No, it's 1:00, let's take our
20 lunch break at this time. Given the fact that the
21 pace isn't going as quickly as we thought, let's
22 resume at quarter to two.

23 (Noon recess taken.)

24 ATTORNEY STRANG: Two quick things before
25 we resume with him, your Honor, if I may.

1 THE COURT: All right.

2 ATTORNEY STRANG: One, Mr. Kratz and
3 Mr. Fallon were kind enough to tell me that, at
4 least to them, I left an impression that the Calumet
5 County District Attorney's Office had the entire
6 November 18, 2005 interview, including raw footage.
7 That wasn't my intended implication at all.

8 The DVD or the CD that was produced is
9 what was aired on TV, and nothing more. I
10 intended no -- if the Court took it that way, I
11 certainly intended no such implication.

12 THE COURT: The only impression I got was
13 that they would have had the telephone interview, by
14 virtue of the fact that it was conducted over the
15 telephone, not --

16 ATTORNEY STRANG: Right.

17 THE COURT: -- for any other reason. But I
18 did not get the impression that they had any of the
19 full length TV interviews.

20 ATTORNEY STRANG: Right. I just wanted to
21 make that very clear, if it wasn't already. Second,
22 I think Mr. Fallon and I agreed here that it would
23 make sense, and be appropriate for the Court, to be
24 permitted to take judicial notice of the calendars
25 for 2005 and 2006, so that we don't have to worry

1 about what's a Saturday and what's a Wednesday and
2 that kind of -- the days of the week, as we're going
3 through things with witnesses, including on the next
4 motion, I assume.

5 ATTORNEY FALLON: Yeah. I think that's
6 true. I think we can agree, for instance, that the
7 5th, the 12th, the 19th, and 26th of November were
8 Saturdays.

9 THE COURT: Very well.

10 ATTORNEY FALLON: And we would also just
11 note for the record, that a request has been made to
12 Corporate Counsel in New York for the substance of
13 the entire interview. The initial request was not
14 granted, and we'll see where that takes us, whether
15 or not that results in further hearings elsewhere or
16 not, but at least so the record is clear, that a
17 request was made for the entire interview. It has
18 not been adhered to at the moment.

19 ATTORNEY STRANG: That's -- Not only is
20 that not in dispute, but I have heard that before
21 from Mr. Fallon.

22 THE COURT: Answer me something here, the
23 motion in this case is a motion to suppress
24 statements made to the media. If the State doesn't
25 have the statements, what's the relevance of the

1 other content.

2 ATTORNEY STRANG: If the motion is denied
3 for any reason, then we have a doctrine of
4 completeness problem. I'm sure that's what counsel
5 has in mind.

6 ATTORNEY FALLON: That's correct, yes,
7 because some of those comments and statements were
8 actually aired, parts of the interview were aired
9 publicly.

10 THE COURT: Okay. And I understand --

11 ATTORNEY FALLON: So either party may
12 choose to use some of the on air snippets from the
13 interview. At this particular point, the defense is
14 challenging the three in issue, as not wanting that
15 to occur. But that's a separate issue on the rule
16 of completeness. And in the interest of accuracy,
17 which was, I think, something that Ms Kolbusz was
18 attempting to provide in her testimony. But that's
19 a separate issue over and above the admissibility
20 per se of the statements which were aired publicly.

21 THE COURT: All right. Mr. Strang, you may
22 proceed with your examination of the witness. And,
23 Mr. Byrnes, you are still under oath.

24 MR. BYRNES: Yes.

25 (Exhibit 15 marked for identification.)

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DIRECT EXAMINATION, CONT.

BY ATTORNEY STRANG:

Q. Mr. Byrnes, this is Exhibit 15, do you recognize at least the type of form?

A. Yes, the form is an Inmate Communication Form that we use.

Q. Part of the business of the Calumet County Jail is to make regular, the communication of inmates to jail staff and jail staff back to inmates, by the use of this form?

A. Correct.

Q. It's a standard form that your jail, at some time, created?

A. Correct.

Q. You maintain these in the ordinary course of the business of the Calumet County Jail?

A. Yes.

ATTORNEY STRANG: Move Exhibit 15.

ATTORNEY FALLON: No objection.

THE COURT: This exhibit is what number?

ATTORNEY STRANG: Fifteen.

ATTORNEY FALLON: We have no objection to the introduction of Exhibit 15.

THE CLERK: I put the wrong number on, do you want me to change it to 13.

1 THE COURT: I thought it was 13.

2 THE CLERK: It should be, I just put the
3 wrong sticker on it.

4 THE COURT: Yes, let's make it 13.

5 ATTORNEY STRANG: All right. Thirteen it
6 is. All right. Exhibit 13, so I that's the one I
7 move.

8 THE COURT: There's no objection, as I
9 understand it, from the State?

10 ATTORNEY FALLON: No. It's been
11 re-numbered to 13 now?

12 THE COURT: Correct. Exhibit 13 is
13 admitted.

14 Q. (By Attorney Strang)~ The top half of Exhibit 13
15 is the part on which the inmate writes?

16 A. Correct.

17 Q. And then the bottom half is for a response by
18 jail staff?

19 A. Correct.

20 Q. The top half here is written by Steven Avery?

21 A. Yes.

22 Q. The bottom half is written by you?

23 A. Yes.

24 Q. What's the date of Steven Avery's request, or his
25 communication?

1 A. This is January 9, 2006.

2 Q. And you write back to him on what date?

3 A. Would have been January 9th, 2006.

4 Q. Same day?

5 A. Yes.

6 Q. What's Mr. Avery asking?

7 A. It's addressed to Jail Administrator, John
8 Byrnes. It says, I have got TV 26 NBC for a
9 interview on 1/11/06. Aaron Keller, he is going
10 to come to see me. Thank you.

11 Q. And then what's your reaction, or your response
12 to Mr. Avery?

13 A. My response was, I cannot approve a special visit
14 for this, you will have to do this interview by
15 phone.

16 Q. Okay. Thank you. In fact, we'll just leave that
17 there. Now, I think we agreed, before lunch,
18 that Mr. Avery had not made any request for the
19 three televised interviews that we have already
20 discussed, but we now have him making a written
21 request for a 4th televised interview?

22 A. Correct.

23 Q. And although he had not requested the first
24 three, you arranged those, and we have gone
25 through the sequence of your involvement, and

1 Sheriff Pagel's involvement, and that of
2 corrections officers. This one you are turning
3 down, when he finally does request one, and my
4 question for you is, why?

5 A. At some time, I believe it was later in November
6 or December, the sheriff redirected us, I think
7 after speaking with Mr. Avery's counsel, not to
8 grant interviews. It was an agreement that we
9 would abide by the counsel's wish, the attorney's
10 wish, that we stop that process.

11 Q. Erik Loy at that time?

12 A. I believe so.

13 Q. Are you aware of any document reflecting that
14 agreement?

15 A. I'm sure that Sheriff Pagel issued a memo; I
16 don't have a copy of it.

17 Q. Okay. So that would have -- You would have
18 received such a memo, or some kind of directive
19 from Sheriff Pagel, after the third interview we
20 discussed before the lunch break, but before this
21 request. So the answer simply is, no, even
22 though Mr. Avery is initiating the request.

23 A. Correct.

24 Q. Sheriff Pagel had not directed you to prevent
25 telephone interviews with Mr. Avery, correct?

1 A. There's really no way to prevent it.

2 Q. If the inmate places the call?

3 A. Correct.

4 Q. Right?

5 A. Yes.

6 Q. Okay. Was there any direction about request for
7 a telephone interview initiated by a member of
8 the media?

9 A. I believe that any request, whether it was for a
10 telephone interview or anything, since that
11 change in direction, it has to be addressed to
12 Mr. Avery at the Calumet County Jail. They have
13 to send a letter, or -- we're not even providing
14 notes to Steven any more.

15 Q. Since this December directive from Sheriff Pagel?

16 A. Correct.

17 Q. As to the three interviews that did happen on
18 camera, you had an understanding of the topics on
19 which the reporters wished to interview
20 Mr. Avery, true?

21 A. Not specifically. It was related to the case.

22 Q. Right. Generally, you understood them to be
23 wanting to interview him relating to the case?

24 A. Correct.

25 Q. By the case, you mean the pending charges against

1 Mr. Avery, concerning the disappearance and death
2 of Teresa Halbach?

3 A. Correct.

4 ATTORNEY STRANG: That's all I have. Thank
5 you.

6 THE COURT: All right. Mr. Fallon.

7 ATTORNEY FALLON: Yes, thank you.

8 **CROSS-EXAMINATION**

9 BY ATTORNEY FALLON:

10 Q. Do you have the exhibits in front of you?

11 A. Just 13.

12 Q. All right.

13 THE COURT: Counsel, your microphone is
14 still on there.

15 ATTORNEY FALLON: May I approach the
16 witness?

17 THE COURT: Yes.

18 Q. (By Attorney Fallon)~ Lieutenant, I'm showing you
19 what has been received into evidence as Exhibit
20 No. 8, are you familiar with that form?

21 A. Yes.

22 Q. And do you know its purpose?

23 A. There's two forms here. The Fifth Amendment, or
24 the notification?

25 Q. And my attention is directed -- I'm directing

1 your attention to the top part of the Fifth
2 Amendment Form?

3 A. Yes, the purpose is to ensure that the jail staff
4 understands and makes any law enforcement officer
5 that may come in to question an inmate,
6 understand that that inmate has invoked his Fifth
7 Amendment rights, does not wish to give a
8 statement without an attorney present.

9 Q. So, that's to alert any other law enforcement
10 officer who may wish to interview a defendant or
11 suspect, on any other crime, on any other matter,
12 that they would be prohibited from doing so,
13 because the individual has invoked his right to
14 counsel on all unrelated and related matters,
15 correct?

16 A. Correct.

17 Q. All right. And that's for law enforcement
18 personnel seeking to come and interview a given
19 inmate who is detained at the jail?

20 A. Correct.

21 Q. Okay. Now, you indicated in your direct
22 examination that there were at least two distinct
23 classes, or groups of individuals, and that the
24 rules were different for purposes of facilitating
25 visitation; is that correct?

1 A. Yes.

2 Q. And one group, or one class of individuals, you
3 have lawyers, clergy, probation and parole, and
4 medical personnel?

5 A. Yes.

6 Q. And on the other side of the ledger, the other
7 group, we have family members, friends,
8 relatives, and perhaps other members of the
9 general public?

10 A. Correct.

11 Q. All right. Now, I believe, also, you said in
12 your examination that there wasn't anything
13 specific in the visitation rules governing
14 contacts with the media; is that correct?

15 A. That's correct.

16 Q. All right. So, for purposes of assessing the
17 media, in your opinion, which category does the
18 media fall into? Do they fall into the lawyers,
19 clergy, professional, law enforcement,
20 doctor group; or would they fall into the family,
21 friends, relatives, and others group?

22 A. We consider them professional visitors, as a
23 doctor or an attorney.

24 Q. All right. And why were they afforded this
25 professional status?

1 A. Well, because we -- Obviously, generally, they
2 are not family, and the inmates are limited to a
3 specific number of friends that can visit. I
4 guess, to allow the visitation, which the inmate
5 does have a right to access the media, we just
6 consider them a professional visit.

7 Q. Well, let's talk about that right of access to
8 the media. Where does that come from?

9 A. The courts uphold that inmates have certain
10 rights in jail, such as access to the courts,
11 access to their attorneys, access to their legal
12 materials, and access to the media, or other
13 organizations that do help them.

14 Q. Now, is that something that you learned in
15 training?

16 A. Yes.

17 Q. Could you tell us about that, please.

18 A. I believe, specifically, I learned -- I attended
19 a Department of Corrections Seminar on writing
20 policies and procedures. And part of the
21 materials that we were provided talked about
22 specific inmate rights that should be protected.

23 Q. All right. So would it be fair to say that you
24 were sensitive to any given inmate's right to
25 have access to the media?

1 A. Correct.

2 Q. So, sensitive to their First Amendment right to
3 free speech?

4 A. Correct.

5 Q. All right. And does that sensitivity somewhat
6 inform you in exercising your policy of
7 reasonableness?

8 A. Yes.

9 Q. All right. There was a fair amount of discussion
10 relative to -- to flexibility that needed to be
11 afforded to permit professional visits; is that
12 correct?

13 A. Yes.

14 Q. All right. As a matter of fact, Monday, in
15 Calumet County, is criminal court intake day; is
16 it not?

17 A. Yes.

18 Q. And things get rather hectic on that particular
19 day, correct?

20 A. Yes.

21 Q. There's a lot of court appearances to be held?

22 A. Yes.

23 Q. And as a result, there's a lot of visits by
24 retained counsel for inmates?

25 A. Yes.

1 Q. As a matter of fact, there may very well be
2 visits by the State Public Defender's Office
3 doing indigency evaluations and things of the
4 sort to see if some in custody person is entitled
5 to a right of counsel, correct?

6 A. Correct.

7 Q. Now, on a given day like that, do you sometimes
8 have to call in extra personnel to make these
9 visits happen?

10 A. Yeah, we generally like to, if we can, staff
11 heavier on busier court dates.

12 Q. I believe you said the staffing is somewhat more
13 limited on weekends; is that correct?

14 A. It's limited in the way that there's not always a
15 supervisor working. The corrections officers
16 depend more on the patrol supervisors to assist
17 them.

18 Q. All right. And in terms of the correctional
19 individuals, or sometimes referred to as jailers,
20 the staffing, does that depend on the number of
21 inmates that may be housed at any given time at
22 the jail? Do you have to put on extra staffing,
23 in other words, if you're full versus half full,
24 for instance?

25 A. We prefer, but there's so many factors that

1 influence it, that it's really hard. We like to
2 have as many working as we can, but as I said
3 there's a lot of factors that limit it.

4 Q. And those factors, then, necessitate an exercise
5 of reasonableness in attempting to facilitate
6 visits that someone -- that any given inmate may
7 wish to have?

8 A. Yes.

9 Q. All right. Let's talk about the situation with
10 Jennifer Kolbusz. As I understand your
11 testimony, she provided you with a letter briefly
12 explaining her purpose for visiting Mr. Avery; is
13 that correct?

14 A. Correct.

15 Q. And you examined the letter?

16 A. Yes, I reviewed it.

17 Q. All right. And you found it to be appropriate,
18 under the circumstances?

19 A. Yes.

20 Q. And you took that letter and you went down to
21 Mr. Avery's cell, correct?

22 A. Yes.

23 Q. You handed him the letter, correct?

24 A. Yes.

25 Q. You waited for a reply?

1 A. Yes.

2 Q. And what we didn't hear is, what was his reply?

3 A. Said he would talk to them.

4 Q. All right. At that particular point, was he at
5 all hesitant to grant the interview?

6 A. Didn't appear to be. He studied the letter, and
7 thought about it, and agreed to it.

8 Q. All right. At any time during your contact with
9 him, did he express an unwillingness to meet with
10 them?

11 A. No.

12 Q. As a matter of fact, you gave him the letter,
13 correct?

14 A. Yes.

15 Q. You never took that letter back, correct?

16 A. No, I did not.

17 Q. For all you know, that letter is in his
18 possession to this day?

19 A. Probably, unless he disposed of it.

20 Q. All right. And there was a -- I will withdraw
21 that. When you were discussing with him the fact
22 that Ms Kolbusz, from Channel 5, was wanting to
23 interview him, he never once mentioned Attorney
24 Erik Loy to you, did he?

25 A. No.

1 Q. As a matter of fact, he never mentioned once to
2 you, Exhibit No. 9, which was the handwritten
3 letter that he wrote out and was found in your
4 files, correct?

5 A. No.

6 Q. As a matter of fact, there was no real hesitation
7 whatsoever in terms of his willingness to meet
8 with the reporter, correct?

9 A. Correct.

10 Q. And that held true, as far as you know, for both
11 interviews conducted by Ms Kolbusz, the
12 November 18th letter circumstance we were just
13 talking about, and the December 14th?

14 A. Correct.

15 Q. Now, with respect to this media access issue and
16 Mr. Avery, it's true, is it not, that initial
17 counsel in this case, Erik Loy, and his
18 associate, were concerned about the interviews
19 given to the media by their client, Mr. Avery,
20 correct?

21 A. Yes.

22 Q. As a matter of fact, he was not heeding their
23 advice not to give those interviews was he?

24 A. No.

25 Q. And as a matter of fact, the change in the policy

1 that you alluded to by Sheriff Pagel, came at the
2 request of the attorneys that -- basically, in
3 effect, asking for a favor that they not -- that
4 he not grant access or pass on information to
5 their client, correct?

6 A. Correct.

7 ATTORNEY STRANG: Personal knowledge here,
8 but I think we need some foundation.

9 THE COURT: I will sustain the objection on
10 foundational grounds, at this point.

11 Q. (By Attorney Fallon)~ What's your understanding
12 as to why there was a change of policy in
13 January of '06?

14 A. As I explained earlier, my understanding from
15 conversations with the sheriff was that
16 Mr. Avery's counsel at that time had requested
17 that we no longer grant access, by the media, to
18 Mr. Avery. And the sheriff at that time changed
19 his policy of passing notes and asking if
20 Mr. Avery wanted to do an interview and, in
21 effect, stopped it.

22 Q. All right. And that, specifically, was at the
23 request of his attorneys of record at that time?

24 A. That was my understanding.

25 Q. All right. Now, in terms of the interviews, who

1 were granted interviews -- Well, let's rephrase
2 that. In terms of the individuals for whom Mr.
3 Avery agreed to be interviewed, those interviews
4 were conducted by Emily Matesic, correct?

5 A. Yes.

6 Q. All right. And they were also interviews
7 conducted by Jennifer Kolbusz, correct?

8 A. Yes.

9 Q. And it's true, is it not, that Mr. Avery declined
10 to be interviewed by Mark Leland, from FOX 11
11 news, correct?

12 A. Yes, it's in the jail log.

13 Q. As a matter of fact, in the jail logs, the
14 individuals to whom Mr. Avery granted interviews
15 are all women, correct?

16 A. Correct.

17 Q. As a matter of fact, for instance, Ms Matesic and
18 Ms Kolbusz are young, attractive, dark-haired
19 professional women, correct?

20 ATTORNEY STRANG: Stipulated.

21 A. Correct.

22 Q. (By Attorney Fallon)~ One other matter, in
23 November and December, which is the time frame in
24 question, it was customary for you and/or other
25 jail staff to sit down and have discussion with

1 Mr. Avery as to how he was doing, how he was
2 adjusting in the jail, correct?

3 A. Yes.

4 Q. As a matter of fact, you would review everything
5 from his visitation list, to his medication
6 needs, to his entertainment needs, whatever the
7 case may be; you wanted to see if he was
8 adjusting correctly?

9 A. Yes.

10 Q. And comfortably?

11 A. Yes.

12 Q. All right. How often would these meetings take
13 place with Mr. Avery?

14 A. I couldn't say specifically, I know I tried to
15 speak with him weekly, it's probably not that
16 frequent any more.

17 Q. And as a matter of fact, you did have a meeting
18 with him on November 30th; would that be correct?

19 A. I guess.

20 Q. Well, perhaps I can show you a page from the
21 report.

22 (Exhibit 14 marked for identification.)

23 ATTORNEY FALLON: May I approach?

24 THE COURT: Yes.

25 Q. (By Attorney Fallon)~Lieutenant, I show you

1 what's been marked for identification purposes as
2 Exhibit 14; is that correct?

3 A. Yes.

4 Q. Directing your attention to the last entry on
5 Exhibit 14.

6 A. That's a narrative that Sergeant Hemauer wrote
7 about a meeting that we had with Mr. Avery.

8 Q. Tell us about that meeting. What does the entry
9 say?

10 A. I will read it. Earlier this afternoon JA Byrnes
11 and I invited Inmate Avery into the office to
12 discuss any concerns, requests, or complaints, he
13 may have. Inmate Avery stated he is doing as
14 good as can be.

15 I asked Inmate Avery if everything was
16 working properly in his housing unit. The only
17 complaint Inmate Avery indicated, were that
18 sometimes the water in the shower is too hot and
19 the reception on the television is poor.

20 Inmate Avery stated he has no problems
21 with the correctional staff and is -- that's all.

22 ATTORNEY FALLON: I believe the next page
23 is already an exhibit -- No, it's not. All right.

24 THE COURT: If you are going to add a page,
25 can the parties agree just to make it part of --

1 ATTORNEY FALLON: Yeah, I'm going to add
2 Page 6, in the interest of completeness.

3 THE COURT: All right.

4 ATTORNEY STRANG: Sure.

5 Q. (By Attorney Fallon)~ All right. There's the
6 rest of the that note, would you continue,
7 please.

8 A. It's, again, on the first page, Inmate Avery
9 stated he has no problems with the correctional
10 staff and is being treated okay.

11 I asked Inmate Avery about a report by a
12 television station, that his mother made the
13 comment he is depressed. Inmate Avery stated he
14 was doing okay.

15 Inmate Avery was advised that should he
16 ever need services from the Calumet County
17 Department of Human Services, the jail will
18 assist him in arranging to have someone speak
19 with him. Inmate Avery again stated he was doing
20 okay and would let correctional staff know if he
21 needs assistance from CCDHS.

22 Lastly, we talked about being housed
23 alone. Inmate Avery stated he is okay with it,
24 but sometimes he wishes he had someone to talk
25 to. Inmate Avery made the comment he's facing

1 more time this time than the last. It was
2 decided that Inmate Avery will continue to be
3 housed alone, but will be revisited at Inmate
4 Avery's request, in the future.

5 Inmate Avery thanked JA Byrnes and
6 myself for our time and was turned over to
7 correctional staff.

8 Q. Thank you. So it would be fair to say -- or
9 would it be fair to say that those types of
10 meetings or debriefings would occur periodically
11 during his detention?

12 A. Yes.

13 Q. And at that particular meeting, it's obvious he
14 didn't have any concerns or express any problems
15 with having media interviews, correct?

16 A. Correct.

17 Q. So, during the course of these periodic reviews,
18 to your recollection did he ever -- and I'm now
19 talking specifically from the time frame of
20 November. Well, that note was November 30th,
21 through December 15th, were there ever any
22 concerns expressed by Mr. Avery regarding, geez,
23 I just don't want any more media contact?

24 A. No.

25 ATTORNEY FALLON: I move into evidence

1 Exhibit 14 and tender the witness for redirect.

2 THE COURT: Any objections?

3 ATTORNEY STRANG: No objection.

4 THE COURT: All right. The exhibit is
5 admitted. Mr. Strang.

6 **REDIRECT EXAMINATION**

7 BY ATTORNEY STRANG:

8 Q. With respect to an inmate's access to the media,
9 okay, discussed on cross-examination, one of the
10 things an inmate ordinarily has available to him
11 in the jail is a telephone?

12 A. Correct.

13 Q. Each block, or pod, however the jail is
14 organized, has such a phone?

15 A. Yes.

16 Q. That phone can be turned off by jail staff?

17 A. Yes.

18 ATTORNEY FALLON: Objection, beyond the
19 scope of cross.

20 ATTORNEY STRANG: It's clearly within.

21 THE COURT: I'm trying to remember.

22 Mr. Strang.

23 ATTORNEY STRANG: All I'm going is, Avery
24 was able to initiate calls to the media, by
25 telephone.

1 ATTORNEY FALLON: I don't recall bringing
2 that up on cross-examination.

3 ATTORNEY STRANG: Yes, the right of access
4 to the media and his training on right of access to
5 the media.

6 THE COURT: Yeah. I will allow the
7 question.

8 Q. (By Attorney Strang)~ This is a phone that can be
9 turned off by jail staff.

10 A. Correct.

11 Q. But unless it's abused, ordinarily it's on?

12 A. Correct.

13 Q. Doesn't receive incoming calls?

14 A. No.

15 Q. But the inmate can place outgoing calls, collect?

16 A. Yes.

17 Q. There was a short time in March of 2006 where you
18 turned off Mr. Avery's phone, or at least moved
19 him to a cell that had no phone, correct?

20 ATTORNEY FALLON: Objection, relevance as
21 to what went on in March, we're talking November and
22 December.

23 THE COURT: Mr. Strang, what's the --

24 ATTORNEY STRANG: It's just a counter
25 point. What I'm going to is, he, other than for a

1 very brief period of time in March, has had access
2 to a telephone and could make collect calls.

3 THE COURT: I don't know that that's
4 contested. I'm going to sustain the objection.

5 Q. (By Attorney Strang)~ Mr. Avery, to your
6 knowledge, was able to place collect calls to any
7 media outlet he wished, who would accept his
8 collect call?

9 A. Correct.

10 Q. We discussed the three interviews, television
11 interviews, Mr. Avery did not request, and the
12 one television interview he did request and was
13 turned down. And Mr. Fallon explored the sex and
14 the physical characteristics of the reporters.
15 The one reporter Mr. Avery ever asked to speak to
16 was a gentleman named Aaron Keller, wasn't it?

17 A. I'm not familiar with Aaron Keller -- pardon
18 me -- but the note indicates "he".

19 Q. Finally, the November 30 meeting, which I
20 understand was one of several similar meetings
21 that you have had with Mr. Avery, --

22 A. Yes.

23 Q. -- correct? And so you are the Jail
24 Administrator, and with you for that meeting was
25 your Jail Sergeant, Sergeant Hemauer?

1 A. Correct.

2 Q. During the period of November and December, 2005,
3 were you and Sergeant Hemauer in the habit of
4 regularly visiting every inmate of the Calumet
5 County Jail, to inquire how things were going,
6 whether he was depressed, whether the water in
7 the shower was too hot, how the TV reception was
8 doing; were the two of you running around and
9 talking to every inmate, during that time period,
10 about these solicitous matters?

11 A. I would say we didn't have formal meetings with
12 them. I'm not sure how formal this was but,
13 yeah, we keep in touch with the inmates and, I
14 mean, I want to know what's going on and how they
15 are doing. And he is not the only inmate in
16 there, and not the only one I'm concerned about.

17 Q. Sure, but I have had a chance to look at the jail
18 log, and we have only marked a few pages of it,
19 but I don't see that -- that sort of attention to
20 the other inmates. Am I missing something, or
21 was Mr. Avery a little bit different?

22 A. The jail log that you were provided are entries
23 that deal solely with Mr. Avery, nothing with the
24 other 40, 50 inmates that we house. That log was
25 provided by querying his booking number. And

1 from that I obtained all the log entries specific
2 to him only.

3 Q. Very well. So the question, really, the final
4 question is, was Mr. Avery treated differently in
5 terms of your solicitude, the Jail Sergeant and
6 the Administrator, visiting him and making these
7 sort of inquiries; was he treated differently, in
8 the last two months in 2005, than the other 40 or
9 50 inmates?

10 A. No.

11 ATTORNEY STRANG: That's all I have.

12 THE COURT: Any other questions?

13 ATTORNEY FALLON: Nothing further for the
14 witness.

15 THE COURT: You may be seated.

16 THE WITNESS: Thank you.

17 THE COURT: Does the defense have any
18 further witnesses on this motion?

19 ATTORNEY STRANG: We do not.

20 THE COURT: Any other witnesses for the
21 State?

22 ATTORNEY FALLON: One moment. We have
23 nothing further.

24 THE COURT: All right. I know each party
25 has submitted a written argument in support of their

1 position on their motion, does either party wish to
2 be heard orally, after today's evidence on the
3 motion?

4 ATTORNEY STRANG: I would like an
5 opportunity to get a transcript, which I'm willing
6 to pay for on an expedited basis, and submit a
7 written argument. Because I think we will find no
8 case that directly controls this on the question of
9 where the line falls on a citizen becoming, de
10 facto, an agent of the police. I think it's an
11 interesting issue. And I would like a chance to
12 look at the testimony and argue it in writing.

13 ATTORNEY FALLON: Your Honor, I guess I
14 would disagree. I think there is case law both in
15 Wisconsin and elsewhere. I cited some of it in my
16 brief. We have argued it. We have done our
17 preliminary research. We have taken the testimony.
18 And I would be prepared to orally argue further
19 comments, based on the testimony, while it's fresh
20 in our minds.

21 THE COURT: I think on the general
22 question, the memoranda submitted by both parties
23 adequately addressed the point. There was a -- I
24 don't know that the written memoranda addressed the
25 significance, if any, of the written request that

1 was made by the defendant, not to have access to any
2 media people.

3 ATTORNEY STRANG: No, we had none of that
4 at the time of the memoranda.

5 THE COURT: All right. In light of that
6 fact, I will grant the request to allow the parties
7 to submit written argument, a supplemental memoranda
8 on this issue. I will just make it due by
9 August 9th.

10 (Discussion about expedited transcript.)

11 THE COURT: I also think that the parties
12 can probably start researching their memoranda
13 before they get a copy of the transcript. I don't
14 think the evidence is that complicated here.

15 ATTORNEY FALLON: Let me ask, Judge, are
16 you contemplating, then, a simultaneous filing,
17 since we each have already filed our initial replies
18 or responses, so that each party will file our final
19 position by the 9th; is that the contemplation?

20 THE COURT: Yes, that is exactly what I
21 contemplate.

22 ATTORNEY FALLON: That's fine.

23 THE COURT: All right. Then we move on to
24 the **Franks** motion regarding the basis for the search
25 warrant. I believe the defense is going to begin

1 here. Mr. Buting, you are handling this one?

2 ATTORNEY FALLON: Excuse me, your Honor,
3 before we begin, if I could have a moment, since I'm
4 doing this one as well, to reorganize my paperwork.
5 But I would like the right to be heard on whether or
6 not the pleading is sufficient to justify an
7 evidentiary hearing on part of the defense motion
8 dealing with the **Franks** issue.

9 THE COURT: All right.

10 ATTORNEY BUTING: Judge, I think the State
11 has had an opportunity to respond to this motion,
12 several weeks, if they were going to reply and
13 object to this motion being heard, having a hearing
14 on that part of it, they could have filed it in
15 writing. I can't say that I have all the case law
16 at my fingertips right now, on these issues, because
17 it wasn't raised as a concern until right now.

18 THE COURT: Mr. Fallon.

19 ATTORNEY FALLON: Yes, Judge. Well, I
20 would have liked to have had the time to file a more
21 written rendition of the argument I'm about to make,
22 but like other counsel, I have been away from the
23 office quite a bit in the last few weeks.

24 And I did write a brief for the November
25 5th proceeding, and I wrote a brief with respect

1 to the issue we just had. I did not have time to
2 write the third brief. That's all I can say.

3 I would note for the record that, in
4 reading the case law, the courts have often times
5 footnoted comments regarding the fact that the
6 issue was not raised at the trial court, and
7 probably should have been raised, so I did not
8 want to be put in a situation, should there be an
9 appellate review, of not having argued the point.

10 THE COURT: All right. I will acknowledge
11 that you have raised the issue at this time, and I
12 will take it under advisement, but I think, given
13 the fact I haven't had a chance to review any
14 arguments that might have been made either, I would
15 have difficulty ruling on it at this time. So we
16 will proceed with the evidentiary hearing.

17 ATTORNEY FALLON: At some point, may I
18 submit at least a brief offer of what my argument
19 would have been had the Court entertained it, just
20 to preserve the record.

21 THE COURT: Yes. And if it turns out that
22 the Court can still grant your motion --

23 ATTORNEY FALLON: All right.

24 THE COURT: -- even if I take evidence
25 today, if the Court is satisfied that the defense

1 wasn't entitled to an evidentiary hearing, based on
2 the material provided. Likewise, Mr. Buting gets an
3 opportunity to make the counter-argument.

4 ATTORNEY BUTING: All right. Thank you.

5 THE COURT: And I suppose we should have
6 that due by August 9th as well.

7 ATTORNEY BUTING: My witness is probably in
8 the hall. Let me check.

9 ATTORNEY FALLON: Your Honor, I will let
10 you swear the witness, but there's one other
11 housekeeping matter I thought we might want to take
12 up regarding the scope of the claim, so that I'm
13 certain I know exactly what the defense is wishing
14 to accomplish in terms of what is to be suppressed
15 and what is not.

16 THE COURT: Okay.

17 **INVESTIGATOR MARK WIEGERT**, called as a
18 witness herein, having been first duly sworn, was
19 examined and testified as follows:

20 THE CLERK: Please be seated. Please state
21 your name --

22 THE COURT: All right. Mr. Fallon.

23 ATTORNEY FALLON: Just so that we're clear,
24 as I understand the suppression motion, Counsel, you
25 are challenging the -- primarily and exclusively,

1 the searches of your client's trailer and garage,
2 based on the initial averments in the affidavit
3 prepared by this witness; is that correct?

4 ATTORNEY BUTING: On the **Franks** motion, no,
5 it would be the question of whether any part of this
6 warrant is sufficient for probable cause, to
7 anything that they search, including the property of
8 the whole salvage yard.

9 ATTORNEY FALLON: If you are asserting
10 that, then, my point at this time is, I would like a
11 demonstration of standing by the defendant, if he
12 would prove that he has standing to object to
13 searches of locations on the salvage yard, above and
14 beyond his private trailer and his garage. If he's,
15 then, challenging the entire fruits of everything,
16 then he ought to show standing that he's entitled to
17 challenge.

18 ATTORNEY BUTING: Again, Judge, this is --
19 I would have thought that if the State was going to
20 object to standing, they would have replied. I
21 filed this June 15, I think it was, approximately a
22 month ago. They haven't raised an issue on the
23 **Franks**, whether there is a right to a hearing. They
24 haven't raised an issue on standing. Mr. Avery
25 lived and worked on the property, just like any of

1 the others. I think, beyond that, I don't have
2 witnesses to establish that today.

3 ATTORNEY FALLON: I would note for the
4 record, that standing is the first issue that needs
5 to be dealt with when you are dealing with a
6 comprehensive search warrant such as this. And if
7 the defense is challenging everything, if everything
8 is in play, then it seems to me, the fact that the
9 defendant worked there, it doesn't cut the mustard
10 in terms of establishing that he has standing, for
11 instance, to challenge the searches of burn barrels,
12 of fire pits, of the residences of Delores, and
13 Steven Avery, the residence of Barb Janda, the
14 business office.

15 He's an employee, as I understand it,
16 he's not an owner. So my question is -- That's
17 why I asked the question, what is really being
18 suppressed and where is the standing? I mean,
19 that's hornbook law.

20 ATTORNEY BUTING: Counsel is correct, he
21 would not have standing to object to searches of
22 other private residences encompassed in this
23 warrant. And maybe I should have been more clear on
24 that, but the motion does go to the search of the
25 properties, which would include the Rav 4 vehicle

1 that was found, as well as his personal residence,
2 garage, and areas within the general purview of
3 those particular buildings.

4 ATTORNEY FALLON: Again, my question then
5 is, well, what is the defendant's reasonable
6 expectation of privacy in a vehicle owned by Teresa
7 Halbach? Just because it's found in the salvage
8 yard, that makes it a reasonable expectation of
9 privacy? I think not.

10 ATTORNEY BUTING: The issue is not what
11 privacy he has in the vehicle. The issue is what
12 privacy interest he has on the property. And if the
13 State wishes to challenge that, we can take
14 testimony today on these issues and I can try and
15 supplement the record later to establish the
16 standing questions.

17 But they have not raised that until
18 today, as a concern. And I think my motion was
19 pretty clear as to what is involved here. I
20 mean, obviously, issues related to the business
21 office, business records, are not in play. There
22 is nothing there anyway. I think counsel knows
23 that.

24 As to other private residences on the
25 property, again, there is no issue there either,

1 as counsel is aware of. So there's really only a
2 few areas of this 40 acre property that are at
3 issue here.

4 ATTORNEY FALLON: And that's the point of
5 the pleading. The pleading does suggest suppression
6 of derivative fruits, etcetera. But when you read
7 the argument, the entire argument is obsessed with
8 the numerous entries to both his trailer and the
9 garage, and not much else.

10 So there's -- that's the reason for my
11 question, what is at issue. And if it's the
12 trailer and the garage, and those entries, then,
13 I will concede standing. I don't have a problem
14 with that. But if everything else is in play,
15 then Mr. Avery should take the stand and
16 demonstrate he has a reasonable expectation of
17 privacy, sufficient to be acknowledged by a court
18 of law, in the remaining 39 and a half acres.

19 ATTORNEY BUTING: Perhaps there's confusion
20 here. What we -- I anticipate we're going to take
21 testimony from the witnesses this afternoon on is
22 the **Franks** portion of the motion. That's separate
23 from the separate violation alleged, which is the
24 exceeding the scope of the warrant.

25 Before you can even get to that

1 question, we have to determine if the warrant
2 itself was valid under **Franks**. We have to look
3 at the alleged untruthful -- or statements made
4 with reckless disregard for the truth, see if we
5 can meet our burden to establish the **Franks**
6 standard. And then, if so, those paragraphs are
7 stricken from the warrant.

8 Then we look at the warrant to see if
9 there's probable cause to support it at all. If
10 there is no probable cause left, then the whole
11 second part of the motion, which is the exceeding
12 the scope because they entered over, and over,
13 and over, and over, after -- all on one warrant,
14 then that becomes moot.

15 If the warrant is found to be invalid,
16 lacking probable cause, after we strike and
17 redact those portions for which the **Franks**
18 standard has been met, then the rest of it is
19 mooted. The rest of all of those entries would
20 be illegal, I think. I think counsel would agree
21 with that.

22 ATTORNEY FALLON: That assumes he has
23 standing to challenge the warrant. He has standing
24 to challenge the warrant as it may pertain to his
25 residence, and his garage, and probably his yard

1 area. But the -- For instance, the Toyota Rav 4,
2 which the evidence will show, is about as far away
3 from Mr. Avery's particular curtilage as you could
4 possibly be on that property.

5 So while I would concede that he has
6 standing and, thus, the ability to challenge the
7 warrant on our **Franks** theory, for purposes of
8 the -- his trailer and his garage, I would
9 concede that, and we're ready to go. But that's
10 why I asked the question, what is in play. If
11 it's all in play, then there should be a
12 standing.

13 ATTORNEY BUTING: Judge, if you think about
14 it, it really doesn't matter at this point. We can
15 establish the standing question later, if we need
16 to. But if the warrant is invalid as to the -- as
17 to Mr. Avery's residence, and his garage, then, I
18 mean, that's obviously an important legal
19 determination that's going to have to be made.

20 It's a separate question whether, then,
21 that means he also has standing, or that somehow
22 the rest of the property also would be --
23 evidence would be suppressed from other parts of
24 the property as well. But either way, if there's
25 a **Franks** motion -- if there's a valid **Franks**

1 motion as to his residence, then we should
2 proceed today.

3 THE COURT: All right. Well, I have
4 already indicated that the Court is going to take
5 under advisement the State's motion that the defense
6 is not entitled to a hearing on a **Franks** challenge
7 to the search warrant, based on the allegations in
8 the pleading.

9 We'll hear evidence at this time, on the
10 **Franks** motion portion of the motion. I'm not
11 sure, actually, how far we're going to get to the
12 other challenge to the search warrant today. So
13 Mr. Buting.

14 ATTORNEY FALLON: That's fine.

15 THE COURT: You may proceed, Mr. Buting.

16 ATTORNEY BUTING: I talked with counsel
17 about this, I will limit my questioning of -- this
18 witness actually would have some relevance to the
19 other part of the motion on the multiple entries,
20 but for today's purposes, I'm going to limit it to
21 the parts that deal with the **Franks** motion, and the
22 issuance of the warrant in the first instance. I
23 would move to sequester any other witnesses that the
24 State intends to call.

25 ATTORNEY FALLON: I don't believe any of

1 them are here, but if I can have a moment --

2 THE COURT: Go ahead.

3 ATTORNEY FALLON: -- to canvass.

4 ATTORNEY KRATZ: I will take care of it,
5 Judge.

6 ATTORNEY FALLON: Okay. Good.

7 THE COURT: Detective, would you spell your
8 name and state it for the record, please.

9 THE WITNESS: Sure. Mark Wiegert,
10 W-i-e-g-e-r-t.

11 DIRECT EXAMINATION

12 BY ATTORNEY BUTING:

13 Q. And how are you employed?

14 A. I'm an Investigator with the Calumet County
15 Sheriff's Department.

16 Q. And how long have you been there?

17 A. About 14 years.

18 Q. And as part of your responsibilities, did you go
19 through some training, in law enforcement, before
20 you arrived?

21 A. Yes.

22 Q. On the job?

23 A. Yes.

24 Q. And what did that involve?

25 A. I have a associate's degree in police science. I

1 have a lot of specialized classes as far as
2 investigations, interviews, and things like that.

3 Q. Okay. And I assume, then, that part of your
4 training involved the Fourth Amendment and how it
5 applies to law enforcement?

6 A. Yes.

7 Q. That would be the rights with regard to searches
8 and seizures, right?

9 A. Yes.

10 Q. Okay. And did you -- I assume you learned about
11 the standard that is to be applied under the
12 Fourth Amendment, that is, probable cause?

13 A. Yes.

14 Q. And you have learned about searches with warrants
15 and searches without warrants?

16 A. Yes.

17 Q. And you were also taught how to apply for a
18 search warrant?

19 A. Yes.

20 Q. And that you do so -- And how do you go about
21 applying for a search warrant?

22 A. Basically, getting your information together,
23 putting together an affidavit for the search
24 warrant, and putting the search warrant together,
25 and presenting it to a judge.

1 Q. And the affidavit that you put together is -- is
2 that something that you type up yourself?

3 A. No.

4 Q. Is it something that you dictate to someone else,
5 or what?

6 A. Depends on the situation. Sometimes it's
7 dictated. Sometimes it may be called in over the
8 phone. Sometimes we may get it off a report,
9 depends on the situation.

10 Q. Are they fill in the blank kind of things?

11 A. The affidavit, generally not.

12 Q. Okay. So, it's usually, the words in it, though,
13 come from you, prepared by some typist somewhere?

14 A. Generally, yes.

15 Q. Not like -- You don't have the District Attorney
16 prepare your warrants?

17 A. It's usually a member of the District Attorney's
18 Office that would prepare that for us.

19 Q. Okay. Some clerical staff, is that what you are
20 saying?

21 A. Yes.

22 Q. And then you are aware that these affidavits have
23 to be sworn -- that you have to be sworn before
24 you sign the affidavits, right?

25 A. Yes.

1 Q. And you swear that everything in them is the
2 truth, right, as you know it?

3 A. The truth, yes.

4 Q. Now, in this particular case, you were working on
5 an investigation of a complaint, or concern about
6 a missing person, initially, correct?

7 A. Yes.

8 Q. Teresa Halbach, right?

9 A. Yes.

10 Q. And that complaint, or call, came in to you on
11 November 3rd, or into your department on November
12 3rd; is that right?

13 A. That's correct.

14 Q. About 5:30 p.m., something like that?

15 A. Yeah, I think, roughly.

16 Q. Okay. And were you then assigned? How did you
17 manage to get involved in the case?

18 A. Initially, no. Initially it went to a road
19 officer, who eventually contacted me for
20 assistance in the case.

21 Q. Okay. And did you know the Halbach family, or
22 Teresa?

23 A. No, I did not.

24 Q. And one of your first duties, or one of the first
25 things you did, anyway, was to go to Teresa's

1 residence, right?

2 A. Yes.

3 Q. And you spoke to some of her friends and
4 roommates who were there, right?

5 A. Friends, roommates, family.

6 Q. Okay. And did you have an opportunity to look at
7 a list of phone calls that she had made?

8 A. Yes.

9 Q. How did that come about?

10 A. I believe her -- one of her best friends and her
11 roommate had located her phone records on her
12 computer.

13 Q. So somebody had a password, they were able to get
14 into her online records?

15 A. I assume so, yes.

16 Q. And so you looked at a list of phone calls that
17 she had made on her cell phone on -- in
18 particular, on October 31st, right?

19 A. Correct.

20 Q. And there were no other outgoing phone calls from
21 her cell phone after that date, right?

22 A. Yes.

23 ATTORNEY FALLON: Your Honor, I'm going to
24 interpose an objection as to the relevance of this
25 particular line of inquiry, as it may pertain to

1 whether or not there was a lie or a reckless
2 disregard for the truth in a November 5th affidavit.
3 It seems to be a bit tenuous in terms of its
4 connection. It seems to be more exploratory, or
5 discovery in nature.

6 THE COURT: Mr. Buting.

7 ATTORNEY BUTING: It's foundational, Judge.
8 I'm leading up to what -- how he developed his
9 investigation, and in particular, with volunteers?

10 THE COURT: Well, some background might be
11 appropriate, but I think it's getting a little more
12 detailed than it needs to be, so I will ask you to
13 move it along.

14 Q. (By Attorney Buting)~ At some point, after going
15 through this list of phone numbers, you noticed
16 that one of them was a phone call to a Barb
17 Janda's house, right?

18 A. Yes.

19 Q. And somehow you determined that that was
20 Mr. Avery -- could have been to Mr. Avery, to
21 Steven Avery; is that right?

22 A. We had learned that it was a relative of Steve
23 Avery, specifically his sister.

24 Q. Okay. So you contacted -- He lived in Manitowoc
25 County, you are in Calumet; right?

1 A. That's correct.

2 Q. So you contacted the Manitowoc County Sheriff's
3 Department and requested their assistance?

4 A. Yes.

5 Q. And when you called, you spoke to Sergeant
6 Colborn?

7 A. Yes.

8 Q. And did he just answer the phone, or did he
9 somehow get assigned to you?

10 A. I called their department directly and requested
11 to speak with a shift commander, or supervisor.
12 And I believe Sergeant Colborn called me back.

13 Q. Okay. And so you spoke to him about some
14 investigation you wanted to do. And then shortly
15 after that, you got a call from Lieutenant Lenk;
16 is that right?

17 A. I spoke with Sergeant Colborn first, and then,
18 yeah, some time after that, I believe -- I
19 believe Lieutenant Lenk had called me.

20 Q. So, he called you, you didn't call him?

21 A. No, I didn't call him.

22 Q. Okay. And you learned later, sort of passing
23 over some things here, but you learned later that
24 Sergeant Colborn had gone out and talked to
25 Mr. Avery, Steven Avery, correct?

1 A. Yes.

2 Q. And, in fact, had actually gone into his
3 residence, looked around, saw that no evidence of
4 Teresa Halbach or anything amiss, correct?

5 A. I don't know if, initially, Sergeant Colborn went
6 into the residence. Without reviewing my report,
7 I don't know that. I know he spoke with Steven
8 Avery.

9 Q. Okay. Next day is when Detective Remiker, or
10 somebody, actually went over and went to his
11 house?

12 A. Yes, eventually somebody did.

13 Q. Okay. Now, at some point, then, on -- was it on
14 the first night, November 3rd, did you learn that
15 there was some family or friends who were
16 interested in assisting the investigation in some
17 way?

18 A. No.

19 Q. No?

20 A. Not on November 3rd.

21 Q. Okay. Did you learn that on November 4th?

22 A. On November 4th, I spoke with one of Teresa's
23 friends who was at her residence, and they
24 indicated they were going to hang some posters.

25 Q. Okay. Let me just go back for a second, just to

1 clarify the record. Actually, on November 3rd,
2 that same evening, you contacted Sheriff Pagel,
3 correct?

4 A. That's correct.

5 Q. And he took steps to see that the missing person
6 complaint was distributed to the media, right?

7 A. Yes.

8 Q. With the hope that that would generate some
9 public assistance in locating Teresa or her
10 vehicle, right?

11 A. Yes.

12 Q. And did that include -- Did the request that went
13 out to the public include a description of
14 Teresa's vehicle?

15 A. Yes, it did.

16 Q. Do you recall what it was?

17 A. It was -- I believe it was a 1999 Rav 4, greenish
18 in color. And we had the license plate put out
19 there as well.

20 Q. Okay. And so, did you get calls from people,
21 then, interested in providing assistance?

22 A. Yes, we got several calls from the public.

23 Q. Okay. And did some of those actually include
24 people who were interested in going out, boots on
25 the ground, doing a search?

1 A. We had gotten inquiries, I believe, the following
2 day, that people were wondering if there was a
3 search organized or not.

4 Q. Okay. And that would be November 4th, correct?

5 A. Yes.

6 Q. And that's also the day that you did a flyover of
7 the Manitowoc County area; is that right?

8 A. I did not, personally, but our department did.

9 Q. Sheriff Pagel, I think, was involved?

10 A. Yes.

11 Q. And that included a flyover of the Avery
12 property, correct?

13 A. Yes.

14 Q. Were there any other flyovers done of the Avery
15 property, by the way, on other dates, that you
16 are aware of?

17 A. I believe after her vehicle was found, I think
18 there was a flyover done then.

19 Q. Okay. So, after you learned that there were
20 people interested in helping search and wondering
21 if anybody was organizing a search, is the word
22 you said, right?

23 A. Correct.

24 Q. What did you do, or what did you suggest, with
25 regard to the request for citizens who were

1 interested in doing that kind of a search?

2 A. Well, basically, when they would call me, I told
3 them that at this point we would take their
4 names, and if our department was going organize
5 anything, and if we were intending on using
6 anybody, that we would call them. But at that
7 point, we had no intention of forming any kind of
8 search.

9 Q. Now, were you concerned, have you ever done any
10 -- Let me go back for a second. Had you ever
11 done any other missing person cases?

12 A. Yes.

13 Q. Had you ever done any large scale searches for
14 missing persons?

15 A. Yes.

16 Q. Where citizens get involved and actually start
17 doing searches themselves?

18 A. The other large one that I can remember doing, we
19 used firefighters for, and not just citizens. I
20 should say, not citizens at all, we used
21 firefighters, for the other one that I was
22 involved in.

23 Q. Okay. And as an investigator, if there was
24 concern about there being a possible crime and
25 possible evidence, you might have some concern

1 about citizens just running amok, so to speak,
2 doing their own searches, freelance, correct?

3 A. If I had a specific area where I thought the
4 crime was committed, yes, I would have that
5 concern.

6 Q. Okay. And even without that, I assume if there's
7 a large scale search, it would be best that it be
8 organized in some way, so that people are not
9 re-searching the same areas and, you know,
10 searching over the same areas; is that right?

11 A. Yeah. Yes.

12 Q. Okay. So, for instance, in the fire, the one
13 where you used the firemen, you often do
14 something called a grid search?

15 A. Yes.

16 Q. And that's where people are kind of running, or
17 walking along in parallel, covering ground, the
18 same ground, in almost a grid shaped pattern,
19 right?

20 A. That's correct.

21 Q. So at what point, then, did you learn that some
22 of these citizens were actually going to do
23 searches themselves, they actually wanted to get
24 out into the field and start walking and
25 searching?

1 A. I had received a phone call late Friday
2 afternoon, evening area, by somebody, and I don't
3 even recall who it was, that they had intended on
4 getting a search party together to go to the
5 Manitowoc or Mishicot area to look for her
6 vehicle in ditches and things. They were
7 concerned that she had an accident.

8 Q. Okay. And did you -- Why did they call you?

9 A. I can't answer why they called me, I don't know
10 that.

11 Q. Did you give them any advice, or suggestions?

12 A. No, I did not. They had just advised me that
13 they were planning on doing that. And what I
14 told them is, that I would notify Manitowoc
15 County, if they were intending on searching road
16 areas and ditches, that the searchers would be in
17 that area, that they may want to have somebody
18 out there for traffic control.

19 And after hanging up with that person, I
20 did contact the shift commander in Manitowoc
21 County, again, late Friday evening, and told them
22 that there were going to be volunteer searchers
23 in the area, looking through ditches, things like
24 that, that they may want to have an officer in
25 the area for traffic control, because I did not

1 know how big it was going to be, or how small it
2 was going to be.

3 Q. And this was late on, you said Friday afternoon,
4 that's November 4th, right?

5 A. Yes.

6 Q. And the shift commander that you spoke to was
7 who?

8 A. I don't know who was working that afternoon.

9 Q. Late afternoon, but before 5?

10 A. I want to say it was after 5, before 8, I
11 believe. I worked quite late that night, on the
12 case, so I'm really not sure. I believe between
13 5 and 8 some time.

14 Q. Would it have been Sergeant Colborn who you spoke
15 to earlier?

16 A. I don't believe it was Sergeant Colborn. It was
17 somebody who I had not spoke to at all on this
18 case, at that point.

19 Q. So it wasn't -- You had spoken to Sergeant
20 Colborn and Lieutenant Lenk, it was neither of
21 those?

22 A. No, it was neither of those.

23 Q. Detective Remiker you also spoke with?

24 A. No, it was not him either. It was one of their
25 road shift commanders.

1 Q. Okay. Okay. And your understanding was that
2 this search party was going to do this on
3 Saturday, the 5th?

4 A. That's correct.

5 Q. Okay. And so on Saturday, did you also get some
6 calls from any of these citizen searchers,
7 telling you any further plans that they had?

8 A. No, I did not.

9 Q. Did you talk with any of the searchers about
10 trying to get together with a meeting somewhere,
11 where they could sort of coordinate their
12 efforts?

13 A. No.

14 Q. Did you ever suggest that perhaps the searchers
15 could meet at the Manitowoc Sheriff's Department,
16 or somewhere nearby there, to try and coordinate
17 their efforts?

18 A. No. What I did have, was a discussion with
19 Sheriff Pagel and Investigator Dederling on
20 Saturday morning. And we had come up with a --
21 basically a plan that we were going to go to the
22 Sheriff's Department in Manitowoc and meet with
23 one of the detectives there.

24 And we thought as long as there were
25 volunteers in the area, that we would see if the

1 Avery's would give us permission to go on their
2 property. And if there were volunteers willing
3 to assist us, that we would go out there and see
4 if we could get permission, and permission to use
5 those volunteers, for that purpose.

6 Q. So you had this meeting with Sheriff Pagel and
7 Dederling, you said?

8 A. That's correct.

9 Q. And your specific interest, or area of interest
10 at that point, though, was the Avery property?

11 A. During our discussion, that's what we thought we
12 would do, yes.

13 Q. And prior to that time, had you ever asked any of
14 the Averys for permission to go into their
15 salvage area and search?

16 A. I, personally, did not, no.

17 Q. Are you aware of anybody in your department, or
18 in Manitowoc, whoever asked them, personally?

19 A. Outside of what you asked me earlier, I know
20 there were some officers who had, days earlier
21 had talked to some of the Averys, but I don't
22 know what they asked them.

23 Q. Well, you are aware that they -- they went to
24 Mr. Steven Avery's residence?

25 A. Yes, I'm aware of that.

1 Q. This is the Manitowoc Sheriff's people?

2 A. Correct, yes.

3 Q. And that he allowed them to come into his
4 residence and look around?

5 A. Yes.

6 Q. My question then is, do you know whether -- did
7 either you, or to your knowledge, the Manitowoc
8 Sheriff's Department, ask any of the Avery's,
9 Steven or otherwise, if they could go through the
10 rest of the property, all of the salvage vehicles
11 and all of that, to search?

12 A. I never did, personally, no. And I don't know if
13 anybody from Manitowoc did. I'm not aware if
14 they did.

15 Q. Okay. So -- But Saturday morning you stated that
16 you were interested, then, in searching that
17 salvage yard?

18 A. Yes.

19 Q. And why?

20 A. Well, after doing interviews both Thursday night,
21 Friday, researching Teresa's financial records,
22 researching Teresa's phone records, knowing that
23 one of the last places we believe that she was
24 was on the Avery property, or at least one of the
25 last places that we think she was, and one of

1 last people she had contact with, on the phone,
2 we thought that would be a good place for us to
3 start.

4 Q. And, indeed, Sheriff Pagel had done a flyover of
5 the property just the day before, correct?

6 A. That's correct.

7 Q. And did he see anything of suspicion?

8 A. Not that I am aware of.

9 Q. Not that you are aware of?

10 A. Not that I'm aware of.

11 Q. But at least you had some idea of how massive the
12 undertaking would be. How many -- Approximately
13 how many vehicles do you think there were there
14 in the salvage yard?

15 A. At that time, I didn't know. As a result of
16 consequence, or the other search warrants that we
17 did, you know, I have a good idea now how many
18 vehicles there were out there.

19 Q. Which is?

20 A. I believe there was roughly 3,800 vehicles.

21 Q. Okay. So, approaching 4,000 vehicles. And
22 Sheriff Pagel saw that in it's totality, from the
23 air, on November 4th, right?

24 A. I would assume so, yes.

25 ATTORNEY FALLON: Your Honor, I'm going to

1 interpose an objection on two grounds. Still, I'm
2 not entirely sure that I see the relevance of all
3 this, vis-a-vis, the challenge to the averments and
4 the warrant. And number two, even if the Court does
5 find its relevance, I think we're at the point where
6 counsel is leading the witness and should be doing a
7 direct, and not a cross.

8 THE COURT: Mr. Buting.

9 ATTORNEY BUTING: Well, I can rephrase it
10 so it's not leading.

11 THE COURT: I'm going to sustain the
12 objection on relevance. This is not a trial, it's a
13 motion hearing. I read your documents. I think
14 it's time to get to the meat of your motion.

15 Q. (By Attorney Buting)~ Okay. So going back to
16 Saturday morning, November 5th, then, you talked
17 about -- your plan was that you would go to the
18 Manitowoc Sheriff's Department, that is, you and
19 who?

20 A. Myself, Sheriff Pagel, and Investigator Dederling.

21 Q. And that you would try and meet with some of the
22 citizens who were interested in searching?

23 A. No, our intention was to meet with Detective
24 Remiker, who was working that morning for the
25 Manitowoc Sheriff's Department.

1 Q. And did you tell Detective Remiker that you were
2 interested in getting some space where the
3 citizens could meet and organize their searches?

4 A. No, my phone conversation with Detective Remiker
5 consisted of basically telling him that we would
6 like to come down and meet with him. I did
7 inform him, over the phone, that there were
8 volunteer searchers in the area of the Avery
9 property, and that we would like to get
10 permission from the Avery family. And if we
11 gained that permission, that we would like to use
12 those volunteer searchers to go and search the
13 Avery property.

14 Q. Well, did you tell Detective Remiker that you
15 were aware that several of the searchers were
16 willing to go to the Avery property and search
17 the junkyard salvage area?

18 A. No, I couldn't have, because I had no knowledge
19 of that at all. I hadn't talked to any of the
20 volunteer searchers up to that point, except for
21 the one phone call that I received the night
22 before, basically, indicating they were going to
23 do that. So, no, I did not tell him that. I
24 told him we would like to meet with him and use
25 those volunteer searchers, if we had permission

1 from the Averys to do so.

2 Q. So, your phone call the night before, did it --
3 did the individuals you spoke with, the citizens
4 you spoke with, express any interest in searching
5 the Avery's property?

6 A. No, again, their primary focus when they spoke
7 with me, is they were concerned, as I think you
8 get a lot of times, initially, in a missing
9 persons complaint, that maybe she ran off the
10 road somewhere, maybe she's laying in a ditch.
11 There's a lot of deep ditches in that area, if
12 you're familiar with the area, where that 147,
13 for example, there's a lot of deep ditches,
14 there's ponds, there's things like that.

15 So, in my conversations with the
16 searchers at that time, they were more concerned
17 about that than anything else.

18 Q. Well, had you had any phone conversations with
19 any of the volunteer searchers on Saturday
20 morning?

21 A. Again, I don't believe I did.

22 Q. Did you tell Detective Remiker that you wanted to
23 come meet at the Manitowoc Sheriff's Department,
24 with volunteers, and coordinate your efforts with
25 theirs?

1 A. No, what I told Detective Remiker, was that I
2 would like to meet with him, and that there were
3 volunteer searchers in that area, and if we got
4 permission from the Avery's, that we would like
5 to use those volunteer searchers. I believe -- I
6 believe I know what you are referring to, and I
7 believe that Detective Remiker may have
8 misunderstood me on the phone.

9 Q. Well, how were you going to get any of the
10 searchers to Manitowoc Sheriff's Department where
11 you would meet and use any of their services?

12 A. Wasn't our intention to bring them to the
13 Manitowoc Sheriff's Department. It was our
14 intention to go out to the Averys first and get
15 permission. We knew from the conversation on
16 Friday that they were going to be in that area
17 looking through the ditches. So we knew there
18 would be searchers in that area. We could meet
19 with them there. That's how we were going to do
20 that.

21 Q. So, your plan was you were just going to go, so
22 then why go to the Manitowoc Sheriff's Department
23 at all?

24 A. Because we wanted to meet with Detective Remiker
25 and see what his thoughts were on it. It was his

1 jurisdiction at that point. We didn't have
2 jurisdiction over anything at that point. So we
3 wanted to go down and meet with him and see what
4 his thoughts on it were.

5 Q. Why didn't you just pick up the phone -- or --
6 and call one of Averys, or go over there yourself
7 and ask the first question, which is, is it okay
8 if we and perhaps some other volunteers come and
9 search this salvage yard?

10 A. Again, we were out of our jurisdiction at that
11 point. We had not been named the lead
12 investigative agency at that point, number one.
13 Number two, the media had contacted us on
14 Saturday and requested if we had any new
15 information.

16 And we also instructed the media to meet
17 us at Manitowoc Sheriff's Department. At that
18 point, we were trying to get it out to the media
19 as much as we could because we had a missing
20 persons complaint. We were concerned about her.
21 That was the other reason that we went to the
22 Manitowoc Sheriff's Department, because the media
23 was going to meet us there.

24 Q. Oh, so you had actually arranged to have the
25 media meet you at the Manitowoc --

1 A. They were calling us constantly, obviously. And
2 Saturday morning they were, again, on the phone
3 with us. And we thought we would meet with them
4 in Manitowoc at that point.

5 Q. And, again, the idea was you were going to do all
6 that before you contacted the Averys and got --
7 and even asked if they would give you permission?

8 A. We were going to do what, I'm not sure?

9 Q. Meet at Manitowoc Sheriff's Department with
10 Manitowoc people and media?

11 A. We were going to meet with detectives and the
12 media, yes.

13 Q. Before going -- before contacting the Averys?

14 A. Yes.

15 Q. Okay. Did you have any reason to believe, or any
16 concerns that the Averys would not have given
17 permission?

18 A. Not at that point, no.

19 Q. And I assume, at that point, you didn't believe
20 you had probable cause to get a search warrant
21 for the Avery property?

22 A. No, I did not have any probable cause at that
23 time.

24 Q. So, did you ever meet with any of the -- any of
25 the volunteers on Saturday morning?

1 A. No -- Well, let me go back from there. After we
2 got the call from Pam Sturm, who was a volunteer
3 searcher, obviously we talked with her. But
4 prior to that, no, I did not meet with any
5 volunteer searchers.

6 Q. Did you -- Do you know whether the volunteer
7 searchers had any kind of maps that they were
8 working with?

9 A. I found that out later in talking to
10 Mr. Hillegas. He instructed me, or told me
11 later, basically, that he had gotten some maps
12 and things together. At the time, I did not know
13 that.

14 Q. Did the maps come from you?

15 A. No.

16 Q. Do you know if they came from the Manitowoc
17 Sheriff's Department?

18 A. In speaking with Mr. Hillegas, at a later date,
19 he had told me that he had taken them off the
20 internet.

21 Q. All right. So, is it your testimony, that until
22 you got a phone call from a woman by the name of
23 Pamela Sturm, while you are at the Sheriff's
24 Department in Calumet, that you had no idea
25 whatsoever that any of the volunteers were going

1 to be searching the Avery property?

2 A. That is correct.

3 Q. But you don't know what Manitowoc may have known
4 as to that?

5 A. No, I don't know.

6 Q. Was there some effort to -- in the public, in the
7 media, information that was distributed, or was
8 there some effort to centralize a phone number
9 where people could call if they had found
10 something?

11 A. During our initial press conference, or news
12 release, on the night, actually, that she was
13 reported missing, on the third, we had given out
14 our Sheriff's Department and our Crime Stopper's
15 number. If anybody had any information about
16 Teresa, we instructed them to call those numbers.

17 Q. And when you got a call, you got a call at some
18 point on Saturday morning, from Pamela Sturm,
19 right?

20 A. Yes.

21 Q. And do you know what number it came in on?

22 A. I believe it was our regular line. From what I
23 understand, she had called from her cell phone.
24 Then she called the Sheriff's Department phone
25 number, the regular line, is my understanding.

1 Q. All right. Now, that phone call, actually, part
2 of it took place before you got on the phone, I
3 understand; is that right?

4 A. Yes.

5 Q. And that was because it was -- originally, the
6 call was given to Sheriff Pagel?

7 A. Yes.

8 Q. Okay. And so, then, how did you become involved
9 in it?

10 A. Actually, Sheriff Pagel, myself, and Investigator
11 Dederling were physically walking out the back
12 door of the Sheriff's Department to go to
13 Manitowoc when Sheriff Pagel got called back into
14 the Dispatch Center, so we all went back in the
15 Dispatch Center.

16 At that time, the dispatcher informed
17 Sheriff Pagel that there was a phone call from a
18 lady named Pam, I believe. I think that's what
19 she had said, something about a Rav 4 which she
20 believed she had found. Sheriff Pagel initially
21 took the phone, and eventually handed the phone
22 over to me, because he did not have his glasses
23 and could not read a VIN number which he was
24 trying to compare.

25 Q. So, then you got on the phone and spoke to this

1 woman; is that correct?

2 A. Yes.

3 Q. Now, did you know who this Pamela Sturm woman
4 was?

5 A. No.

6 Q. Never met her before?

7 A. No.

8 Q. Never talked to her before?

9 A. No.

10 Q. Okay. And Sheriff Pagel passed it to you because
11 you had the full VIN number somewhere?

12 A. No, the dispatcher had the full VIN number.
13 Sheriff Pagel had the VIN number in his hand,
14 which was given to him by the dispatcher, but
15 didn't have his glasses with him so he couldn't
16 read it, so he handed the phone to me and the VIN
17 number to me.

18 Q. Okay. Now, when you talked with her, did she
19 give you a description of the vehicle that you --
20 that she saw?

21 A. Yes.

22 Q. And did she tell you that it was green?

23 A. I believe she said it was greenish blue.

24 Q. Did she tell you that it matched the description
25 of the vehicle that had been passed out on any of

1 the fliers or anything?

2 A. I don't know her exact words, but she said
3 something to the effect, I think she thought it
4 was similar to it.

5 Q. Okay. But she did not use the word that it
6 matched the description, correct?

7 A. I don't know the exact words she used. Without
8 looking at the transcript, I couldn't say the
9 exact words she used.

10 Q. Well, did she, in fact, express some concern
11 about whether it was -- about a difference in the
12 color?

13 A. Yes.

14 Q. She said it was more blue, than green, correct?

15 ATTORNEY FALLON: Excuse me, your Honor.
16 In an effort to expedite the proceedings, we did
17 bring an audiotape of that phone conversation, if
18 counsel would like to play it. It's four minutes in
19 length, thereabouts, and that might speed things
20 along. I will offer.

21 THE COURT: Mr. Buting.

22 ATTORNEY BUTING: I don't know, at some
23 point we may introduce that into evidence, but what
24 I'm getting at right now is what his knowledge and
25 what his information was at the time that he

1 prepared the affidavit. So I don't know that it's
2 directly --

3 ATTORNEY FALLON: It's his call. It's his
4 presentation of evidence. I just thought I would
5 offer.

6 THE COURT: All right. You may continue.

7 ATTORNEY BUTING: Okay.

8 Q. (By Attorney Buting)~ So, she told you that she
9 had found this vehicle, that was a Rav 4, but she
10 didn't tell you that it matched the description
11 of what she was looking for, right?

12 A. I believe -- And again, without seeing the
13 transcript I don't know her exact words, but it
14 was similar. I believe she said it was similar.
15 She just didn't know exactly.

16 Q. And in fact, she asked what the VIN number was of
17 Teresa's vehicle so that she could try and
18 compare it to the one that she had found; is that
19 right.

20 A. Yes.

21 Q. And did you give it to her?

22 A. No, actually, I requested that she give me the
23 VIN number so I could compare it to what I had.

24 Q. Is there some reason for doing it that way?

25 A. I just thought it would probably be the easier

1 way for her. No other reason at that point, no.

2 Q. Okay. So -- So, did she actually find the VIN
3 number? Did you help assist her in locating
4 where -- telling her where she could locate that
5 on the car?

6 A. Yes.

7 Q. And did she read the numbers to you?

8 A. She did.

9 Q. Or, actually, she had a similar problem with no
10 glasses, did she not?

11 A. Yes, she did.

12 Q. And she had her daughter try and read some of it?

13 A. Correct.

14 Q. Now, in fact, she was not able to, neither she
15 nor her daughter, were able to actually relay to
16 you all of the VIN numbers that were on this
17 unknown Rav 4 that they had located; isn't that
18 right?

19 A. I believe that she provided me with 10 of the
20 characters of the 17 that are in the VIN number.

21 Q. Okay. So she had not -- She was unable to do all
22 17 characters of the VIN number?

23 A. Correct.

24 Q. VIN numbers have a full 17 numbers, correct?

25 A. Correct.

1 Q. All right. Now, at that point, did you -- did
2 you -- what did you tell her to do, after she had
3 given you those 10 numbers?

4 A. Actually, I asked her if she had permission to be
5 there, first.

6 Q. And why did you ask that?

7 A. Because that was important, to establish that,
8 whether she had permission to be on that
9 property, from the Avery family.

10 Q. And what difference would it make if she had not?

11 A. I didn't want her -- First of all, for her
12 safety, I didn't want her in a place where she
13 shouldn't be, obviously. I thought if she was
14 there with permission, it would probably be a
15 little safer for her. Because, if you listen to
16 the phone call, by the tone of her voice, she
17 seemed somewhat concerned. She even mentioned
18 that there were other people walking around.

19 Q. Were you concerned about whether, legally, the
20 search -- any search that might result, might
21 have some problems, if she was there without
22 permission?

23 A. Well, certainly, that would be a concern as well.
24 But at the point, again, in the phone
25 conversation, it appeared that she was concerned

1 about her safety as well.

2 Q. So did you tell her she could leave, then, and
3 retreat to some place of safety?

4 A. What I told her to do is just stay where she was,
5 that I would be contacting someone from
6 Manitowoc, basically, get somebody over there as
7 soon as possible, and if she had any problems,
8 that she should dial 911.

9 Q. Okay. So then you called Detective Remiker?

10 A. Yes.

11 Q. And you also set off from the Calumet Sheriff's
12 Department to the Avery property?

13 A. Yes.

14 Q. And you went with someone else?

15 A. I rode over with Investigator Dederling and
16 Sheriff Pagel had followed us there.

17 Q. So two vehicles, right?

18 A. Yes.

19 Q. And when you talked with sheriff -- I'm sorry,
20 with Detective Remiker, did you talk with him
21 after he had gotten to the property, but before
22 you did?

23 A. I don't think so, because we arrived not long
24 after he did. I talked to him on our way there.
25 I called him with some more information that I

1 had.

2 Q. Was this -- This communication, was this over the
3 dispatches, or over the radio, or over some
4 personal cell phones, or what?

5 A. It was on work cell phones.

6 Q. And when you say you called him to tell him that
7 you had some additional information, what was
8 that?

9 A. Pam Sturm had informed me that there was a
10 Lemieux Toyota sticker on the vehicle, and I had
11 contacted Karen Halbach to inquire if she knew if
12 there was one. At which time she said she didn't
13 know, but she would find out for me. And then
14 Karen, in fact, had called me back and told me
15 she believed there was one on there. And I
16 relayed that to Investigator Remiker.

17 Q. All right. So, then, when you arrived at the
18 property, the Avery compound, had you ever been
19 there before?

20 A. No.

21 Q. How did you know where to go?

22 A. Investigator -- Detective Remiker gave me
23 directions.

24 Q. Before he arrived, or after he had gotten there?

25 A. Before he arrived.

1 Q. And how did he know where to go, on the property,
2 I mean?

3 A. On the property?

4 Q. Yes.

5 A. If I recall Pam telling me, saying that she was
6 down at the end of the property, or something to
7 that effect. She kind of explained where she
8 was. I don't know exactly how Detective Remiker
9 found her, that I can't answer. But she kind of
10 described a little bit where she was on the
11 property.

12 Q. Do you know whether Detective Remiker spoke with
13 her while he was on his way?

14 A. Not to my knowledge.

15 Q. Did you give Detective Remiker her cell phone, or
16 anything like that?

17 A. I don't recall doing that, no. I don't think so.

18 Q. Okay. So, okay, you arrived at the Avery
19 property and you drove down to where?

20 A. Well, when I arrived at the property, there was
21 an officer at the end of Avery road, which is a
22 town road. And he said he believed that they
23 were down towards the end of the property. He
24 said, kind of go straight, just follow the gravel
25 road down.

1 Q. And this was some Manitowoc officer you were
2 talking about?

3 A. I believe it was a Manitowoc road officer at the
4 end of the road, yes.

5 Q. All right. So, when you drove on to the
6 property, then, there is a sort of a cluster of
7 buildings, business kind of buildings, that you
8 first come into, on your left there; is that
9 right?

10 A. Mm-hmm, yes.

11 Q. And then, beyond that, is this large sort of
12 sunken area where all the salvage cars are,
13 correct?

14 A. Yes.

15 Q. And did you drive your vehicle down into that
16 depressed area?

17 A. We drove down into the salvage yard area, yes.

18 Q. And drove all the way towards the back, southeast
19 corner of it?

20 A. Not all the way to the back, no. We drove down
21 past, if you will, past the salvage yard shop and
22 then down a small embankment to a clearing area
23 where there was a car crusher.

24 Q. And you saw Detective Remiker's vehicle there?

25 A. Yes.

1 Q. And you parked next to it?

2 A. Yes.

3 Q. All right. Now, did you, personally, get out and
4 go over and look at the -- this unknown Rav 4?

5 A. I did not.

6 Q. You spoke with Detective Remiker?

7 A. Yes.

8 Q. And did he tell you that he had gone and looked
9 at it?

10 A. Yes.

11 Q. And did he tell you that he had been able to see,
12 himself, that he had been able to read all 17
13 characters of the VIN number?

14 A. Yes, he did.

15 Q. He didn't tell you that he had -- he was unable
16 to read the first two or three numbers?

17 A. Eventually, and I don't know when I learned this,
18 but I know eventually he indicated that he had
19 difficulty seeing the first several digits of the
20 VIN number. However, he used a small flashlight,
21 I believe he said he had gotten from another
22 officer, and he was able to read the entire VIN
23 number at that time.

24 Q. Now, did you know -- or let me ask you this. You
25 didn't stop at the -- other than with the officer

1 out on Avery Road and the highway, did you stop
2 and talk with any of the Averys, or anybody that
3 looked like they would -- they were in charge
4 there, before you drove down into the pit?

5 A. Not prior to going in the pit, no.

6 Q. And did you have any knowledge whether Detective
7 Remiker had received consent to be where he was
8 at, at that point?

9 A. I can't answer that. I don't know.

10 Q. Okay. Now, at some point, you were -- other
11 personnel from Manitowoc and your department
12 arrived, I take it.

13 A. Yes.

14 Q. And some agreement was made, because of some
15 concern, that your department would take over the
16 lead investigation?

17 A. Yes, there was a representative of the Manitowoc
18 Sheriff's Department, as well as my sheriff, and
19 eventually the Manitowoc County District
20 Attorney, as well as the Calumet County District
21 Attorney, and then that decision was made at some
22 time during that.

23 Q. And the concern was, that because Steven Avery
24 had a pending lawsuit, \$36 million dollar civil
25 lawsuit against Manitowoc County, that there

1 might be some impropriety, or appearance of it,
2 with having that county and that department now
3 investigating this case; was that it?

4 A. There was no concern on my part, but obviously
5 there must have been some concern, somewhere,
6 that there would be the appearance of
7 impropriety. But I didn't have any concern at
8 all.

9 Q. Did you see, while you were at the property --
10 I'm sorry. Let's get the time down here, so that
11 we're clear for the record. What time did you
12 arrive at the property, Avery property?

13 A. I believe it was around 10 after 11 in the
14 morning, give or take.

15 Q. Okay. And this is November 5th, right?

16 A. Yes.

17 Q. Did -- And you were in charge of this
18 investigation up to that point, correct?

19 A. Yes.

20 Q. Did you direct that members of your department
21 should take over custody of the vehicle, or
22 anything of that sort?

23 A. At that point it was not my call, it was still
24 Manitowoc County's call at that point, until the
25 people that are obviously higher up than me made

1 the decision that we were taking it over.

2 Q. And what -- How much longer was that, couple
3 hours, or what?

4 A. I would say, yeah, a couple hours. I don't have
5 a time on it, but would be a couple of hours
6 before it was determined and, actually, that's
7 the way it went.

8 Q. Actually, could it have been as soon as 11:45?

9 A. Again, I don't know. It was some time after.
10 There was some discussions, obviously, that took
11 place prior to that happening. It could have
12 been. I really don't know.

13 Q. All right. But is it your testimony, that even
14 after that, you didn't have any involvement in
15 the directing who would take custody, or maintain
16 the custody, of the Rav 4?

17 A. Well, at that point, there was an officer from
18 Manitowoc that was with the Rav 4. I know,
19 eventually, one of our officers -- and I don't
20 know the time frame on it -- but one of our
21 officers eventually had taken over staying with
22 the Rav 4 until the Crime Lab would arrive on
23 scene.

24 Q. And you were parked about how far away from where
25 the Rav 4 was located?

1 A. I would guess about 100 yards.

2 Q. And there's a little strip of trees kind of along
3 that pond area where you --

4 A. There's a brushy area.

5 Q. Okay. And this was -- The Rav 4 was actually
6 behind the brushy area?

7 A. Yes.

8 Q. Between the brushy area and the berm, right?

9 A. Yes.

10 Q. And so that brushy area was obscuring some of
11 what you could see from your location?

12 A. Some, yes. I mean, you could see the vehicle
13 there. Did you have a plain sight at it, no.

14 Q. At some point, was a decision made to try and get
15 a search warrant for the property?

16 A. Yes.

17 Q. Do you know when that was?

18 A. Timewise, no. Again, the two District Attorney's
19 had arrived on scene. And after conferring with
20 them, we decided that that was the route we would
21 take.

22 Q. Okay. And did you then participate in getting a
23 warrant?

24 A. I did.

25 Q. And did you actually draft the affidavit for that

1 warrant yourself?

2 A. No, it was drafted by a representative from the
3 Calumet County D.A.'s Office.

4 Q. Did you call it in?

5 A. I did speak with them, yes, and gave them the
6 information.

7 Q. Okay. So, you provided the information that was
8 supposed to be put in the affidavit; is that
9 right?

10 A. Myself, and with the assistance of Detective
11 Remiker.

12 Q. Well, whose affidavit was it supposed to be,
13 yours or --

14 A. It's mine. It's mine.

15 Q. Okay. So, you were responsible for insuring that
16 the information in the affidavit was truthful,
17 right?

18 A. Yes.

19 Q. And when -- I know the search warrant -- Let me
20 ask you this. Let's mark this.

21 (Exhibit 15 marked for identification.)

22 Q. Okay. We're up to 15. I'm showing you Exhibit
23 15, can you identify that?

24 A. Yes, it's a search warrant.

25 Q. And just for the record, could you just indicate

1 how many pages it is?

2 A. With the affidavit, or without?

3 Q. With the affidavit, the whole exhibit.

4 A. Be 10 pages.

5 Q. Let me just show it to counsel. Okay. Maybe,

6 just so we're clear then, can you tell us how

7 many pages of that are the affidavit?

8 A. There's two pages that are search warrant, three

9 pages of affidavit, including the signature page,

10 obviously.

11 Q. Okay. And -- I'm sorry, what's the remainder?

12 A. The remainder, there's two, that's three, that's

13 five, there would be five other pages, I guess.

14 Q. And those are the return; is that right?

15 A. The return, and then there's a, yeah, a face page

16 from a fax, for the return, yes.

17 Q. For an amended return, actually?

18 A. Yeah, right.

19 Q. And you obtained this at what time; do you

20 recall?

21 A. Not off hand, I don't recall what time we

22 obtained it. It's endorsed by me at 3:10 p.m.

23 Q. Okay. So around -- At about 3:00 you signed it

24 and then obtained a signature from Judge Fox, was

25 it?

1 A. Yes.

2 THE COURT: All right, Counsel, I think
3 since we're going to take a break sometime this
4 afternoon, I don't think you are going to get
5 through with him in the next few minutes, we'll take
6 an afternoon break at this time, resume in 10
7 minutes.

8 ATTORNEY BUTING: Thank you.

9 (Recess taken.)

10 THE COURT: At this time we're back on the
11 record. I will indicate that I spoke with Counsel
12 during the break. And it's obvious we're not going
13 to be able to complete the hearing today, on the
14 **Franks** motion. It's my understanding that the
15 attorneys for both sides have gathered in the
16 courtroom. The witnesses that have been sequestered
17 earlier, who will be testifying regarding this
18 motion; is that correct, Counsel?

19 ATTORNEY FALLON: We have made an effort to
20 do that, I believe there might have been one or --
21 one civilian witness excused already?

22 ATTORNEY BUTING: Is Detective Remiker
23 here?

24 OFFICER: He is on the way.

25 ATTORNEY FALLON: So we have one witness

1 that was --

2 ATTORNEY BUTING: Three, actually, he is
3 with Lenk and Colborn.

4 ATTORNEY FALLON: We're waiting for three
5 Manitowoc.

6 THE COURT: All right. And for the rest of
7 today's proceedings, I believe, Mr. Buting, you
8 believe you can finish your direct examination of
9 Mr. Wiegert and then you are going to take a couple
10 civilian witnesses?

11 ATTORNEY BUTING: Yes, Patricia (sic) and
12 Nikole Sturm. And the other witnesses we could
13 release, if the Court can give some sequestration
14 instructions. But since some of them aren't here, I
15 don't know if you want to do it twice, or wait a few
16 minutes until we're concluded with him, and hope
17 that the others arrive? Did somebody call for them?
18 They did.

19 THE COURT: All right. And Mr. Fallon you
20 are going to --

21 ATTORNEY FALLON: Yes.

22 THE COURT: -- postpone your
23 cross-examination of this witness?

24 ATTORNEY FALLON: Yes, in an effort to
25 accommodate Pamela Sturm and her daughter, Nikole,

1 that I would defer cross of this witness until the
2 9th. In an effort, since they both took the entire
3 day off, they have been patiently waiting, we will
4 make an effort to get them in by the close of
5 business today, so that they could be excused.

6 THE COURT: All right. We still don't have
7 some witnesses here, correct?

8 OFFICER: They are on their way.

9 THE COURT: From where?

10 OFFICER: Sorry, the District Attorney's
11 Office.

12 THE COURT: That's not that far away. I
13 hope they get down here quicker than we get D.A.'s
14 when we need them. Call up and make sure they are
15 on their way.

16 THE CLERK: Who am I calling?

17 THE COURT: The D.A.'s Office. Oh, here we
18 go. All right. Do we have all of the -- We don't.
19 Who are we missing?

20 OFFICER: Colborn and Lenk.

21 THE COURT: Do we know where they are?

22 OFFICER: Here they are. They are both
23 here.

24 THE COURT: Okay. It's my understanding
25 that we now have, in the courtroom, all of the

1 witnesses who were subpoenaed to appear at the
2 hearing today on the defendant's motions regarding
3 the search warrants in this case. Because we're not
4 going to complete taking testimony today, we're
5 going to excuse a number of you. And I believe that
6 is everyone, Counsel, except for who?

7 ATTORNEY FALLON: I believe Earl Avery was
8 subpoenaed and he was released earlier in the day.

9 THE COURT: Okay.

10 ATTORNEY BUTING: Who was that?

11 ATTORNEY FALLON: Earl Avery.

12 ATTORNEY BUTING: Okay.

13 THE COURT: The two Sturm witnesses.

14 ATTORNEY BUTING: Sturm, yes.

15 THE COURT: We're going to take their
16 testimony?

17 ATTORNEY BUTING: Correct.

18 THE COURT: They will be asked to leave the
19 courtroom in a few minutes. But we'll get their
20 testimony in. The rest of you will not have to come
21 back until August 9. But I want to, because the
22 hearing has started, I want to make sure you
23 understand that the exclusion order continues to
24 apply to you.

25 That means, you should not talk to any

1 of the other witnesses in this case who have been
2 called, or will be called. You are permitted to
3 talk to Counsel between now and the next hearing.

4 However, in order to make sure that the
5 exclusion order has effect, you are not to watch
6 any news casts concerning these proceedings, this
7 evening, nor to look at any webcast of today's
8 proceedings, between now and the next scheduled
9 hearing, on August 9. And you should not discuss
10 this case either with any of the other witnesses
11 who have been subpoenaed, or with anyone else,
12 except for Counsel in this case.

13 Counsel, are there any other admonitions
14 either of you wishes the Court to give at this
15 time?

16 ATTORNEY FALLON: I guess I would add the
17 written print accounts of the testimony of this
18 witness, and the two civilians yet to come.

19 THE COURT: That's correct, no news
20 accounts of any kind. Make sure that you don't read
21 any account of today's proceedings until after you
22 testify at the conclusion of this hearing. Anything
23 else?

24 ATTORNEY BUTING: Judge, just that the
25 witnesses should be instructed that they should

1 return on the 9th, so that we don't have to
2 re-subpoena them. And maybe warn some of them that
3 it may possibly extend into August 10th as well.

4 THE COURT: I hope it won't extend into
5 August 10th, at least on this particular motion
6 hearing, because we will start at 9:00. But that's
7 correct, for those of you who are here under
8 subpoena, you should report back at 9:00 on
9 August 9th, for the continuation of today's hearing.
10 Mr. Fallon.

11 ATTORNEY FALLON: Yes, I just ask if any of
12 the witnesses are going to have a problem with
13 appearing on the 9th if they would immediately let
14 Counsel, or Counsel's staff, know that there is a
15 conflict and we'll see if we can work around that.

16 THE COURT: All right. Very well, then the
17 witnesses who were subpoenaed today can step out in
18 the hall. Except for the Sturm's, the rest of you
19 are free to leave today. And after we complete the
20 examination of this witness, we'll -- I assume
21 defense counsel will be calling the Sturms.

22 All right. Mr. Wiegert is still on the
23 stand. Mr. Buting, you may resume your direct
24 examination.

25 ATTORNEY BUTING: Thank you, Judge.

1 Q. (By Attorney Buting)~ We were talking about the
2 search warrant affidavit that you filed on
3 November 5th at around 3:10 p.m., I think it was.
4 And you indicated that you didn't type it
5 yourself, but you did receive a typed copy at
6 some point, correct?

7 A. Yes.

8 Q. And you reviewed it?

9 A. Yes.

10 Q. And you -- did you read it carefully?

11 A. I believe so, at the time, yes.

12 Q. And you swore an oath that what was in that
13 affidavit was the truth, as you knew it?

14 A. Yes.

15 Q. In fact, though, there are a few items that are
16 not entirely accurate in it, are there not?

17 A. There is one item that I can see, from reviewing
18 it now, that it's not 100 percent accurate, yes.

19 Q. And which item is that?

20 A. If you look at the affidavit -- I have to find it
21 here -- Paragraph 5 of the affidavit.

22 Q. All right. And what specific item are you
23 referring to within Paragraph 5, that's not
24 correct?

25 A. It indicates that the search provided the VIN

1 number and lists the VIN number taken from the
2 vehicle, which they located. In the affidavit,
3 it has got the full VIN number, and I did not
4 receive the full VIN number from the volunteer
5 searchers.

6 Q. And you also indicated, on the second line, that
7 the volunteer searchers said they had located a
8 vehicle that matched the description of Teresa
9 Halbach's?

10 A. Yes.

11 Q. Did they tell you that it matched -- I think we
12 have been through this, but just so it's clear --
13 they did not, in fact, tell you that it matched
14 the description, they told you it was similar to,
15 right?

16 ATTORNEY FALLON: Objection, argumentative,
17 as to context.

18 THE COURT: Mr. Fallon, can you explain
19 your objection a little more.

20 ATTORNEY FALLON: It seems to me that --
21 maybe it's premature, depending on what the next
22 question is -- but in terms of a question of
23 semantics, or matched, or matching, or similar to,
24 whatever the case may be, it seems, given the tone
25 of voice and the manner in which the question was

1 asked, it seemed argumentative. But it's been a
2 long day.

3 THE COURT: Well, just a second, let me
4 look at the -- Mr. Buting, what is your question?

5 ATTORNEY BUTING: I don't know if it is
6 possible to read it back, Madam Reporter.

7 (Last question read back.)

8 THE COURT: I think the objection goes more
9 to the weight of evidence or the inferences to be
10 drawn from it. I will allow the question.

11 Q. (By Attorney Buting)~ Could you answer it?

12 A. Again, I believe they had told me that it was
13 similar.

14 Q. All right. And you also said that Investigator
15 Remiker was able to confirm the VIN number. And
16 then you list all 17 characters, again, of the
17 VIN number, and that's not accurate; isn't that
18 right?

19 A. No, that's accurate.

20 Q. By the time of this preparation of the warrant,
21 you are saying that Detective Remiker had been
22 able to do that?

23 A. Yes, he did.

24 Q. Okay. And Detective -- or Investigator Remiker
25 actually assisted in the preparation of this

1 warrant?

2 A. Yes.

3 Q. This affidavit?

4 A. Yes.

5 ATTORNEY BUTING: I will pass.

6 THE COURT: That's the end of your
7 questions?

8 ATTORNEY BUTING: That's the end of my
9 questions, your Honor.

10 THE COURT: Mr. Fallon, I understand you
11 are going to postpone your cross until the 9th.

12 ATTORNEY FALLON: Yes, I will defer cross
13 until the 9th in an effort to get the Sturms done.

14 THE COURT: Very well. This witness is
15 excused.

16 THE WITNESS: Thank you, your Honor.

17 THE CLERK: Please raise your right hand.

18 **PAMELA STURM**, called as a witness

19 herein, having been first duly sworn, was

20 examined and testified as follows:

21 THE CLERK: Please be seated. Please state
22 your name, spell your last name for the record.

23 THE WITNESS: My name is Pamela Sturm,
24 S-t-u-r-m, P-a-m-e-l-a.

25 **DIRECT EXAMINATION**

1 BY ATTORNEY BUTING:

2 Q. Now, ma'am, did you review anything prior to your
3 testimony today, to refresh your recollection?

4 A. I read my statement.

5 Q. And that would be the statement that was taken by
6 the Calumet County Sheriff's Department; is that
7 right?

8 A. Deputy Dederling.

9 Q. Okay. You didn't review your prior testimony you
10 have given?

11 A. No.

12 Q. No?

13 A. No.

14 Q. Okay. Didn't see any maps, or diagrams, or
15 photos, or anything of that nature?

16 A. I saw a photo in the break room.

17 Q. And what was that photo of?

18 A. It was an aerial view of the salvage yard.

19 Q. Okay.

20 A. Yeah.

21 Q. Do you have any familial relationships -- or
22 relationship with the Halbach family?

23 A. They are my relatives, yes.

24 Q. In what degree?

25 A. Tom Halbach is my first cousin, so Teresa would

1 be my second cousin.

2 Q. Okay. And I understand that you became involved
3 as a volunteer -- volunteered your services, I
4 should say, to help search, once Teresa turned up
5 missing; is that right?

6 A. That's correct.

7 Q. Can you tell me why you felt it necessary for you
8 to provide some services like that?

9 A. Well, I guess our motto is family helps family.
10 And Betty had called me on Friday night, which
11 would be the 4th of November, and told me that,
12 you know, Teresa was missing.

13 And I sure wanted to do my part, so I
14 said, is there a search going to be conducted
15 tomorrow, which would have been the 5th, and she
16 said yes.

17 Q. I'm sorry who was this conversation going on
18 with?

19 A. Betty Halbach, who is Tom's sister.

20 Q. Okay. And did you -- Did you have in mind any
21 particular place that you were going to search,
22 or area you were going to search, when you were
23 having this phone conversation on Friday, the
24 4th?

25 A. No, I had no idea where the search party was

1 going to go the next day.

2 Q. Did you -- Let me ask you this first, before I
3 get to the next stage. Did you have any prior
4 experience doing any kind of searches of this
5 nature?

6 A. Not exactly this nature, no.

7 Q. Like for missing persons, or large areas of
8 geography, land?

9 A. Never for a missing person, and never for a large
10 geographical area.

11 Q. You have some experience as a private
12 investigator; is that right?

13 A. That's correct.

14 Q. And what -- Are you presently licensed?

15 A. No, I'm not.

16 Q. Were you licensed on November 5th?

17 A. No, I wasn't.

18 Q. Is there some reason for that? Were you ever
19 suspended, or revoked?

20 A. No, I wasn't suspended or revoked. It was my
21 choice.

22 Q. Okay. So you just let it lapse?

23 A. Correct.

24 Q. And how long ago was it that you had that
25 license?

1 ATTORNEY FALLON: Objection, relevance.

2 THE COURT: Mr. Buting.

3 ATTORNEY BUTING: I can go on. I think it
4 goes to her question of whether -- One of the issues
5 we're dealing with here is whether she's a volunteer
6 or not, so.

7 THE COURT: I'm going to sustain the
8 objection. I haven't heard anything to tie it in.

9 Q. (By Attorney Buting)~ Let me ask you it this way,
10 then, as part of your training to be -- did you
11 have training to be a private investigator?

12 A. Yes.

13 Q. And did part of that training involve learning
14 some of the law about Fourth Amendment searches?

15 A. Yes.

16 Q. But, in other words, you learned what the
17 standard of probable cause is, correct?

18 A. That's correct.

19 Q. And did you learn about the need for search
20 warrants?

21 A. That's correct.

22 Q. Did you also learn about warrantless searches?

23 A. Yes.

24 Q. Consent searches?

25 A. Yes, I believe so.

1 Q. Okay. Now, up to that point of that Friday
2 after -- or Friday evening phone call, had you
3 any contact with any members from the Calumet
4 County Sheriff's Department?

5 A. No.

6 Q. Had you ever worked with them on any of your
7 other cases before?

8 A. No.

9 Q. Besides your private investigator experience,
10 have you had any law enforcement experience?

11 A. No.

12 Q. So you have never been a sworn officer anywhere?

13 A. No.

14 Q. Had you had any contact with Manitowoc County
15 Sheriff's Department, up to the point of Friday
16 evening, November 4th?

17 A. No.

18 Q. Now, on Saturday morning, then, did you make
19 plans? Were you going to meet somewhere, after
20 this discussion you had with Betty?

21 A. Betty said that the search party was going to
22 meet at Teresa's house at approximately eight
23 a.m. on Saturday. So my daughter and I decided
24 that we were going to go and help with that
25 search.

1 Q. Okay. And any particular reason why your
2 daughter was involved too?

3 A. She was just eager to assist the family.

4 Q. Okay. And this daughter you are referring to is
5 Nikole?

6 A. That's correct.

7 Q. And how old is she?

8 A. 29.

9 Q. Okay. So you went -- Did you go, in fact, to
10 Teresa's residence, on Saturday morning?

11 A. Yes, we did.

12 Q. And that was based on information you had
13 received from Betty?

14 A. That's correct.

15 Q. Did you talk to anybody else, between that time,
16 about what was going on?

17 A. I talked to my sisters and my mom.

18 Q. And were they also going to this meeting or
19 this --?

20 A. No, they weren't going to.

21 Q. They weren't part of the search?

22 A. No.

23 Q. Did you know any of the people who were going to
24 be part of this search party?

25 A. I assumed my first cousins would be there?

1 Q. Okay. And so, you did arrive on Saturday morning
2 at Teresa's residence?
3 A. Yes, that's correct.
4 Q. And who was there?
5 A. Scott and Ryan were both there.
6 Q. Is that Scott Bloedorn (phonetic)? Is that how
7 you say his name?
8 A. That sounds right.
9 Q. And the Ryan you are referring to is Ryan
10 Hillegas?
11 A. Yes.
12 Q. And Ryan is -- was a former boyfriend of
13 Teresa's, is that --
14 A. I heard that.
15 Q. -- right?
16 A. I'm not sure.
17 Q. And Scott was her roommate at the time, when she
18 disappeared; is that right?
19 A. Yes.
20 Q. Okay. Were there any other people there when you
21 arrived?
22 A. No.
23 Q. So, did you ever attend any meeting with other
24 searchers, to coordinate who would do what?
25 A. No.

1 Q. Just when you got to Ryan -- or to Teresa's
2 house, and those two people were there, is your
3 only meeting; is that what you're saying?

4 A. That's correct.

5 Q. Did you -- Were you given reason to think that
6 others had been there earlier and had gone, or
7 were they still coming, or what?

8 A. I just thought it was peculiar that there were
9 only a couple cars in the parking lot. But we
10 got there at 9:00, so we thought we must have
11 missed the main group.

12 Q. And when you went into the residence, was that
13 confirmed?

14 A. Yes --

15 Q. That others had been --

16 A. -- they already had left.

17 Q. And were there some sort of maps that you were --
18 that they were looking at when you came in?

19 A. Yes, they had several maps.

20 Q. And how was it determined what you would search?

21 A. There was already a group dispensed to a certain
22 area, and he gave us a map of that area.

23 Q. And what area was that?

24 A. I'm not sure.

25 Q. So, did you go to that area then?

1 A. No. I said something to Ryan, that I would like
2 to actually go to the Avery Salvage Yard and
3 search there.

4 Q. Was that on any of the maps that he had?

5 A. It just showed the Avery road. It really wasn't
6 part of the search.

7 Q. So were these maps that you were looking at, did
8 they have -- were they divided up into quadrants,
9 or sections, or anything like that?

10 A. It was like a map quest, and it had several roads
11 on it. I'm not sure if it's a specific property
12 they were looking at, or boundaries.

13 Q. Okay. But you are saying that the map he had
14 didn't actually have the Avery Salvage yard on
15 it?

16 A. It just had Avery Road on it.

17 Q. And was it your understanding that none of the
18 other searchers who had left earlier were going
19 to go to the Avery yard?

20 A. He said there was no one else that had gone
21 there.

22 Q. Did you have any information whether the police
23 or law enforcement had already done a search of
24 that area, that is, the Avery Salvage Yard?

25 A. I don't believe so. I didn't have any knowledge

1 of that.

2 Q. So, it was your understanding that it had not
3 been searched; is that -- would that be correct?

4 A. It had not been searched by any of the search
5 party people, that wasn't part of the search.

6 Q. Okay. So it was your suggestion that you felt
7 like going there; is that what you are saying?

8 A. It was my suggestion.

9 Q. And why did you have that interest in going to
10 that particular area?

11 A. Because Teresa was last seen on the Avery Salvage
12 Yard. And I thought that's the point where I
13 should start, search that area first.

14 Q. And who told you that she was last seen there?

15 A. It was on a press release on Friday morning, I
16 believe it was.

17 Q. So, that was a press release from Sheriff Pagel?

18 A. One of the news stations maybe it was, I'm not
19 sure.

20 Q. Okay. So your understanding, though, is that you
21 learned that from some specific media information
22 that was provided?

23 A. Right.

24 Q. On Friday morning?

25 A. Mm-hmm.

1 Q. By the way, do you know Sheriff Pagel,
2 personally?

3 A. No, I don't.

4 Q. Before this case, had you ever met him?

5 A. No, sir.

6 Q. Or talked with him at all?

7 A. No, sir.

8 Q. Okay. So you decided you wanted to go to the
9 Avery Salvage, because that was the last place
10 that you knew that she was seen?

11 A. That's correct.

12 Q. And did you have any fears, or concerns, about
13 your safety in going to that location?

14 A. Yes.

15 Q. What were those?

16 ATTORNEY FALLON: Objection, relevance.

17 THE COURT: Mr. Buting.

18 ATTORNEY BUTING: I will move on. I will
19 go to something else, actually.

20 Q. (By Attorney Buting)~ You decided, though, to go
21 with just yourself and your daughter?

22 A. That's correct.

23 Q. And neither one of you were armed, or anything
24 like that, right?

25 A. No.

1 Q. And did you make any kind of arrangements to have
2 any -- Two women alone, going to this strange
3 place, did you make any kind of arrangements to
4 have any kind of back up security, or anything
5 like that?

6 A. No.

7 Q. Did you tell anybody that you were going there?

8 A. I told Ryan.

9 Q. Do you know whether Ryan told -- called the
10 police, or let anybody know that you were going
11 to that location?

12 A. I don't know if he did or not.

13 Q. Did you ask Ryan to come along with you?

14 A. No.

15 Q. Is there any particular reason?

16 A. He was the coordinator for the search party.

17 Q. Okay. And by coordinator, what does -- what did
18 you mean?

19 A. Well, if anybody called in, they would know -- he
20 would know where to send them, for that search,
21 for that day.

22 Q. Okay. So the plan was that if people were to
23 call him and he would coordinate it from there?

24 A. I believe so.

25 Q. So, if anybody found anything suspicious, or

1 untoward, they would call him and report in; is
2 that right?

3 A. I received Sheriff Pagel's personal telephone
4 number to contact him, in case I found any kind
5 of evidence.

6 Q. Okay. And how did you get that?

7 A. I got that from Ryan.

8 Q. Okay. So Ryan -- Did Ryan tell you that he had
9 spoken with Sheriff Pagel, then, and gotten this
10 personal phone number?

11 A. No, he didn't tell me that.

12 Q. You just assumed it, since he gave it to you; is
13 that right?

14 A. I wasn't sure --

15 ATTORNEY FALLON: Objection, relevance as
16 to what she assumed. It also calls for speculation.

17 THE COURT: Sustained.

18 Q. (By Attorney Buting)~ All right. So when you say
19 you had Sheriff Pagel's personal phone number,
20 did you understand that to be his cell phone, or
21 something like that, or what?

22 A. All I understood, it was his direct line to him.

23 Q. Okay. So when you arrived at the Avery property,
24 had you ever been there before?

25 A. No.

1 Q. Did you know, have any idea how many cars there
2 were in that?

3 A. I had no idea how many cars were in that area.
4 All I heard, it was a 40 acre plot.

5 Q. So, would it be fair to say you knew there could
6 have been thousands of cars?

7 A. Yes.

8 Q. And what was your intent in going to that
9 property?

10 A. I was going to look in each and every car to try
11 to find a trace of Teresa.

12 Q. Okay. You were going to look inside of each
13 vehicle?

14 A. We looked inside the vehicle. We didn't actually
15 go inside a vehicle, but we looked in the
16 windows.

17 Q. So it was your intent to not only look for her
18 vehicle, but also to look for her, perhaps in
19 some other vehicle, right?

20 A. Correct.

21 Q. And did you think that, with just the two of you,
22 that you would be able to cover the whole yard?

23 A. We hoped we could get it done that day.

24 Q. Okay. And were you -- Besides looking for her,
25 were you also looking for her vehicle?

1 A. Yes.

2 Q. And did you have some description of the vehicle?

3 A. Yes, we had the sheet on the vehicle, and what it
4 looked like.

5 Q. And the sheet --

6 A. The plate number.

7 Q. -- what kind of sheet are you referring to?

8 A. It was, I believe, a picture of the car.

9 Q. Okay. And did the car -- What kind of
10 information was on the sheet?

11 A. It was a Toyota Rav 4, and there was a license
12 plate number, the color.

13 Q. The what?

14 A. The color.

15 Q. And what was the color?

16 A. Green.

17 Q. Okay. And was there a year, also, on there,
18 model year?

19 A. I think so, but I can't remember.

20 Q. All right. So when you arrived at the Avery
21 Salvage Yard, and you drive in, there's a number
22 of sort of business type buildings; is that
23 right?

24 A. Yes.

25 Q. One of which has a sign that says Avery Salvage

1 Yard, correct?

2 A. Yes.

3 Q. You stopped there, rather than driving into the

4 rest of the yard, right?

5 A. I stopped there? Where is there?

6 Q. Well, I'm sorry, you stopped at that building

7 that said Avery Salvage Yard on it?

8 A. Yes.

9 Q. From there, you could see that there was a sort

10 of a pit, depressed area with many, many, many

11 cars, off in the distance?

12 A. Yes.

13 Q. But you didn't drive on into, past these

14 buildings, and go down into that pit, initially,

15 did you?

16 A. No.

17 Q. And why was that?

18 A. Because I wanted to ask permission first, before

19 we went.

20 Q. Okay. And did it appear obvious to you that --

21 that before you would go into that back area

22 where all these cars were, that you should get

23 permission?

24 A. Yes.

25 Q. Didn't appear to be an area where it was just

1 open to the public, without any permission at
2 all?

3 A. I didn't think so.

4 Q. Okay. And then, did you speak with anyone there?

5 A. Yes.

6 Q. And who was that?

7 A. Earl Avery.

8 Q. And what did you tell him?

9 A. I asked him if we could search the salvage yard
10 for Teresa, or Teresa's car, or any evidence of
11 Teresa?

12 Q. And by Teresa, did he seem to know who you were
13 talking about?

14 A. Absolutely.

15 Q. Did he have any hesitation at all?

16 A. He hesitated a little bit, yes.

17 Q. And when you say hesitated a little bit, what did
18 he do, or what did he say?

19 A. He said that someone else tried to search the
20 area, and they used their car, and they almost
21 got stuck, and came right back out.

22 Q. Okay. So did you have to use your powers of
23 persuasion, then, to allow him to search, or
24 what?

25 A. Well, I just told him that we would search on

1 foot, that we wouldn't take our car.

2 Q. And did he have any -- seem to have any problem
3 with that?

4 A. No, he recommended walking.

5 Q. And did you tell him anything that you were in
6 anyway there on behalf of the police, to give you
7 any kind of authority, or anything of --

8 A. No.

9 Q. -- that nature?

10 A. No.

11 Q. Did you tell him that you were part of some sort
12 of official search party that had been organized
13 by the police?

14 A. No.

15 Q. So you didn't mention that you had any connection
16 in any way to the police?

17 A. No.

18 Q. I mean, is that yes?

19 A. I told him that I didn't have. No. He never
20 even asked if I had any, you know, contact with
21 the police, or was with the police. And I never
22 said I was with the police.

23 Q. All right. Thank you. Did you have a discussion
24 with Earl Avery about hunting season coming up?

25 A. Yes.

1 Q. And talking about hunters, perhaps, finding
2 something; do you recall that?

3 A. Yes.

4 Q. Did you say that -- that you were hoping that,
5 perhaps, hunters could find some evidence of
6 Teresa out in the woods or something?

7 A. Yes.

8 Q. Was it your assumption that she was already dead?

9 A. No.

10 Q. Then why would you be expecting hunters to find
11 something?

12 A. I said some type of evidence.

13 Q. What sort of evidence were you expecting that
14 hunters would find?

15 ATTORNEY FALLON: Objection, speculation,
16 relevance, to the narrow issue for what we're here
17 for.

18 THE COURT: Sustained.

19 Q. (By Attorney Buting)~ All right. So you are
20 saying it was your assumption that she was still
21 alive?

22 A. Well, I surely hoped so, yes.

23 Q. Okay. And so, then, you did proceed to walk into
24 the pit, you and your daughter?

25 A. That's correct.

1 Q. Now, it was your intention, you said, to look
2 inside each vehicle, as well as look for Teresa's
3 vehicle?

4 A. Yes.

5 Q. Why did you pick the part of the yard that you
6 went to, to start searching?

7 A. I believed that God led us that way, through
8 prayer.

9 Q. Okay. Did you say a prayer before you went in?

10 A. Sure, I did.

11 Q. And, I mean, were you asking for some guidance on
12 which place to start searching or?

13 A. Yes. And I think all my cousins were praying
14 too, so it really worked.

15 Q. Okay. I believe in that power as well, but I
16 guess my question would be, as far as the area
17 that you chose to search, in the salvage yard, of
18 those thousands of cars, were you asking for that
19 kind of guidance?

20 A. I sure was.

21 Q. Dear God, tell me which way to go?

22 A. Sure, I was.

23 Q. Okay. And so that's how you decided?

24 A. Yes.

25 Q. There was nothing about any aspect of the

1 property you were searching, that gave you any
2 reason to go one place versus the other?

3 A. No.

4 Q. Were there other people in the salvage yard as
5 well?

6 A. Yes.

7 Q. Did you speak with any of them?

8 A. No.

9 Q. Did you -- You didn't ask them to see if they
10 could help you search as well?

11 A. No.

12 Q. Did you ask them whether they had seen a car like
13 hers, a Rav 4, anywhere in there?

14 A. No, the people I came upon were speaking Spanish.

15 Q. Okay. So, is that why you didn't go up to them,
16 because you thought you wouldn't be able to
17 communicate?

18 A. No.

19 Q. Well, why did you not?

20 A. Because I did not want to get them involved?

21 Q. Was there some reason?

22 A. I didn't know these people, and I'm on Avery's
23 Salvage Yard.

24 Q. Well, did you have some reason to feel guilty
25 about being there on the --

1 A. No, I just thought perhaps they may be dangerous,
2 so I would not approach them.

3 Q. Okay. So you were concerned, already, that there
4 was something, some foul -- something --
5 something amiss in the whole Avery Salvage Yard;
6 is that what you are saying?

7 ATTORNEY FALLON: Objection, he's leading
8 the witness. And she just said she just perceived
9 danger. So I would object to the use of the term
10 foul, or something amiss. I think her testimony is
11 clear, she felt there was some danger, and that's
12 why she didn't approach.

13 THE COURT: The objection is sustained. In
14 addition, I guess I'm not following how some of this
15 line of questioning is relevant to the motion here.

16 ATTORNEY BUTING: All right. I will move
17 on, Judge.

18 Q. (By Attorney Buting)~ Can you tell me, was there
19 anything that drew your attention to that
20 particular area where you found it?

21 A. No, sir.

22 Q. And you had looked through how many vehicles
23 before you came upon this Rav 4?

24 A. Approximately 50.

25 Q. And that was looking inside, as well as looking

1 at the vehicle?

2 A. Yes.

3 Q. Opening trunks and all that, or no?

4 A. No.

5 Q. Just inside?

6 A. Right.

7 Q. Okay. And when you came upon this particular
8 vehicle, this Rav 4, was it -- about how long do
9 you think you had been searching?

10 A. Approximately 20, 25 minutes.

11 Q. Okay. Just a short while. And did the -- If I
12 understand the area where you found it, it was in
13 a single row of cars, it was kind of double
14 parked?

15 A. It was up on a ledge. The quarry is shaped like
16 a bowl. And up on the ledge were about seven or
17 eight cars.

18 Q. Okay. And they were all in a single file, except
19 for this one?

20 A. I think they were zigzagged a little bit, not
21 exactly bumper to bumper.

22 Q. Okay. And the Rav 4, though, was it sticking out
23 to some degree?

24 A. No, I don't believe so.

25 Q. Okay. Now, when you walked up to it, did you --

1 did you look inside?

2 A. Yes.

3 Q. Did you see any blood?

4 A. No.

5 Q. You didn't see Teresa?

6 A. No.

7 Q. Did you see anything with her name on it? I'm

8 sorry. Do you need some tissues?

9 A. What was the last question?

10 Q. Did you see anything with Teresa's name on it,

11 inside the vehicle?

12 A. No.

13 Q. Did you try the doors?

14 A. No, I didn't.

15 Q. Did you see your daughter try the doors?

16 A. I was actually on the -- looking at the VIN

17 number when she was trying to open the doors.

18 Q. And was that just the front passenger and front

19 driver's side door, to your knowledge?

20 A. I'm not sure.

21 Q. Okay. Did you see -- notice -- take note of

22 anything else inside the vehicle?

23 A. There was a pop can on the floor, on the

24 passenger side, in the front.

25 Q. Did you look under the vehicle?

1 A. I don't recall.

2 Q. Okay. Now, was it at that time -- I skipped over
3 some stuff. Your daughter was separated from you
4 for a short period of time, right?

5 A. Yes.

6 Q. But you called her over to come look at the
7 vehicle as well?

8 A. Yes.

9 Q. And you thought that there was -- that this was
10 similar to what the description was?

11 A. Yes.

12 Q. Would you say that it matched the description
13 exactly or?

14 A. It was real close to the description.

15 Q. You had some concern about the color?

16 A. Yes.

17 Q. Looked more -- Did it look more blue than green,
18 I think?

19 A. Right.

20 Q. And then you called this special number that you
21 had; is that right?

22 A. Um --

23 Q. Or did your daughter?

24 A. You will have to ask my daughter.

25 Q. Okay. So you didn't dial it?

1 A. No.

2 Q. Did your daughter speak to anybody, or did she
3 hand it right to you?

4 A. She handed it to me.

5 Q. And did you speak with Sheriff Pagel, then,
6 immediately or --

7 A. It went to his voice mail first. And then I
8 dialed zero again and the operator answered.

9 Q. So, it gave you -- From the voice mail, it gave
10 you an option to dial zero and go to an operator,
11 on the voice mail, rather than leaving a message?

12 A. Yes.

13 Q. Okay. I didn't understand at first, but. And
14 then when you spoke to the operator, or the
15 dispatcher, she put you in touch with Sheriff
16 Pagel?

17 A. Yes, she did.

18 Q. And did you tell him that you had -- or you
19 explained to him that you had found the vehicle,
20 or a vehicle that was similar to it, right?

21 A. I believe it was her vehicle, yes.

22 Q. You told -- You asked for the VIN number, though,
23 right? You didn't have the VIN number?

24 A. No, we didn't have the VIN number.

25 Q. And there were no license plates on it, right?

1 A. No plates on it.

2 Q. And it was more blue than green, like you were
3 expecting, right?

4 A. It was bluish green.

5 Q. So you had some doubt, enough doubt that you
6 wanted to see if you could compare the VIN
7 number?

8 A. Right. But it was camouflaged, so, yeah, we
9 probably suspected it was her car.

10 Q. Okay. And then he wasn't able to give you the
11 VIN number, so he passed you off to someone else?

12 A. I don't recall that.

13 Q. Do you recall speaking to Investigator Wiegert?

14 A. I don't recall that.

15 Q. Okay. So, at any rate, then, you weren't -- I
16 don't want to lead, but I'm trying to move things
17 along. You weren't provided with the actual VIN
18 number, though, correct?

19 A. It was on some sheet, but we didn't have that
20 specific sheet with us.

21 Q. I see. So instead, they asked you to look and
22 see if you could find the VIN number on that
23 vehicle, though?

24 A. Yes.

25 Q. And were you able to provide all of the numbers

1 in that VIN number to the officer you spoke with?

2 A. I didn't have my glasses on, so my daughter read
3 the numbers to me, while I read it to the officer
4 on the phone.

5 Q. Okay. And do you know, was she able to see all
6 of them, or only a partial?

7 A. You will have to ask her.

8 Q. Okay. She didn't tell you? I mean you heard
9 her, she was passing the numbers to you?

10 A. Right.

11 Q. And she didn't say whether some of it was
12 obscured or not?

13 A. I think she did say that, yes.

14 Q. That she could not see all of them?

15 A. That she couldn't see all of them.

16 Q. All right. You -- I have the advantage of having
17 seen the transcript of your call, but you
18 indicated you thought it was a particular model
19 year, a 1999, or year 2000; do you recall that?

20 A. No, I can't recall that.

21 Q. Okay. Did you have any sort of knowledge, or
22 information, that would enable you to tell the
23 year of a vehicle like that?

24 A. No, I have no knowledge of that.

25 Q. And then the officer that you spoke with told you

1 to standby?

2 A. He told us not to touch anything and to move away
3 from the car.

4 Q. And how long was it before the officers arrived,
5 first officer?

6 A. I would say approximately 20 minutes.

7 Q. Do you know who that officer was?

8 A. It was Officer Remerick, Remerak (phonetic).

9 Q. Remiker?

10 A. Remiker. I'm sorry, yes.

11 Q. While you were waiting, did you speak with that
12 Officer Remiker?

13 A. My daughter did.

14 Q. Your daughter spoke with him by cell phone?

15 A. I believe so.

16 Q. And then, how long were you at the scene after
17 that, before you were allowed to leave?

18 A. I don't believe we left until about 12:30.

19 Q. So -- And -- I'm sorry. Do you know what time it
20 was when you discovered the car, the Rav 4?

21 A. Approximately 10:20 to 10:25.

22 Q. All right.

23 ATTORNEY BUTING: I have nothing further.

24 Thank you.

25 THE WITNESS: Thank you.

1 THE COURT: Mr. Fallon.

2 ATTORNEY FALLON: Yes, just one moment.

3 Yes, your Honor, a moment or two, we're going to ask
4 the witness to identify an audio recording.

5 THE COURT: Is there any chance of the
6 parties stipulating that the recording is the
7 correct one?

8 ATTORNEY BUTING: Sure.

9 THE COURT: I assume this is something
10 that's been exchanged?

11 ATTORNEY FALLON: It has been exchanged and
12 there is a transcript that I'm able to provide the
13 Court and Counsel. We would like to mark that and
14 hand it to the witness. We can do that.

15 THE COURT: All right. Defense has a copy,
16 I take it?

17 ATTORNEY STRANG: I do.

18 ATTORNEY BUTING: I do.

19 THE COURT: All right. We'll have one
20 marked. And then, do you wish to introduce the CD
21 of the actual conversation into evidence?

22 ATTORNEY FALLON: I would.

23 THE COURT: We'll have that marked.

24 ATTORNEY FALLON: Is the stipulation, then,
25 Counsel, that the voices which appear on the tape

1 are the voices of this witness, Pamela Sturm,
2 Sheriff Pagel, and Investigator Wiegert?

3 ATTORNEY BUTING: And the dispatcher.

4 ATTORNEY FALLON: And the dispatcher.

5 ATTORNEY BUTING: Whose name I don't know
6 that I have. Do you?

7 ATTORNEY FALLON: I don't have the
8 dispatchers name. We could certainly supplement the
9 record with that.

10 ATTORNEY BUTING: Yes, we would stipulate
11 that those are the voices.

12 THE COURT: Very well.

13 ATTORNEY FALLON: All right. Very well.

14 (Exhibit 16 & 17 marked for identification.)

15 ATTORNEY FALLON: May I approach the
16 witness?

17 THE COURT: Yes.

18 **CROSS-EXAMINATION**

19 BY ATTORNEY FALLON:

20 Q. Ms Sturm, have you ever had an opportunity to
21 review a transcript of that audio recording?

22 A. No, I haven't.

23 Q. All right. Very good. I will take that. Thank
24 you.

25 ATTORNEY FALLON: Pursuant to the

1 stipulation, I would offer Exhibit 17. The Court
2 may examine it at its leisure.

3 THE COURT: Any objection to Exhibit 17,
4 Mr. Buting?

5 ATTORNEY BUTING: No objection.

6 THE COURT: All right. Exhibit 17 is
7 admitted.

8 Q. (By Attorney Fallon)~ Just so I'm clear, I just
9 have a few questions, Ms Sturm. You became aware
10 of Teresa's disappearance, when?

11 A. Approximately November 4th at like 10 a.m, over
12 the TV.

13 Q. So that would have been Friday morning, about 10
14 o'clock?

15 A. Correct.

16 Q. And you hadn't caught any of the newscast, or any
17 of the information from the previous day?

18 A. No.

19 Q. And your first contact with anyone regarding her
20 disappearance would have been your cousin, Tom
21 Halbach's sister, Betty, called you?

22 A. Yes.

23 Q. And that occurred on Friday evening, that same
24 day?

25 A. Yes.

1 Q. About how late in the day would that call have
2 occurred, your best recollection? Before dinner,
3 after dinner?

4 A. I think after dinner.

5 Q. All right. On that day, Friday, did you have any
6 discussions with any member of law enforcement,
7 regarding Teresa's disappearance?

8 A. No, sir.

9 Q. Directing your attention, then, to Saturday
10 morning, on Saturday morning, prior to your
11 calling Sheriff Pagel, did you have discussion
12 with any law enforcement officer, whether it be
13 Manitowoc County, Calumet County, any police
14 officer whatsoever, regarding Teresa's
15 disappearance?

16 A. No, sir.

17 Q. Did you have any discussion, whatsoever, with any
18 law enforcement officer, regarding the volunteer
19 search efforts; in other words, letting them know
20 that you were ready to join the search?

21 A. No, sir.

22 Q. When you arrived at the residence where Ryan
23 Hillegas and Scott Bloedorn were coordinating, as
24 it were, these efforts, there was no law
25 enforcement officer present, correct?

1 A. No, sir.

2 Q. Just so that we're absolutely clear, your
3 decision -- or excuse me -- the idea to go to the
4 Avery Salvage Yard was entirely your idea?

5 A. That's correct.

6 Q. And as far as you knew, from your discussions
7 with Mr. Hillegas and Mr. Bloedorn, no one else
8 had offered to go to that particular local?

9 A. Yes.

10 Q. And your reason for choosing it was because it
11 seemed to you, logical, that that would be a
12 place to look, because according to the
13 information you had become aware of, that was the
14 last place that she was located?

15 A. That is correct.

16 Q. Now, did that information, in terms of the last
17 place seen by her, did that come in in that 10
18 o'clock news information; or did that come later
19 in the day, from Betty Halbach; or perhaps did it
20 come on Saturday morning; when in the sequence
21 did you become aware of that?

22 A. It was Friday morning on the TV.

23 Q. All right.

24 A. The news release.

25 Q. And you had no discussions with any law

1 enforcement officer about that particular aspect
2 of the missing person case, that she was last
3 seen, or last believed to be seen, at that
4 property, for a business appointment?

5 A. No.

6 Q. When you arrived at this salvage yard, you spoke,
7 I believe you said, with Mr. Earl Avery; is that
8 correct?

9 A. That's correct.

10 Q. Did you speak with him inside a building, or was
11 it out on the grounds?

12 A. It was out on the grounds.

13 Q. And do you recall which building it was in front
14 of, or near, that you had your conversation with
15 him? In other words, did it appear to be a
16 business office, a residence, a shed, anything
17 stick in your mind?

18 A. It appeared to be a building with an office
19 inside.

20 Q. Did you, at all, go into the office?

21 A. Yes, I did.

22 Q. All right. And in the office, did you observe,
23 for instance, any missing poster -- missing
24 person poster of Teresa Halbach in that office?

25 A. No.

1 Q. All right. You indicated that Mr. Avery had --
2 your belief was that Earl Avery had no -- he knew
3 exactly what you were there for and who you were
4 looking for?

5 A. Yes, he did.

6 Q. All right. And how was it that you reached the
7 conclusion that he was quite sure what you were
8 wanting to do?

9 A. He agreed to the search. And I told him that we
10 were searching for Teresa, or her vehicle, or any
11 trace of Teresa.

12 Q. Or any trace of her?

13 A. Yes.

14 Q. Okay. All right. You go down to the -- You
15 start in one area, you search for 20, 25 minutes,
16 and you come upon her vehicle; is that correct?

17 A. Yes.

18 Q. All right. Now, there was some questions from
19 counsel regarding your attempt to -- or you or
20 your daughter's attempt to get into the vehicle.
21 So I want to talk a little bit about that. Just
22 so I'm clear, you, yourself, did not attempt to
23 get into the vehicle?

24 A. No.

25 Q. All right. Your daughter, you think attempted to

1 get into the vehicle, at least perhaps tried one
2 or more of the doors?

3 A. Yes.

4 Q. All right. And the doors were locked, correct?

5 A. Correct.

6 Q. And you could not get into the vehicle, correct?

7 A. Correct.

8 Q. Now, describe for us, was the vehicle -- When you
9 came upon it, describe the condition of the
10 vehicle. How was it -- You said, you used the
11 word camouflaged. Tell us about that.

12 A. There were branches leaning up against it. Also
13 a hood from another car leaned up against it.
14 Plywood. And on the roof there were branches, so
15 it was covered.

16 Q. Be fair to say it was difficult to look inside
17 the vehicle, because of this stuff?

18 A. No, it wasn't really difficult to look inside. I
19 could see, you know, through the branches.

20 Q. All right.

21 A. There was a viewing area.

22 Q. In your initial efforts to read the VIN number,
23 did you have to move anything?

24 A. No.

25 Q. Did your daughter have to move anything?

1 A. No.

2 Q. When she attempted?

3 A. No.

4 ATTORNEY FALLON: Okay. That's all.

5 THE COURT: Any redirect?

6 ATTORNEY BUTING: No.

7 THE COURT: All right. The witness is
8 excused.

9 ATTORNEY BUTING: Can we have just a
10 minute, your Honor?

11 THE COURT: Sure. We'll take a two minute
12 break and then come back.

13 (Brief recess taken.)

14 THE COURT: All right. Counsel, you may
15 call your next witness.

16 ATTORNEY BUTING: The other witness I was
17 going to call today would have been the daughter,
18 Nikole; however, I think, given the testimony of her
19 mother, it's probably not necessary. So I would --
20 I will not do that.

21 THE COURT: All right. So does that -- Now
22 wait a minute, that doesn't conclude the evidence.

23 ATTORNEY FALLON: I think that just gives
24 us, we adjourn for today, I think is what it means.

25 THE COURT: And, Mr. Buting, you will have

1 more witnesses to call on the **Franks** motion, on the
2 9th.

3 ATTORNEY BUTING: Correct.

4 THE COURT: All right. Is there anything
5 else to address today before we adjourn?

6 ATTORNEY BUTING: One last -- Just one last
7 thing. The State subpoenaed Mr. Hillegas. And he
8 was here and was told to come back. But because the
9 State subpoenaed him and I did not, I would just
10 ask, if you intend to withdraw your subpoena at any
11 point, let me know. Otherwise, I will assume, by
12 the Court's comments, that he will be here next
13 time.

14 ATTORNEY FALLON: I will make sure that we
15 contact him. I believe we told him to come back on
16 the 9th.

17 ATTORNEY BUTING: Oh, was he not one of the
18 ones who was here?

19 ATTORNEY FALLON: He was here.

20 ATTORNEY BUTING: He was. That's fine,
21 then, Judge.

22 THE COURT: All right. Anything further?
23 If not, we're adjourned for today.

24 ATTORNEY STRANG: Thank you.

25 (Proceedings concluded.)

1 STATE OF WISCONSIN)
)ss
2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 27th day of July, 2006.

Diane Tesheneck, RPR
Official Court Reporter

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, PARTIAL MOTION HEARING

5 vs. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8
9 **DATE:** AUGUST 9, 2006

10 **BEFORE:** Hon. Patrick L. Willis
11 Circuit Court Judge

12 **APPEARANCES :**

13 KENNETH R. KRATZ
Special Prosecutor
On behalf of the State of Wisconsin.

14 THOMAS J. FALLON
Special Prosecutor
On behalf of the State of Wisconsin.

15 DEAN A. STRANG
Attorney at Law
On behalf of the Defendant.

16 JEROME F. BUTING
Attorney at Law
On behalf of the Defendant.

17 STEVEN A. AVERY
Defendant
Appeared in person.

18
19
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21
22
23 **PARTIAL TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery. It's Case No.
3 05 CF 381. We are here this morning on a
4 continuation of a hearing regarding some pretrial
5 motions filed by the defense; specifically, the
6 remaining testimony on the **Franks** motion that's been
7 filed by the defense, and also to your testimony on
8 defense motions regarding the execution of the
9 search warrant that was issued. And a motion to
10 suppress statements made by the defendant to the
11 Marinette County Sheriff's Department.

12 Will the parties state their appearances
13 for the record, please.

14 ATTORNEY KRATZ: The State appears by
15 Calumet County District Attorney Ken Kratz,
16 appearing as Special Prosecutor in this matter. Tom
17 Fallon, from the Department of Justice, also appears
18 having been appointed Special Prosecutor.

19 ATTORNEY BUTING: Good morning, your Honor.
20 Buting and Williams by Attorney Jerome Buting,
21 appearing on behalf of Mr. Avery, who is present.
22 Also, Attorney Dean Strang, appearing on behalf of
23 Mr. Avery.

24 THE COURT: All right. As I recall, when
25 we left off, Mark Wiegert was testifying. The

1 defense had completed its direct exam, and the State
2 is going to cross-examine the witness today; is that
3 correct?

4 ATTORNEY FALLON: That's correct, Judge.

5 THE COURT: All right. Is Mr. Wiegert
6 here?

7 ATTORNEY FALLON: Yes, he is.

8 THE COURT: The Court will have the clerk
9 re-swear the witness.

10 **DETECTIVE MARK WIEGERT**, called as a
11 witness herein, having been first duly sworn, was
12 examined and testified as follows:

13 THE CLERK: Please be seated.

14 ATTORNEY BUTING: Judge, I assume the
15 sequestration order remains, as to any other
16 witness?

17 THE COURT: Yes, it does.

18 ATTORNEY FALLON: Yes, it does. I don't
19 believe any other witnesses, relative to the **Franks**
20 matter, is present. Our Victim/Witness person
21 advises me that is the case. Officer Fassbender is
22 here for the next motion, unless there is any
23 objection, by counsel, on him sitting in on this
24 part.

25 ATTORNEY BUTING: No.

1 ATTORNEY FALLON: Very well.

2 THE COURT: All right. Mr. Fallon, you may
3 proceed.

4 ATTORNEY FALLON: All right. Thank you.

5 **CROSS-EXAMINATION**

6 BY ATTORNEY FALLON:

7 Q. Detective Wiegert, before you spoke to Pam Sturm
8 on that Saturday morning, November 5th, you had
9 spoken only to one other volunteer searcher in
10 this particular matter; is that correct?

11 A. That is correct.

12 Q. As a matter of fact, you received only one call
13 from that person?

14 A. Yes.

15 Q. And to this day, you don't really recall the name
16 of the person who called you?

17 A. No, I do not.

18 Q. All right. You were informed by that person that
19 the searchers would be searching county roads,
20 and ditches, etcetera, for evidence of Teresa
21 Halbach, their thinking perhaps that she had some
22 type of motor vehicle accident?

23 A. That's correct.

24 Q. All right. The volunteers indicated they would
25 be searching from Manitowoc to Mishicot to the

1 area where she lived, that general stretch of
2 road?

3 A. Right, the Mishicot area over towards the Hilbert
4 area.

5 Q. All right. And you spoke to no other volunteers
6 on that particular day, November 4th, that's a
7 Friday; is that right?

8 A. That's correct.

9 Q. All right. So, with respect to the events of
10 November 4th, you did not organize any volunteer
11 search group?

12 A. No, not at all.

13 Q. You did not coordinate anything with that
14 particular group?

15 A. No.

16 Q. You did not direct them in any way?

17 A. No.

18 Q. You did not instruct them in any way?

19 A. Did not.

20 Q. You did not suggest any locales where they should
21 commence their search?

22 A. No.

23 Q. And you certainly didn't give them any details of
24 any other places, or buildings, or things to
25 search?

1 A. No.

2 Q. And it's fair to say you gave them no
3 instructions, whatsoever; you basically were a
4 conduit of information received from them?

5 A. That's correct.

6 Q. All right. As a result of receiving that
7 information, you then called the Manitowoc
8 Sheriff's Office?

9 A. Yes, I contacted the shift commander at the
10 Manitowoc County Sheriff's Department.

11 Q. And you advised the shift commander of the
12 information you received from this volunteer
13 searcher; is that correct?

14 A. That's correct, yes.

15 Q. All right. And because -- You did this because
16 there were some safety issues or concerns, with
17 respect to people being out on the roads, either
18 late at night or early in the morning, looking
19 for Teresa Halbach?

20 A. Yeah. My concern was that they would be parked
21 on the side of the road and there would be a lot
22 of people, obviously, in the area, for their
23 safety.

24 Q. All right. Now, on Saturday, November 5th, that
25 particular morning, you contacted Detective

1 Remiker; is that correct?

2 A. Yes.

3 Q. And you wanted to meet with him at the Manitowoc
4 Sheriff's Office?

5 A. Yes.

6 Q. In thinking you were wanting to come up with some
7 type of game plan, or organization as to how you
8 were going about this, finding the missing person
9 of Theresa Halbach?

10 A. That's correct.

11 Q. You wanted to -- And one of the things, I believe
12 you indicated you wanted to ask consent
13 because -- of the Avery family -- because one of
14 the places you wanted to search, or look for her,
15 was their property; is that correct?

16 A. Yes.

17 Q. And that's because, as far as anyone knew at that
18 point, that was the last place she had been seen
19 alive?

20 A. Correct.

21 Q. All right. And it was at that point, with
22 respect to your discussions with Detective
23 Remiker, that it was your thinking, at least in
24 your mind, that if consent were granted to look
25 at the Avery property and the surrounding area,

1 you might, at that point, call upon the
2 volunteers to assist in a search of that area?

3 A. Yes. We had an idea of how big the salvage yard
4 was, and we thought if they would grant us
5 permission, since we were there with people in
6 the area, we would ask them for their help.

7 Q. All right. Now, up to this particular point, you
8 had not asked for any volunteers help, correct?

9 A. No, did not.

10 Q. Were you actually planning on meeting with
11 volunteers at the Sheriff's Department, or just,
12 at some point later on, asking for their help in
13 search of various locales?

14 A. No, our purpose was to meet with Detective
15 Remiker, to discuss with him our ideas and see
16 what kind of ideas he might have. But no, we had
17 no intentions of meeting with any volunteer
18 searchers at that time.

19 Q. As a matter of fact, no such meeting with
20 Detective Remiker, regarding your thoughts, ever
21 occurred that morning, did it?

22 A. That's correct.

23 Q. You never asked for any volunteers for assistance
24 on November 5th, correct?

25 A. Correct.

1 Q. You did not organize them on that day?

2 A. No.

3 Q. You did not direct them on that day?

4 A. No.

5 Q. You did not coordinate any of their efforts?

6 A. Did not.

7 Q. You did not suggest a place to search?

8 A. No.

9 Q. And prior to that day, you had never had any
10 telephone or contact with Pamela Sturm regarding
11 her intentions?

12 A. That's correct.

13 Q. All right. After your discussion with Detective
14 Remiker, it was at that point where your
15 department received a phone call from Pamela
16 Sturm; is that correct?

17 A. Yes.

18 Q. All right. And it was pursuant to that phone
19 call, that you then responded to the scene, to
20 the Avery property?

21 A. Yes.

22 Q. All right. And, again, prior to that phone
23 conversation from her, you had no idea that
24 anyone was actually going to that property that
25 morning did you?

1 A. No idea.

2 Q. All right.

3 ATTORNEY FALLON: Your Honor, does the
4 Court have Exhibit 15 available for our perusal, for
5 the witnesses perusal?

6 THE COURT: We will in a minute.

7 ATTORNEY FALLON: Very well.

8 Q. (By Attorney Fallon)~ Detective, you were the
9 affiant in the search warrant, issued on November
10 5th, 2005?

11 A. Yes, I was.

12 Q. All right. And that means you set forth specific
13 facts which you believed established probable
14 cause to justify a search warrant of the Avery
15 property, correct?

16 A. Correct.

17 Q. All right. Now, in that particular affidavit,
18 and until we get the official one, I will let you
19 examine my copy of Exhibit 15. I would like to
20 direct your attention to Paragraph 5.

21 ATTORNEY FALLON: May I approach the
22 witness?

23 THE COURT: Yes.

24 ATTORNEY FALLON: Thank you.

25 Q. (By Attorney Fallon)~ For the record, Detective,

1 you have a copy of Exhibit 15?

2 A. I do, yes.

3 Q. Now, that copy of the Exhibit 15, however, does
4 not have the return of the officers on it,
5 correct?

6 A. It does not, you are correct.

7 Q. All right.

8 THE COURT: Just for my benefit, is this --
9 This affidavit is attached to the defense motion,
10 correct?

11 ATTORNEY FALLON: Yes, the warrant and
12 affidavit are attached to the defense motion.

13 THE COURT: Because I have got a copy of
14 the motion here, so at least I have something to
15 follow along with.

16 ATTORNEY FALLON: All right. Very well.

17 Q. (By Attorney Fallon)~ Now, in Paragraph 5, you
18 use a phrase, a vehicle matching the description
19 of the vehicle owned by Teresa Halbach was found
20 on the Avery property; is that correct?

21 A. Yes.

22 Q. All right. Now, there was much questioning
23 regarding the discussion of matching. And, first
24 of all, let me begin by asking you this question,
25 Detective Wiegert. What were the sources of

1 information that you used to prepare that
2 warrant?

3 A. Actually had three different sources: One was
4 Pam Sturm, and the information she called in,
5 such as the color of the vehicle, the sticker on
6 the back of the vehicle, the Le Mieux Toyota
7 sticker; the vehicle that was covered up by --
8 was covered up by branches, for example; and the
9 partial VIN number that she provided me. Also,
10 information I received from Karen Halbach,
11 Teresa's mother, that the Le Mieux Toyota sticker
12 should be on the back of her truck, which matched
13 the one that was out at the scene.

14 Also, information that I had gotten from
15 Detective Remiker. He had went to the scene and
16 verified the complete and entire VIN number,
17 which matched Teresa Halbach's vehicle.

18 Q. All right. Now, Detective Remiker arrived at
19 that scene, before you and other members of the
20 Calumet County Sheriff's Department arrived
21 there, correct?

22 A. Yes, he did.

23 Q. All right. Were you in communication with
24 Detective Remiker, by telephone, prior to your
25 arrival at the salvage yard?

1 A. By telephone, and I believe, also, on the radio,
2 one or two times, yes.

3 Q. All right. Now, you also, did you not, have
4 information from the Wisconsin Department of
5 Transportation, some teletype communication, with
6 a more detailed description of the vehicle
7 registered to Teresa Halbach?

8 A. Yes, we did.

9 Q. All right. So you knew, then, that it was a
10 1999, or 2000, Toyota RAV 4?

11 A. Yeah. And as a matter of fact, when Pam Sturm
12 had called, she had told me that she believed it
13 was a '99 or 2000 RAV 4, so that also matched.

14 Q. All right. And with respect to -- For purposes
15 of our discussion now, would you describe for
16 us -- Well, first of all, let me ask this: When
17 you arrived at the scene, did you have an
18 opportunity to examine the vehicle yourself?

19 A. I stayed at least 100 yards from the vehicle.

20 Q. All right.

21 A. I did not get close to the vehicle.

22 Q. All right. Since that time, have you had an
23 opportunity to get a close look at the vehicle?

24 A. Absolutely, yes.

25 Q. All right. Now, for purposes of our discussion,

1 describe the color of that vehicle for us?

2 A. I would say it's a greenish, bluish color. It
3 depends on when the light hits it, you know, what
4 color it is. It kind of differs with the
5 different type of light you have. But it's a
6 greenish blue.

7 Q. All right. And in your particular affidavit
8 there, you use the phrase dark blue; is that
9 correct?

10 A. Yes.

11 Q. All right. Now, with respect to the information
12 provided by Ms Sturm, you indicated that she --
13 you received a partial VIN number. First of all,
14 with respect to VIN's, to be more grammatically
15 correct, how many characters are commonly
16 associated with a VIN.

17 A. Seventeen characters in a VIN number.

18 Q. And with respect to the information provided by
19 Ms Sturm, how many characters did she provide of
20 that number?

21 A. She provided 10 of the 17 numbers, off the VIN.
22 And those matched, obviously, Teresa's vehicle.

23 Q. All right. And with respect to Detective
24 Remiker's involvement here, did Detective Remiker
25 advise you that he had confirmed the remaining

1 numbers?

2 A. Yes, he did. As a matter of fact, he indicated
3 that he had a match, and that all the numbers
4 were verified.

5 Q. All right. Now, so -- And that all occurred
6 before you applied for the search warrant, which
7 is reflected in Exhibit 15?

8 A. That's correct, yes.

9 Q. All right. So, at the time you prepared that
10 warrant, you knew that you were -- a vehicle that
11 was dark blue, or greenish blue, had been located
12 at the Avery property?

13 A. Yes.

14 Q. You knew the vehicle was secreted in some way, in
15 so far as it was covered by brush and other
16 automobile parts?

17 A. Yes.

18 Q. You knew that the -- that you had 10 of 17 VIN
19 characters from Ms Sturm, and the remaining seven
20 provided by Detective Remiker?

21 A. Yes.

22 Q. You had a teletype from the Department of
23 Transportation regarding the registration and
24 description of the vehicle?

25 A. Yes.

1 Q. And you also confirmed, with Karen Halbach, that
2 there was a Le Mieux Toyota sticker available --
3 or located on that vehicle?

4 A. Yes.

5 Q. All right. And at the time of -- As a matter of
6 fact, you knew before you even got there, from
7 your discussion with Ms Sturm, that such a
8 sticker -- dealer sticker, was on that vehicle?

9 A. Yes, I did.

10 Q. All right. Now, Detective, did you deliberately
11 misstate any facts in that affidavit?

12 A. Absolutely not.

13 Q. And in your mind, did you omit any significant
14 facts which would affect the determination of
15 probable cause by this Court?

16 A. No.

17 ATTORNEY FALLON: No other questions.

18 THE COURT: Mr. Buting.

19 **REDIRECT EXAMINATION**

20 BY ATTORNEY BUTING:

21 Q. Now, Detective, so it's your testimony that you
22 did not tell Detective Remiker, from the
23 Manitowoc Sheriff's Department, that you had --
24 I'm referring now to Saturday morning, the
25 November 5th before the vehicle was discovered.

1 A. Mm-hmm.

2 Q. Is it your testimony that you did not tell him
3 that you had volunteers that were willing and
4 interested in going to the Avery property?

5 A. I did not tell him that there were volunteers
6 willing to go to the Avery property, that's
7 correct.

8 Q. Okay. And you did not tell him that several of
9 the volunteer search parties would be coming to
10 the Manitowoc Sheriff's Department to meet and
11 coordinate efforts; is that your testimony?

12 A. That's correct.

13 Q. Okay. And you are familiar -- We have discussed
14 it briefly, but just to refresh your
15 recollection, we talked about it earlier, you
16 have had training in how to apply for search
17 warrants, right?

18 A. Yes.

19 Q. And you know that it's very important that you be
20 completely truthful and honest when you prepare
21 an affidavit for a search warrant, right?

22 A. That's correct, yes.

23 Q. And that that's so that the judge, or the
24 magistrate, can form his or her own opinion, as
25 to whether or not there's probable cause to

1 justify the warrant, right?

2 A. Yes.

3 Q. In other words, the judge is not supposed to
4 simply rely on your belief that probable cause
5 exists, correct?

6 A. Yes.

7 Q. That you have to provide the facts to him or her
8 so that an independent decision can be made,
9 correct?

10 A. That's correct.

11 Q. And in your affidavit, Exhibit 15 --

12 THE COURT: The record should reflect that
13 he's holding the actual Exhibit 15 at this point.
14 It was handed to him during his testimony on
15 cross-examination.

16 ATTORNEY BUTING: Thank you, your Honor.

17 Q. (By Attorney Buting)~ In Exhibit 15, directing
18 your attention to Paragraph 5, you prepared the
19 words -- the wording in this paragraph are your
20 words, are they not?

21 A. Yes.

22 Q. Anybody else help you formulate this?

23 A. Detective Remiker was there when we put it
24 together.

25 Q. Okay. So it was -- was it a mutual effort

1 between you and Detective Remiker?

2 A. Yes.

3 Q. Both of you read it over?

4 A. I can't say if he read it over. I know I did. I
5 can't testify to what he did, for sure.

6 Q. All right. And you read it over and you swore to
7 it?

8 A. I did.

9 Q. And in that, you specifically said that the
10 volunteer searchers had located -- I'm sorry, I
11 will use the exact phraseology here -- that
12 officers had received information, quote, from
13 volunteer searchers, that they had located a
14 vehicle matching the description of the vehicle
15 owned by Teresa Halbach, closed quote, right?

16 A. Yes.

17 Q. But, in point of fact, you had no information
18 that the volunteers told you the vehicle matched
19 the description?

20 A. No, she told me what type of vehicle it was. She
21 told me that there was a sticker on the back.
22 She told me the color of the vehicle. She told
23 me the year of the vehicle. To me, that's
24 matched.

25 Q. So, the volunteers did not tell you that it

1 matched, you concluded that it matched?

2 A. I concluded, from the information that the
3 searcher gave me, that there was a match.

4 Q. And you did not, however, put in your affidavit,
5 for the judge to make his or her own
6 determination on whether or not the vehicle
7 matched, the following facts: You did not
8 mention anything about a Le Mieux sticker; isn't
9 that correct?

10 A. It is not in the affidavit, that's correct.

11 Q. You did not mention anything about the model
12 year; is that correct?

13 A. I would have to review the affidavit to be sure.

14 Q. Take your time.

15 A. That's correct.

16 Q. And you did not put anything in your affidavit to
17 tell the judge that the volunteer you personally
18 spoke with, that is, Pamela Sturm, told you that
19 she was concerned that the color did not appear
20 to match the description of the vehicle as she
21 understood it?

22 A. She indicated that it was a bluish green color.
23 And I don't know exactly what's in the affidavit,
24 again, without looking at it, but that's what she
25 told me.

1 Q. And she told you, though, also, that she was --
2 as a result of the fact that the information had
3 gone out that the vehicle was green, that's
4 correct, is it not?

5 A. Yes, that's correct.

6 Q. She told you, therefore, that she was not certain
7 that this was really the same vehicle, right?

8 A. She initially was concerned about the color,
9 because she said it was bluish green. However,
10 after discussing other facets of the vehicle:
11 The sticker, what she said was the year of the
12 vehicle, and the VIN number, I took it that she
13 believed that it was the vehicle.

14 Q. But she never told you that, you just took it at
15 that?

16 A. She asked me several times, is this the vehicle,
17 and I said I can't tell you that at this time.

18 Q. Okay. And that uncertainty, about the difference
19 in the color, that she expressed to you, was not
20 something that you included in your affidavit;
21 isn't that right?

22 A. No, because I believed --

23 Q. That's fine. Answer the question. The answer is
24 no; is that right?

25 A. That's correct.

1 Q. The sources of the information that you said went
2 into this Paragraph 5, you included information
3 from Detective Remiker, who had actually arrived
4 at the scene, correct?

5 A. Yes.

6 Q. Now, are you aware that Detective Remiker did not
7 have any consent from the property owners, to be
8 in the location he was at, when he made his
9 observations?

10 A. No.

11 ATTORNEY FALLON: Objection.

12 THE COURT: What is the objection?

13 ATTORNEY FALLON: Speculation, it's
14 irrelevant at this point.

15 THE COURT: Mr. Buting?

16 MR. BUTING: Well, it is relevant. It goes
17 directly to the issue of what can be relied upon in
18 a search warrant.

19 ATTORNEY FALLON: I don't see how that is
20 relevant to the averments in the affidavit, under
21 the circumstances in which the affidavit was
22 presented.

23 THE COURT: All right. I'm not going to
24 say that it's not relevant for purposes of the
25 defense motion, but I think for purposes of this

1 witness's testimony, I agree with Mr. Fallon. The
2 Court will sustain the objection.

3 Q. (By Attorney Buting)~ All right. As part of your
4 experience and training with regard to search
5 warrant applications, you know that you cannot
6 put information into a warrant, for a judge to
7 rely on, that was obtained unlawfully by the
8 police; is that right?

9 A. Yes.

10 Q. And that you are also aware that observations
11 that an officer may make on private property, the
12 lawfulness of those observations would depend on
13 whether that officer had a lawful purpose in
14 being there at the time he made such
15 observations, right?

16 A. Yes.

17 Q. And that if Detective Remiker, in this instance,
18 did not have a lawful reason to be in the place
19 where he made the observations you relied upon,
20 you would not have included those in this
21 affidavit, right?

22 A. If I knew he wasn't there lawfully, are you
23 asking --

24 Q. Yes.

25 A. -- would I have included that? If I knew he was

1 there illegally, I would not include that, no.

2 Q. Okay. And he was with you when you prepared this
3 affidavit?

4 A. That's correct.

5 Q. Did you ask him whether he had consent to be in
6 the -- that portion of the Avery property where
7 he was making his observations of the RAV 4
8 vehicle?

9 A. I did not ask him if he had permission to be
10 there; I assumed he did.

11 Q. And he never told you that he had permission to
12 be there?

13 A. I never asked him.

14 Q. That's not my question. Did he ever tell you?

15 A. No, not specifically.

16 Q. Okay. And you actually arrived at the scene
17 later, yourself, correct?

18 A. Later than?

19 Q. Than Detective Remiker?

20 A. Yes.

21 Q. A matter of a few minutes, I believe, correct?

22 A. Correct.

23 Q. And you had an opportunity to speak with one of
24 the property owners or managers, correct?

25 A. I did speak with Earl Avery, that's correct.

1 Q. And you did so when you -- after you had been
2 there for a period of time, right?

3 A. Yes.

4 ATTORNEY FALLON: Objection, on two
5 grounds. Irrelevant and, two, beyond the scope of
6 cross-examination.

7 THE COURT: Sustained, as beyond the scope.

8 Q. (By Attorney Buting)~ Did you -- Did you know --
9 Well, first of all, when you first arrived, did
10 you see Mr. Earl Avery, or any other property
11 owner, speaking or standing next to Detective
12 Remiker?

13 A. Earl Avery was in the area. I don't know if he
14 was speaking to anybody or not. I don't recall
15 that.

16 Q. In fact, it wasn't until five or so minutes later
17 that Mr. Avery, Earl Avery, came up to where you
18 were located and asked what was going on; isn't
19 that right?

20 A. I believe Earl Avery was already in that area, on
21 a four-wheeler, when we arrived.

22 Q. Was he over by the vehicle?

23 A. He was probably within feet of one of the squad
24 cars. I don't know that.

25 Q. Did you have personal knowledge about whether he

1 had consented to Detective Remiker being in the
2 location he was when he made his observations of
3 the vehicle?

4 ATTORNEY FALLON: Again, objection, beyond
5 the scope. It's irrelevant.

6 THE COURT: The Court will sustain the
7 objection. It is beyond the scope of redirect.

8 Q. (By Attorney Buting)~ So, just so we're clear,
9 then, the information you relied upon in terms of
10 the description of the vehicle, and whether or
11 not it was similar to, or matched, the Teresa
12 Halbach vehicle, did not come from your own
13 personal observations?

14 A. No, it came from other people, that's correct.

15 Q. Because even when you arrived at the scene, you
16 did not physically walk up to the vehicle to
17 check out any of the information you had received
18 about it, right?

19 A. I could see the vehicle. I did not walk up to
20 the vehicle.

21 Q. So you couldn't see its VIN number, for instance?

22 A. That's correct.

23 Q. And it's your testimony that Detective Remiker
24 told you that he had walked up to the vehicle?

25 A. Yes.

1 Q. And that he had actually obtained the entire VIN
2 number, all 17 numbers?

3 A. Yes.

4 Q. When you say that, in Paragraph 5, that
5 Investigator Remiker -- this is half way down --
6 your affiant is informed that Investigator
7 Remiker was provided with the VIN number of the
8 RAV 4, located at the Avery Auto Salvage, you are
9 saying that it was provided by somebody else to
10 him or?

11 A. I'm not understanding your question. He was
12 provided with the VIN to match up to the one that
13 was on the truck at the salvage yard.

14 Q. But you say that he was provided with the VIN
15 number of the RAV 4, that was located at the
16 Avery property, right? And then the rest of your
17 sentence after the semicolon, goes on, the
18 searchers provided the VIN number, and you list
19 all 17 numbers, right?

20 A. Yes. Well, I believe what happened is, the
21 number that Pam Sturm called in, I discussed that
22 with Detective Remiker, I believe that's what
23 that's referring to.

24 Q. So, when you say, in this affidavit, that the
25 searchers provided the VIN number, and you list

1 all 17 characters, that, in fact, is not true;
2 isn't that right?

3 A. No, they provided 10 of the 17 numbers.

4 ATTORNEY BUTING: All right. I have no
5 other questions.

6 THE COURT: Any recross?

7 ATTORNEY FALLON: A couple questions.

8 **RECROSS-EXAMINATION**

9 BY ATTORNEY FALLON:

10 Q. Counsel asked you about your experience in
11 applying for search warrants and the need for
12 accurate, reliable, truthful information, so I
13 have a few questions regarding that. With
14 respect to your experience in applying for search
15 warrants, you are aware that the legal standard
16 is probable cause?

17 A. That's correct.

18 Q. All right. And that is a standard of proof
19 that's somewhat, or significantly, less than
20 beyond a reasonable doubt?

21 A. Yes.

22 Q. It's a standard of proof which is less than --
23 more likely than not, by less than 50 percent?

24 A. Yes.

25 Q. Probability?

1 A. Yes.

2 Q. All right. And based on the information that you
3 had at the time, from Ms Sturm, that you had a
4 dark blue or bluish green, late model, 1999-2000
5 Toyota RAV 4; that it had a Le Mieux sticker on
6 it; that it was secreted in brush and other
7 automobile parts; that you had, at minimum,
8 before you even arrived, 10 of the VIN
9 characters; in your mind, did you believe that
10 was probable cause right there?

11 A. Absolutely. I think that would have been enough
12 to get a search warrant, right there, in my
13 opinion.

14 Q. As a matter of fact, setting aside for the VIN
15 number, the fact that Teresa Halbach was last
16 seen on the Avery property on October 31st; the
17 fact that the defendant, Steven Avery,
18 acknowledged her being there as recently as
19 November 4th, that she was there to take pictures
20 of a vehicle he was selling; the fact that he was
21 the last person known to have seen her alive; the
22 fact that a late model, dark blue, greenish RAV 4
23 was located on that property; setting aside the
24 VIN number, setting aside all that; in your mind
25 is that probable cause?

1 A. Absolutely, yes.

2 ATTORNEY FALLON: That's all I have.

3 ATTORNEY BUTING: Just one quick follow up.

4 **RE-REDIRECT EXAMINATION**

5 BY ATTORNEY BUTING:

6 Q. Until the vehicle was located by Ms Sturm on the
7 5th, you did not believe there was probable cause
8 to get a warrant; isn't that right?

9 A. Maybe not at that point, but looking at it now,
10 yeah, I believe it would have.

11 Q. You didn't -- In other words, the mere fact that
12 Mr. Avery -- that Teresa Halbach had been at the
13 Avery property four or five days earlier, and
14 that Mr. Avery had acknowledged that, was not
15 enough for you to get probable cause for a search
16 warrant?

17 A. I think the fact that she was missing for that
18 many days, coupled with the fact it was the last
19 place she was seen, I think looking back on it
20 now, we may have been able to use that for enough
21 probable cause.

22 Q. But you did not seek a warrant at that time?

23 A. At that point, we did not, no.

24 Q. And during that period of time, you were
25 obviously concerned about doing whatever you

1 could to locate Teresa Halbach?

2 A. That's correct.

3 Q. And, nevertheless, you did not seek a warrant
4 until after Ms Sturm located the vehicle on the
5 property?

6 A. That is true, yes.

7 ATTORNEY BUTING: Thank you. No further
8 questions.

9 ATTORNEY FALLON: Nothing else.

10 THE COURT: Witness is excused.

11 THE WITNESS: Thank you.

12 THE COURT: Mr. Buting, you may call your
13 next witness.

14 MR. BUTING: I call Detective Remiker.

15 THE CLERK: Raise your right hand.

16 **DETECTIVE DAVID REMIKER**, called as a
17 witness herein, having been first duly sworn, was
18 examined and testified as follows:

19 THE CLERK: Please be seated. Please state
20 your name, spell your last name for the record.

21 THE WITNESS: Dave Remiker, R-e-m-i-k-e-r.

22 **DIRECT EXAMINATION**

23 BY ATTORNEY BUTING:

24 Q. And you are a detective; is that correct?

25 A. Yes.

1 Q. How long have you been a police officer, or in
2 law enforcement?

3 A. About 13 years.

4 Q. And how long have you been a detective?

5 A. I have been an investigator since January of '99.
6 Part of that included narcotics.

7 Q. And you are employed by whom?

8 A. Manitowoc County Sheriff's Department.

9 Q. And on November 4th, 5th, in that time period of
10 last year, were you also so employed?

11 A. Yes.

12 Q. And in your experience as a officer or detective,
13 with the Manitowoc County Sheriff's Department,
14 have you had experience in applying for search
15 warrants?

16 A. Yes.

17 Q. Have you had training to do so as well?

18 A. Depends on what part of the search warrant you
19 are talking about. I don't recall any specific
20 training in reference to applying for search
21 warrants.

22 Q. Never had any training on how to prepare an
23 affidavit in order to get a search warrant, on
24 the job, or otherwise?

25 A. On the job experience, that type of training.

1 Q. Okay. You do know, though, that when you prepare
2 an application for a search warrant and, in fact,
3 when you prepare an affidavit in support of that,
4 that you must be truthful in the information
5 that's provided?

6 A. Definitely.

7 Q. Could you tell me when you first became involved
8 in the Teresa Halbach matter?

9 A. I believe it was on a Thursday, that would have
10 been November 3rd, I believe.

11 Q. And how did that come about?

12 A. I was paged. I was requested to come into the
13 Sheriff's Department. I arrived there and I met
14 with some of the detectives from our department
15 and Calumet County.

16 Q. And you were asked to come in by who; was that
17 Lieutenant Lenk?

18 A. Probably.

19 Q. When you came in, did you meet with Lieutenant
20 Lenk?

21 A. He was there, yes.

22 Q. As well as an investigator from the Calumet
23 County Sheriff's Department?

24 A. Investigator Dederling, correct.

25 Q. And at that time, was it your understanding that

1 you were being called in to assist with a Calumet
2 County matter, or a Manitowoc County matter, or
3 which?

4 A. Missing person.

5 Q. But an investigation involving which department?

6 A. Well, the female that was missing was from
7 Calumet County. They had received some
8 information that some of her last contacts
9 included an address in Manitowoc County.

10 Q. Okay. And did that address, in fact, turn out to
11 be the Avery property in Manitowoc, Town of
12 Gibson?

13 A. That was one of the locations, yes.

14 Q. Okay. And did you have occasion to check with
15 Steven Avery on Thursday night, November 3rd, as
16 to whether he had any information about the
17 missing woman?

18 A. I did not.

19 Q. Someone from your department did?

20 A. Correct.

21 Q. And that would have been?

22 A. Sergeant Colborn.

23 Q. You know, did he go out to the property, or was
24 it by phone?

25 A. I believe he went out to the property and spoke

1 with Steven, and maybe some additional people.

2 Q. Okay. And the following day, did you, in fact,
3 have an opportunity to go out to the Avery
4 property as well?

5 A. Yes.

6 Q. Were you asked to do that, or did you do that on
7 your own?

8 A. I was asked.

9 Q. By?

10 A. It was Calumet County. I believe one of the main
11 contacts we had was with Investigator Wiegert.

12 Q. Okay. And do you know what time it was you went
13 to the Avery property on the 4th?

14 A. 10:30.

15 Q. 10:30 in the morning?

16 A. Correct.

17 Q. Did you have a warrant at that time?

18 A. No.

19 Q. And did you approach the trailer in which Steven
20 Avery resided in?

21 A. At one point, yes.

22 Q. Do you know the address, actual address of that?

23 A. 12932.

24 Q. Avery Road?

25 A. Correct.

1 Q. Okay. Did you speak with other -- You are aware,
2 from your investigation, that there are other
3 people that live at that same general area or
4 compound, correct?

5 A. That was the first time I have ever been on the
6 Avery property.

7 Q. Okay.

8 A. I had no idea who lived out there.

9 Q. So at that time, you didn't know -- you were
10 directed to go to that specific address?

11 A. Correct.

12 Q. And that specific address related to the trailer
13 resided in by Mr. Steven Avery?

14 A. I believe that's the information I received, yes.

15 Q. And when you drove on to the property, you had to
16 turn right and go down sort of a dirt road to get
17 to the end of the road before you reached that
18 particular trailer; isn't that right?

19 A. I recall, when we first got out there, I had no
20 idea where to go. I wasn't sure where his
21 trailer was. At one point, we went down that
22 road that leads to Steve's trailer, yes.

23 Q. And when you knocked on the door, was he there?

24 A. No.

25 Q. Did you enter without him being there?

1 A. No.

2 Q. After a period of time, did he arrive, or did he
3 come up to you?

4 A. We attempted to make contact at that trailer,
5 then we went to another trailer. That was the
6 trailer that was resided by Barb Janda. And
7 then, when there was no contact there, we started
8 leaving. And as we were driving down the road,
9 Steven, and I believe Delores, arrived, made
10 contact with us. They were in a golf court.

11 Q. When you say us and we, who are you referring to?

12 A. Myself and Lieutenant Lenk.

13 Q. Lieutenant Lenk was actually out there with you?

14 A. Yes.

15 Q. Okay. And, so, did you talk with Mr. Steven
16 Avery at that point?

17 A. Yes.

18 Q. Do you explain what your purpose was in being
19 there?

20 A. Yes.

21 Q. And what was that? What did you tell him?

22 A. I told him that we were investigating a missing
23 female. He seemed a little surprised. I told --
24 I explained to him that he had contact with
25 Sergeant Colburn the night before, and then I

1 asked if I could search his trailer.

2 Q. Okay. And did he agree to do that?

3 A. Yes.

4 Q. Gave his consent freely?

5 A. Freely.

6 Q. Appeared to cooperate fully?

7 A. Yes.

8 Q. And, so, then did you walk back, or drive back,

9 to the end of the road where his trailer was

10 located?

11 A. Yeah, he told me to go ahead and search. I told

12 him I wanted him to come with me, and then we

13 drove over to his trailer, and then he followed

14 in the golf cart.

15 Q. So he was willing to let you just go into his

16 trailer and let you search without him even being

17 there?

18 A. I believe so, yes.

19 Q. But you wanted him to be there?

20 A. Correct.

21 Q. And when you walked into the trailer, did you

22 look around, through the complete trailer?

23 A. Yes.

24 Q. And can you just briefly describe what the

25 layout -- or what the layout of the trailer is

1 inside?

2 ATTORNEY FALLON: Objection, relevant.

3 THE COURT: Mr. Buting?

4 ATTORNEY BUTING: Well, we're going to get
5 to it eventually, so to make the record clear, I
6 think it's helpful.

7 THE COURT: We may get to it eventually, as
8 part of the case, but I'm hoping that the testimony
9 here will focus on your motion. And I am having
10 trouble understanding the relevance of what he found
11 in the trailer, or what he observed in the trailer,
12 to the motion.

13 ATTORNEY BUTING: Well, we do have a burden
14 to establish some standing, and so some of these
15 questions need to go towards that so. I can --

16 THE COURT: I'm not sure I follow that.

17 ATTORNEY BUTING: I can rephrase it.

18 Q. (By Attorney Buting)~ When you went in the
19 trailer, did it become clear to you that
20 Mr. Steven Avery did in fact reside in that
21 trailer?

22 A. Yes.

23 Q. Okay. You had no reason to doubt that?

24 A. No, he let us in.

25 Q. Okay. And you went and searched all of the rooms

1 and opened up all the doors and closets at that
2 time, right?

3 A. Yes.

4 ATTORNEY FALLON: Your Honor, I'm going to
5 renew my objection as to the relevance of this. If
6 Counsel is trying to lay foundational evidence for a
7 standing argument, as I already argued last week,
8 and in written pleadings, we do not challenge the
9 fact that Mr. Avery has standing to challenge a
10 search of his residence or his garage. Our argument
11 goes to everywhere else. I'm not sure how this
12 questioning, on November 4th, is relevant to the
13 events on November 5th.

14 MR. BUTING: Nevertheless, Judge, we do
15 have to make a record to establish standing, as
16 Mr. Fallon has pointed out. And this is -- This
17 detective was there and can testify about
18 Mr. Avery's standing to object to this warrant,
19 which included this particular trailer. That's what
20 I'm trying to establish.

21 THE COURT: I don't know that that's
22 disputed. I think that that's established already.
23 I don't know how, what he found in the various
24 rooms, relates to that, so I'm going to sustain the
25 objection.

1 ATTORNEY BUTING: All right.

2 Q. (By Attorney Buting)~ In any event, you walked
3 through the trailer and then came out, right?

4 A. Correct.

5 Q. Didn't find anything inside that gave you any
6 reason to think that Teresa was there, or had
7 been there?

8 A. I had no reason to believe that Teresa was there.

9 Q. Okay. And then, did Steve allow you to -- Well,
10 let me go back for a second. There's also a
11 detached garage that's near that particular
12 trailer; isn't that right?

13 A. Yes.

14 Q. And it has a door on it?

15 A. Correct.

16 Q. Actually, two doors, a service door and an
17 overhead door?

18 A. Correct.

19 Q. And were those doors opened?

20 A. I don't recall.

21 Q. Did Steve allow you to go in and look into the
22 garage as well?

23 A. I didn't ask to go in the garage.

24 Q. I'm sorry?

25 A. I didn't ask to go in the garage.

1 Q. Okay. And he didn't do anything to prevent you
2 from going in the garage, though?

3 A. There wasn't any discussion about the garage.

4 Q. Did you look around to see if there was any
5 evidence that her vehicle was on the property
6 somewhere, in that area?

7 A. We may have looked as we were driving in and out,
8 that's about it.

9 Q. Did you walk around any of the property to the
10 side or back of the trailer?

11 A. No.

12 Q. Did you see any burn barrels located nearby the
13 Steven Avery trailer?

14 A. On the day of the consent search?

15 Q. Or before you actually filed the warrant?

16 A. I know there's burn barrels out there, from my
17 contact out there. When I exactly seen them, I
18 don't know.

19 Q. Did it appear to you that the burn barrels you
20 saw were in some way connected to the Steven
21 Avery trailer, that somehow there was some
22 connection between them, as opposed to anywhere
23 else?

24 A. Well, when I was out there on Saturday and
25 Sunday, and I seen the burn barrels, at that

1 point, obviously, I sensed that there was some
2 connection between Steven's house and the burn
3 barrels, yes.

4 Q. And that's because of the proximity to the house,
5 or what?

6 A. Yes.

7 Q. The barrels you are referring to were in the --
8 Are we talking about one or more barrels?

9 A. I believe there's one, just prior to you arriving
10 at Steven's trailer, and on the right hand side
11 of the driveway.

12 Q. Sort of in the front, still, of the trailer?

13 A. Correct.

14 Q. And did you -- Did you at any point see a
15 burning -- a burn pit to the rear of the detached
16 garage, next to Mr. Avery's trailer?

17 A. Are you still talking about that Friday, or into
18 Saturday/Sunday; what date are we talking about?
19 They are quite different.

20 Q. For purposes of clarifying the record, on this
21 question, we can include your subsequent.

22 A. Saturday and Sunday?

23 Q. Yes.

24 A. Yes, I seen a burn pit back there.

25 Q. And did that burn pit appear to be connected in

1 any way to the Steven Avery residence, as opposed
2 to any of the neighboring ones?

3 A. It's right behind his garage.

4 Q. So your answer would be?

5 A. Yes, it is.

6 Q. Did you do anything else before you left the
7 Avery property on November 4th?

8 A. No.

9 Q. So you and Detective Lenk came together in the
10 same vehicle?

11 A. Correct.

12 Q. Now, the following day, Saturday, November 5th,
13 were you working?

14 A. Yes.

15 Q. Do you know what time you started?

16 A. 8:00 a.m.

17 Q. Did you receive a call from Investigator Wiegert
18 that morning?

19 A. Yes.

20 Q. Do you know what time?

21 A. I would say between 8:00 a.m. and 10:00 a.m.

22 Q. And did, in that -- I'm talking about the first
23 conversation that you had with Investigator
24 Wiegert, did you have a discussion about
25 volunteer searchers?

1 A. Yeah, he gave me some information about some
2 volunteer searchers.

3 Q. And did Investigator Wiegert tell you that there
4 were numerous volunteer searchers who were
5 coordinating their efforts to do some searches of
6 properties within Manitowoc county?

7 A. Not those exact words, no.

8 Q. Have you reviewed anything prior to your
9 testimony today?

10 A. Yes.

11 Q. What was that?

12 A. My report, um, recorded phone calls, um, recorded
13 radio transmissions.

14 Q. And are those transcribed, those radio
15 transmissions you are talking about?

16 A. No.

17 Q. Did you bring those with you today?

18 A. I did not.

19 Q. Where are they located?

20 A. At the Sheriff's Department.

21 Q. What radio transmissions are you referring to?

22 A. There's recorded conversations, phone
23 conversations between myself and Investigator
24 Wiegert. And I also reviewed the radio traffic
25 that I participated in.

1 Q. And those recordings, are they -- what day are
2 they referring to?

3 A. Saturday, the 5th.

4 Q. So this is around the time of this phone call
5 that we were talking about?

6 A. Correct.

7 Q. And, thereafter, as you are approaching the Avery
8 property, later?

9 A. Yes.

10 Q. How many different recordings did you listen to?

11 A. Phone calls or radio conversations?

12 Q. Do you have tape recordings of the phone calls
13 too?

14 A. Yes.

15 Q. Which ones?

16 A. There were a couple conversations between myself
17 and Investigator Wiegert, prior to me arriving at
18 the Avery property.

19 Q. Were those while you were located, still, at the
20 Sheriff's Department, or while you were on the
21 road?

22 A. At the Sheriff's Department.

23 Q. And would that include your first conversation
24 with Investigator Wiegert that morning?

25 A. I believe so.

1 Q. And, so, approximately how many phone
2 conversations did you have, or did you review,
3 before your testimony today, that concerned your
4 conversations with Investigator Wiegert?

5 A. I believe there's two phone calls between myself
6 and Investigator Wiegert.

7 Q. And did both of those take place while you were
8 still located at the station?

9 A. Correct.

10 Q. And the radio transmissions that you are
11 referring to that you reviewed, were those ones
12 that took place after you had left the station?

13 A. Correct.

14 Q. And included what period of time?

15 A. From the time I left the south parking lot of the
16 Sheriff's Department until the time that --
17 shortly after I confirmed the VIN number on the
18 vehicle.

19 Q. And did those radio transmissions also include
20 your conversation, in other words, statements you
21 were making on the radio?

22 A. Yes.

23 Q. I will get back to the recordings in a minute.
24 But you also indicated that you reviewed your
25 report?

1 A. Yes.

2 Q. As part of your testimony today?

3 A. Correct.

4 Q. And by your report, are we talking about a -- a
5 portion of a 22 page report prepared by the
6 Manitowoc County Sheriff's Department?

7 A. Yes.

8 Q. And that goes in a sort of sequential,
9 chronological time, the way it's organized?

10 A. For the most part, yes.

11 Q. And is that something you dictate, your part of
12 it?

13 A. Yes.

14 Q. And then it gets transcribed by somebody?

15 A. Correct.

16 Q. And then you review it?

17 A. Yes.

18 Q. To make sure that it's accurate?

19 A. Yes.

20 Q. And that's done shortly after the events that you
21 are investigating, right?

22 A. I can tell you, that report was probably dictated
23 about a week after the last day I was out there.

24 Q. Okay. Now, would you agree with me, since you
25 reviewed your report, that in your report, you

1 state, quote, I, Detective Remiker, was working
2 at the MTSO -- is that an abbreviation for
3 Manitowoc County Sheriff's Department?

4 A. Yes.

5 Q. -- at which time I received a phone call from
6 CASO -- Calumet Sheriff's Department, right?

7 A. Correct.

8 Q. -- Investigator Mark Wiegert. Investigator
9 Wiegert indicated there were numerous volunteer
10 searchers who were coordinating their efforts to
11 do some searches of properties within Manitowoc
12 County. Does this all sound familiar with what
13 you reviewed?

14 A. That's what my report says.

15 Q. Did you bring it with you today?

16 A. Yes.

17 Q. Do you want to retrieve it quickly?

18 A. Sure.

19 Q. I believe we're on Page 4 of 22?

20 A. Got it.

21 Q. Okay. And do you also go on to say in your
22 report, quote, Wiegert indicated that several
23 searchers were willing to go to the Avery
24 property, on Avery road, to search the
25 junkyards/salvage area.

1 A. That's what it says.

2 Q. And does it also say, quote, Investigator Wiegert
3 stated he and several of the volunteer search
4 parties would be coming to the MTSO within the
5 next hour, to meet and coordinate efforts.

6 Right?

7 A. Correct.

8 Q. That's what your report says?

9 A. Correct.

10 Q. And, finally, Investigator Wiegert requested my
11 assistance for this follow up. Closed quote.

12 A. Yes.

13 Q. That's what your report says, right?

14 A. Yes.

15 Q. And is your report true and accurate?

16 A. It's close.

17 Q. You try to make a complete and true report, I
18 assume, right?

19 A. Absolutely.

20 Q. And when you say it's close, what -- that's based
21 upon what?

22 A. Well, during my conversations with Investigator
23 Wiegert, um, in the first conversation I had with
24 him, he indicates that, he says to me, just so
25 you know, the family is doing their own thing out

1 there with searches. In case you get calls of
2 trespassers, in case you get calls that there's
3 people walking the ditches, the family is out
4 there doing their own thing. That was my first
5 conversation with him.

6 Q. And this -- this conversation that you are
7 relating right now, is that based on some
8 independent recollection you have now, of an
9 event?

10 A. That's based on my review of the phone calls.

11 Q. That's based on your review of the phone calls
12 that you did to prepare for today's testimony?

13 A. Yeah, I mean, some of the conversation I can
14 recall, but I was able to, I guess, verify a
15 little bit more once I reviewed that.

16 Q. Anything else about your report, or is there
17 anything about your report that's not true?

18 A. Well, I guess I misunderstood Investigator
19 Wiegert in which -- at some point I had thought
20 that he was bringing some people to our
21 department, some volunteer searchers to
22 coordinate our efforts, that wasn't the case.

23 Q. Well, that is what you put in your report,
24 though?

25 A. Correct.

1 Q. So, is your report not true on that?

2 A. I would say that part is a little, yeah, a
3 little -- it's not quite accurate.

4 Q. Not quite accurate, doesn't really cut it. My
5 question is, did Wiegert say that several
6 searchers were willing to go to the Avery
7 property to search the junkyard/salvage yard
8 area.

9 A. The part that there were volunteer searchers out
10 there, that's accurate. Another conversation
11 that I had with Wiegert after that was, he calls
12 me, he says, Hey, we have a change of plans. I
13 think we should reinterview Steven and another
14 individual. And he also indicated that there
15 were some volunteer searchers who were willing to
16 go out and do some searches in different
17 locations. And he had thought that we should
18 meet up and talk about that and it was possible
19 that we would go and try to get consent from the
20 Avery's to search the salvage yard. That was the
21 second conversation I had with him.

22 Q. And all of this recollection that you are
23 relating to us now comes from your review of the
24 phone calls?

25 A. It's a little bit of both. As I reviewed the

1 phone calls, I remembered a couple more things,
2 an independent recollection of that exact date.

3 ATTORNEY BUTING: Judge, at this time, I
4 request we take a break. We have not had an
5 opportunity, did not even know of such recordings,
6 even though we have requested them. And I think at
7 this point we have got to take a break so that we
8 have an opportunity to review those before I can
9 complete my cross-examination of Detective Remiker.

10 THE COURT: Mr. Fallon.

11 ATTORNEY FALLON: We don't have any
12 objection to that. Counsel and I were unaware that
13 Manitowoc actually had recordings of those, I
14 believe. We had some information from Calumet
15 County, or things that they had recorded. And,
16 quite frankly, never dawned on us that they would
17 have recordings of something 10 months old, so.

18 THE COURT: All right. Does anyone have
19 any idea how long it's going to take to get these
20 together?

21 THE WITNESS: I know they are in the
22 process of getting it all together. There's a lot
23 of information, a lot of recordings. I don't know
24 where they are at. I believe they are -- they are
25 finishing up.

1 ATTORNEY FALLON: Let me ask, this, If I
2 may, Judge?

3 THE COURT: Go ahead.

4 ATTORNEY FALLON: Detective, is it
5 possible -- Apparently there's a lot of radio
6 traffic relative to that day, so let me ask this
7 question. Is it possible to obtain, for instance, a
8 recording of the telephone conversations you had
9 with Investigator Wiegert and, perhaps, what would
10 you say, gentlemen, the first hour of radio traffic,
11 and then we can wait, for the rest of it may not
12 have any pertinence at all to the balance of the
13 motion? What do you think, if we just -- Is there
14 any way we can get like --

15 THE WITNESS: Probably have it to you
16 within the hour.

17 ATTORNEY FALLON: Within the hour.

18 Q. (By Attorney Buting)~ Can I ask you this, when
19 you reviewed them, were they on -- did you just
20 review them through some central system, or were
21 they on cassettes already, or what?

22 A. The individual that was collecting the
23 information, doing the recordings, he had -- I
24 had requested that I be able to listen to a few
25 things. And he had centralized, or itemized

1 those specific ones. And I think they are all on
2 some hard drive, some main data base within the
3 Department.

4 Q. When you listened to them, you had some
5 headphones plugged into something, or what?

6 A. No, they were just right on the computer.

7 Q. Okay. Is that right next door?

8 A. Correct.

9 THE COURT: Well, let me ask this, what are
10 the other witnesses that the parties anticipate
11 calling, with respect to this motion? Does the
12 defense have any further witnesses?

13 ATTORNEY BUTING: We do, your Honor, but I
14 view this new information as extremely important to
15 all of the witnesses. If we're talking about actual
16 recordings of communications that are directly at
17 issue here, that is, Detective Wiegert's testimony
18 and Detective Remiker's testimony, about their
19 contacts with the volunteers and all of that, if
20 that's recorded somewhere, then that's obviously
21 very important. And it would really, potentially,
22 impact how I would question other witnesses, if I
23 had that information, which I had requested but --
24 and apparently it was in the process of being
25 prepared, but had not yet been prepared to us.

1 THE COURT: What I'm wondering is, if we
2 can't continue taking testimony either on this
3 motion, or one of the other motions, while people at
4 the Sheriff's Department are getting the recordings
5 together, so perhaps over an hour and a half break
6 for lunch, the parties could listen to the
7 recordings, but not put us too far behind schedule
8 here today.

9 I understand perfectly, before you
10 complete your examination of Detective Remiker,
11 you are going to want to listen to those
12 recordings. I also acknowledge that it may well
13 play a role in your examination of other
14 witnesses on this particular motion. But I would
15 prefer that we not be wasting time, with
16 everybody here, while somebody at the Sheriff's
17 Department is compiling the information.

18 I would hope that someone over at the
19 Sheriff's Department could be instructed to get
20 that together so that it's ready over the noon
21 hour. And we can take testimony, either
22 additional testimony on this motion, or move on
23 to one of the other motions before the lunch
24 break.

25 ATTORNEY BUTING: Let me ask one other

1 question, first, of Detective Remiker.

2 Q. (By Attorney Buting)~ These phone calls that are
3 recorded that you reviewed, do any of them
4 involve discussions with an individual by the
5 name of Ryan Hillegas?

6 A. That name is never mentioned.

7 Q. I'm sorry?

8 A. That name is never mentioned.

9 Q. Or any phone conversations with the Halbach
10 family?

11 A. No.

12 Q. Or Patricia (sic) Sturm?

13 A. That's all it is, is I think two phone calls
14 between myself and Investigator Wiegert, and then
15 some radio traffic from myself going out to the
16 Avery property. I have it kind of written down,
17 word for word --

18 (Court reporter couldn't hear.)

19 A. I have it written down almost word for word what
20 the conversation is.

21 ATTORNEY BUTING: All right. We could call
22 one other witness, then, if we would take a break,
23 and Detective Remiker be instructed to contact the
24 Sheriff's Department and expedite making copies of
25 those.

1 THE COURT: All right. Is that
2 satisfactory to everyone?

3 ATTORNEY FALLON: That's fine.

4 DETECTIVE REMIKER: Clarify exactly what
5 you want.

6 ATTORNEY BUTING: I'm talking about the
7 phone conversations, as well as the radio traffic,
8 right up to the point where you say you stopped
9 reviewing it, that is, I think you were looking at
10 the VIN number or something.

11 THE WITNESS: There's myself talking about
12 the VIN number quickly, and then dispatch contacts
13 me and tells me that there's somebody waiting at the
14 Sheriff's Department, the media shows up at the
15 Sheriff's Department. And that's about where it
16 ended.

17 ATTORNEY BUTING: Okay. So all of that, up
18 to that point. After that, if you haven't reviewed
19 that for today, then we'll deal with it later.

20 DETECTIVE REMIKER: Correct.

21 THE COURT: Is the -- Is someone at the
22 Sheriff's Department in the process of transcribing
23 these conversations?

24 DETECTIVE REMIKER: We're in the process of
25 providing radio, telephone, various types of

1 communication that's recorded, to the defense, in
2 it's original form.

3 THE COURT: All right. Why don't I excuse
4 you at this time. You can contact the Sheriff's
5 Department and ask them to get that together. We'll
6 move on to the next witness. Okay. And, hopefully,
7 it will be ready to be reviewed over the noon hour.

8 (Witness excused.)

9 ATTORNEY BUTING: We are waiting for Ryan
10 Hillegas. That's H-i-l-l-e-g-a-s, Ryan with a y.

11 THE CLERK: Please remain standing. Please
12 raise your right hand.

13 **RYAN HILLEGAS**, called as a witness
14 herein, having been first duly sworn, was
15 examined and testified as follows:

16 THE CLERK: Please be seated. Please state
17 your name and spell your last name for the record.

18 THE WITNESS: Ryan Hillegas,
19 H-i-l-l-e-g-a-s.

20 **DIRECT EXAMINATION**

21 BY ATTORNEY BUTING:

22 Q. And, Mr. Hillegas, do you reside in Calumet or
23 Manitowoc County?

24 A. I don't anymore.

25 Q. Where do you reside?

1 A. I'm in Waukesha County now. I moved in February.

2 Q. Okay. In November of 2005, did you reside in
3 this area?

4 A. I did.

5 Q. In which county?

6 A. Calumet.

7 Q. And what is your occupation?

8 A. I'm a registered nurse.

9 Q. Do you know, or did you know Teresa Halbach?

10 A. I did.

11 Q. And what was the nature of your relationship with
12 her?

13 A. Um, we were close friends. We dated for a while
14 in high school; basically, just remained friends.

15 Q. So for a period of time you were
16 boyfriend/girlfriend?

17 A. Mm-hmm.

18 Q. You have to say yes or no for the court reporter?

19 A. Yes.

20 Q. And when did you discover that she was missing?

21 A. That Thursday right after Halloween.

22 Q. Thursday, November 3rd, would that?

23 A. That's correct.

24 Q. Okay. And how did you learn this?

25 A. Her roommate called me and, basically, asked me

1 if I had talked to her, or heard anything about
2 her?

3 Q. Her roommate being who?

4 A. Scott Bloedorn.

5 Q. B-l-o-e --

6 A. -d-o-r-n.

7 Q. -d-o-r-n. Okay. And had you seen her recently,
8 before that?

9 A. I saw her -- let's see, I believe it was --
10 Halloween was a Monday, I saw her on Sunday.

11 Q. So the very day before?

12 A. I believe so, yes.

13 Q. And were you familiar with her vehicle?

14 A. Yup. Yes.

15 Q. Did you ever personally see it, in other words?

16 A. Yes.

17 Q. Did you ever drive it?

18 A. No.

19 Q. Ever ride in it?

20 A. Yes.

21 Q. And did you, at some point, become involved in
22 some searches of the area?

23 A. Yes.

24 Q. And how did you become involved in that?

25 A. Um, once we -- I heard she was missing, I believe

1 it was Friday morning, it would have been the
2 4th. I talked to the family that morning, and we
3 had arranged to pick up posters and -- pick up
4 posters in Appleton, at a missing person
5 organization and, basically, it kind of started
6 there.

7 Q. Did you help put together the posters or
8 suggest--

9 A. Um, the posters were already put together. I'm
10 not sure if the family collaborated. I'm pretty
11 sure it was the family that got together with the
12 missing person organization. They put the
13 posters together and printed them up for us.

14 Q. Did you use those posters yourself and later
15 distribute them to others?

16 A. Yes.

17 Q. What sort of information was contained on them?

18 A. Um, there was a picture of Teresa, some of the
19 posters had a picture of Teresa as well as the
20 vehicle. There was information about her,
21 describing her, her height, weight, what she was
22 possibly wearing, and then, I believe, just a
23 little information that if anybody seen her that
24 they should call the number and there was the
25 number for the Sheriff's Department there, for

1 them to call.

2 Q. And so after you -- you picked up some of these
3 posters -- and this was Friday morning you said,
4 right?

5 A. Yes.

6 Q. How did you then go from there to becoming
7 involved in some kind of search?

8 A. I agreed to go pick the posters up, and I guess I
9 kind of had the most access to, like, phone
10 numbers of her friends, stuff like that. And we
11 just started calling, basically, anybody we new,
12 to come help. And by the time I returned with
13 the posters that afternoon there was, I don't
14 know, 50, 60 people waiting in the driveway to go
15 out and hang the fliers.

16 Q. So, the idea, then, was to have these people go
17 out and post the fliers, not actually search?

18 A. On Friday, we put up the posters, correct. So it
19 wasn't so much a search. It was more or less
20 getting the information out, and getting people
21 in the local areas to realize what was going on.

22 Q. So, did you sort of become the coordinator of all
23 of this, the volunteers?

24 A. Basically, yes.

25 Q. And, then, at some point did your -- did your

1 thinking go from just a matter of putting up
2 posters to actually using these people to do some
3 searches?

4 A. Yes. Basically, how I was advised, through the
5 missing person agency, was they kind of go in
6 steps. First, you get posters out, make people
7 aware. And you kind of move, you get a little
8 more invasive from there, I guess.

9 Q. Do you know the name of this agency?

10 A. It is the -- I believe it's the YES Foundation,
11 in Appleton.

12 Q. Is it connected with the police department there?

13 A. I have no idea.

14 Q. Okay. But you knew the police were already
15 involved in their own investigation at that time,
16 right?

17 A. Yup.

18 Q. So, why did you feel it necessary to do any other
19 searches with these volunteers, if the police
20 were already involved?

21 A. Well, the more help you could get, the better
22 odds we would have of finding her quick, I guess.

23 Q. Did you have any experience in --

24 A. No.

25 Q. -- searches of this sort?

1 A. No.

2 Q. And did you talk to anybody, any police officers,
3 or anybody, to help explain to you how you could
4 go about doing these searches?

5 A. No, I talked to the police, but none of it was --
6 none of it really regarded how to search, or I
7 guess I didn't get any pointers from the cops on
8 that.

9 Q. When you say you talked to the police, who did
10 you speak with?

11 A. Let's see, I know Thursday night, when we were at
12 the house, I went over -- after Scott called me,
13 I went to the house and we kind of started
14 calling around and started calling friends then.

15 But I believe it was Jerry Pagel and
16 Detective Wiegert, who were at the house Thursday
17 night, collecting belongings and asking
18 questions. The family was there also.

19 Q. Did you know either of those individuals before
20 that night?

21 A. No, I had heard of Jerry Pagel before, only
22 because he was the County Sheriff, but I don't
23 think I had ever met him before.

24 Q. Didn't have any other dealings with him on
25 anything?

1 A. No.

2 Q. And, then, after Thursday night, did you also
3 have some contact with police, or law
4 enforcement, on Friday?

5 A. I believe on Friday -- I believe on Friday I
6 talked to Jerry Pagel. And I'm pretty sure it
7 was regarding, you know, more -- they had -- I
8 spoke to the police every day regarding questions
9 about Teresa, personal items, and friends of
10 hers, people who may know information about her.

11 I did talk to -- I talked to Jerry on
12 Friday, just shortly, and just mentioned what we
13 were doing. I said we had put up posters and
14 just kind of told him the game plan for things.

15 Q. And did you tell him that -- When you say him,
16 you are referring to?

17 A. Jerry Pagel.

18 Q. Jerry Pagel, Sheriff Pagel. Did you tell him
19 that you were intending to use these volunteers
20 and go out and do searches?

21 A. I believe so. And I believe what we had -- what
22 we had told them was -- or what I had told them,
23 sorry, was that we were just going out on
24 Saturday to do car searches. I told him we were
25 putting up flyers on Friday. And our plan was to

1 go out on Saturday and drive around the
2 countryside and look for anything that was
3 interesting, or worth taking a second look at.

4 Q. So, did you tell Sheriff Pagel that you had sort
5 of become the coordinator of all of this?

6 A. I don't believe so. I think it was just kind of
7 assumed, I was kind of the contact for the whole
8 search. If anybody wanted to help, they were
9 instructed to call me. Basically, I guess it
10 started with me.

11 Q. Did you also speak with Investigator Wiegert on
12 Friday?

13 A. I don't know that for sure.

14 Q. What about Saturday morning, did you speak with
15 him?

16 A. I don't know that for sure either.

17 Q. Is it possible that you did?

18 A. I don't know.

19 Q. Well, did you -- Let me ask it this way. Did you
20 speak to any law enforcement people on Saturday
21 morning, November 5th?

22 A. I don't know.

23 Q. And why is it that you don't know?

24 A. Well, I guess a lot was going on. We had been up
25 for, you know, most of Thursday night, planning

1 all day Friday, all day Friday night, making maps
2 and posters, and sizing them and scaling them, to
3 hand out to everybody to their assigned driving
4 areas. Yeah, I guess, you know, three days
5 without sleep will -- I don't know what else to
6 tell you.

7 Q. Did Sheriff Pagel or any other law enforcement
8 individual tell you that they did not want you to
9 do any of these searches?

10 A. No.

11 Q. They didn't say, like, butt out, this is our
12 investigation, anything of that sort?

13 A. No.

14 Q. Did they -- any of them tell you that they had
15 some concerns about whether your searches might
16 compromise their own investigation?

17 A. No.

18 Q. Did you have any concerns of your own about
19 whether searchers, or all these volunteers going
20 out over the countryside, might somehow
21 compromise the police investigation?

22 A. No, not really. I guess our main concern was to
23 find Teresa, and find her quick, if she was still
24 alive, or still somewhere.

25 Q. But had you considered the possibility that she

1 was not alive at that point?

2 A. It was always a possibility, I guess.

3 Q. And were your searchers instructed to search, not
4 just for her, but anything, any evidence of her,
5 or anything that might point to her?

6 A. Sure, yes.

7 Q. And did you tell that to Sheriff Pagel, that that
8 was your purpose?

9 A. Maybe not specifically like that but, you know, I
10 think the intent was just to go out there and
11 search for anything that would lead to her, yeah.

12 Q. And so to that effect you conveyed that
13 information to Sheriff Pagel?

14 A. Yeah.

15 Q. Other than the Thursday, November 3rd, which is
16 the day I think you said you actually met with
17 Investigator Wiegert, right?

18 A. Yes.

19 Q. Did you have any phone conversations with him
20 after that, between that time and when the
21 vehicle was located?

22 A. Detective Wiegert, I don't know.

23 Q. Is it possible, or are you sure either way?

24 A. I don't know, like I said. I talked to so many
25 of the detectives and police throughout the whole

1 search, not just those first two days, you know,
2 regarding personal items, numbers of contact for
3 Teresa, people who knew her. I can't say for
4 sure.

5 Q. All right. So I take it then that you put the
6 word out to these volunteers to get together
7 somewhere, you talked about working on maps and
8 all of that?

9 A. Mm-hmm, yes.

10 Q. And was there some group meeting of these
11 volunteers?

12 A. Yeah, I guess Friday, when I got back with the
13 posters, most of the calls were put out, you
14 know, family and friends. I know the family had
15 contacted a lot of people. A lot of people were
16 just calling to see what they could do.

17 Basically, we were just telling them to
18 meet at the house. So, Friday, everybody met me
19 there, when I came back with the posters. And
20 Saturday morning -- Friday night we planned that
21 Saturday morning everybody would meet at the
22 house. I'm not sure what time it was, 6, 7.

23 Q. So, you had a big meeting on Friday night of
24 everybody, as well as Saturday?

25 A. Not -- Not so much a meeting as it was everybody

1 just met and then we kind of divvied up, I guess,
2 driving assignments and where everybody should
3 go.

4 ATTORNEY FALLON: Excuse me, just for
5 purposes of clarification, we're losing the
6 sequence. Is this Friday night, or is this
7 Saturday, that we're talking about right now?

8 ATTORNEY BUTING: We'll talk about Friday
9 and then we'll move immediately to Saturday.

10 THE WITNESS: Right now, I think we're
11 talking about both days, yeah.

12 Q. (By Attorney Buting)~ So, Friday evening there
13 was a gathering of 50 some people, something like
14 that?

15 A. Yes.

16 Q. When you say at the house, which house are you
17 referring to?

18 A. At Teresa's house, where Teresa lived.

19 Q. Okay. And were there assignments made on Friday
20 night as to who would do what or was that --

21 A. Friday wasn't as organized as Saturday was. It
22 was, you know, rather fly by the moment. I
23 picked the posters up and everybody met. And
24 when we got back, just had a big circle around
25 me, I guess, and started telling people what

1 cities we needed posters put up in. And
2 people -- people volunteered for mostly the areas
3 they knew, but people just kind of picked areas,
4 we wrote them down for what cities, and made sure
5 that all the surrounding.

6 Q. Is this still Friday night we're talking about?

7 A. This is Friday afternoon, Friday night, yeah.

8 Q. And then, so what was the purpose of meeting
9 again then on Saturday?

10 A. To get a group of people together to do a road
11 search, a car search.

12 Q. So, were there other assignments handed out on
13 Friday evening, that were different than that?

14 A. Friday was just putting up posters. Friday
15 wasn't driving around the countryside looking for
16 a vehicle or anything like that. It was
17 basically --

18 Q. I'm talking about Friday evening, when you had
19 this gathering?

20 A. Friday was all posters. We had one gathering.
21 Everybody met. I handed out posters to
22 everybody, gave them city assignments. They went
23 and handed their posters out and that was it for
24 that day.

25 Q. Okay. So the Friday meeting didn't have any

1 discussion with actual doing any searches, it was
2 just where are we going to put the posters?

3 A. Getting the information out, correct.

4 Q. I gotcha. Okay. So, then, on Saturday morning,
5 did it change to, let's now use them for
6 searches?

7 A. Saturday morning, right, it changed. Everybody
8 met and we decided to do a car search, basically.

9 Q. Was that your decision?

10 A. Basically, yeah. We were up all night Friday
11 night, making maps. Basically, just took
12 satellite images off the internet, blew them up
13 to scale, gave everybody a blown up version of
14 their roads that we wanted them to search.

15 Q. And did the areas you selected -- How did you
16 select what areas to search?

17 A. Um, well, we -- we searched pretty much every
18 town and every road from just about the St. John,
19 Sherwood area, to all the way to Lake Michigan,
20 off to Green Bay.

21 Q. Let me ask you this way. Did you have any
22 information from the police, or otherwise, as to
23 where Teresa was last seen or where she was going
24 on the day she was last seen.

25 A. I'm not sure. I don't believe that -- that we

1 knew where she was last seen then. I'm not real
2 clear about that, like I say.

3 Q. Did you know anything about her travels, her
4 activities on the 31st?

5 A. I knew that she had been taking pictures out in
6 the Manitowoc County area.

7 Q. Okay. And did you know that one of the locations
8 was the Avery Salvage property?

9 A. I believe I did, yes.

10 Q. Okay. You are saying you just don't know if you
11 knew it was the last place that she was seen, but
12 you --

13 A. Right. I don't know when that information was
14 specifically figured out.

15 Q. Okay. But you did know when you were gathering
16 these searchers together, that the Avery property
17 was one place she had been?

18 A. Yes.

19 Q. And so as you are dividing up the property, or
20 the areas to search, did you give that particular
21 area to any individual?

22 A. I didn't, per se, give it to anybody, somebody
23 volunteered -- Well, we had -- we had that whole
24 area covered anyways, all the roads, all the back
25 country roads. But the property itself was --

1 was went through, I guess.

2 Q. Was what?

3 A. I guess you could say went through. Pam -- Pam
4 Sturm had went there, found the vehicle, yes.

5 Q. I'm talking, now, about the meeting on Saturday
6 morning?

7 A. Sure.

8 Q. Did one of the -- one of the sectors -- or you
9 said you had maps, right?

10 A. Mm-hmm, yes.

11 Q. Okay. And you divided them up in certain
12 sectors, would we say, or sections?

13 A. Yeah.

14 Q. And then people were assigned, or volunteered, to
15 take certain sections?

16 A. Yes.

17 Q. And one of those sections included the Avery
18 property?

19 A. No, that's not correct.

20 Q. So, you did not -- That was not something that
21 was considered, by you, to be an area that should
22 be searched?

23 A. By me, I considered it an area that, you know, we
24 definitely should look at. That morning, as you
25 were talking, we did not specifically tell

1 anybody to go there. It was more or less the
2 surrounding areas and the counties around there.

3 Q. Okay. And there's like gravel pits, and
4 quarries, and things like that in that area, too?

5 A. Right.

6 Q. And were people actually going to be walking over
7 land, or just driving on the roads?

8 A. No. That morning, the plan was for everybody to
9 go out in their cars and look for anything
10 conspicuous, tracks going into the ditch, her
11 vehicle, anything, basically, that would lead to
12 where she was.

13 Q. But my question is, were they restricted to just
14 the roads, or was it anticipated that people
15 would then get out and walk?

16 A. I did not restrict anybody. If they wanted to
17 get out of their vehicles and walk spots, that
18 was kind of up to them. My plan was just to get
19 the people out there and have them looking.

20 Q. All right. Now, Pamela Sturm, did you know her
21 before that day?

22 A. No.

23 Q. Never met her?

24 A. No.

25 Q. Did she -- So you had never talked with her at

1 all before Saturday morning?

2 A. Um, she may have been there on Friday, when we
3 handed out the posters. I took names down, I
4 don't remember who I talked to. Basically, we
5 were in such a hurry by the time I got back, that
6 I didn't have time to meet and greet with
7 anybody.

8 Q. Okay. By the way, did you review anything before
9 your testimony today, to help you refresh your
10 recollection about your testimony?

11 A. No.

12 Q. No reports or notes of your own?

13 A. No.

14 Q. Okay. So, did Pamela Sturm arrive with all the
15 other groups?

16 A. No.

17 Q. When did she arrive?

18 A. I don't remember the time. The large group that
19 met that morning left the house at approximately
20 between 7 and 8, I'm going to guess. Pam showed
21 up maybe an hour or two after everybody else had
22 left.

23 Q. And what was discussed at that point?

24 A. Pam came to the house and, basically, introduced
25 herself and asked what she could do. I explained

1 to her what we were doing for the day, what our
2 plan was, showed her the maps.

3 By that time, most of the areas were
4 already covered. And she, basically, mentioned
5 to me, you know, has anybody gone to the Avery
6 car lot, or Avery's Salvage Yard. I don't
7 remember the correct terms for it that she used
8 but.

9 Q. And did you know that she was a former private
10 investigator?

11 A. At that time, I don't know if I did.

12 Q. Did she -- Do you recall her telling you anything
13 about any experience she might have had, with
14 searches?

15 A. I don't remember that. I don't know.

16 Q. Okay. When she mentioned that she might want to
17 take that section and search the Avery Salvage
18 lot, did you understand she meant actually going
19 onto the property?

20 A. Yes.

21 Q. Not just the roads nearby?

22 A. Yes.

23 Q. And did you discuss with her at all, you know,
24 whether she should get permission, or what her
25 procedure should be, or anything of that sort?

1 A. I don't remember that. I really don't remember
2 what was discussed. Basically, that she wanted
3 to go in there and just said, well, if that's
4 what you want to do. I wasn't going to tell her
5 no, but I, specifically, didn't want to tell
6 anybody that they should either, but.

7 Q. But you were coordinating all this, right?

8 A. Yes.

9 Q. So there wouldn't be overlap?

10 A. Yes.

11 Q. And did you talk to her at all about, well, you
12 know, the police might also be searching that
13 area and you should check with them, or did you
14 have any discussion like that?

15 A. I do not think so. I guess I'm not real sure,
16 though. I don't believe so.

17 Q. Okay. Did she tell you that she had spoken to
18 any police officers about it?

19 A. No.

20 Q. No, she didn't or --

21 A. No, she did not.

22 Q. She did not tell you that?

23 A. She didn't tell me that.

24 Q. Okay. Now, you mentioned that these fliers had
25 phone numbers on them, like a hot line number or

1 something?

2 A. Some type of number, yes.

3 Q. Not a number that you got yourself?

4 A. Excuse me?

5 Q. I mean, not a number -- You didn't have anything
6 to do with putting that number on the flier?

7 A. No.

8 Q. You got some other numbers that you could also
9 use to contact the law enforcement, right?

10 A. Yes.

11 Q. And what were those?

12 A. Most of the investigators that I had been
13 speaking to.

14 Q. Okay. They all gave you their phone numbers?

15 A. Pretty much, yes, and cards.

16 Q. So that would be their direct lines?

17 A. Yes.

18 Q. So Sheriff Pagel gave you his card, with his
19 phone number?

20 A. Yes.

21 Q. Investigator Wiegert gave you his card, with his
22 phone number?

23 A. Yes.

24 ATTORNEY FALLON: Objection, leading.

25 ATTORNEY BUTING: I'm asking, did he. I

1 will rephrase it.

2 Q. (By Attorney Buting)~ Did Investigator Wiegert?

3 THE COURT: You may answer.

4 A. Ask me that again, please.

5 Q. Did Investigator Wiegert give you his business
6 card with his phone number?

7 A. Yes.

8 Q. And did you provide those phone numbers to the
9 volunteer searchers?

10 A. I don't -- not that morning, I did not, but I had
11 also -- I had tried to call that number for
12 information and it was -- the number on the
13 flier, I believe, was the number for the general
14 dispatch in Calumet County, which it is not a
15 fast way to get a hold of anybody you need to, if
16 you have direct numbers.

17 Q. So, the faster way was to call which number,
18 then?

19 A. Well, for me, I had direct access to all the
20 investigators, so I could just call their
21 numbers.

22 Q. So, what was the plan, were the volunteers, if
23 they found anything, were they supposed to call
24 you? Were they supposed to call the sheriff?
25 How did you organize that?

1 A. The plan was to call the sheriff, or to call 911,
2 or whatever number they had available to them, to
3 get a hold of somebody.

4 Q. So, did you give them any of those direct phone
5 numbers?

6 A. I gave Pam -- Pam Sturm, I gave her Jerry Pagel's
7 number that morning. The cell phone coverage out
8 in that area is absolutely horrid. And to get a
9 call out to -- most of the time when I used my
10 phone out there, I only had 30 seconds or a
11 minute to talk before your phone cut off on you.
12 But I gave Pam that number, Jerry Pagel's number,
13 that morning, with the intent that if she was
14 going into the car lot and needed to call
15 somebody quick, and get somebody out there, that
16 would be the best way for her to.

17 Q. Is she the only one you gave that personal number
18 to?

19 A. I believe so.

20 Q. Who else was -- Who else had already been on that
21 Avery property, to your knowledge?

22 A. To my knowledge, I don't know if anybody had. I
23 knew that there were cars that were in that area,
24 whether any of them got out and got into the
25 property, I do not know.

1 Q. When you say cars in that area, you mean other
2 volunteers?

3 A. Yeah, searchers from that morning.

4 Q. What about the prior day, were there any
5 searchers in that area, volunteer searchers in
6 that area?

7 A. Not searchers, per se, more or less handing out
8 fliers at, you know, bars, restaurants, grocery
9 stores, post offices.

10 Q. So a volunteer may, in fact, have actually gone
11 to the Avery property and left a flier?

12 A. There is a possibility, if that was their choice
13 to go there and put a flier up, maybe they did.
14 I never instructed anybody or heard that it
15 happened.

16 Q. Okay. Before the morning of November 5th, had
17 you ever been out to the Avery property?

18 A. The 5th, no.

19 Q. That Saturday morning?

20 A. No.

21 Q. So, before the vehicle was located, you had never
22 been -- in your whole life, you had never been to
23 that Avery property?

24 A. No.

25 Q. I mean, that's correct?

1 A. That is correct.

2 Q. Okay. Did you have any idea, though, how many
3 vehicles might have been on that property, that
4 Pam Sturm was going to have to --

5 A. I didn't know how many vehicles were there, no.

6 Q. You hadn't seen any aerial photographs that would
7 give you a clue, or anything of that sort?

8 A. I don't know if I had seen the aerial photographs
9 by then, when the news was covering it.
10 Obviously, there was coverage from above,
11 helicopter shots of the property. I don't recall
12 when I saw those and realized the scale of it,
13 though.

14 Q. So, you don't know whether that was before the
15 vehicle was found, or not?

16 A. No, I don't.

17 Q. Did you -- Did you at some point ever go to the
18 property, the Avery property?

19 A. Yes.

20 Q. When was that?

21 A. Geez, when did we go there? I'm not real sure on
22 the dates. It was possibly that Monday or
23 Tuesday, which would have been, let's see, was
24 that the 6th or 7th, that Monday?

25 Q. Let me ask you this. When you went to the

1 property, was it still, to your knowledge, in the
2 custody of the law enforcement?

3 A. Yes.

4 Q. Did you pass through any checkpoints?

5 A. Yes.

6 Q. And what were you doing there? What were you
7 supposed to be?

8 A. We had met, let's see -- we went and we talked
9 to, I believe it was Jerry Pagel, and just showed
10 him our maps, showed him the lands that we had
11 searched. We had been walking fields and
12 outlying areas of the sector off areas of the
13 Avery property. We had went through county parks
14 around there, river bottoms, fields, forest,
15 basically, to show on the maps and show them the
16 lands we have covered.

17 Q. So, did you actually go into the salvage lot
18 area, though, and start searching on that day?

19 A. No.

20 Q. I don't understand.

21 A. Well, I will correct myself. We had went there
22 and showed them the maps, yes, that morning. And
23 I believe it was that -- like I say I'm not clear
24 on the days that we were out there. But we did
25 go into -- I don't know if it was the sector off

1 off areas, but the very outskirts areas of the
2 enclosed areas, I guess.

3 We walked just a flat winter green field
4 with nothing in it. Walked across the road
5 on some -- I believe it was public land, just
6 forested, and fields by some houses.

7 Q. But were you walking around in the Avery property
8 area, or its immediate outskirts?

9 A. Not in the salvage yard. And I don't know who
10 owned the land, if it was the Averys or not, it
11 was farm field.

12 Q. But it was past the police checkpoint?

13 A. On the road, yes. Police checkpoint was a mile
14 out on each side.

15 ATTORNEY FALLON: I'm going to object to
16 the relevance of this. We don't even know what day
17 it is. We don't know if it was Monday. We don't
18 know if it was Tuesday. We don't know if it's
19 inside, outside the property, and whether it is or
20 isn't is irrelevant.

21 THE COURT: Mr. Buting?

22 ATTORNEY BUTING: I'm just trying to
23 clarify whether it is or isn't.

24 THE COURT: I'm going to give Mr. Buting a
25 little latitude here to answer some of the questions

1 raised by Mr. Fallon.

2 ATTORNEY FALLON: Just so the record is
3 complete, I just would note that whatever is
4 occurring here is well after the warrant was applied
5 for.

6 ATTORNEY BUTING: We may have to recall the
7 witness, potentially. But I'm almost done with my
8 questions of him anyway, so.

9 THE COURT: All right. Go ahead.

10 Q. (By Attorney Buting)~ Just so we're clear, at
11 some point, you were allowed in past some police
12 checkpoint, to do some searches?

13 A. Correct.

14 Q. You are just alone or with other volunteers?

15 A. Myself at first, and then other volunteers to
16 follow after we kind of got a land assignment.

17 Q. And did the officers who let you in know that you
18 had a relationship as a former boyfriend with the
19 missing woman, at that point?

20 A. I don't know if anybody knew I was an
21 ex-boyfriend of hers. I guess I never saw the
22 relevance in it.

23 Q. Did Sheriff Pagel know that?

24 A. What's that?

25 Q. Did Sheriff Pagel know of your relationship with

1 her?

2 A. I don't believe so. I think everybody just
3 assumed I was a good friend.

4 Q. Did Sheriff Pagel know that you had seen Teresa,
5 yourself, just the day before she disappeared?

6 A. I believe so.

7 MR. BUTING: That's all the questions I
8 have, Judge?

9 THE COURT: All right. We'll take our
10 morning break at this time and come back in 15
11 minutes.

12 (Recess taken.)

13 THE COURT: Mr. Buting, it's my
14 understanding that you have finished your direct
15 examination of Mr. Hillegas?

16 ATTORNEY BUTING: Yes, your Honor.

17 THE COURT: Mr. Fallon, or Mr. Kratz?
18 Mr. Fallon.

19 ATTORNEY FALLON: Thank you, Judge.

20 **CROSS-EXAMINATION**

21 BY ATTORNEY FALLON:

22 Q. Mr. Hillegas, the YES Organization which you
23 mentioned, that is an acronym for the Youth
24 Education and Safety Organization.

25 A. I believe so, yeah.

1 Q. And that's an organization that was founded by
2 Mr. Breyer?

3 A. Yes.

4 Q. And as far as you know, he has no association
5 with any law enforcement entity whatsoever?

6 A. I don't believe so, no.

7 Q. All right. Okay. So we're clear, you became
8 involved in the efforts to find Teresa Halbach on
9 Thursday, November 3rd?

10 A. Yes.

11 Q. And that's when you became aware of the fact that
12 she was actually missing?

13 A. Yes.

14 Q. And you were aware of the fact that a missing
15 persons report was filed by the Halbach family,
16 regarding Teresa?

17 A. Yes.

18 Q. All right. And at some point, there was a
19 gathering of people on Thursday evening?

20 A. Friday, it was Friday afternoon.

21 Q. Friday afternoon. Okay. I'm not clear from your
22 testimony on direct examination, did you
23 participate at all in any meeting with any
24 volunteers, any family members, anyone, on
25 Thursday night, November 3rd?

1 A. Yes.

2 Q. Okay. Where did that take place?

3 A. That was at Teresa's house.

4 Q. Teresa's house. And where she lived with her
5 roommate, Mr. Bloedorn?

6 A. Yes.

7 Q. And there were other family members there?

8 A. Karen and Tom came over to the house that
9 evening.

10 Q. All right. Now, as you sit and think now, as to
11 that particular day, do you recall whether
12 Sheriff Pagel was even present on Thursday
13 evening, November 3rd? Do you have an
14 independent recollection of that?

15 A. I believe that it was Pagel and Wiegert that were
16 over Thursday night, with the family, looking for
17 belongings.

18 Q. Looking for belongings. As opposed to Friday, as
19 opposed to any other day?

20 A. I believe it was Thursday but, honestly, I
21 believe there was somebody at the house for about
22 the first four or five days, once she was filed
23 missing, to pick up items and belongings.

24 Q. Now, would it be fair to say that, as a matter of
25 fact, you became involved on Thursday, November

1 3rd, and your involvement didn't really end until
2 the following Wednesday?

3 A. Yes.

4 Q. All right. Which would be about the 9th, I
5 believe?

6 A. Yeah.

7 Q. All right. Now, during that particular time, you
8 did have numerous contacts with law enforcement,
9 throughout the days?

10 A. Yes.

11 Q. All right. Specifically, my questions are going
12 to be focussed on Thursday, Friday, and Saturday
13 morning. Think about those particular times, all
14 right. Now, first and foremost, you indicated
15 that posters were obtained on Thursday,
16 November 3rd?

17 A. Actually, the posters were obtained Friday, on
18 the 4th.

19 Q. All right. When did you become aware that
20 posters were on order, as it were?

21 A. I believe it was Friday morning. I had spoken
22 with the family and they had mentioned to me that
23 this foundation in Appleton was printing up the
24 posters. And they asked me if I could pick them
25 up.

1 Q. When did it become apparent, either directly or
2 implicitly, that you were going to coordinate the
3 volunteer effort?

4 A. Um, I guess it kind of just happened Friday, when
5 I got back with the posters. Basically, had a
6 whole group of people, I guess, wanting to know
7 what they could do, and somebody had to get them
8 on the way.

9 Q. All right. So would it be fair to say that, on
10 Thursday evening, you volunteered to go get the
11 posters?

12 A. Friday morning I volunteered to go pick them up.

13 Q. So, in terms of Thursday evening, there was no
14 discussion really, no formal discussion,
15 regarding the organization or coordination of a
16 poster effort, or a volunteer effort, at that
17 particular point?

18 A. No.

19 Q. And there was no -- no instruction, or guidance,
20 or direction, provided by anyone from law
21 enforcement, to you, relative to the creation of
22 a volunteer effort on Thursday evening?

23 A. No.

24 Q. That's a correct statement?

25 A. That is a correct statement.

1 Q. All right. Now, let's -- let's go to Friday
2 morning. Friday morning you volunteered to go
3 pick up the posters?

4 A. Yes.

5 Q. And the posters were provided by this YES
6 Organization?

7 A. Yes.

8 Q. They were not provided by law enforcement?

9 A. No.

10 Q. All right. You returned back with the posters,
11 there's a group of individuals gathered at Teresa
12 Halbach's residence?

13 A. Yes.

14 Q. All right. And at that particular point, you and
15 Mr. Bloedorn discuss things and, apparently, or
16 implicitly, you become the director, as it were,
17 or the coordinator of this volunteer effort to
18 find Teresa Halbach?

19 A. Yes.

20 Q. All right. Now, at that Friday morning meeting,
21 regarding the placing of the posters, it was your
22 decision to focus efforts, on that day, of
23 getting the word out to the community?

24 A. That's correct.

25 Q. And it was your idea to organize people in such a

1 way as there would be specific areas targeted for
2 the publication, as it were, of the information
3 regarding Teresa's disappearance?

4 A. Yes.

5 Q. All right. And that information was going to be
6 disbursed to the public by means of these
7 posters?

8 A. Yes.

9 Q. And they were going to be tacked up in public
10 places throughout Manitowoc and Calumet County?

11 A. Yes.

12 Q. All right. And in terms of taking that approach,
13 that was your idea, correct?

14 A. Um, I guess it wasn't so much my idea to do it
15 that way, it was the YES Foundation that had
16 mentioned that, you know, first thing is get the
17 information out. So I guess that's how I kind of
18 pictured that we needed to do it.

19 Q. All right. So you got advice from them?

20 A. Yes.

21 Q. All right. Who were you in contact with, from
22 the YES Organization, that provided that advice;
23 do you recall?

24 A. Yup, Jay Breyer.

25 Q. All right. And you had a number of conversations

1 with him?

2 A. Yes.

3 Q. He had some experience, as it were, in trying to
4 find missing persons, or engaging in this type of
5 work?

6 A. Yeah, some type of experience. I know he had a
7 daughter or a niece that was abducted or missing,
8 and that's how he began. But he had helped out a
9 lot of searches across the state.

10 Q. So you conferred with him regarding a relative
11 game plan, as it were, to get the word out?

12 A. Yes.

13 Q. All right. So you were following his advice?

14 A. Yes.

15 Q. So with respect to the placing of the posters,
16 and dividing people up and sending them to
17 various locales in the two-county or tri-county
18 area, there was no one from law enforcement
19 telling you to do that?

20 A. No.

21 Q. There was no one coordinating you, or directing
22 you, in that regard?

23 A. No, that is correct.

24 Q. All right. So you come back, you disburse the
25 people to cover their respective areas for these

1 poster placements; did anything else occur on
2 that particular day, other than disbursing the
3 posters?

4 A. No.

5 Q. All right. Now, the phone number, which was on
6 the poster, was the general dispatch number for
7 the Calumet County Sheriff's Department, correct?

8 A. I believe so, yes.

9 Q. All right. Now, at some point during that day,
10 you did have some contact with Sheriff Pagel,
11 correct?

12 A. Yes.

13 Q. And you were -- The point of that conversation or
14 contact was to advise him of what you were doing,
15 correct?

16 A. Yes.

17 Q. All right. At no point during your conversation
18 was Sheriff Pagel, that day --

19 ATTORNEY BUTING: I'm sorry, what day are
20 we talking about?

21 ATTORNEY FALLON: Friday.

22 Q. (By Attorney Fallon)~ At no point during your
23 conversation -- Well, first of all, before I even
24 ask that question, how many times, your best
25 recollection -- if you are not sure, tell us you

1 are not sure -- how many times you spoke with
2 Sheriff Pagel on Friday, November 4th?

3 A. I guess, how many times, I am not exactly clear
4 or sure.

5 Q. Could it have been once, could have been twice?

6 A. It was at least once. I don't know if it was any
7 more than that.

8 Q. At some point during the course of your
9 discussion, to advise him what you were doing,
10 you obtained a more direct phone number for --
11 from him, should somebody find something?

12 A. Well, I had received his card the night before,
13 when he was at the house.

14 Q. All right.

15 A. So, I guess that's when I obtained the number.

16 Q. All right. But the night before, you didn't have
17 any discussions with him regarding what you were
18 doing, or how you were going to go about it, or
19 anything like that?

20 A. No, we didn't have a plan, basically, until
21 Friday morning.

22 Q. In fact, you don't even know if you talked to him
23 that night, other than to receive his card and
24 exchange pleasantries?

25 A. Basically, yes.

1 Q. Okay. So, on Friday, when you did talk to him,
2 at some point, either one or possibly two
3 occasions, you did obtain a more direct phone
4 number, or was that already on the card?

5 A. I had that on the card.

6 Q. All right. Now, on these conversations with
7 Sheriff Pagel that day, in no way did he direct
8 you to -- where to place these posters, correct?

9 A. That's correct.

10 Q. And there was no discussion with him, whatsoever,
11 regarding any perceived or intended plan to
12 actually conduct searches with the volunteers who
13 were placing the information in the general
14 public?

15 A. Yes.

16 Q. That's correct?

17 A. Yes.

18 Q. All right. And, similarly, you think that you
19 may have had contact with Detective Wiegert on
20 Friday, November 4th, or are you not sure about
21 that?

22 A. I'm not sure if I had any contact with Wiegert on
23 Friday.

24 Q. All right. And it's difficult for you to recall
25 when you had contact, because at some point

1 during the seven days or so that you were
2 involved in looking for Teresa, you did have
3 contact with law enforcement from time to time?

4 A. Yes.

5 Q. Okay. Now, with respect to later that Friday,
6 were there -- on Friday was there -- when did it
7 become apparent, or when did the idea come to you
8 that maybe we should do more than put posters
9 out, maybe we should actually use some of these
10 folks to actually look for Teresa; when did that
11 come about?

12 A. I believe it was late Friday night. I don't
13 exactly recall how we got started on that idea.
14 I did know that I had a whole lot of -- well, a
15 whole lot of volunteers that wanted to do
16 something. Everybody was willing to help. So I
17 guess we just figured we would put them to use.

18 Q. When you say, we figured we would put them to
19 use, are you referring to yourself and
20 Mr. Bloedorn?

21 A. We means, me and Scott, yes.

22 Q. Now, the decision that maybe we can take
23 advantage of these folks in that regard, was
24 entirely your decision?

25 A. Um, I don't know if it was entirely my decision.

1 And I guess, like I said, I'm not clear how
2 that -- how that started, or how we came upon the
3 idea of it.

4 Q. When I say your, I mean yours, meaning you and
5 Mr. Bloedorn's.

6 A. Right, yes.

7 Q. No one from law enforcement told you that, hey,
8 this would be a great idea if you collected some
9 people and went out and helped to look, right?

10 A. No, nobody from law enforcement told us that.

11 Q. All right. Now, Saturday morning, you indicated
12 that, at some point then, on Friday evening, you
13 must have gotten word out to get everybody to
14 come to the house on Saturday morning?

15 A. Yup. Friday -- Friday evening, late evening, we
16 had started telling people to just meet at the
17 house the following morning and we would have a
18 plan.

19 Q. And you were drawing from the pool of 50 to 60
20 people who assisted in putting posters up that
21 day?

22 A. That, and there were probably 20 to 40 more
23 people that were there the following day, on
24 Saturday morning.

25 Q. All right. So on Saturday morning, you had

1 perhaps as few as 70 and maybe almost 80, 90
2 people?

3 A. I would say that's probably accurate.

4 Q. All right. Now, of that 80 to 90 people, it's
5 true, is it not, that there was not one single
6 solitary law enforcement officer present; is that
7 true?

8 A. That is true. That's correct.

9 Q. And the meeting, you said, was scheduled for
10 somewhere between 6, maybe 7 o'clock in the
11 morning, your best recollection?

12 A. I believe, yeah.

13 Q. All right. Now, during the course of the
14 meeting, you had a large gathering of individuals
15 there and the decision was -- tell us how the
16 meeting went.

17 A. Well, by the time people had started showing up
18 in the driveway on Saturday, to go out and do the
19 search, me and Scott had already, basically, had
20 maps of sectioned out areas that we were ready to
21 hand out to people and, basically, when they got
22 there, we had them line up and come through the
23 house. When they got in the kitchen, we made
24 them take a look at the map, gave them a larger
25 version of the map, and then we gave them a

1 smaller version, also, that we wanted them to
2 cover, that's where they went from there.

3 Q. Where did the maps come from?

4 A. Me and Scott made them that night.

5 Q. And where did you make them? How did you make
6 them? Where did you get the information to
7 create the maps?

8 A. Satellite imaging off the internet.

9 Q. Your best estimate, how long did the meeting
10 last, for you to process all the helpers, as it
11 were?

12 A. To go through everybody, it was pretty quick,
13 once they started filing through the house and
14 taking assignments. From start, to the end of
15 the large group that was there in the morning,
16 probably maybe took an hour, hour and a half, to
17 get everybody out of the house.

18 Q. So, after an individual group or person received
19 their assignment, were they then released to go
20 search that area, or did they stick around for
21 any further instructions?

22 A. No, they left right away.

23 Q. They left right away. So it was basically in,
24 get your assignment, and they were out the door?

25 A. As soon as they talked to me and got their

1 assignment, they were, basically, out on their
2 own and ready to leave.

3 Q. All right. And you pretty much left it in each
4 individual searchers discretion as to how they
5 would go about conducting the search?

6 A. Yes.

7 Q. Similar to, I think you said, whether people
8 wanted to get out of their vehicles and walk the
9 area, that was up to them. You certainly didn't
10 put any restrictions, or even give advice, as to
11 how they should go about doing it?

12 A. No, I basically told them to look for anything
13 suspicious, her vehicle, tracks, anybody who had
14 seen her.

15 Q. As a matter of fact, the focus still, at that
16 time, was under the impression or hope that there
17 might have been just some automobile mishap and
18 that perhaps her car was stuffed some side of the
19 road somewhere and no one had discovered it?

20 A. I guess, yes.

21 Q. All right. Now, during the course of handing out
22 these assignments, you didn't hand out any
23 assignments to go search any personal property?
24 By that, I mean any particular residence or
25 buildings?

1 A. No.

2 Q. And the assignments to search areas were more or
3 less public roads and lands which were readily
4 accessible from public roads?

5 A. Yes.

6 Q. They included county parks, gravel pits, for
7 instance, and fields, farms, etcetera?

8 A. Yes.

9 Q. All right. Now, after the initial group of
10 people were processed and given their assignment
11 and sent on their way, later that morning, Ms Pam
12 Sturm and her daughter, Nikole, showed up?

13 A. Yes.

14 Q. Your best estimate, that was maybe as much as an
15 hour, could be even more, after the general group
16 had passed through?

17 A. Yes.

18 Q. Now, Ms Sturm comes to your particular meeting
19 here, and by and large was she the only one left,
20 had everyone else pretty much passed through?

21 A. The large group of people that left that morning,
22 everybody was gone from that group. Throughout
23 the entire day, people were stopping in, people
24 who just got off work, or people who just found
25 somebody to watch their kids. So all throughout

1 the day there were stragglers coming in.

2 Q. Stragglers coming in. Now, when Ms Sturm came
3 in, as I understand it, just so that we're clear,
4 it was she who asked, without any prompting from
5 you, or anyone else, whether anyone had been
6 given the assignment of going to the Avery
7 property?

8 A. Yes.

9 Q. All right. And she said, well, then I'll take
10 that; is that correct?

11 A. Yeah.

12 Q. It was her idea?

13 A. Basically, yes.

14 Q. All right. Well, when you say basically?

15 A. Yeah, it was entirely her idea. She was the one
16 that mentioned it to me.

17 Q. And that's because she told you, well, isn't that
18 the last place where Teresa was seen?

19 A. It was.

20 Q. That was her thinking, I might as well go there?

21 A. Yes.

22 Q. All right. So she and her daughter, then, took
23 that assignment, and they left to go there,
24 correct?

25 A. Yes.

1 Q. Now, before they left, did you give them a phone
2 number, just in case they had problems, or they
3 found anything?

4 A. I did.

5 Q. All right. And what number did you give them?

6 A. I gave them Jerry Pagel's, his cell number.

7 Q. His cell number. From the card that he gave you?

8 A. Yes.

9 Q. All right. And other than that, you had no other
10 discussion with her regarding law enforcement's
11 potential involvement in her effort to search the
12 Avery property?

13 A. Right, that's correct.

14 Q. Okay. Her time at your -- at the meeting place
15 was just, literally, a matter of minutes, maybe
16 10 minutes?

17 A. I would say between 5 and 10 minutes.

18 Q. Did she take any maps or did she just kind of go
19 on her own?

20 A. We gave her maps, I believe, of the area.

21 Q. The general area?

22 A. Right. The same map that we had handed to
23 everybody else.

24 Q. Okay. Similarly, I know I asked you about
25 Saturday, let me back up to the Friday meeting,

1 about divvying up the posters and deciding who
2 was going to put the information and the posters
3 in what particular area. There was no one from
4 law enforcement involved in that meeting either?

5 A. No.

6 Q. All right. Let's talk about the Sunday, Monday,
7 Tuesday.

8 ATTORNEY FALLON: If I may, and if the
9 Court wants to put another exhibit on there, I would
10 like to direct the witness's attention to Exhibit
11 No. 2, from the preliminary examination, dated 12/6
12 of 05. If the clerk would prepare another
13 exhibit -- sticker, I would be happy to put it on
14 here, whatever the next number in order is.

15 THE CLERK: 18.

16 (Exhibit 18 marked for identification.)

17 Q. (By Attorney Fallon)~ All right. Mr. Hillegas, I
18 would like to direct your attention to
19 Exhibit 18, which is an aerial photograph; do you
20 recognize this particular property?

21 A. Yes.

22 Q. And what is that property?

23 A. That's the Avery Salvage Yard.

24 Q. All right.

25 ATTORNEY FALLON: And if the clerk would

1 prepare one more exhibit, 19, please.

2 Q. And I would also like to direct your attention to
3 the aerial photograph which is behind you on the
4 chalkboard, which will be marked Exhibit No. 19.

5 (Exhibit 19 marked for identification.)

6 All right. I just want to clear up some
7 perceived misconception from your examination.

8 First of all, let's look at 18. Now, you
9 indicated at some point on Monday or Tuesday, you
10 passed a checkpoint and were permitted -- you and
11 a few of your volunteers were permitted to do
12 some searching past a checkpoint; is that
13 correct?

14 A. Yes.

15 Q. Now, with respect, first of all, to Exhibit 18,
16 did any of the searching that you and your
17 volunteers did, on either that Monday or Tuesday,
18 occur within the parameters of Exhibit 18?

19 A. No.

20 Q. All right. As a matter of fact, the closest you
21 got to Exhibit 18 is the far corner, upper right
22 hand corner; is that correct?

23 A. Yes.

24 Q. You never passed in through this area, where
25 we're -- into the main business area, correct?

1 A. That's correct.

2 Q. All right. And you had never been on
3 this property before, in your life, correct?

4 ATTORNEY BUTING: Could the record just
5 reflect where you are pointing?

6 ATTORNEY FALLON: Let the record reflect
7 that I'm pointing a laser pointer, in the upper
8 right hand corner, about 4 or 5 inches in from the
9 right side and about 6 inches down from the top,
10 between an area, wide spot in the road with four
11 buildings.

12 ATTORNEY BUTING: That's fine.

13 ATTORNEY FALLON: Good enough?

14 Q. (By Attorney Fallon)~ And, now, you have never
15 been in that particular area before that,
16 correct?

17 A. Correct.

18 Q. All right. Now, directing your attention, again,
19 to Exhibit 19, which is behind you, and if you
20 would be so kind as to get up and use the
21 pointer, the laser pointer, and tell us if you --
22 First of all, can you identify Exhibit 19? You
23 are familiar with what's depicted?

24 A. Right. It's an aerial -- it's like an aerial or
25 a satellite image of, this would be the Avery

1 property, pretty much dead center of the map.

2 Q. All right. Would you point the laser pen,
3 there's a button on there.

4 A. Sure. Right there is the salvage area.

5 Q. And what is depicted there is, in fact, a smaller
6 version of Exhibit 18?

7 A. Yes.

8 Q. All right. Now, you indicated at some point
9 during questioning by Counsel, that you passed a
10 particular checkpoint, to assist law enforcement
11 in doing a search. In looking at Exhibit 19, do
12 you have an idea where that checkpoint would have
13 been?

14 A. Yeah. Am I allowed to get up and look closer?

15 Q. Yes, please do.

16 A. The checkpoint I'm speaking of, I believe that
17 the roads were blocked off here and here, and
18 this is the checkpoint that I'm talking about.

19 Q. All right. I'm going to let you put your
20 initials in red on the spot where that was, your
21 best recollection. Okay. Now, as you are
22 standing there --

23 ATTORNEY BUTING: If you could put a
24 circle, it would make it a little bit more obvious.

25 ATTORNEY FALLON: Sure.

1 Q. (By Attorney Fallon)~ All right. Now, you have
2 marked there, that's the checkpoint, you believe,
3 that you were allowed to pass through with your
4 volunteers?

5 A. Yes, the road block, one of the roads were
6 blocked.

7 Q. Okay. You indicated on direct examination that
8 on either this Monday or Tuesday, and you are not
9 sure when that was, that you were allowed to
10 assist in a search of a couple of areas. Can you
11 draw a line, or put a series of X's to the
12 property which you believe you and your group
13 searched?

14 A. Sure.

15 Q. Just so we're clear.

16 A. Yes. To the edge of this, it's just a plain
17 winter wheat field.

18 Q. All right. And you are making a series of X's?

19 A. I'm making a series of X's.

20 Q. Go ahead. Continue.

21 A. Just, you know, a strip like right here. And
22 then we did some searches of here as well.

23 Q. Perhaps this red might be a little deeper. You
24 could improve upon that. All right. So for
25 purposes of our discussion here -- thank you --

1 you have marked an area, a rectangle as it were,
2 with a series of X's, and that is below -- what
3 is this road right here?

4 A. That's a highway.

5 Q. Do you recall what the name of that highway was?

6 A. I don't recall what it is right now.

7 Q. Okay. Fair enough. Below that highway, you have
8 a rectangled box containing X's?

9 A. Yes.

10 Q. And above the highway you have a four-sided --
11 the geographical -- the box here that --
12 containing X's as well, reflecting an area that
13 you searched?

14 A. Yes.

15 Q. Now, is the area above the road, which passed
16 through, was that past the checkpoint, or was
17 that --

18 A. It was past where the roads were blocked.

19 Q. Where the roads were blocked.

20 ATTORNEY BUTING: Do you want to just
21 stipulate, for the record, what the name of that
22 road is, so it's clear?

23 ATTORNEY FALLON: 147.

24 ATTORNEY BUTING: Is that Highway 147?

25 ATTORNEY KRATZ: Yes, I believe so.

1 ATTORNEY FALLON: Highway 147. All right
2 Very good, have a seat.

3 Q. (By Attorney Fallon)~ And just so that we're
4 clear, there was one other point during your
5 testimony, when you and/or Mr. Bloedorn were
6 collecting this information and coordinating
7 these searches, you would, from time to time,
8 check in with Sheriff Pagel and tell him what you
9 were doing?

10 A. Yes.

11 Q. And you would tell him the areas that you were
12 searching?

13 A. Yes.

14 Q. At no time, however, did he ask you to search any
15 particular place, did he?

16 A. No.

17 Q. He never directed any particular area to be
18 searched, correct?

19 A. That's correct.

20 Q. And, basically, all he did was, well, if you find
21 something, or anything interesting, call us?

22 A. Yes.

23 Q. That was the extent of the direction that you
24 received from Sheriff Pagel.

25 A. Yes.

1 Q. And that was the extent of the direction you
2 received from any law enforcement officer,
3 relative to the search efforts for Teresa
4 Halbach.

5 A. Yes.

6 ATTORNEY FALLON: That's all. Would move
7 into evidence Exhibits 18 and 19.

8 ATTORNEY BUTING: No objection.

9 THE COURT: Those exhibits are admitted.
10 Mr. Buting.

11 ATTORNEY BUTING: Thank you, Judge.

12 **REDIRECT EXAMINATION**

13 BY ATTORNEY BUTING:

14 Q. You mentioned that you had these satellite maps
15 that you had generated off the internet; is that
16 right.

17 A. Yes?

18 Q. Were they similar to Exhibit 19 that you were
19 marking on?

20 A. Yes.

21 Q. Or were they more in, close up, that's a pretty
22 high aerial shot?

23 A. No, our maps were probably like that, or actually
24 farther out. We had no reason to go real close
25 with them, we just wanted to see the roads.

1 Q. Okay. And you mentioned that there was a general
2 map, a big one, and then like a smaller one of
3 certain areas?

4 A. Mm-hmm. Yes.

5 Q. When you say smaller, in what way, were they
6 closer up?

7 A. We handed out a general map to everybody, which
8 covered, basically, the whole -- everything from
9 Lake Winnebago to Lake Michigan, that whole strip
10 of land in there, Manitowoc, Calumet Counties.

11 Q. Like a satellite deal?

12 A. No, that was just a far away -- just a road view.

13 Q. Okay.

14 A. Just a normal map, I guess you could say. And
15 then we made closer versions also, on Friday, to
16 give the people a closer look at the roads we
17 wanted them to travel on. Because the larger
18 maps didn't show all the small country roads and
19 such.

20 Q. So, the smaller ones, were they -- did they cover
21 smaller areas than is depicted in Exhibit 19?

22 A. No, no smaller.

23 Q. So they were about like that?

24 A. Some of them were like that. Some of them were
25 just normal maps that we blew up. It just

1 depended if we could see the roads or not.

2 Q. By normal maps, are you referring to like a Map
3 Quest map, or are you talking about satellite
4 maps?

5 A. A Map Quest map, or just a plain piece of paper
6 with lines on it that had boundaries and roads.

7 Q. Okay. In any event, one of them contained the
8 Avery property as well, right?

9 A. Yup.

10 Q. And the map that you then gave to Pamela Sturm,
11 was it similar to Exhibit 19, then?

12 A. No.

13 Q. What was it like?

14 A. I just gave her the general map that I gave
15 everybody, the large view of all the highways and
16 the roads, nothing close up.

17 Q. Okay. And she said that one of the reasons she
18 wanted to go search that property was because she
19 knew that Teresa had been there the day that she
20 was last seen?

21 A. I believe so, yes.

22 Q. And you were aware of that as well, right?

23 A. Yes.

24 Q. And did you know what her purpose was in going
25 there?

1 A. I knew that she was taking pictures for Auto
2 Trader that day.

3 Q. Did she have any other purpose that you were
4 aware of?

5 A. No.

6 Q. No other reason for being there?

7 A. Not that I'm aware of.

8 Q. Okay. Your discussions with Sheriff Pagel, you
9 said you kept him informed about where people
10 were going to search?

11 A. Just basically let him know what we were doing.

12 Q. And did he ever say, don't go to the Avery
13 property?

14 A. No.

15 Q. Did he ever tell you not to actually go onto
16 private property, without permission?

17 A. I don't know.

18 Q. Did he ever talk to you at all about making sure
19 that the volunteers would get permission if they
20 were on private property?

21 A. I don't recall. I don't know. Like I say, I
22 never really received instruction from him, as to
23 what to do. I basically just told him that we
24 were going out to search.

25 Q. I understand, but what I'm getting at is maybe

1 any advice or instruction he gave you of what not
2 to do. Did he warn you about not to do certain
3 things?

4 A. No.

5 Q. There was no instruction or warning not to pick
6 up evidence, if you found it, or anything like
7 that?

8 A. We -- I guess I pretty much knew that from common
9 knowledge. I didn't need anybody to tell me that
10 I shouldn't tamper with evidence. I, basically,
11 just instructed people from my point of view and
12 from the YES Foundation's, you know, that if
13 anybody did find anything, the first thing you do
14 is get a hold of somebody and leave it alone.

15 Q. It wasn't clear to me from the way you were just
16 testifying in the chronological sequence; did you
17 have any phone conversation with Detective
18 Wiegert, or Investigator Wiegert, on Saturday
19 morning?

20 A. I don't know.

21 Q. Do you remember talking to him about how you were
22 going to have this -- how this meeting was going
23 to take place on Saturday morning to organize all
24 these people?

25 A. I don't know if I told that to Detective Wiegert.

1 I guess I'm not sure.

2 Q. Okay. But you told it to somebody at the
3 Sheriff's Department?

4 A. That I had told Jerry Pagel that we were just
5 going to go out and do a car search.

6 Q. Okay. By car search, you mean --

7 A. Driving the roads and looking for anything
8 conspicuous.

9 Q. And you told him that you were going to do that
10 Saturday morning?

11 A. Yeah.

12 Q. And when you searched the areas that you marked
13 on Exhibit 19, was that just you alone, or was
14 that other volunteers as well?

15 A. Me, as well as other volunteers.

16 Q. How many would you say?

17 A. Between 30 to 50 people came and went, some had
18 prior obligations or couldn't get there until
19 later, so.

20 Q. So, in terms of that little parcel that you first
21 marked, that you searched, south of Highway
22 150 -- 147, how many people were walking through
23 that field with you?

24 A. Between 30 to 50.

25 Q. Okay.

1 A. Like I said, people came and went as they needed.

2 Q. And were there any police officers with you when
3 you were doing that part?

4 A. Yes.

5 Q. Walking with you?

6 A. Yes.

7 Q. How many?

8 A. I believe two.

9 Q. Manitowoc or Calumet?

10 A. I do not know.

11 Q. Don't know their names?

12 A. No.

13 Q. And that first area that you marked is a field
14 that is directly adjacent to the north -- on the
15 north, to the Avery salvage property, right?

16 A. Yes.

17 Q. And did you get Sheriff Pagel's permission to do
18 that?

19 A. Yes.

20 Q. And I'm sorry, I don't remember, but by that
21 point had you told Sheriff Pagel that you were
22 her -- Teresa's former boyfriend?

23 A. I don't know. Like I said earlier, I really
24 wasn't, you know; I guess I didn't tell too many
25 people about it. It never really occurred to me

1 that it was an issue. And it was quite a while
2 ago, that we dated.

3 Q. But you were still seeing her as recently as the
4 day before, that she disappeared, right?

5 A. Yes.

6 Q. And Sheriff Pagel knew that?

7 A. Yes, I believe so.

8 ATTORNEY BUTING: All right. Thank you.
9 No further questions.

10 THE COURT: Anything else?

11 ATTORNEY FALLON: Nothing for this witness.

12 THE COURT: All right. You are excused.
13 With the understanding, Mr. Buting, that you still
14 have the right to recall Detective Remiker, are
15 there any other witnesses for the defense on this
16 motion?

17 ATTORNEY BUTING: Well, Judge, I do know --
18 I understand that the CD's are prepared now, of the
19 information that we talked. I don't know whether
20 you would like to take maybe an early break at this
21 point and we could then proceed.

22 THE COURT: All right. We'll take a lunch
23 break now and resume at 1 o'clock; will that work
24 for the parties?

25 ATTORNEY KRATZ: Sure.

1 ATTORNEY BUTING: Okay.

2 THE COURT: Very well. We'll take our
3 lunch break at this time and then resume at 1
4 o'clock.

5 (Lunch break taken.)

6 THE COURT: At this time, we'll go back on
7 the record. Do I understand, Mr. Buting, you are
8 going to be recalling Detective Remiker?

9 ATTORNEY BUTING: Yes, if we could do that,
10 Judge. And Detective Remiker is involved in both
11 motions, but we thought maybe we would finish his
12 testimony related to the **Franks** part of the motion,
13 including the State's cross-examination. And then
14 we can recall him when we're ready to switch gears
15 into the next motion.

16 THE COURT: Is that acceptable to the
17 State?

18 ATTORNEY FALLON: I think that is
19 acceptable, as far as I know. I told Lieutenant
20 Lenk to be available. We thought it would be in the
21 morning; but I told him, don't plan anything for the
22 day depending on -- so we would have maximum
23 flexibility, so that should work.

24 THE COURT: All right. Is Mr. Remiker
25 here?

1 ATTORNEY BUTING: Yes.

2 THE COURT: Mr. Remiker, you are still
3 under oath. Mr. Buting, you may continue.

4 ATTORNEY BUTING: Thank you, Judge.

5 **CONTINUED DIRECT EXAMINATION**

6 BY ATTORNEY BUTING:

7 Q. All right. Detective, we had an opportunity over
8 the noon hour to listen to the recordings that
9 you used to refresh your recollection. And I
10 guess, so we put on the record, that included,
11 you had 2 CD's, one of which was phone
12 conversations that you had that morning of
13 November 5th; is that right?

14 A. Yes, that's correct.

15 Q. And the other one, the other CD contained radio
16 dispatch information?

17 A. Correct.

18 Q. Okay. Now, the first call that you had on
19 Saturday morning -- I'm sorry, what time did you
20 say you got to work?

21 A. 8:00 a.m.

22 Q. Okay. If I understood from the records, at 9:03
23 a.m., you made a phone call to Investigator
24 Wiegert; is that right?

25 A. Yes.

1 Q. And during that time, you were asking him if they
2 had a timeline or anything for the missing
3 person?

4 A. Correct.

5 Q. And at that time, Investigator Wiegert had some
6 phone records that he had relied on, evidently,
7 and was telling you certain times the phone calls
8 were made?

9 A. Yes.

10 Q. And at that time, the belief was that Teresa
11 Halbach made an appointment -- or made it to her
12 appointment in New Holstein, sometime around
13 1:30 p.m. on October 31st?

14 A. I believe that was part of the conversation, yes.

15 Q. And that the understanding or belief, at that
16 time, was that after that she went to the Avery
17 property?

18 A. Yes.

19 Q. And then after that, she went to her appointment
20 at the Zipperer, Z-i-p-p-e-r-e-r --

21 A. There were discussions about those appointments,
22 whether you are in the correct order or how
23 exactly that discussion took place, I'm not sure,
24 but.

25 Q. But you do you recall at that time, there was a

1 belief or understanding that she had made a
2 subsequent -- an appointment subsequent to
3 meeting with Mr. Avery?

4 A. Correct.

5 Q. Okay. You also talked about some tips that
6 various people had called in; is that right?

7 A. Yes.

8 Q. But in that conversation, there was no discussion
9 about volunteer searchers -- Well, I take that
10 back, there was a reference that Wiegert advised
11 you that the family was doing their own search?

12 A. Yes. Investigator Wiegert tells me, he says,
13 Just so you know, in case you get any calls, the
14 family is doing their own thing. They are out
15 there doing some searches, in case you see them
16 or get some calls of somebody out in some yards
17 or doing some stuff. Just so you know, they are
18 doing their own thing.

19 Q. When he told you that, you said, Yes, I got that,
20 or I read that note?

21 A. Yes, I say that on the phone call.

22 Q. Did you actually get some sort of written
23 instruction about that?

24 A. I don't recall.

25 Q. You haven't seen any kind of written note or

1 instruction about that since?

2 A. No, based on the phone call, I'm assuming it was
3 something in reference to maybe a note in the
4 Shift Commander's Office, or somebody had called
5 the shift commander and just let him know that
6 there's people out there doing some searches --

7 Q. Okay.

8 A. -- in case you get any reports.

9 Q. Okay. And then you also got a second call
10 from -- incoming, from Investigator Wiegert, at
11 about 10:07 a.m., correct?

12 A. Yes.

13 Q. And in that call, did he tell you that there was
14 a change of plans?

15 A. Yes.

16 Q. And did he tell you that his boss wanted them --
17 I don't know if I have the exact words but,
18 wanted to see about using the search -- the
19 volunteer search party, to see if they would go
20 to the Avery junkyard and search that property?

21 A. What he says to me is that, he identifies him as
22 his boss, wants him to reinterview Steven Avery,
23 and another individual, and that there also are
24 some volunteer searchers out there who would be
25 willing to do some searching and that he was

1 going to come and talk to me, and there was a
2 chance maybe we could see if those searchers
3 could get consent to go out on the Avery property
4 and search. I think he called it the junkyard.

5 Q. Maybe we should -- Could we mark your copy? And
6 then could you get another one, if we marked
7 yours as an exhibit?

8 A. No problem.

9 Q. Do you have just the CD of the phone calls with
10 you?

11 A. I had two copies, I gave one to you --

12 Q. Okay.

13 A. -- and one to the State.

14 ATTORNEY FALLON: Are you going to play it,
15 Counsel?

16 ATTORNEY BUTING: No, I just want it
17 marked.

18 ATTORNEY FALLON: Marked?

19 ATTORNEY BUTING: Yeah.

20 ATTORNEY FALLON: Is this the phone or --

21 ATTORNEY BUTING: It says phone call. This
22 is the one, right?

23 THE WITNESS: Correct.

24 ATTORNEY BUTING: Could you mark this?

25 (Exhibit 20 marked for identification.)

1 Q. (By Attorney Buting)~ I'm showing you Exhibit 20,
2 can you identify that for the record?

3 A. That is a CD recordable device that contains
4 audio recordings of conversations on recorded
5 phone lines at the Sheriff's Department.

6 Q. And that includes the phone conversation that we
7 have been discussing this morning, or this
8 afternoon now?

9 A. Should.

10 Q. And that would be the best evidence of what
11 actually was said by Investigator Wiegert, to
12 you, and vice versa?

13 A. That's exactly what he said.

14 Q. Okay. And then you also got another call from
15 Investigator Wiegert; that was on your cell phone
16 though, correct, later that morning?

17 A. The last recorded call that I have between myself
18 and Investigator Wiegert, I give him my cell
19 phone, that's the best way of getting a hold of
20 me. And there were some additional calls that he
21 made to me on my cell phone.

22 Q. And that was before you left the station, even,
23 to go to the Avery property?

24 A. Yes.

25 Q. And we don't have a recording of those phone

1 calls, though?

2 A. We do not.

3 Q. Okay. And in those phone calls, did he talk with
4 you any more about any searches of the Avery
5 property?

6 A. At one point he calls me and says, Hey, I just
7 got a call from some lady, supposedly they are
8 out at the Avery property, they said they got
9 permission from Earl to be out there, and they
10 observed a vehicle that might be Teresa's.

11 Q. Okay. But before that call, were there any other
12 discussions that he had about plans to search, or
13 get consent of -- for a search of the Avery
14 property?

15 A. No, the last recorded call you have there, the
16 second recorded call, he says, I will meet you at
17 the department in about an hour. So then I was
18 waiting for him and then I receive a phone call
19 from him, on my cell phone, advising me that
20 somebody is out there, they found a car.

21 Q. So your understanding was then, the plan would be
22 that he would come to your department and the two
23 of you would go out to the Avery's, or would
24 contact the volunteers, or what?

25 A. He just said we were going to come to your

1 department, we'll discuss it, we'll go from
2 there. We never got to that point.

3 Q. But that his boss wanted to contact the volunteer
4 searchers to see if they would be able to get
5 permission to go onto the Avery property and look
6 there?

7 A. He does make a statement similar to that, yeah.

8 Q. Okay. Now, after you got the call on your cell
9 about -- from Wiegert -- about two women being at
10 the Avery property, you got in your car and left
11 the station, right?

12 A. Yes.

13 Q. And you also made a call to -- or had dispatch
14 contact Lieutenant Lenk, sometime during that
15 point?

16 A. A ways after that.

17 Q. And Lieutenant -- Was Lieutenant Lenk your
18 supervisor at the time?

19 A. Yes.

20 Q. Was he -- He was directly involved with you on
21 this particular Halbach missing person matter as
22 well, wasn't he?

23 A. Yes.

24 Q. And he did also come to the Avery property then?

25 A. Eventually, yes.

1 Q. Do you know what time?

2 A. No idea.

3 Q. Within an hour or so after you called?

4 A. He was out of town. I would say within three
5 hours of calling him, would be a fair guess.

6 Q. Do you know if he arrived before or after you
7 obtained -- you and Investigator Wiegert obtained
8 the actual search warrant?

9 A. Before.

10 Q. Before you did?

11 A. Yes.

12 Q. And then you left the property. You and
13 Investigator Wiegert left the Avery property, to
14 go get the warrant signed by Judge Fox, right?

15 A. Yes.

16 Q. So there's a period of time when you two are gone
17 from the Avery property and from the vehicle,
18 while you are getting that warrant, right?

19 A. Correct.

20 Q. About how long were you gone?

21 A. I'd have to look at my report, several hours.

22 Q. Okay. And then, during that time period, who was
23 the highest ranking officer who would be in
24 charge of your Department's involvement,
25 Lieutenant Lenk, or someone else?

1 A. Deputy Inspector Schetter.

2 Q. Okay. And he arrived about when?

3 A. I would say within two hours after we had

4 verified that it was Teresa's car on the

5 property.

6 Q. And just so we have a time of that, time of the

7 reference, what -- you arrived at the property

8 and about what time was it when you made that

9 verification?

10 A. Approximately 11:00.

11 Q. Okay. Now, I'm sorry, did you actually -- did we

12 talk about you going to the -- We already talked

13 about you going to the Avery's property on the

14 4th, didn't we?

15 A. We did talk about that, yes.

16 Q. Okay. Did you ever -- Before you arrived at the

17 property on November 5th, and saw the vehicle,

18 did you ever talk to any volunteer searchers

19 yourself?

20 A. No.

21 Q. Any volunteers come to your department and say, I

22 want to help, I'm going to be involved in some

23 kind of a search, anything like that?

24 A. None.

25 Q. Any contact with the Halbach family that you had?

1 A. I have never met them.

2 Q. Okay. And when you arrived at the Halbach -- at
3 the Avery property, if I could refer you to
4 Exhibit 18. I'm going to hand you this pointer,
5 maybe you could just show us where you went, how
6 you arrived, with the pointer, and then we'll
7 state it for the record as well?

8 A. I travelled from the Village of Mishicot onto
9 147, which isn't pictured in this diagram. And I
10 would have taken a left onto Avery Road, which is
11 a town road. It actually extends above this a
12 little bit.

13 Q. You are indicating the upper right hand corner of
14 the exhibit?

15 A. Yeah. The picture doesn't actually show Avery
16 Road real well. I would have travelled down this
17 roadway. I wasn't sure where the searchers were.
18 I continued -- this is just a main -- I think
19 it's a gravel portion. There's shops, there's
20 buildings, there's a residence right here. I
21 just continued to go straight down. Continues a
22 gravel portion, some sort of roadway. And then I
23 just continued all the way down here. Right
24 where this lighter area is, is about where I
25 stopped, as it gets a little bit darker here.

1 Q. Let me just state, the record reflects then that
2 your route of entry was a -- is a gravel dirt-
3 type road on the far right of the exhibit, that
4 runs sort of behind the cluster of buildings; is
5 that right?

6 A. Correct.

7 Q. Did you stop at -- First of all, had you ever
8 been to the Avery property? That's right, you
9 were there the night before.

10 A. Friday was the first time I can ever recall ever
11 being on Avery Road.

12 Q. Okay. And when you were there that night, were
13 you aware that the main area where the public
14 would go normally, would be branching on a fork
15 to the right as you come in there, because there
16 is an office building there; is that right?

17 A. Are you asking what my thoughts were when I first
18 got there? I'm not sure what you are asking.

19 Q. Did you ever go to the office, the night before
20 when you were there?

21 A. No.

22 Q. So you have never been there at all?

23 A. I have never been on that property, ever.

24 Q. Until --

25 A. With the exception of Friday, when I did the

1 consent search.

2 Q. I was going to say the morning before, it was
3 Friday morning when you were there, right?

4 A. Correct, 10:30 a.m.

5 Q. Okay. And in any event, you didn't stop anywhere
6 to talk with any of the owners or managers of the
7 property, to see if you had permission to go all
8 the way down to where you did; is that right?

9 A. Correct.

10 Q. And how far away from the Toyota RAV 4 were you,
11 where you parked your vehicle?

12 A. My vehicle is parked right about where that dot
13 is and, obviously, you see there is an indication
14 of where the Toyota is.

15 Pam and Nikole Sturm are also standing
16 right there. I remember them, they were pointing
17 to me the direction as to where that vehicle was.
18 I could see the vehicle from right here where I
19 was standing.

20 ATTORNEY FALLON: All right. Let the
21 record reflect the witness is using the laser
22 pointer to indicate a spot on the exhibit, which is
23 about five inches up from the bottom of the exhibit,
24 on the right hand side, and slightly to the right of
25 the area, or linear line where the RAV 4 was found.

1 In other words, about 4-inches from the far right
2 side and about five inches up from the bottom, in
3 the right hand corner.

4 THE COURT: Parties agree with that
5 characterization?

6 ATTORNEY BUTING: That's fine.

7 THE COURT: All right. The record will so
8 reflect.

9 ATTORNEY BUTING: I can clarify it a little
10 bit more.

11 Q. (By Attorney Buting)~ Are you aware there's a
12 little pond in that area, or a depression with
13 some sort of water?

14 A. Yeah. There's a depression, I think eventually
15 filled up one of those days because it was
16 raining or snowing.

17 Q. You were -- Your car was parked to the north of
18 that?

19 A. Yes.

20 Q. And you were looking across that depression or
21 pond-type area, to the south, where the RAV 4 was
22 found; is that fair?

23 A. That's pretty accurate.

24 Q. Okay. And about how many feet away from the
25 vehicle would you say?

1 A. I'm going to guess at least 200 yards.

2 Q. Okay. Did you eventually go up to the RAV 4
3 yourself?

4 A. Yes.

5 Q. And did you approach it yourself or with others?

6 A. I believe Sergeant Jason Orth was just ahead of
7 me. He arrived just before me. Lieutenant Todd
8 Hermann, we either walked together or we were
9 very close together. I don't remember if we
10 walked together or where he was.

11 Q. And when you did that, that was -- When you first
12 approached the vehicle, that was before the
13 Calumet people had arrived; that is, Investigator
14 Wiegert, or Dederling, or Sheriff Pagel?

15 A. Yes.

16 Q. Okay. And what were you able to determine when
17 you walked up to the vehicle?

18 A. Well, there was a Toyota RAV 4. I had in my hand
19 a manila folder that had the, I call it a
20 teletype or the registration of the vehicle, with
21 me. It was the same make and model, didn't have
22 license plates, it had a Le Mieux Toyota sticker
23 on the back, I believe. There were tree branches
24 covering it. There was a vehicle hood alongside
25 the passenger side. I walked to the driver's

1 side and I just -- I just started looking at the
2 VIN plate.

3 Q. Were you able to look inside the vehicle?

4 A. At one point I looked in the vehicle, yes.

5 Q. And did you see any blood or anything?

6 A. I did not observe any blood then, no.

7 Q. Didn't see any person, obviously?

8 A. Not that I could see.

9 Q. Did you have to use a flashlight to do that or
10 was the daylight bright enough?

11 A. I had to use a flashlight to get the whole VIN
12 number. I may have used -- I looked under the
13 car, to see if Teresa was under there.

14 Q. Did it appear that the drive train was disengaged
15 at all or did it look --

16 A. The grass was kind of high, just -- I made a
17 quick determination that there was nobody under
18 the vehicle, and from what I could see in the
19 vehicle, and confirm the VIN number, and I walked
20 out.

21 Q. Okay. Now, you -- you weren't actually able to
22 get all of the VIN numbers; isn't that right?

23 A. No, that's not right.

24 Q. Do you still have your report with you?

25 A. Yes.

1 Q. If you could look at Page 5, please.

2 A. Okay.

3 Q. Right about in the middle, there was a reference
4 of 11/05/05, 1100 hours?

5 A. Mm-hmm.

6 Q. Third line from the bottom, don't you say in your
7 report, I was able to verify all but the first
8 two numbers on the VIN.

9 A. That's what it says.

10 Q. So would that be more accurate than your memory
11 today?

12 A. If you read the next paragraph, I think it
13 explains it. The VIN was confirmed as the VIN
14 number for missing Halbach vehicle.

15 Q. Confirmed how?

16 A. I read all 17 numbers.

17 Q. So four minutes later -- At first you couldn't
18 read it, and then you did read it later?

19 A. The VIN plate was moved. And with the sunlight
20 and the windshield, you couldn't see it real
21 well. I got a flashlight from -- it was either
22 Orth or Hermann -- and I used the flashlight to
23 illuminate the numbers. I could get all the VIN
24 numbers then.

25 Q. Is this the VIN number that's found up on the

1 dashboard, by the driver's side?

2 A. Correct.

3 Q. You say it was moved?

4 A. Well, it looked like somebody had tampered with
5 it. It was bent. And it wasn't in original
6 factory condition.

7 Q. Okay. And you weren't able to see it without the
8 use of a flashlight?

9 A. I believe it was the first two numbers I couldn't
10 get. Then when I got the flashlight, I shined it
11 in there and I was able to get all 17 numbers.

12 Q. Okay. Did you check any of the doors?

13 A. I didn't touch that vehicle.

14 Q. Okay. So, how long were you in that presence of
15 the vehicle?

16 A. Well, I -- I arrived at 1100 hours, 1106 I
17 walked away from the vehicle. Sergeant Orth
18 stayed by the vehicle as security.

19 Q. Okay. And then you went back to where your car
20 was, or someplace else?

21 A. I went and made contact with Nikole and Pam, told
22 them that it was the vehicle. They started
23 crying, comforted them for a little bit, and then
24 Calumet County showed up.

25 Q. Okay. And then how long was it after that that

1 Calumet County showed up?

2 A. 1110 hours.

3 Q. When you say Calumet County, it's Sheriff Pagel,
4 Investigator Wiegert, and Investigator Dederling,
5 right?

6 A. My report says Sheriff Pagel and Investigator
7 Wiegert. I know Investigator Dederling was there
8 also. When he arrived, I'm not sure.

9 Q. Did you see how they entered the property?

10 A. They came down -- They came down the road that --
11 in the area where I was parked. So, that's all I
12 know.

13 Q. And then also in that area then was, when they
14 arrived, was yourself, Sergeant Orth -- and was
15 Lieutenant Hermann down there near your car?

16 A. Sergeant Orth was standing by the vehicle.

17 Q. Okay.

18 A. Lieutenant Hermann was by me somewhere, and then
19 Wiegert and Sheriff Pagel arrived.

20 Q. And you were all clustered in that lower right
21 hand corner of Exhibit 18?

22 A. Yeah. I would say between where the road ends,
23 and there's a car crusher right along the side
24 here.

25 Q. Okay. So that's about 11:10 a.m., and at that

1 time point there's six law enforcement officers
2 clustered in that area, including Orth?

3 A. I would say at least five.

4 Q. And to your knowledge, none of them had actually
5 obtained consent to come into the property and go
6 to that location, yet, from the property owners?

7 A. They did not.

8 Q. Okay. Did you actually have contact with the --
9 one of the owners or managers of the property?

10 A. Earl drove down there on his four-wheeler.

11 Q. At what point was that?

12 A. Well, I have Wiegert and Sheriff Pagel arriving
13 at 1110 hours. In my report I indicate, a short
14 time later a four-wheeler came to our location,
15 so.

16 Q. Five minutes or so?

17 A. Yeah, I would say.

18 Q. So in terms of time then, from about 11:00 a.m
19 when you first arrived -- Were you the first one
20 to arrive or Sergeant Orth?

21 A. We were all within a minute or two.

22 Q. Okay. So, from about 11 a.m. to about 11:15, one
23 or more law enforcement officers was down in the
24 Avery property, without yet having had any
25 contact, to gain consent from one of the owners?

1 A. At one point, Lieutenant Hermann made contact
2 with Earl and got consent for us to be there and
3 to start conducting an investigation.

4 Q. And that was at about 1117; is that right?

5 A. It's in the report here, somewhere. Yeah, 1117,
6 Lieutenant Hermann spoke with Earl Avery. Earl
7 gave verbal consent at this time for conducting
8 an investigation in the salvage yard.

9 Q. All right. Now, at what time was it determined
10 that there might be a change in the leadership of
11 the investigation?

12 A. I documented a time of 1145 hours. There was a
13 decision made to turn over the scene to Calumet
14 County Sheriff's Department and DCI.

15 Q. And did you participate in that decision?

16 A. I was present during the discussions. I don't --

17 Q. Who actually made the decision?

18 A. I think that was collectively made between Deputy
19 Inspector Schetter, Calumet County Investigator,
20 Sheriff Pagel. They were all in on the
21 discussions.

22 Q. Okay. Were there any -- any attorneys on the
23 scene at that point?

24 A. Attorney Kratz showed up.

25 Q. District Attorney Rohrer?

1 A. Yes. And I believe -- I believe Assistant
2 District Attorney Griesbach was out there also.

3 Q. And did any of the attorneys involved -- or did
4 they -- Were they involved at all in the decision
5 to transfer authority from Manitowoc Sheriff's to
6 the Calumet, if you know?

7 A. I don't know.

8 Q. Okay. Were you then asked to get information
9 together that could be placed in a warrant -- a
10 search warrant application?

11 A. I was asked to drive down some of the driveways
12 and get some physical legal descriptions of
13 certain pieces of property.

14 Q. And that would include the residences that you
15 were aware of, and the properties?

16 A. Yes.

17 Q. Including Steven Avery's trailer and garage?

18 A. Yes.

19 Q. And you got physical description of that, that
20 you could then -- but you had to drive over there
21 to get it; is that right?

22 A. Yes.

23 Q. Did you go inside any buildings during that
24 period of time?

25 A. Never left my vehicle.

1 Q. Okay. And then, did you participate in the
2 drafting of the warrant?

3 A. I'm sure I was asked some questions and gave
4 verbal information to Investigator Wiegert. We
5 were in phone contact with Calumet County's
6 paralegal or secretary, District Attorney Kratz.

7 Q. But did you -- Did you read the warrant before it
8 was presented to the Judge? I understand you
9 didn't sign it.

10 A. I may have, I don't know.

11 Q. It wasn't -- Since you weren't the one that was
12 signing it, it wasn't as important that you make
13 sure that everything in it was accurate?

14 A. I know there were some changes made, certain
15 people would review it, a phone call was made
16 back to the paralegal to change this or change
17 that. Eventually there was sufficient
18 information that we felt comfortable. I don't
19 remember if I specifically read it at the end.

20 Q. Okay. In any event you didn't, or did you, make
21 any corrections to the information in the
22 affidavit before it was presented to the Judge?

23 A. I know there were changes made periodically,
24 whether it was in direct correlation to what I
25 say, or based on myself reviewing it, I don't

1 know.

2 Q. Okay. But your position was that you weren't --
3 It wasn't directly your application, it was
4 Investigator Wiegert's; would that be fair?

5 A. He was the lead investigator, so, we were all
6 working together on it.

7 ATTORNEY BUTING: All right. I have no
8 other questions on this *Franks* part.

9 THE COURT: Very well. Mr. Fallon.

10 ATTORNEY FALLON: Thank you.

11 **CROSS-EXAMINATION**

12 BY ATTORNEY FALLON:

13 Q. Is it detective or investigator; does it matter?

14 A. Either one is fine.

15 Q. Okay. Detective Remiker, on Friday,
16 November 4th, you had no contact with any
17 volunteer, or anyone associated with
18 Mr. Hillegas' and Scott Bloedorn's volunteer
19 search efforts; would that be correct, on Friday,
20 November 4th?

21 A. No.

22 Q. All right. And on Saturday, November 5th, just
23 so that we're clear, you did not have any
24 conversations, on the phone or in person, with
25 anyone representing themselves to be a member of

1 Mr. Hillegas's search efforts?

2 A. No.

3 Q. Okay. So that's correct, you had no contact?

4 A. I'm not sure who Mr. Hillegas is.

5 Q. Okay. Fair enough. Did you have contact with
6 anyone representing themselves to be a searcher,
7 anyone that you believed was a volunteer
8 searcher, on Saturday?

9 A. The only contact I had was when I was attempting
10 to get more information from Investigator
11 Wiegert, about these two females down in the
12 gravel pit or salvage yard. He said, Here's
13 their number, call them.

14 Q. So --

15 A. And I called, I think I spoke to Nikole. And she
16 told me where she was and what was going on.
17 Other than that, I had no idea anybody was out
18 there.

19 Q. Other than that. Very well.

20 A. Other than that.

21 Q. Okay. Now, I would like to clarify something
22 regarding the phone conversations you had with
23 Investigator Wiegert on Saturday morning,
24 November 5th. On his second call with you,
25 that's to you, Investigator Wiegert said, there's

1 been a change of plans, correct?

2 A. Yes.

3 Q. And in that call, he indicated that his boss,
4 which you took to mean Sheriff Pagel?

5 A. I don't know who I took it as. He just said his
6 boss, whoever that is.

7 Q. Indicated that at that time that he wanted them,
8 presumably himself and other people involved in
9 the missing persons case, to reinterview Steven
10 Avery and another individual, possibly
11 Mr. Zipperer or someone?

12 A. That's correct.

13 Q. And as a matter of fact, the intention was that
14 we should go talk to them and see if we can gain
15 consent to look around the salvage yard, correct?

16 ATTORNEY BUTING: Objection as to what --
17 what their intent would be, since he's speculating
18 as to that.

19 ATTORNEY FALLON: I'm saying the stated
20 intent.

21 ATTORNEY BUTING: Okay.

22 Q. (By Attorney Fallon)~ Is that correct?

23 A. My understanding is that --

24 THE COURT: Your objection is withdrawn?

25 ATTORNEY BUTING: If it's focussed on what

1 was stated, yes.

2 THE COURT: Okay.

3 A. Can I hear your question again, I'm sorry?

4 Q. Sure. The reason for the reinterview was to --
5 one of the reasons -- was to see if they would
6 gain consent of Mr. Avery, or others at the
7 property, to look around the property, correct?

8 A. My impression was, it's kind of separate, do
9 some -- reinterview Steven and Mr. Zipperer; and
10 there's some searchers that are out there, they
11 are willing to do some searches. Maybe at some
12 point we can contact the Averys and see if they
13 would allow these searchers to go out on the
14 property.

15 Q. Maybe?

16 A. Possibly.

17 Q. That meeting never took place, correct?

18 A. Correct.

19 Q. And there was no other further discussions
20 regarding that idea, were there?

21 A. No.

22 Q. And the reason that occurred is because shortly
23 thereafter you got a call from Mr. Wiegert,
24 Investigator Wiegert, saying, Hey, we have one of
25 these people on the property, they think they

1 found the car?

2 A. Correct.

3 Q. And that's when things really changed?

4 A. A lot.

5 Q. All right. Now, when you went to the property
6 that Saturday morning, there were no gates
7 around, at that particular time, precluding entry
8 to the property, right?

9 A. No gates, no chains, nothing. I continued down a
10 gravel portion, if you extend Avery Road, right
11 down into the gravel pit. There was a road, went
12 past a residence, went by shops.

13 Q. Well, obviously, and it hasn't been made clear
14 yet, but this is a commercial business, right,
15 this is a salvage yard?

16 A. Yes.

17 Q. They were open for the public that day, right?

18 A. I would assume so, yes.

19 Q. In fact, there were other people milling around,
20 upon your arrival, right?

21 A. Yes.

22 Q. As a matter of fact, one of the reasons that Ms
23 Sturm called, she indicated, Well, there's some
24 people walking around here, and she was a little
25 uncomfortable, right?

1 A. Yes, there were people walking around the salvage
2 yard, traffic in and out.

3 Q. Traffic in and out. So people were coming and
4 going. In fact, since people were coming and
5 going, you actually had some of the officers
6 stopping or checking license plate numbers for
7 vehicles that were coming and going from the
8 property, as you members of law enforcement were
9 first arriving?

10 A. Yes.

11 Q. And that's because there was traffic in and out
12 of the Avery property. When I say the Avery
13 property, I'm referring to the salvage yard,
14 which is depicted on Exhibit 18?

15 A. There were people walking around, within these
16 cars, as we were down there. There were people
17 coming in off 147 and Avery Road, constantly.

18 Q. All right. As a matter of fact, one of the
19 reasons why it took Mr. Avery -- Mr. Avery, I'm
20 referring to Earl Avery -- a few minutes to get
21 down there is because he was talking to some
22 people; is that right?

23 A. That, I don't know.

24 Q. All right. Now, with respect to the location of
25 the vehicle, you did, yourself, walk from where

1 you parked your squad, up to the vehicle,
2 correct?

3 A. Yes.

4 Q. All right. Did Pamela Sturm and her daughter,
5 Nikole, walk with you to the vehicle, or was it
6 readily visible from where you stopped your car
7 and parked?

8 A. They stood right by my vehicle. I did not allow
9 them to go any further than that. I walked back
10 from my vehicle, back to where the Toyota was,
11 they stayed there. I returned, and they were in
12 that same location.

13 Q. All right. So you walked to the vehicle alone?

14 A. Lieutenant Hermann and Sergeant Orth were
15 either -- I think Sergeant Orth was just ahead of
16 me and Lieutenant Hermann was by me, or somewhere
17 in the vicinity.

18 Q. At the time you were investigating the VIN
19 characters, were you alone or were the other two
20 officers, with you?

21 A. The other two were with me.

22 Q. All right. And as a matter of fact, when you
23 first examined it, you were able to get 15 out of
24 the 17 characters?

25 A. First two, I couldn't see.

1 Q. Because of the light and position?

2 A. Yes.

3 Q. Now, a few minutes later you were able to borrow
4 a flashlight?

5 A. Yes.

6 Q. And you were able to get the last two vehicle
7 identification numbers?

8 A. I matched up all 17 from that -- that vehicle
9 registration that I had in my hand, with the
10 vehicle that was parked there.

11 Q. All right. And, now, describe for us, if you
12 will, you indicated there was some trouble
13 reading the VIN number, and why was that?

14 A. It was tampered with. It was moved. I guess my
15 best recollection would be as if somebody maybe
16 took a screwdriver or something and pushed it, or
17 moved it, or bent it. It wasn't in its normal
18 position. It wasn't flat.

19 Q. And did that contribute, along with the sunlight
20 and difficulty in initially reading all of the
21 numbers?

22 A. Yeah. Yeah, I'm sure it did.

23 Q. All right. If you would take the pointer and
24 tell us, you said you never left your vehicle
25 when you went out and looked for better -- or

1 physical descriptions of some of the buildings on
2 the parcel of land here. Tell us how you went
3 about that, if you would, with the pointer, show
4 us what you did, where you drove?

5 A. I drove from this lower portion here, back up
6 this road.

7 Q. So you are going south to north, back toward the
8 entrance?

9 A. Yes. And then I know I travelled down this road,
10 which actually leads to Steve's residence, Barb's
11 residence. And I continued to drive down here.
12 I parked at the end of this driveway.

13 Q. All right. Now, that's the driveway that runs
14 across the top of the exhibit?

15 A. Correct.

16 Q. And you showed us a course of driving east to
17 west; is that correct?

18 A. Yes.

19 Q. All right.

20 A. I either wrote down the legal descriptions, or I
21 was on a phone with Calumet County and I was
22 giving it to them. Then I drove back. I know I
23 got a legal description of Barb's trailer, which
24 is right there. And I don't know how many other
25 buildings I got information from.

1 And then I just drove back here and came
2 back down. In fact, my car battery went dead
3 here. I used somebody else's car. My car
4 actually stayed here. I used somebody else's car
5 and drove down here.

6 Q. For the initial foray, or did you have to go back
7 and redo it because -- or -- I'm not sure, when
8 did the car die on you?

9 A. When I went back -- When I was given instructions
10 to go get legal descriptions, I went back to my
11 car and then it was dead. And I went and grabbed
12 somebody else's car and I drove here and got
13 those descriptions and then I came right back.

14 Q. Now, how about the area where there's a cluster
15 of buildings in the northeast corner there,
16 toward the entrance way, there is one, two,
17 three, four, looks like five buildings; were
18 those included in the general description that
19 you were asked to get or did you somehow already
20 have that information?

21 A. I know I got Barb's and Steve's. I don't know --
22 I don't recall if I got descriptions of all these
23 other buildings. I don't know. I may have
24 gotten Chuck's trailer, which is right here. I
25 don't know about those other buildings. I don't

1 recall.

2 Q. All right. How that information was obtained?

3 A. I'm not sure.

4 Q. Okay. Now, when you first made contact with Earl
5 Avery, shortly after 11:10 a.m., he indicated to
6 you that most of the family, Charles, Allen,
7 Delores, and Steven, were up at their family
8 property in Marinette County, correct?

9 A. Yes.

10 Q. So he was the one that was more or less in charge
11 of the property and the business area at that
12 time, correct?

13 A. I think I asked him. I think he said he was part
14 owner, or owner, of the property or the business.

15 Q. At any time during that particular meeting with
16 him, the one shortly after 11:10 a.m., did he
17 ever ask you to leave?

18 A. No.

19 Q. Did he ever indicate any displeasure or -- with
20 your presence on the property?

21 A. Earl was very cooperative. He didn't know much
22 about what was going on, but he was very
23 cooperative.

24 Q. Right.

25 ATTORNEY FALLON: That's it.

1 THE COURT: Mr. Buting, any redirect?

2 ATTORNEY BUTING: Judge, I would move
3 Exhibit 20 into evidence. And I wonder, just so we
4 can clear the record, maybe the -- that second phone
5 call, we could just play it. It's only about a
6 minute or two and we would have the exact. There's
7 been some -- It's been described various ways as to
8 what Investigator Wiegert said about the use of
9 volunteers in searching the Avery property. I think
10 that would be the best evidence.

11 ATTORNEY FALLON: We could do that, or the
12 Court could listen to it at your leisure as well.
13 It doesn't matter to me; whatever you think is
14 easiest.

15 THE COURT: You don't object to it's
16 admission?

17 ATTORNEY FALLON: Not at all.

18 THE COURT: I will admit it into evidence.
19 I think it's just as easy for me to listen to it
20 later.

21 ATTORNEY BUTING: Okay.

22 THE COURT: It's in evidence.

23 ATTORNEY BUTING: The one thing that we
24 should maybe clarify, though, or that he could
25 clarify for here is, who's speaking. They don't

1 identify themselves. And the second phone call, the
2 first voice, I don't know if it's obvious to the
3 Court which one is Wiegert.

4 THE COURT: It's Detective Remiker calling
5 Mr. Wiegert?

6 ATTORNEY BUTING: No, that's the first one,
7 that's a longer call, the second one is much
8 shorter.

9 THE COURT: I'm sorry, the second one is
10 Wiegert calling Remiker.

11 ATTORNEY BUTING: Right.

12 THE COURT: Are they the only two
13 participants in the call?

14 ATTORNEY BUTING: Yes.

15 ATTORNEY FALLON: Yes.

16 THE COURT: Okay. I think I can figure it
17 out.

18 ATTORNEY FALLON: I have no objection to
19 the receipt of the exhibit, that's fine.

20 THE COURT: Exhibit 20 then is received. I
21 will ask the Clerk, are there any exhibits that have
22 been marked today that haven't been received yet?

23 THE CLERK: No.

24 THE COURT: Okay.

25 ATTORNEY BUTING: I do have just one last

1 question, now that I think about it.

2 REDIRECT EXAMINATION

3 BY ATTORNEY BUTING:

4 Q. You indicated there were other customers or
5 people in the salvage yard, right, when you were
6 there?

7 A. Yes.

8 Q. Nobody else's vehicles were parked down where you
9 were, right, operating vehicles, in other words,
10 not junk ones?

11 A. I don't believe so.

12 Q. So any customers that would be in that area,
13 their cars would be parked up by those business
14 buildings, or don't you know?

15 A. I have no idea where they are parked.

16 ATTORNEY BUTING: Okay. No further
17 questions.

18 ATTORNEY FALLON: Nothing.

19 THE COURT: Anything else? All right. The
20 witness is excused. Does the defense, then, have
21 any further witnesses on the **Franks** motion.

22 ATTORNEY BUTING: No, your Honor.

23 THE COURT: Does the State have any
24 witnesses to call on the **Franks** motion?

25 ATTORNEY FALLON: Just one.

1 THE COURT: Very well.

2 ATTORNEY FALLON: We have just one witness,
3 we call Earl Avery.

4 THE COURT: Mr. Avery, you can just step up
5 to the witness stand, please. Remain standing and
6 the Clerk will swear you in.

7 THE CLERK: Please raise your right hand.

8 **EARL AVERY**, called as a witness herein,
9 having been first duly sworn, was examined and
10 testified as follows:

11 THE CLERK: Please be seated. Please state
12 your name, and spell your last name for the record.

13 THE WITNESS: Earl Avery A-v-e-r-y.

14 ATTORNEY FALLON: Thank you.

15 **DIRECT EXAMINATION**

16 BY ATTORNEY FALLON:

17 Q. Mr. Avery, you are the brother of Steven Avery?

18 A. Yes.

19 Q. All right. And what do you do for a living, sir?

20 A. I run a salvage yard with my brother.

21 Q. All right. And which brother do you run the
22 salvage yard with?

23 A. Chuck.

24 Q. Is that short for Charles?

25 A. Yes.

1 Q. And you run the business which is depicted here
2 on Exhibit 18; that's a picture of the property
3 that you run?

4 A. Yes.

5 Q. All right. And just so I'm clear, who owns all
6 that land or property?

7 A. My mom, my dad.

8 Q. All right. And their names are Delores and Allen
9 Avery?

10 A. Yes.

11 Q. All right. And in terms of who keeps the books,
12 and works on the purchasing orders, and sales,
13 and things of that sort for the salvage yard
14 business?

15 A. That would be my dad, Al.

16 Q. I'm sorry, I didn't hear your answer?

17 A. That would be my dad, Al.

18 Q. All right. And how long have you been running
19 the business, as it were?

20 A. I couldn't tell you, last couple years.

21 Q. All right. And as of last November, that's how
22 it was, you and your brother, Chuck, were running
23 the business and your mom and dad were handling
24 the books, as it were?

25 A. I guess, yes.

1 Q. All right. And what kind of decisions that you
2 and your brother, Chuck, would make -- I mean
3 what kind of business, what activities, did you
4 do as in terms of running the business?

5 A. I mainly just disassembled cars, and picked up
6 cars, picked up junk cars. I was mostly on the
7 road.

8 Q. On the road. Who handled the customer traffic
9 that would come in? Say, for instance, I wanted
10 to come in and pick up an automobile part, or
11 maybe I wanted to sell you some crushed cars, or
12 I should say, not crushed, but crashed cars, or
13 something like that?

14 A. Whoever was there.

15 Q. Whoever was there. So that would either be you
16 or --

17 A. Me and Chuck.

18 Q. Chuck. Would your dad sometimes handle that
19 work?

20 A. No.

21 Q. How about your mom?

22 A. No.

23 Q. All right. Now, did your brother, Steve, was he
24 a co-owner of the business?

25 A. No.

1 Q. Was he an employee of the business?

2 A. No, he was just helping us out.

3 Q. He would help you out from time to time?

4 A. Yeah.

5 Q. What were some of the things that he would help

6 you out with?

7 A. The same thing, disassemble cars and get them

8 ready for to go down in the yard, and everything

9 else.

10 Q. All right.

11 A. Drain the fluids.

12 Q. And did your brother, Steve, have any say in how

13 the business was run, or pretty much you and

14 Chuck?

15 A. Mainly just me and Chuck.

16 Q. Any big decisions or final decisions, were those

17 made by you, or made by your dad?

18 A. Mostly my dad.

19 Q. All right. Now, in recent years, your dad was

20 gone quite a bit to your property up in Marinette

21 County; would that be fair?

22 A. Huh?

23 Q. Would that be fair, he would take a lot of time

24 off, you know, and go to the property in

25 Marinette County?

1 A. Yeah. Just Monday through Thursday, he was
2 usually at the yard.

3 Q. Monday through Thursday. And he would take long
4 weekends to go up north?

5 A. Yeah.

6 Q. All right. That had been going on for a couple
7 years?

8 A. Yes.

9 Q. All right. So, for the day-to-day business, you
10 and your brother, Chuck, would pretty much handle
11 most things that came up?

12 A. Yes.

13 Q. All right. Now, what were the business hours for
14 the salvage yard?

15 A. Eight to five, Monday through Friday.

16 Q. All right. How about Saturdays?

17 A. Eight till noon.

18 Q. Eight till noon. All right. If, for instance, I
19 wanted to come in and see if you had any parts
20 for a particular car that I needed to repair,
21 would I come in and check in the office or could
22 I, if I wanted to, just wander through the yard
23 and see if I could find something that might fill
24 my need?

25 A. No, you have to check in the office.

1 Q. Okay. And so then we probably would come in, say
2 I'm looking for a part to a 1999 Chevrolet
3 Impala, and you might say, well, try this part of
4 the yard?

5 A. Yes.

6 Q. Okay. All right. Of your family, Mr. Avery, who
7 actually lived in the parcel of land that's known
8 as the Avery property, or the -- Who lived there,
9 who had residences?

10 A. It was my brother, Chuck, and my ma and dad, and
11 that was it.

12 Q. Your brother, Steve, had a residence, right?

13 A. Yeah, but that wasn't on Avery's Auto Salvages.

14 Q. I'm sorry?

15 A. That wasn't on Avery's Auto Salvages property.

16 Q. Of the 40 acres, 37 was actually salvage yard
17 property; would that be about right?

18 A. I guess, yes.

19 Q. Something like that?

20 A. Yeah.

21 Q. All right. And your sister, Barb, was -- where
22 was her property?

23 A. Hers was down on the end.

24 Q. All right.

25 A. Yeah.

1 Q. Now, I would like to direct your attention to
2 Saturday morning, November 5th. Did their come a
3 time where you had some people come to your
4 property expressing an interest regarding the
5 whereabouts of Teresa Halbach?

6 A. Yes.

7 Q. All right. Did you have more than one person
8 come to the yard that morning?

9 A. Yes.

10 Q. Um, tell us about that, you had someone come?

11 A. Yeah, I had -- At first I had two -- two people
12 come. I don't know what time it was, but there
13 was a man and a lady there that asked if they
14 could take a ride through the yard, just to take
15 a look. And I told them, go ahead, I'm more than
16 willing to help you guys out.

17 Q. Did they give you anything to hang up in the
18 office?

19 A. Yeah, they gave me a poster or something to hang
20 up in the office. Actually, they asked me if
21 they could hang it up and I said, yes.

22 Q. Okay. So they did, and they kind of asked if
23 they could take a ride around?

24 A. Yes.

25 Q. Do you know if they did?

1 A. As far as I know, they went down into the pit and
2 they took a ride around, but I didn't see them
3 leave after that.

4 Q. Okay. Now, did you have other visitors that had
5 come that morning, expressing an interest in
6 Teresa Halbach's whereabouts?

7 A. Yes.

8 Q. Tell us about that.

9 A. I was outside with a neighbor, talking to a
10 neighbor outside. And they come up to me and
11 they asked me -- there were two ladies, maybe it
12 was about 45 minutes after.

13 Q. After the first group?

14 A. Yes.

15 Q. Okay.

16 A. And they asked me if they could take a walk. And
17 I told them there was a man and a lady down there
18 already, that they are more than welcome to go
19 down and take a walk through the yard. And I
20 kind of pointed to them, where they can start, or
21 whatever.

22 Q. Mm-hmm. So these two women asked permission to
23 look around?

24 A. Yes.

25 Q. All right. And you -- And they told you they

1 were looking for anything that would help them
2 locate Teresa Halbach?

3 A. Yes.

4 Q. All right. And you had no problem with that?

5 A. I had no problem with it.

6 Q. All right. And what was your thinking there?

7 A. Huh?

8 Q. What was your thinking? Why did you have no
9 problem with that?

10 A. I was just trying to help them out.

11 Q. As a matter of fact, you would want someone to
12 help out if it was your sister who was missing,
13 right?

14 A. Yes.

15 Q. So, they came in and they started looking around,
16 and they decided what direction they were going
17 to go, or did you make any suggestions?

18 A. Well, I told them, I kind of just pointed, you
19 know, what was down in the -- how to get down
20 into the pit and how to get on the top. That's
21 about all I did.

22 Q. Did you give them any directions, or express
23 anything about the roads, or the condition of the
24 yard, or anything they should do to be careful,
25 so they didn't get hurt?

1 A. No, I didn't. I don't think I did any way.

2 Q. Okay. After they came in and asked permission,
3 you let them go and look around?

4 A. Mm-hmm, yes.

5 Q. All right. As being one of the owner's of the
6 business, would it be a fair idea that you would
7 have a pretty good idea of what kind of vehicles
8 you have in the salvage yard?

9 A. Yes.

10 Q. All right. And you would need to know that for
11 your own inventory purposes in case somebody came
12 and asked questions about do you have a part for
13 such and such and whether or not you have that
14 vehicle on hand?

15 A. Yes. Like I said before, is a lot of times I was
16 more on the road picking vehicles up. And I
17 usually remember what kind of vehicles I pick up
18 or what kind of vehicles I put down in the yard.

19 Q. All right.

20 A. With the loader and that.

21 Q. Okay. Did your brother, Chuck, do that kind of
22 work or were you pretty much involved in securing
23 the vehicles for use in the salvage yard?

24 A. No, he did it once in awhile to.

25 Q. Once in a while. Now, if a vehicle were brought

1 in by, say your brother, Chuck, or anyone else,
2 at some point would you have knowledge that that
3 was brought in just so that you would know what
4 is on the property?

5 A. Yes.

6 Q. Okay. Now, were you surprised when they found
7 this Toyota RAV 4 that appeared to be Teresa
8 Halbach's vehicle?

9 A. Yes, I was.

10 Q. And did you even have any idea that that vehicle
11 was there?

12 A. No. And I didn't, after I went down there to see
13 what was going on, I still didn't know that it
14 was down there. I still couldn't see it.

15 Q. All right.

16 A. I was down there for an hour, until they pointed
17 it out to me. And then I finally seen it.

18 Q. All right. You had no idea that vehicle was
19 there?

20 A. No. It was like two days -- two days or three
21 days before that, we were just through there
22 rabbit hunting with my brother-in-law and that
23 vehicle wasn't there.

24 Q. All right. Well, tell me about that, that rabbit
25 hunting; when did that happen, do you think?

1 A. It was during the week my brother-in-law come
2 over. He wanted to hunt for some rabbits.

3 Q. Okay. And what's his name, by the way?

4 A. Robert Fabian.

5 Q. I'm sorry?

6 A. Robert Fabian.

7 Q. Fabian?

8 A. Yes.

9 Q. Okay. So, you were down in that portion of the
10 yard where that vehicle was found?

11 A. Yes.

12 Q. All right. Now, is that something you guys did
13 fairly regularly, you would hunt rabbit, or
14 squirrel, or other small game, that --

15 A. That was --

16 Q. -- that might be on the property?

17 A. That was the first time we did it that year.

18 Q. That year?

19 A. Yeah. In the fall like that, yes.

20 Q. Yeah. So, two or three days earlier, as far as
21 you know, that vehicle wasn't there?

22 A. No, it wasn't there. I'm not sure if it was
23 Wednesday or Thursday.

24 Q. That you were rabbit hunting?

25 A. That we were right through that area. We were

1 through the whole yard and that vehicle wasn't
2 there.

3 Q. Okay. Now, Mr. Avery, a couple last questions,
4 originally, on that Saturday afternoon, after the
5 police officers started showing up, I think one
6 of them indicated that you may have drove down on
7 a four-wheel drive -- a four-wheeler vehicle, to
8 find out what was going on; is that right?

9 A. Yes.

10 Q. And you talked to one of the officers there?

11 A. Not at first. At first they just told me to sit
12 there. For about 45 minutes I sat there. Then
13 they came up to me and then they were telling me
14 what was going on.

15 Q. What was going on. So they gave you a full
16 debriefing then?

17 A. Somewhat, yes.

18 Q. All right. Now, before that, however, or shortly
19 after they arrived, one of the officers asked
20 you, just to make sure, that you had no
21 problem --

22 ATTORNEY BUTING: Objection leading.

23 THE COURT: Sustained.

24 ATTORNEY FALLON: All right.

25 Q. (By Attorney Fallon)~ Somewhere between 11 and

1 11:30, were you approached by an officer, to your
2 recollection?

3 A. I don't remember.

4 Q. You don't remember. All right.

5 A. All I know, I sat down there for about 3, 3 1/2
6 hours.

7 Q. At some point -- Let me ask you this. At some
8 point during your conversation with law
9 enforcement, did they ask you if they had your
10 continued permission to be there?

11 A. No, they didn't.

12 Q. You don't recall?

13 A. No, they didn't.

14 ATTORNEY FALLON: Nothing else.

15 ATTORNEY BUTING: I'm sorry?

16 ATTORNEY FALLON: That's it, your witness.

17 THE COURT: Mr. Buting.

18 ATTORNEY BUTING: Thank you.

19 **CROSS-EXAMINATION**

20 BY ATTORNEY BUTING:

21 Q. Now, you mentioned that this Avery Auto Salvage
22 business was -- the day-to-day stuff was run
23 primarily by you and your brother, Chuck, right?

24 A. Yes.

25 Q. Now, once Steven Avery was released from prison,

1 after his wrongful conviction, he came to live on
2 the Avery area compound as well, did he not?

3 A. Yes.

4 Q. And that was about two years before this incident
5 that we're here today about?

6 A. Yes.

7 Q. So, the fall of 2003 is when he came to live
8 there?

9 A. Yes.

10 Q. And during that two years, you said he wasn't an
11 employee, but he did do work at the yard,
12 correct?

13 A. Yes, he helped us out.

14 Q. In fact, he did a lot of the same things that you
15 and Chuck did, when it came to the cars?

16 A. Yes.

17 Q. He would disassemble them, prepare them for
18 either crushing or storage, as a salvage vehicle?

19 A. Yes.

20 Q. He would go with you out on the road to go pick
21 up vehicles on your tow truck or flat bed to
22 bring to the yard?

23 A. Yes.

24 Q. And he was paid cash for his work as well, was he
25 not?

1 A. That I don't know nothing about.

2 Q. Okay. Because you didn't have anything to do
3 with that part of it?

4 A. No.

5 Q. And directing your attention to Saturday,
6 November 5th, you are saying that it was only
7 about 45 minutes before the two women came, that
8 a different two -- a different couple arrived?

9 A. Yes, there was a man and a woman. I think they
10 were more younger, and they took a ride through
11 the yard, yes.

12 Q. When you say took a ride through the yard, on
13 what kind of a vehicle?

14 A. I don't remember that.

15 Q. They would drive their own car, not a
16 four-wheeler?

17 A. No, they drove their own vehicle. They asked me
18 if it was all right. And I told them, yes, it
19 was.

20 Q. So, the general custom, in fact, is -- maybe you
21 could use your pointer and point to Exhibit 18
22 and show me where your office is?

23 A. I have got to find the office. The new office is
24 right in here.

25 Q. And the record should reflect he's pointing on

1 Exhibit 18 to the upper right hand corner, the
2 building farthest to the right edge, actually
3 appears to be about the largest building in the
4 photograph.

5 ATTORNEY FALLON: That's fair -- That's
6 fair, Judge.

7 THE COURT: The record will so reflect.

8 Q. (By Attorney Buting)~ And when you are open for
9 normal business, 8 to 5 on weekdays and 8 to noon
10 on Saturday, people come up to that office first,
11 before they start roaming around in the yard?

12 A. Yes, they do.

13 Q. And that's part of your policy and custom?

14 A. Yes.

15 Q. You don't allow members of the public to just
16 come at off hours and start roaming through the
17 yard, without your permission?

18 A. Not unless they want to get chased down with a
19 four-wheeler.

20 Q. Would it be fair to say that the area on Exhibit
21 5, that shows really most of that area that is
22 filled with cars; is that sort of like your
23 stockroom of your business?

24 A. Yeah, you could say that, yes.

25 Q. So people first come to you to ask whether or not

1 you have a particular part for a particular
2 vehicle, like a 1995 Chevy, something or other?

3 A. Yes.

4 Q. You have got these cars arranged in various
5 groups?

6 A. Somewhat, yes.

7 Q. And you can tell them, from your inventory, yes,
8 we have a '95 Chevy, whatever, and direct them,
9 generally, where to go?

10 A. Sometimes, yes.

11 Q. Do they take the parts off themselves, or do you
12 take the parts off for them?

13 A. Sometimes they take a part off, sometimes we take
14 the part off.

15 Q. And you have regular customers, I assume, right,
16 that you recognize?

17 A. Yes.

18 Q. Now, when the man and the woman arrived, they
19 came up to the office that you mentioned there?

20 A. Yes.

21 Q. And you were the only one of the Avery's still
22 left on the property, so were you up by the
23 office, or in it?

24 A. I don't recall, but I think I was in the office,
25 yes, when the first two came.

1 Q. And they gave you the poster, or they hung the
2 poster of Teresa?

3 A. Yes.

4 Q. And then they themselves started driving down
5 looking through the junkyard, right?

6 A. I think so, yes.

7 Q. Did you see which way they went?

8 A. No, I didn't.

9 Q. But you never saw them leave.

10 A. No, I didn't see them leave.

11 Q. And you think, then, it was about 45 minutes or
12 an hour later, when the two women came?

13 A. Yes. Roughly, yes.

14 Q. And were you inside the office at that time or
15 were you out?

16 A. I was outside.

17 Q. You were outside when they drove up?

18 A. Yes.

19 Q. Can you show us on the pointer where they drove
20 up?

21 A. I'm not sure where they drove up, but where this
22 vehicle is right here is where I was standing, by
23 a pickup truck. And they come from -- they --
24 actually they must have been parked over here.

25 Q. Record should reflect you are pointing to sort of

1 an open, dirt parking kind of area in the front
2 of the office, that you previously described. Is
3 that area generally like a parking area, where
4 people come up --

5 A. Yes, it is.

6 Q. -- customers?

7 A. Yes.

8 Q. So customers park in at that little area there?

9 A. Yes.

10 Q. In front of the office building? Yes?

11 A. Yes.

12 Q. Okay. And these two women did the same thing,
13 basically?

14 A. Yes.

15 Q. And did you -- You said you pointed how to get
16 down into the pit. Can you show me what you did
17 and where you were when you were doing that?

18 A. We were standing right in here and I just -- I
19 just verbally told them that this road here goes
20 up on the top here and behind the blue building
21 here.

22 Q. The record should reflect you're pointing to the
23 upper six inches or so of the diagram where
24 there's some vehicles.

25 A. And then I pointed down here. I told them to

1 take the main road down the pit hill and that
2 goes down into the pit.

3 Q. So, did you walk out to the edge of where that
4 dirt parking lot ends and kind of --

5 A. No.

6 Q. -- suggest anything?

7 A. No, I didn't.

8 Q. You didn't give them any direction as to which
9 area to start.

10 A. No, I'm pretty sure they said that they would
11 just walk around and look. I'm not sure.

12 Q. The road that runs along the sort of a dirt
13 driveway, that runs along the right side of that
14 exhibit, do you see that? It runs the full
15 length, from the top down towards the bottom?

16 A. Yes.

17 Q. And that's behind the office?

18 A. Yes, it is.

19 Q. That's not a public road that's open for
20 customers, right?

21 A. No, it isn't.

22 Q. So --

23 A. The public road ends up here.

24 Q. Public road ends up at the top right corner?

25 A. Yes.

1 Q. Customers are allowed to come onto the property
2 into the parking area in front of the office,
3 right?

4 A. Yes.

5 Q. But the road that goes behind it, all the way
6 down to the lower left -- lower right corner of
7 the property, is not an area that is open to the
8 public; is that right?

9 A. Yes, that's correct. That's Chuck's driveway.

10 Q. Okay. Yes, because Chuck's -- Could you
11 indicate -- maybe we should, just for the
12 record--

13 A. Chuck's house is right here, and this is his
14 driveway here.

15 Q. I'm going to have you, if you wouldn't mind, use
16 this red marking pen and just put some numbers on
17 some of these buildings?

18 A. What do you mean?

19 Q. If you could just put a number one on the top --
20 on the roof area of the new office building, as
21 you call it.

22 A. This is number one.

23 Q. Make a bigger number right in the middle, with a
24 circle. Okay. And Chuck's residence is where,
25 if you could put a number two. And the area that

1 would be the stopping point, beyond which the
2 public is not generally invited, without
3 permission, would be where, number 3? Well, they
4 are allowed to come down into the parking lot
5 area?

6 A. Yes, they are, but this is kind of like a private
7 road here. Yeah, I would say like right from --
8 well, even with the buildings, but we still.

9 Q. What about in this area?

10 A. No. No, that there is -- I would say mostly like
11 right into here.

12 Q. All right. Why don't you put a number four where
13 people are -- the public is not generally allowed
14 to go beyond, without permission. Okay. And you
15 have marked that with number four?

16 A. Yeah, number 4.

17 Q. And the private road that goes behind, that goes
18 to Chuck's residence, could you put a number -- I
19 see you put a four up there too.

20 A. Yes.

21 Q. At the top of that where, beyond which it is
22 considered private. All right. You can sit
23 down.

24 ATTORNEY BUTING: I have nothing further at
25 this time.

1 THE COURT: Mr. Fallon, any further
2 questions for this witness?

3 ATTORNEY FALLON: Pass.

4 THE COURT: All right. Mr. Avery, you are
5 excused.

6 ATTORNEY FALLON: We have no other
7 additional witnesses per this particular motion.

8 THE COURT: All right. Given the number of
9 witnesses we have got on the other motions, I don't
10 think I'm going to hear oral argument at this time.
11 Hopefully, there will be time for that tomorrow.

12 Which motion are the parties proposing
13 to move on to next?

14 ATTORNEY BUTING: Judge, I think Lieutenant
15 Lenk is standing by. Could I have just one moment
16 to see whether there is one officer that we may not
17 need to use and he's on vacation here today, with
18 his family waiting. If I could just take a moment
19 to look over my notes.

20 THE COURT: Go ahead.

21 ATTORNEY BUTING: All right. Judge, we're
22 releasing one of the officers that was subpoenaed,
23 who was on vacation today, and we do have Lieutenant
24 Lenk that we wanted to take telephone testimony
25 from. I think he's available. I'm not sure exactly

1 how we connect him.

2 THE COURT: All right. We'll take just a
3 quick couple minute break. You can come back with
4 me. If you have got his number, I will have my
5 Judicial Assistant get him on the line and we will
6 be set to go.

7 ATTORNEY BUTING: Okay. Thank you.

8 (Brief recess taken.)

9 THE COURT: Lieutenant Lenk, you are now on
10 the public address system in the courtroom. You are
11 being called as a witness by Attorney Buting, on
12 behalf of the defendant. Is that correct,
13 Mr. Buting?

14 ATTORNEY BUTING: Yes, it is, your Honor.

15 THE COURT: Before we begin, Mr.Lenk, I'm
16 going to ask you to raise your right hand. Do you
17 have it raised?

18 THE WITNESS: Yes.

19 **LIEUTENANT JAMES M. LENK**, called as a
20 witness herein, having been first duly sworn, was
21 examined and testified as follows:

22 THE COURT: Please state your name and
23 spell your last name for the record, please.

24 THE WITNESS: James M. Lenk, L-e-n-k.

25 THE COURT: All right. Mr. Buting, you may

1 proceed. You may have to sit to make sure you are
2 close enough to the microphone so he can hear you.

3 ATTORNEY BUTING: All right. Can you hear
4 me, Lieutenant?

5 THE WITNESS: Yes, I can.

6 **DIRECT EXAMINATION**

7 BY ATTORNEY BUTING:

8 Q. All right. How long have you been a police
9 officer?

10 A. Total?

11 Q. Yes.

12 A. Approximately 24 years.

13 Q. And have you been, or are you, a detective rank?

14 A. Yes, I am.

15 Q. And how long has that been?

16 A. Approximately five years.

17 Q. And your present rank is what?

18 A. Lieutenant.

19 Q. And in the hierarchy of the Manitowoc Sheriff's
20 Department, how many officers are above you in
21 rank?

22 A. There would be four.

23 Q. That would be the sheriff himself?

24 A. Yes.

25 Q. And what, three other -- I'm sorry. And the

1 Inspector Hermann?

2 A. Yes.

3 Q. And then two deputy inspectors?

4 A. That's correct.

5 Q. So you are the 4th highest ranking officer at the
6 department?

7 A. Yes.

8 Q. And was that also true on November 5th, 2005?

9 A. Yes.

10 Q. Now, I assume as part of your training and
11 experience you have learned how to go about
12 executing search warrants, right?

13 A. Yes.

14 Q. And can you tell me approximately how many search
15 warrants you have executed, or participated in
16 the execution of?

17 A. That would be hard to say, probably a couple
18 dozen. It would be hard to say.

19 Q. Only a couple of dozen search warrants in your
20 whole career?

21 A. In the whole career? Oh, probably, I don't know,
22 30 or 40.

23 Q. Okay.

24 A. It's hard to tell.

25 Q. And have you had any training, or on the job type

1 training, that tells you how you are supposed to
2 go about legally executing a warrant?

3 A. Just the training through the academy and while
4 on the job.

5 Q. So you learned about no knocks, and whether you
6 can just break in, or whether you have to knock
7 first and all of that?

8 A. Correct.

9 Q. Now, how did you first become involved in the
10 Teresa Halbach matter?

11 A. I first became involved on November 4th, when we
12 received a call to assist on doing an interview
13 on the Avery location by the Calumet County
14 Sheriff's Department?

15 THE COURT: Excuse me, Mr.Lenk, I'm going
16 to interrupt you a second here because I intended,
17 before you began your testimony, to have a personal
18 discussion with the defendant. And I believe,
19 Counsel, you discussed this matter with your client?

20 ATTORNEY BUTING: That's correct, Judge.

21 THE COURT: Mr. Avery, your attorney's
22 discussed this with me yesterday, and informed me
23 that they talked to you about this, but do you
24 understand, that if you wished, you may well have
25 the right to have Mr. Lenk testify at this hearing,

1 in person, instead of by telephone? Do you
2 understand that?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: If that happened, you would not
5 only be able to hear what he had to say, but you
6 would also be able to observe his demeanor on the
7 witness stand; do you understand that?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: Have you had adequate
10 opportunity to discuss, with your attorneys, your
11 right to require Mr. Lenk to appear here in person
12 today, as opposed to by telephone?

13 THE DEFENDANT: Yes, I did.

14 THE COURT: Do you wish any more time to
15 discuss this matter with your attorneys?

16 THE DEFENDANT: No, this is good.

17 THE COURT: Okay. And for the purposes of
18 this hearing only, that is, not any future
19 proceedings or certainly a trial, do you have any
20 objection to the Court allowing Mr. Lenk to testify
21 and be cross-examined by telephone, rather than
22 appearing in person?

23 THE DEFENDANT: No, I don't.

24 THE COURT: Very well. That applies to the
25 testimony he's given thus far?

1 THE DEFENDANT: Yes, it does.

2 THE COURT: The Court is satisfied that
3 Mr. Avery is willing to cooperate with this
4 procedure and I have already been informed by
5 counsel that neither counsel objects; is that
6 correct, Counsel?

7 ATTORNEY FALLON: That is correct.

8 THE COURT: It's probably been implicit in
9 the fact that we made arrangements for this
10 telephone conversation, but it should be placed on
11 the record as well. And, Mr. Buting, since he's
12 your witness, you have no objection to the witness
13 appearing by phone?

14 ATTORNEY BUTING: That's correct, Judge.
15 We preferred his personal appearance, but he had
16 plans that were important enough, out of state, that
17 we agreed to arrange this by phone.

18 THE COURT: Very well. All right. You may
19 proceed with your examination.

20 BY ATTORNEY BUTING:

21 Q. Lieutenant, you mentioned November 4th, but I
22 want to direct your attention to November 3rd,
23 which is actually Thursday night; do you recall
24 being advised at that time about the Teresa
25 Halbach missing person Complaint?

1 A. Yes, I believed our detective unit was called and
2 advised that there was a missing -- that they
3 needed assistance.

4 Q. And was it Sergeant Colborn who contacted you
5 about this, or who did you speak with first?

6 A. I don't recall who I spoke with first.

7 Q. But at some point did you place a call to Calumet
8 yourself and speak to Investigator Wiegert?

9 A. I'm not -- I don't believe I did. I believe it
10 may have been Detective Remiker that did that.

11 Q. And at what point did you learn that Steven
12 Avery's name had come up in this matter?

13 A. I'm not sure if it was the 3rd or the 4th, that
14 he had been interviewed regarding this matter.

15 Q. And you learned that -- or did you learn that
16 Sergeant Colborn had actually gone out to his
17 residence and spoken with him about any knowledge
18 he had regarding Teresa Halbach?

19 A. Yes, I learned later, I think it was possibly the
20 4th, that he had already interviewed Mr. Avery.

21 Q. And, actually, you had a meeting on November 3rd
22 with Detective Remiker and Investigator Dederling
23 from Calumet County, did you not?

24 A. Yes, I believe it was up in our detective unit.

25 Q. Now, from that point forward, were you the lead

1 supervising officer with regard to Manitowoc
2 County's involvement in the request for
3 assistance from Calumet on this missing person
4 Complaint?

5 A. At that time I would have been the lead officer,
6 yeah.

7 Q. Okay. And so you would be kept informed by
8 Detective Remiker, or others, Sergeant Colborn,
9 as to what was going on?

10 A. Yes.

11 Q. And you would assign officers to work on the
12 matter?

13 A. Yes, I would have assigned officers to assist
14 Calumet County.

15 Q. Now, on the following day, November 4th, were you
16 asked to go to Steven Avery's house or trailer?

17 A. I believe I received a call from Calumet County
18 asking if we would go out and reinterview
19 Mr. Avery.

20 Q. And this would have been the second interview,
21 because Sergeant Colborn had spoken to him the
22 prior night?

23 A. Correct.

24 Q. And at whose request was that made, somebody from
25 Calumet County, you said, right?

1 A. Yes, sir.

2 Q. Do you know who that was?

3 A. I don't recall. It may have been Detective
4 Wiegert, but I'm not totally positive.

5 Q. And did you go to Steven Avery's property?

6 A. Yes, I went along with Detective Remiker, to his
7 property.

8 Q. Do you remember what time?

9 A. I don't recall offhand, I believe it was in the
10 afternoon, but I don't recall.

11 Q. Could it have been 10:30 in the morning?

12 A. Like I said, I'm not sure what time it was.

13 Q. Okay. But there was only one time on that day,
14 November 4th, when you went over to Steven
15 Avery's residence; is that right?

16 A. That's correct.

17 Q. And did you -- you didn't have a warrant at that
18 point, I assume?

19 A. No, sir.

20 Q. Did you speak with Mr. Avery?

21 A. Yes, we did.

22 Q. Did you ask permission to look through his
23 trailer?

24 A. Yes, I believe Detective Remiker asked him,
25 towards the end of the interview, if he would let

1 us look through his trailer.

2 Q. And did he agree with that?

3 A. Yes, he did.

4 Q. Was he cooperative?

5 A. Yes, he was.

6 Q. And did you actually enter the trailer?

7 A. Yes, we did.

8 Q. So both you and Detective Remiker?

9 A. That's correct.

10 Q. And did you walk through the whole trailer?

11 A. Detective Remiker walked through the trailer; I

12 stood in the living room, with Mr. Avery.

13 Q. Did you walk back to the bedroom at all?

14 A. No, sir.

15 Q. Did Mr. Avery try to prevent yourself, or

16 Detective Remiker, from going in any particular

17 area of the trailer?

18 A. No, sir.

19 Q. And did you find anything that would indicate

20 that Teresa had ever been in the trailer?

21 A. Not at that time, no, sir.

22 Q. And then you left the residence; did you go into

23 any other buildings at that time?

24 A. No, sir, we left and thanked him for his

25 cooperation.

1 Q. Didn't go to -- into the garage?

2 A. I don't believe so. I think we just went into
3 the trailer.

4 Q. And did you have any other investigation, or
5 involvement with the investigation, on that
6 Friday?

7 A. No, sir.

8 Q. Did you ever have any phone conversations with
9 any volunteer citizens who wanted to help search
10 for Teresa or her vehicle?

11 A. No, sir.

12 Q. On any day?

13 A. No, sir.

14 Q. Are you aware whether or not anyone in your
15 department had conversations with any volunteer
16 citizens who wished to help search for Teresa, or
17 her vehicle?

18 A. I'm not aware of any, no.

19 Q. Now, turning your attention to November 5th,
20 Saturday, were you on duty on that day?

21 A. No, sir.

22 Q. Did you receive a call from somebody that told
23 you that they believed that Teresa's vehicle had
24 been located on the Avery property somewhere?

25 A. Yeah, I received a call from Detective Remiker,

1 who was on duty, and he gave me that information.

2 Q. And where were you at the time of the call?

3 A. I was actually looking at an RV in Menasha.

4 Q. Okay. And did you then place yourself on duty
5 and come in?

6 A. I informed him that I would be coming back and
7 that I would be coming out to that location.

8 Q. And did you, in fact, arrive at the Avery
9 property?

10 A. Yes.

11 Q. Do you know what time?

12 A. I'm not sure of the exact time, somewhere 6:30 or
13 7 that evening. I'm not positive.

14 Q. Do you know whether a search warrant had been
15 issued already?

16 A. I don't know. I don't think so, at that time,
17 but I'm not positive.

18 Q. Did you see the RAV 4 Toyota vehicle on the
19 property?

20 A. No, I didn't.

21 Q. Did you go down to the area where it had been
22 located?

23 A. I went down there with another officer. He
24 showed me the location where it was, but I didn't
25 get -- I didn't really see it. I mean, from what

1 I seen, it was getting dark and it was hidden,
2 but I didn't get a good look at it.

3 Q. Did it look like there was a tarp on it, at that
4 time, or not?

5 A. I don't recall. I don't believe so, but I don't
6 really recall.

7 Q. In any event, you didn't walk up to it?

8 A. No, sir.

9 Q. At what time were you advised that your
10 department had turned over the investigative
11 authority to Calumet County?

12 A. Shortly after I arrived, I received that
13 information.

14 Q. You never got a call about that earlier?

15 A. No.

16 Q. And you didn't have any role in the search
17 warrant that was obtained?

18 A. No, sir.

19 Q. All right. Now, on the evening of November 5th,
20 did you participate in a search of Steven Avery's
21 trailer?

22 A. Yes, I did.

23 Q. And this was about 7:30, I believe.

24 A. Approximately, yes.

25 Q. Were you also with Sergeant Colborn?

1 A. Yes, I was.

2 Q. And was there anyone else with you when you
3 entered the trailer?

4 A. Detective Remiker and Sergeant Tyson from Calumet
5 County.

6 Q. So four officers went into his residence to
7 execute the search warrant?

8 A. Yes.

9 Q. And three of whom were from Manitowoc Sheriff's
10 Department; is that right?

11 A. Correct.

12 Q. And do you know how long you were searching his
13 trailer?

14 A. I think it was approximately 2 hours or so, 2 1/2
15 hours.

16 Q. All right. Now, can you describe for me how many
17 rooms there are in the trailer?

18 A. As you walk in, there's a living room area. If
19 you turn to your left and go down the hall, there
20 is a bedroom on the right. If you go down a
21 little farther, it is the bathroom area. After
22 the bathroom area, is the final bedroom,
23 Mr. Avery's bedroom. If you come in the front
24 door and go to the right, there is a small like
25 kitchenette and the kitchen area.

1 Q. So, it's a relatively small residence; would that
2 be fair to say?

3 A. Yes.

4 Q. And the four of you were in there for about 2 1/2
5 hours, right?

6 A. Approximately, yes.

7 Q. And you seized a number of items during that
8 search?

9 A. Yes.

10 Q. Including bedding, and photographs, and
11 handcuffs; do you recall that?

12 A. I believe so, yes, sir.

13 Q. Okay. And then all four of you left the trailer
14 at, what would it have been, about 10 o'clock?

15 A. I would -- Yeah, around at 10 o'clock I think it
16 was.

17 Q. And then what area of the trailer were you
18 searching in, personally?

19 A. I searched the part of the master bedroom which
20 would have been Mr. Avery's bedroom, consisting
21 of a dresser and a walk in closet. I believe I
22 even looked under the bed, and things like that.
23 That was the extent of my searching that room.

24 Q. Did -- Did all four officers go together in a
25 room and search all together, or were you spread

1 out, some in one area, some in the other?

2 A. It's my recollection that we tried to stay at
3 least two people in a location. There may have
4 been a time when an officer may have split off
5 from another officer for a few minutes. But
6 generally speaking, we pretty much stayed
7 together.

8 Q. And so was it you and Sergeant Colborn that were
9 generally together during the search?

10 ATTORNEY FALLON: Objection, relevance to
11 this particular point.

12 THE COURT: Mr. Buting.

13 ATTORNEY BUTING: It's really just
14 foundational, the subsequent witnesses will testify.

15 THE COURT: The issue here is just the
16 multiple execution of the search warrant, right?

17 ATTORNEY BUTING: Right.

18 THE COURT: How is what the -- was found at
19 any particular time going to be relevant or
20 significant for this motion?

21 ATTORNEY BUTING: It goes to when the
22 search was executed, when the warrant was completed,
23 or the search was completed. And I think that's
24 going to be, ultimately, a legal question. But we
25 need to lay a little bit of a factual foundation.

1 THE COURT: All right. I'll allow it.

2 Q. (By Attorney Buting)~ So, when you were --
3 Lieutenant Lenk, when you were searching and
4 paired off into two, were you generally with
5 Sergeant Colborn, or with somebody else?

6 A. We were with different people, at different
7 times. In Mr. Avery's bedroom, I was primarily
8 with Detective Remiker, and searching with him,
9 because of the volume of stuff that we were
10 looking at. Other times, in other rooms, it all
11 depended on who was available to assist.

12 Q. All right. But, in general, you searched --
13 during that 2 1/2 hours you were able to search,
14 the four of you, Mr. Avery's bedroom, the other
15 bedroom, the living room, bathroom, and kitchen
16 area; is that right?

17 A. Correct.

18 Q. And so when you left that evening, you had seized
19 everything you could find that was of any
20 evidentiary value, right?

21 A. Yes, at that time.

22 ATTORNEY FALLON: Objection, leading the
23 witness, also conclusory.

24 Q. (By Attorney Buting)~ Well, had you -- did you in
25 fact --

1 THE COURT: Just a minute. On the form of
2 the question, I will sustain the objection.

3 Q. (By Attorney Buting)~ When you left that evening,
4 did you believe you had seized everything of
5 evidentiary value?

6 A. At that time, yes.

7 Q. Okay. Now, the next morning you returned to the
8 Avery salvage property, did you not?

9 A. Yes.

10 Q. Do you recall about what time?

11 A. I think it was around 8 o'clock in the morning.

12 Q. And let me ask you, how were you assigned -- I'm
13 going to go back a minute to the November 5th
14 evening search. How was it that you were
15 assigned to participate in that search, or did
16 you just -- or were you doing the assigning?

17 A. I was not assigning, at any time. I was -- We
18 were asked by Calumet County, after they decided
19 to take the case, if we would assist them,
20 because they had very short manpower, and we
21 volunteered to assist them.

22 Q. So you volunteered to be one of the officers who
23 searched Steven Avery's residence?

24 A. Yes, sir.

25 Q. And as far as you know, was that also true of

1 Sergeant Colborn?

2 A. Yes, and Detective Remiker.

3 Q. Okay. And so when you returned on the 6th --
4 Going back to the 5th for a second, you had not
5 yet had time, by 10 o'clock at night, to do a
6 thorough search of the garage, the detached
7 garage that was next to Mr. Avery's trailer; is
8 that right?

9 A. Correct.

10 Q. So, did you do that the next morning when you
11 arrived?

12 A. I believe we searched the garage.

13 Q. And were you --

14 A. I don't know if it was. I believe it was the
15 next morning, yes.

16 Q. And were you also paired with Sergeant Colborn,
17 Detective Remiker, again?

18 A. Yes, and Deputy Kucharski from Calumet County.

19 Q. Okay. And can you give me an estimate of the
20 size of that garage, how many, you know, like
21 20 feet by 15 or something, or what?

22 A. Boy, it was a two car garage, whatever a standard
23 two car garage would be, about that size.

24 Q. And do you know about how long you were searching
25 the garage that morning?

1 A. I don't recall how long it was, hour, two. I'm
2 not sure.

3 Q. If I told you that you entered at 8:00 a.m. and
4 left at 9:47 a.m. would that fit with your
5 recollection?

6 A. That would be about right.

7 Q. So were all four officers in the garage during
8 that entire time?

9 A. Yes.

10 Q. And you searched very thoroughly?

11 A. Yes, we tried to.

12 Q. And you seized anything that you thought was of
13 evidentiary value in that garage?

14 A. At that time, yes.

15 Q. And when you all left, at 9:47 a.m., it was your
16 understanding or belief, that you had seized
17 anything that had evidentiary value, from that
18 garage; is that correct? Or is that correct?

19 A. That's correct.

20 Q. Now, after you finished the search of the garage,
21 you didn't go back into Mr. Avery's residence
22 immediately, did you? The trailer?

23 A. No, I don't believe so, that was awhile after
24 that.

25 Q. Okay. A couple hours later, were you asked to go

1 back into Mr. Avery's trailer?

2 A. Yeah, our team leader at the time, Deputy
3 Kucharski, received information that we should go
4 back into the trailer of the unit.

5 Q. And was it for a specific purpose?

6 A. We were told to go back and collect weapons, a
7 vacuum cleaner, and bedding from the spare
8 bedroom, in the trailer.

9 Q. So, three specific types of items you were asked
10 to go back and retrieve, right?

11 A. Yes.

12 Q. Do you know who gave that order?

13 A. I don't know.

14 Q. So, once again you entered Mr. Avery's trailer,
15 along with Sergeant Colborn?

16 A. Yes. Deputy Remiker, I believe, was there also,
17 and Deputy Kucharski.

18 Q. And if I said that you entered at 12:25 p.m. and
19 left at 12:48 p.m.; would that fit with your
20 recollection?

21 A. Yes, that would be about right.

22 Q. And you did, in fact, seize a number of firearms
23 or rifles, I believe, from the residence?

24 A. Yes.

25 Q. In fact, from Mr. Avery's bedroom, correct?

1 A. Correct.

2 Q. And did you actually go into the bedroom
3 yourself?

4 A. I don't know who was -- actually took the
5 firearms. I believe it was Deputy Kucharski who
6 actually took the firearms. It wouldn't surprise
7 me if I was actually back in the bedroom with
8 him.

9 Q. So that was at least the second time when you had
10 been in his bedroom?

11 A. Right.

12 Q. And did you do any more searches of Mr. Steven
13 Avery's trailer or garage, on that day,
14 November 6th?

15 A. Not that I recall, no.

16 Q. The next day, November 7th, which would be a
17 Monday, did you again have an opportunity to go
18 into Mr. Steven Avery's trailer?

19 A. Yes, we did.

20 Q. Was that, once again, with Sergeant Colborn?

21 A. Yes, this time we were also with Sergeant Tyson,
22 from Calumet County.

23 Q. And did you go in there because you were
24 instructed to do something in particular?

25 A. Sergeant Tyson had received information, from his

1 superiors, to go in there and get the serial
2 numbers and things off the computer.

3 Q. So there was, again, one specific reason to --
4 that you were told to go back in, and that was to
5 retrieve the actual serial number of the computer
6 in the trailer; is that right?

7 A. Correct.

8 Q. And if I told you that you entered at 9:57 a.m.
9 and exited at 10:04 a.m., would that fit with
10 your recollection?

11 A. That would be right.

12 Q. Did you -- Do you have any recollection of going
13 into Mr. Steven Avery's trailer or garage, again,
14 later on that date?

15 A. No, sir, I don't recall that.

16 Q. The next day, November 8th, this would be a
17 Tuesday, do you recall, again, going into Steven
18 Avery's trailer with Sergeant Colborn?

19 A. Yes, we went in with Deputy Kucharski, who was in
20 charge.

21 Q. And Sergeant Colborn and yourself?

22 A. Correct.

23 Q. And this was now the 5th time that you had been
24 inside Mr. Avery's trailer, the 4th time since a
25 search warrant was obtained; is that right?

1 A. Correct.

2 Q. And do you remember when you -- the time when you
3 entered and exited?

4 A. On the 8th?

5 Q. Correct.

6 A. I believe it was somewhere around 8:30 in the
7 morning. We left around 12:15.

8 Q. So, if I said 8:25 entered, and exited at 12:18,
9 would that fit?

10 A. That would be about right, yes.

11 Q. Okay. And it was actually -- And you were once
12 again searching in Mr. Avery's bedroom, on this
13 occasion?

14 A. Correct.

15 Q. So this was at least the third time that you had
16 been inside Mr. Avery's bedroom?

17 A. I believe so.

18 Q. And to your knowledge, the fourth time that
19 officers had been in his bedroom, including
20 Detective Remiker, on the November 4th consensual
21 search, right?

22 A. Correct.

23 Q. And it was only at the very end of this search
24 that you found something, in his bedroom, of
25 interest?

1 A. Actually, we were searching -- Primarily, we were
2 sent there to pick up any pornography materials,
3 to retrieve the computer and related items, and I
4 believe there was some swabs that needed to be
5 taken of some blood spots that were found in the
6 bathroom, by the State Crime Lab.

7 Q. And did you also find a key?

8 A. Yes, I observed a key.

9 Q. And I'm not going to go into the details of that,
10 you testified at the preliminary hearing -- or,
11 no, actually you didn't, but is that the -- the
12 key was found by you, initially, correct?

13 A. I saw the key first, yes.

14 Q. And it was sitting in plain view on the floor
15 next to a cabinet; is that right?

16 A. Yes, next to the back corner of the cabinet.

17 Q. Now, also on that same day, after completing the
18 search of the -- Steven Avery's trailer, did you
19 also go back into his garage?

20 A. Yes, we did.

21 Q. And that was, once again, you and Sergeant
22 Colborn, correct?

23 A. And Deputy Kucharski.

24 Q. Okay. And if I said that you entered at 12:19
25 p.m. and exited at 12:45 p.m.; would that fit

1 with your recollection?

2 A. Yes, sir.

3 (Court reporter couldn't hear.)

4 Q. And your answer to that was?

5 A. Yes, we exited about 12:45.

6 Q. Okay. So, that was your second search of the
7 garage, correct?

8 A. That is correct.

9 Q. Now, on the next day, November 9th, in the
10 morning, which would now be Wednesday, did you
11 once again go into Mr. Avery's residence, the
12 trailer, with Sergeant Colborn?

13 A. I don't recall the 9th, no.

14 Q. Do you have the Manitowoc report with you?

15 A. Yes.

16 Q. Do you -- Do you recall going into the Steven
17 Avery garage or trailer at all on November 9th?

18 A. Not that I recall.

19 Q. If there were Calumet County officer's reports
20 that indicated that you, and Sergeant Colborn,
21 and Calumet County Deputy Wendling went into the
22 garage on November 9th, looking for a garage door
23 opener and things; would that fit with your
24 recollection?

25 A. Yes, if it's in their report, then it probably

1 occurred.

2 Q. And if I said that you entered at 10:39 a.m. on
3 November 9th, this is in the trailer we're
4 talking about, and left at 10:59 a.m., there for
5 about 20 minutes looking for a garage door
6 opener, and gloves, things like that; would that
7 fit with your recollection?

8 A. Yes. If that's in the report, yes.

9 ATTORNEY FALLON: If Counsel is willing to
10 stipulate, to facilitate that, my review of the
11 records likewise indicate an entry, 10:39 to 10:59,
12 which was interrupted by the arrival of a locksmith.
13 They left the residence to attend to the need of the
14 locksmith and then resumed between 11:40 and 11:50
15 to complete. I would be willing to stipulate to
16 those facts, to facilitate the continued
17 questioning.

18 ATTORNEY BUTING: That's fine.

19 THE COURT: All right. The Court will
20 accept that stipulation.

21 Q. (By Attorney Buting)~ So then on November 9th,
22 then, that was your 5th and 6th entry of
23 Mr. Avery's trailer, after the warrant had been
24 obtained; is that correct?

25 A. Yes, it would be.

1 THE COURT: Was this the garage or the
2 trailer?

3 ATTORNEY BUTING: This is the trailer.

4 THE COURT: Okay.

5 Q. (By Attorney Buting)~ So a total of six different
6 times that you entered and left Mr. Avery's
7 trailer, on the authority of that first search
8 warrant, correct?

9 A. Yes. Assisting Calumet County, yes.

10 Q. Okay. And, finally, there was a third search of
11 the garage also on that day, in which you entered
12 with Sergeant Colborn at 11:51 a.m., left the
13 garage at 12:10 p.m.?

14 A. This is on the 9th?

15 Q. On the 9th, yes.

16 A. If that's in the report, yes, that's what
17 happened.

18 ATTORNEY BUTING: Do you have that,
19 Counsel, can we stipulate to that?

20 ATTORNEY FALLON: I have them in the
21 garage -- I have them in the garage 11:51 to 12:10,
22 so that's fine.

23 ATTORNEY BUTING: Okay.

24 Q. (By Attorney Buting)~ So that would be your third
25 search of the garage, Mr. Avery's garage,

1 correct?

2 A. Correct.

3 Q. Now, going back for just one minute, to
4 November 5th, at around 6:30 p.m., were you, in
5 fact, giving orders or directions, to officers,
6 as to which buildings to search?

7 A. I don't know. I don't believe it was an order,
8 it was more of a suggestion. We were looking at
9 different buildings. I think it was a suggestion
10 to go to a building.

11 Q. And so, do you recollect telling an investigator
12 named Gary Steier, and Sergeant Bill Tyson, from
13 the Calumet County Sheriff's Office, to check
14 specific trailers and out buildings in the Avery
15 Salvage Yard?

16 A. As I said, it was more of a suggestion that they
17 check a couple buildings on that date.

18 Q. And you were aware at that time that the
19 investigation had already been turned over to
20 Calumet county?

21 A. Yes, sir.

22 Q. All right. So just to summarize and make sure
23 the record is clear, then, between November 4th,
24 when you went in on the consent search, to
25 Mr. Avery's trailer, and about midday on November

1 9th, you were actually in Steven Avery's trailer
2 seven different times?

3 A. That sounds about right.

4 Q. And six of those were on the execution of the one
5 warrant?

6 A. I'm not sure of how many warrants. Like I said,
7 I didn't get the warrants.

8 Q. Okay. And during that same time period, you were
9 also in Mr. Avery's garage three times?

10 A. Yes.

11 Q. On the warrant?

12 A. On some warrant, yes.

13 ATTORNEY BUTING: All right. I have no
14 further questions at this time.

15 THE COURT: Very well. Mr. Fallon.

16 THE DEFENDANT: Thank you, Judge.

17 **CROSS-EXAMINATION**

18 BY THE DEFENDANT:

19 Q. Lieutenant Lenk, this is Mr. Fallon. As I
20 understand it, there was a transfer of authority,
21 to conduct this investigation, from the Manitowoc
22 Sheriff's to the Calumet County Sheriff's
23 Department, on the morning of November 5th,
24 correct?

25 A. I'm not sure when it would have been. Yes, it

1 would have been on the 5th.

2 Q. All right. And when did you arrive at the
3 property, the morning or the afternoon?

4 A. Late afternoon.

5 Q. Late afternoon.

6 A. Yes.

7 Q. By the time you arrived in the late afternoon,
8 you were made aware of the fact that the Calumet
9 County Sheriff's Department was in charge of the
10 investigation, correct?

11 A. Correct.

12 Q. But you were also aware of the fact that they
13 were being assisted -- or by the Wisconsin
14 Department of Justice, Division of Criminal
15 Investigation?

16 A. Correct.

17 Q. And you were aware, as a matter of fact, that it
18 was Special Agent Tom Fassbender and Investigator
19 Mark Wiegert who were actually in charge, as it
20 were, of the investigation, by the time you
21 arrived late afternoon, November 5th?

22 A. Yes, sir.

23 Q. All right. So, in terms of conducting these
24 searches, you were doing these searches under the
25 direction and/or supervision of Investigator

1 Wiegert and Special Agent Fassbender?

2 A. Correct.

3 Q. And in terms of authority, while you may be a
4 lieutenant with the Manitowoc Sheriff's
5 Department, you only had authority with respect
6 to members of your own staff, that is, the
7 Manitowoc Sheriff's officers, and did not have
8 any independent authority over the Calumet
9 deputies or sergeants, correct?

10 A. Correct.

11 Q. As a matter of fact, on each of the occasions you
12 entered the residence of Mr. Avery, or his
13 garage, you were accompanied by a member of the
14 Calumet County Sheriff's Office?

15 A. That is correct.

16 Q. All right. And in terms of, you used the phrase,
17 you volunteered to assist, just so that we're
18 clear on that, in terms of your willingness to
19 help out as a member of the Manitowoc Sheriff's
20 Department, in terms of what you were assigned,
21 and where you were to do it, and how you were to
22 go about it, was determined by either the
23 Department of Justice, or the Calumet County
24 Sheriff's Office?

25 A. That's correct.

1 Q. As a matter of fact, there were a number of
2 search teams that were put together, involved in
3 searching various locations on the Avery
4 property, correct?

5 A. That's correct.

6 Q. And the property itself, and the subject of the
7 warrant, was about a 40 acre parcel of land?

8 A. I believe so, yes.

9 Q. Okay. Now, in response to a number of questions
10 by counsel, regarding what your thought process
11 was at the time you completed each of the
12 searches of Mr. Avery's residence or garage, you
13 indicated, Well, at that time, we thought we had
14 gotten all of the information and evidence that
15 we needed to get. What did you mean by that?

16 A. Well, what I meant was, at that particular time,
17 with the information that we had about the case,
18 we thought we had gotten what we needed to get.

19 Q. All right. And as a result of which, as far as
20 you know, was there additional information coming
21 in that then caused Wiegert and Fassbender to
22 direct reentry, to continue searching these
23 various locations?

24 A. Yes.

25 Q. Would it be fair to say, that when you and

1 members of Manitowoc Sheriff's Office were
2 engaged in the searches of the residence and the
3 garage of Mr. Avery, the person actually in
4 charge of those searches was the Calumet County
5 officer, whether it was a deputy, or sergeant, or
6 lieutenant, or whatever?

7 A. That's correct.

8 Q. And they were the ones who actually collected the
9 evidence, correct?

10 A. That's correct.

11 Q. Thank you.

12 ATTORNEY FALLON: That's all. Thank you.

13 THE COURT: Anything else, Mr Buting?

14 ATTORNEY BUTING: Just a couple.

15 **REDIRECT EXAMINATION**

16 BY ATTORNEY BUTING:

17 Q. You mentioned there were various search teams
18 involved. How many officers do you think were
19 involved in the search of the Avery compound, 40
20 acre compound, on November 5th and 6th?

21 A. I would have no idea.

22 Q. Would you believe more than 50?

23 A. I wouldn't hazard a guess. I have no idea.

24 Q. Okay. But you do know that there were other
25 search teams searching lots of other areas and

1 buildings on the property, right?

2 A. Yes.

3 Q. And that these search teams included

4 non-Manitowoc people, correct?

5 A. I believe so, I'm not sure.

6 Q. All right. You knew there were state troopers

7 out there?

8 A. On that particular day, I'm not sure who was all

9 there. We were pretty much focused on what we

10 were doing.

11 Q. All right. But during that time period when you

12 entered Mr. Avery's house six times -- or trailer

13 six times, there were DCI agents also on the

14 property who could have done the search, correct?

15 A. I believe so.

16 Q. And there were many, many non-Manitowoc County

17 officers who could have conducted the searches of

18 Mr. Avery's trailer, correct?

19 A. If they had been assigned that, yes.

20 Q. And as a matter of fact, there was a later, a

21 second warrant obtained, late on the day of

22 November 9th, that included Mr. Avery's

23 residence; isn't that right?

24 A. I wouldn't know. Like I said, I had nothing to

25 do with the warrants.

1 Q. In fact, though, after November 9th, you never
2 entered Mr. Avery's trailer again, correct?

3 A. I don't believe so, no.

4 Q. Other officers were assigned to do that?

5 A. Yes.

6 Q. Officers from the DCI and Calumet County?

7 A. I'm not sure which officers and which
8 departments, but there were other officers, yes.

9 Q. They were not Manitowoc County officers?

10 A. Not to my knowledge, no.

11 ATTORNEY BUTING: I have no further
12 questions.

13 ATTORNEY FALLON: No redirect.

14 THE COURT: Very well. Mr. Lenk, you are
15 excused.

16 THE WITNESS: Thank you.

17 ATTORNEY BUTING: Thank you, sir.

18 THE COURT: And we'll take our afternoon
19 break at this time.

20 (Recess taken.)

21 (Partial transcript concluded.)

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1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 31st day of August, 2006.

Diane Tesheneck, RPR
Official Court Reporter

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, PARTIAL MOTION HEARING

5 vs.

6 Case No. 05 CF 381

7 STEVEN A. AVERY,

8 DEFENDANT.

9 **DATE:** AUGUST 9, 2006

10 **BEFORE:** Hon. Patrick L. Willis
11 Circuit Court Judge

12 **APPEARANCES :**

13 KENNETH R. KRATZ
14 Special Prosecutor
15 On behalf of the State of Wisconsin.

16 THOMAS J. FALLON
17 Special Prosecutor
18 On behalf of the State of Wisconsin.

19 DEAN A. STRANG
20 Attorney at Law
21 On behalf of the Defendant.

22 JEROME F. BUTING
23 Attorney at Law
24 On behalf of the Defendant.

25 STEVEN A. AVERY
Defendant
Appeared in person.

PARTIAL TRANSCRIPT OF PROCEEDINGS

Reported by Diane Tesheneck, RPR

Official Court Reporter

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EXHIBITS

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1 THE COURT: Counsel, were we going to be
2 taking some witnesses out of order, or on a
3 different motion?

4 ATTORNEY FALLON: I believe that was our --
5 I believe that was our intention, to take a brief
6 hiatus from the multiple execution and do the two
7 witnesses on the Marinette County Sheriff's
8 statement. We have Detective O'Neill here and
9 Attorney Glynn is here.

10 And as the Court observed the last time
11 we were together, you have already listened to
12 the recordings and, basically, the two witnesses
13 are here to fill in what's happened that's not on
14 the recording, so we're not anticipating lengthy
15 testimony.

16 THE COURT: Very well. And the State is
17 going to be calling the witnesses here?

18 ATTORNEY FALLON: Well, we're going to call
19 Detective O'Neill, and I believe the defense will be
20 calling Mr. Glynn.

21 ATTORNEY STRANG: Yes.

22 THE COURT: All right. Mr. Fallon, go
23 ahead.

24 ATTORNEY FALLON: Very well. State, at
25 this time, would call to the stand Detective

1 O'Neill.

2 **DETECTIVE ANTHONY O'NEILL**, called as a
3 witness herein, having been first duly sworn, was
4 examined and testified as follows:

5 THE CLERK: Please state your name, spell
6 your last name for the record.

7 THE WITNESS: O'-N-e-i-l-l.

8 **DIRECT EXAMINATION**

9 BY ATTORNEY FALLON:

10 Q. First name?

11 A. Anthony.

12 Q. What do you do for a living?

13 A. Detective Marinette County Sheriff's Department.

14 Q. How long have you been a law enforcement officer
15 with Marinette County?

16 A. Since 1989.

17 Q. How long have you been a detective?

18 A. Since 1998.

19 Q. To what duties are you normally assigned as a
20 detective with the Sheriff's Department in
21 Marinette?

22 A. General investigations.

23 Q. All right. And I would like to direct your
24 attention to Saturday, November 5th, 2005, did
25 you have an opportunity to meet with one Steven

1 Avery?

2 A. Yes, I did.

3 Q. Is Mr. Avery, the one you met with, is he present
4 in the courtroom this afternoon?

5 A. Yes, he is.

6 Q. And would you point out where he is seated, for
7 the benefit of the Court.

8 A. Seated to the right of his attorney, Mr. Strang,
9 wearing a black, short-sleeve shirt, dark colored
10 pants and dark colored shoes.

11 THE COURT: All right. The record will
12 reflect that the witness identified Mr. Avery.

13 Q. (By Attorney Fallon)~ How did it come to pass
14 that you had contact with Mr. Avery on November
15 5th, 2005?

16 A. My office informed me that it was requested by --
17 excuse me -- Calumet County investigators, that
18 we make contact with the Avery family, at their
19 property located in Marinette County, Wisconsin.
20 And to make contact with the Avery family and
21 talk to them about the case that they were
22 working on involving a missing person by the name
23 of Teresa Halbach.

24 Q. All right. And approximately what time of day
25 was that that you had contact with the defendant,

1 Steven Avery?

2 A. Actually arrived at the property proper at
3 approximately 2 in the afternoon.

4 Q. When you arrived there, what was the first thing
5 you did?

6 A. Went to a smaller type cabin, knocked on the
7 door. I believe it was Charles Avery came to the
8 door, came outside. I spoke to him for a few
9 moments. Also spoke to Mr. Avery, Allen Avery,
10 and then eventually, of course, Steven Avery.

11 Q. All right. And where did you first meet Steven
12 Avery?

13 A. It would have been in the cabin that was occupied
14 by Mr. Avery, Mrs. Avery, and some other Avery
15 family members.

16 Q. What information did you provide, or what reason
17 did you give Mr. Avery for your willing -- your
18 wishing to speak with him?

19 A. Initially, I explained to Chuck Avery that our
20 purpose was on behalf of Calumet County
21 investigators, to speak to the Avery family,
22 including Steven, excuse me, regarding any
23 knowledge that they may have of the whereabouts
24 of Teresa Halbach, and that there was no
25 indications, or no purpose, by law enforcement,

1 to take anybody in custody, or arrest anybody,
2 but merely to talk to them about anything they
3 might know.

4 Q. Was that information, you relayed that directly
5 to the defendant, Steven Avery?

6 A. Yes, while in the cabin, in the presence of his
7 family.

8 Q. Was he willing to speak with you?

9 A. Yes, he was.

10 Q. Did you, in fact, speak with him?

11 A. Yes, I did.

12 Q. Where did that conversation take place?

13 A. It took place in my unmarked car, county squad
14 car, on the Avery property, just outside of the
15 cabin, in a driveway area of the Avery property.

16 Q. Was there anyone else in the vehicle when you
17 engaged in conversation with Steven Avery?

18 A. On that Saturday, no, there was not.

19 Q. All right. Now, on that particular day, was --
20 or excuse me -- were any of your conversations
21 with Mr. Avery recorded?

22 A. Yes.

23 Q. All right. Tell us generally, first and
24 foremost, was there any department policy which
25 facilitated, or suggested, or directed you to

1 record the conversation?

2 A. At that time, no.

3 Q. Are -- The last time you were here, July 19th, I
4 believe it was, did you bring with us copies of
5 those recordings?

6 A. Yes, I did.

7 Q. And you provided copies to myself, and to the
8 defense counsel in this case, correct?

9 A. Correct.

10 Q. All right. Are the information which was
11 provided to us, is that a complete copy of the
12 recordings?

13 A. Yes, it is.

14 Q. All right. Now, are all of your conversations
15 with Mr. Avery, all discussions, all words
16 spoken, recorded on those recordings?

17 A. No, they are not.

18 ATTORNEY FALLON: All right. And just so
19 the record is clear, I believe the Court has already
20 received its copy and has listened to them?

21 THE COURT: I have. I'm wondering if --

22 ATTORNEY FALLON: I can't remember if it
23 was marked as an exhibit or not, that's what I'm
24 drawing a blank on.

25 THE COURT: I don't believe it was. Janet,

1 can you tell me if that's in the file somewhere?

2 THE CLERK: It is in the file.

3 ATTORNEY FALLON: While she's checking that
4 let's continue, Officer.

5 Q. (By Attorney Fallon)~ Let's start with the big
6 picture here. Approximately how much time did
7 you spend with Mr. Avery, total, that day?

8 A. Approximately 2 hours, 45 minutes, to 3 hours.

9 Q. All right. Now, during that time frame, was it
10 one continuous conversation, or were there a
11 series of conversations?

12 A. It was continuous conversation, interrupted by
13 other events.

14 Q. All right.

15 A. If that helps.

16 Q. Sure. Approximately how many interruptions
17 occurred during the course of your contact with
18 Mr. Avery?

19 A. Maybe three.

20 Q. All right. As you recall this day, do you know
21 the reasons for those interruptions?

22 A. Yes.

23 Q. All right. Tell us, please, the first
24 interruption.

25 A. I'm not sure where it fits in, in the

1 pre-interview, or during the interview, but there
2 was a point where Mr. Avery gave consent, along
3 with Steven, for the search of the property and
4 the vehicles that were contained on the property.

5 And my attention was directed towards
6 the Steven Avery vehicle for a moment, by an
7 officer that was conducting the search. That may
8 have been an interruption or may have been
9 pre-interview. The other interruptions would
10 have been numerous phone calls from the press to
11 Mr. Avery, and phone calls from an attorney.

12 Q. All right. Let's start, first, with your first
13 initial contact in the vehicle itself. When was
14 the recorder turned on? Was there any discussion
15 that occurred before the recording was engaged?

16 A. Yes, there was.

17 Q. All right. And tell us about that?

18 A. I obtained some biographical data from Steven
19 regarding his name, his address, his date of
20 birth, and specific information as to where he
21 lived and so forth. And then, as he started
22 telling me the story, at that point, I felt there
23 was a need for me to make more of a record for
24 myself, because it was becoming a story that was
25 involving into a lot of details, a lot of things

1 I was not familiar with, and I needed to make
2 sure that there was an accurate thing I could go
3 back to later on and make sure my reports
4 reflected what was said.

5 Q. All right. So, approximately, if we guessed -- I
6 don't want you to guess -- If you were to
7 estimate, approximately how many minutes went by
8 before you thought to yourself, it's probably a
9 good idea, I better start recording this; about
10 how much time elapsed?

11 A. I would say between 8 to 10, or 10 to 12 minutes.

12 Q. All right. Now, during that particular time,
13 other than biographical data, you know, the
14 details of who he is, and how old he was, and
15 where he lived and worked, etcetera; what else
16 was discussed, that you recall?

17 A. Knowing what we discussed, that I know is not on
18 the recording was, I just had a phone call, okay,
19 and basically was not given any specific details
20 as to what the investigation involved, so it was
21 kind of like coming in blind.

22 And I remember talking to Steven, saying
23 hears the situation as I know it, and I think you
24 are going to be able to tell me much more than
25 what I know, and I'm going to rely upon you to

1 help me through, try and understand what this
2 investigation is, into the missing person, Teresa
3 Halbach.

4 Q. All right.

5 A. And I think at that point, when he started to go
6 into talking about it, I wrote down some notes,
7 like it was Halloween, then it was like, okay,
8 then I flip on the recorder. So it was only from
9 the time I collected the biographical data, and
10 that we had that conversation regarding what I
11 was there for, and trying to understand the
12 circumstances and going from there.

13 Q. Okay. Now, you mentioned some other
14 interruption, or something concerning consent.
15 What was that about?

16 A. I believe it may have been during the initial,
17 and not during the interview, where we asked
18 Mr. Avery if we could search the property. We
19 had some other officers that were present and
20 wanted to give them their tasks, with Mr. Avery's
21 permission, to go and search the property, see if
22 there was anything that may be pertinent, that
23 wasn't normal.

24 Q. All right.

25 A. He gave -- Pardon?

1 Q. I just want to interrupt, which property are you
2 referring to?

3 A. The Avery property, in the Town of Stephenson,
4 Marinette County.

5 Q. Marinette County. All right. So after that
6 occurred, then you had this general discussion of
7 who you were, why you were there getting his
8 biographical data. And then as the questioning
9 begins, it's shortly thereafter, within a matter
10 of what, a minute or two, that you decide, I
11 better turn on the recorder?

12 A. Correct.

13 Q. Okay. All right. What was the next
14 interruption -- Well, strike that. Until the
15 point of the next interruption, should I say the
16 first interruption, was everything recording from
17 that moment on, after you turned on the recorder?

18 A. Yes.

19 Q. Okay. What was the first interruption then?

20 A. I believe it was a phone call that was made to a
21 family member and then presented to Steven by
22 someone who knocked on the door and said, hey,
23 phone, and he says wait a moment, and the person,
24 I believe, said something to the effect of, it's
25 the attorney. And at that point Steven, I

1 believe, rolled down the window and took the
2 phone.

3 Q. All right. And did he remain in the vehicle?

4 A. Yes, he did.

5 Q. Now, while he was on the phone, the recording is
6 still running?

7 A. Yes, it is.

8 Q. All right. At some point during this
9 interruption, was the recording turned off at
10 all?

11 A. Not until after he left the vehicle.

12 Q. All right. After he left the vehicle, did you
13 turn off the recorder immediately, or did you
14 leave it on for a few moments?

15 A. I left it on for a few moments because I made a
16 note, a verbal note, as to what was going on?

17 Q. All right. And at some point, you turned the
18 recorder back on?

19 A. Yes, I did.

20 Q. With respect to that, prior to turning the
21 recorder back on, did you have any conversation
22 with Mr. Avery, before you turned the recording
23 back on?

24 A. No, I stayed in the car.

25 Q. You stayed in the car?

1 A. Correct.

2 Q. All right. So, when you -- When did the
3 recording get turned on?

4 A. When Mr. Avery came back into the car.

5 Q. As he opened the door?

6 A. I believe so. I believe I could even hear a
7 chime from the door, in the recording.

8 Q. All right. And from that moment on, did the
9 recording remain on?

10 A. For that session, yes.

11 Q. All right. And what was the next interruption
12 that occurred?

13 A. When he came back into the car, he still had the
14 phone. We continued on with the interview. I
15 don't think there were any other interruptions.

16 Q. All right. Was there a second phone call from an
17 attorney; do you recall?

18 A. Yes, there was.

19 Q. All right. Tell us about that.

20 A. I believe it was somewhere closer to 4 or
21 5:00 p.m.

22 Q. All right.

23 A. And someone said, again, that it was his
24 attorney. And he said something to the effect,
25 tell him I will call him back in 15 minutes.

1 Q. And at that point, did you continue to converse
2 with Mr. Avery?

3 A. For a short time, yes.

4 Q. And then what happened?

5 A. We concluded our interview.

6 Q. All right. Now, did he step out and take a call
7 from an attorney.

8 A. During the first phone call interruption, yes.

9 Q. All right. Now, when was the last time that you
10 listened to a recording of this -- of this
11 afternoon's conversation with Mr. Avery?

12 A. Would have been, in totality, on the date I came
13 here, which was July.

14 Q. 19th?

15 A. 19th.

16 Q. So, it's been since July 19th that you listened
17 to the recording?

18 A. Actually, I think that was June 19th, wasn't it?

19 Q. Whenever you were here last. But you have not
20 listened to the recording since?

21 A. No, I have not.

22 Q. All right. Now, at any time while the recorder
23 was off, did you have any discussions with
24 Mr. Avery regarding the events which were
25 unfolding in Manitowoc County, about the location

1 of Teresa Halbach's vehicle on his property, that
2 were not recorded?

3 A. No, I did not.

4 Q. All right. Now, any discussion with Mr. Avery,
5 whatsoever, that were not recorded, about whether
6 he should continue to talk with you, not
7 withstanding the fact that he had just taken a
8 phone call from Attorney Glynn?

9 A. No.

10 Q. All right. So, everything relative to the events
11 which were unfolding here in Manitowoc County,
12 and the discussion regarding the fact that his
13 attorney is trying to get a hold of him, are on
14 the recordings?

15 A. To the best of my knowledge, yes.

16 Q. All right. During the course of the afternoon's
17 interview, was Mr. Avery -- in your mind, was he
18 ever in custody?

19 A. No.

20 Q. Did you tell him that he was free to leave during
21 the course of this conversation?

22 A. At least a couple times, and reaffirmed it, yes.

23 Q. Did you advise him, during the course of these
24 conversations, that he was, of course, free to
25 leave any time?

1 A. Yes, and he exercised those as well.

2 Q. As a matter of fact, he left your presence how
3 many times?

4 A. If the interruption of going out and looking at
5 his car occurred during the interview, that would
6 have been one, to take that phone call from his
7 attorney, would have been the second time. So,
8 one for certain, two possibly.

9 Q. All right. And as a matter of fact, you actually
10 talked to his attorney at one point during his
11 receiving the call, correct?

12 A. A person identified himself as his attorney, yes.

13 Q. And the person identified himself as Attorney
14 Stephen Glynn?

15 A. Correct.

16 Q. All right. When you completed your discussions
17 with Mr. Avery, did you arrest, or otherwise take
18 Mr. Avery into custody?

19 A. No.

20 Q. You wrote a report on this?

21 A. Yes, I did.

22 Q. I'm just curious, did you have the opportunity of
23 listening to the recording before writing your
24 report?

25 A. Yes.

1 Q. All right. At any point, while on the
2 recording -- or excuse me -- the recording will
3 speak for itself. At any point, which was not
4 recorded, during your contact with Mr. Avery, did
5 Mr. Avery tell you he just did not want to talk
6 to you?

7 A. No.

8 Q. At any point, during your contact with Mr. Avery,
9 and I'm focusing in on points which were not
10 subject to recording, did he ever say he didn't
11 want to talk to you without the assistance of
12 counsel?

13 A. No.

14 Q. At any point, during your contact with Mr. Avery,
15 that was not recorded, did he ever refuse to
16 answer any particular question?

17 A. As related to Teresa Halbach case, no.

18 Q. Yes. All right. Now, during the course of this
19 conversation, he sat in what part of your
20 vehicle?

21 A. A passenger front.

22 Q. All right. And is that passenger vehicle, is one
23 able to freely get in and out of that vehicle?
24 It is not like the backseats, for instance, it's
25 not locked?

1 A. Just as your typical civilian car, Ford Taurus,
2 no cage, no locks, no special things to keep
3 someone inside the car.

4 Q. All right. Your best recollection, is there any
5 reason in your mind right now why it took 2 or 2
6 1/2 hours to complete the job of interviewing
7 Mr. Avery?

8 A. I believe the duration was in such to be sure as
9 to what he was telling me, to expand upon what he
10 was telling me, to grasp what he was telling me,
11 and to be certain to myself and to him, that what
12 he was telling me was, what he said, the truth.

13 Q. All right. Were any of the interruptions that
14 you have just described lengthy; in other words,
15 there was a lot of down time, where you actually
16 turned off the tape for any extended period of
17 time?

18 A. No.

19 Q. During the course of taking these statements from
20 Mr. Avery, at any point, in an effort to get him
21 to talk to you, did you promise him anything?

22 A. No.

23 Q. Did you at all threaten or otherwise coerce him?

24 A. No.

25 Q. Did you -- Did he make any requests of you that

1 you denied?

2 A. No.

3 Q. And how would you characterize his demeanor when
4 he was speaking with you?

5 A. Wanting to cooperate, wanting to talk. It was
6 almost as if it was a casual conversation, so to
7 speak, but yet with concern. And without any
8 type of need to go anywhere or do anything. It
9 was.

10 Q. All right. And at any point, did he become angry
11 or frustrated with you, or your questioning?

12 A. No.

13 Q. Did he have any questions of you, that are not
14 reflected on the recording?

15 A. I don't believe so, no.

16 Q. All right.

17 ATTORNEY FALLON: Ms Clerk, do we have an
18 exhibit number for that recording?

19 THE CLERK: It wasn't marked as an exhibit,
20 but it was filed.

21 ATTORNEY FALLON: Perhaps we should have it
22 marked.

23 THE COURT: It should be marked, so can it
24 be 21?

25 THE CLERK: Yes.

1 (Exhibit 21 marked for identification.)

2 Q. (By Attorney Fallon)~ Detective, I show you what
3 has been marked for identification purposes as
4 Exhibit 21. Does that look familiar to you?

5 A. This actual CD, no. This is not the CD that I
6 would have produced.

7 Q. Okay. You reproduced an exhibit such as this;
8 would that be yours?

9 A. I believe so, yes.

10 Q. All right. And as far as we know, this is -- As
11 far as you know, this is a true and accurate copy
12 of the original that you brought with you when
13 you were here last?

14 A. Correct.

15 Q. Okay.

16 ATTORNEY FALLON: Is there a stipulation,
17 Counsel, on that creation?

18 ATTORNEY STRANG: Yes. And Exhibit 21 is
19 admissible, as far as I'm concerned.

20 ATTORNEY FALLON: Very well. We'll tender
21 the witness for cross, upon receipt of the exhibit.

22 THE COURT: All right. The Court, based on
23 the stipulation of the parties, will accept
24 Exhibit 21. Mr. Strang, you are doing this one?

25 ATTORNEY STRANG: Yes.

1 CROSS-EXAMINATION

2 BY ATTORNEY STRANG:

3 Q. Detective O'Neill, other than listening to the
4 tape, or the recording that we have now marked as
5 Exhibit 21, what did you review, at any time
6 after November 5, 2005, to refresh your
7 recollection to testify here today?

8 A. My reports.

9 Q. How many reports are those?

10 A. I believe I reviewed the report involving the
11 interview of Steven Avery on November 5th. I
12 believe it was maybe four pages.

13 THE COURT: Can you hand me the exhibit?

14 THE WITNESS: I'm sorry?

15 THE COURT: Can you hand me the exhibit,
16 the CD?

17 Q. (By Attorney Strang)~ Did you review any other
18 reports?

19 A. I believe I reviewed the actual motion that was
20 presented.

21 Q. The defense motion?

22 A. Yes. I reviewed a handwritten note regarding
23 some times --

24 Q. Your handwritten --

25 A. -- some biographical data.

1 Q. Your handwritten notes?

2 A. Yes.

3 Q. Prepared on November 5?

4 A. Yes.

5 Q. During the interview with Steven Avery?

6 A. Yes.

7 Q. Do you have those with you?

8 A. May I check?

9 Q. Yes.

10 A. No, I do not.

11 Q. Where are they?

12 A. Actually, I believe they may be in my car.

13 Q. Which is nearby, obviously?

14 A. Correct.

15 Q. All right. We'll find a convenient time to have
16 you get those.

17 ATTORNEY STRANG: Simply signal the Court
18 now, that I'm asking for them under 906.12.

19 Q. (By Attorney Strang)~ What else did you review?
20 We have gone through the tape, the motion that I
21 filed, one report, which you recall as being four
22 pages, and then your handwritten notes.

23 A. The audio recordings from my first appearance
24 here, I would have reviewed back then.

25 Q. Audio recordings from your first appearance here;

1 I'm not sure I understand?

2 A. When I first came, I think it was on June 19th.

3 I believe that was the first date of motions.

4 Q. July 5.

5 A. I'm sorry. July 5th, the day I would have
6 appeared, but not presented for motion. I would
7 have reviewed, also, the audio recordings, and
8 the diagrams, and the statements that were taken.

9 Q. Okay. So the same things you reviewed. When you
10 say audio recordings, you are talking about the
11 November 5 interview of Steven Avery?

12 A. And 6th, yes.

13 Q. And 6. Okay. Separate recording?

14 A. Yes.

15 Q. All right. Separate report for November 6th as
16 well?

17 A. I believe so, yes.

18 Q. Did you review that to refresh your recollection
19 to testify?

20 A. I don't believe so.

21 Q. I'm going to show you two reports. Before I mark
22 these, I'm going to show you two reports. Tell
23 me if both of those are reports that you
24 authored, which one did you review to refresh
25 your recollection, or do you now think you looked

1 at both of them, having seen them?

2 A. I would have reviewed the report dated 11/16 of
3 '05.

4 Q. And not the report dated 11/17 of '05?

5 A. I don't believe so.

6 Q. Okay. Fair enough. I'm going to mark the one
7 you identified as reviewing that, and ask the
8 clerk to mark that as Exhibit 22. What I will
9 do, I will leave this with you.

10 (Exhibit 22 marked for identification.)

11 ATTORNEY STRANG: I'm not moving it into
12 evidence at this point, your Honor.

13 Q. (By Attorney Strang)~ That report, to my eye, is
14 five pages, not four; is that right?

15 A. Correct.

16 Q. And then there's a 6th page which looks like, you
17 know, somebody's hand drawn diagram?

18 A. Attachment of a diagram, yes.

19 Q. Right. On the fifth of the typed pages, we have
20 got your signature near the bottom?

21 A. Yes, it is.

22 Q. I see four little computer symbols for a speaker;
23 do you see those?

24 A. Yes, I do.

25 Q. Any significance to the symbol?

1 A. When I compiled these reports and presented them
2 to the Calumet County officers, I did so not only
3 in written format but also in a CD ROM format.
4 And that CD ROM would have allowed the user to
5 click on the icons that are there, to access
6 whatever audio recordings were pertinent to that
7 specific report.

8 Q. Okay. And that goes to my next question. There
9 are four of the icons, does that correspond to
10 the four parts, or segments, on the CD, of the
11 November 5 interview of Steven Avery?

12 A. Without actually seeing the CD ROM and looking at
13 that property for the icons, I would say yes.

14 Q. And that would be your expectation --

15 A. Yes.

16 Q. -- in other words? All right. You did not tell
17 Steven Avery, during the course of your
18 November 5 interview, that you were recording it,
19 true?

20 A. True.

21 Q. Where was the recorder, in the unmarked squad,
22 you described?

23 A. Where I always keep it, on my visor, there's kind
24 of like a visor caddy, in that location, right
25 there.

1 Q. Sort of a small dictaphone, or digital handheld
2 recorder?

3 A. Yes.

4 Q. Which you can simply turn on with your thumb by
5 reaching up to the visor?

6 A. Yes.

7 Q. Do that unobtrusively?

8 A. To someone that may be in a vehicle, it may be
9 unobtrusively, yes.

10 Q. Sure. And then turn it off with your thumb, as
11 well, correct?

12 A. Correct.

13 Q. That is something you have grown accustomed to
14 doing?

15 A. During my career, no. But more recently, yes.

16 Q. As of November 5, 2005, you were adept at turning
17 this recorder on and off quickly, without
18 looking?

19 A. I probably would have had to take it down to turn
20 it on, because I'm not that adept. Okay.

21 Q. All right. In any event, you had no reason to
22 believe that Mr. Avery knew that he was being
23 recorded?

24 A. No.

25 Q. The initial phase, if you will, of this

1 interview, involved what I think you said was
2 about 8 to 12 minutes, give or take, of getting
3 some biographical information from Steven Avery,
4 true?

5 A. Yes.

6 Q. What did he tell you about his level of formal
7 education?

8 A. I believe that was part of our conversation. He
9 talked about not having completed high school.

10 Q. And going no further?

11 A. I believe that to be correct, yes.

12 Q. Would your -- Would your notes out in your car
13 reflect some of these biographical details?

14 A. That was just during conversation and -- I really
15 don't know.

16 Q. Did you make most of the notes before you turned
17 on the recorder for the first time?

18 A. I believe so.

19 Q. Which is also the period of time during which you
20 covered the biographical information?

21 A. Correct.

22 Q. So, what you knew, in any event, was that you had
23 a high school graduate, in the car with you?

24 A. I don't believe he graduated high school. I
25 don't think he did.

1 Q. I'm sorry, I misunderstood you.

2 A. I don't believe he did graduate high school.

3 Q. What was your understanding of his educational
4 attainment?

5 A. I believe, just from our conversation, I don't
6 believe he graduated high school because I talked
7 about some familiar surroundings and things and
8 so forth.

9 Q. You didn't learn how far short of graduation he
10 left high school?

11 A. No, I didn't.

12 Q. But you knew you did not have a high school
13 graduate?

14 A. I believe that's correct.

15 Q. That was your understanding?

16 A. Yes.

17 Q. Okay. Did you inquire into the manner of his
18 employment? His trade, or his job?

19 A. I believe during conversation it became known,
20 that it was a family run business, the Avery
21 Salvage Yard.

22 Q. Worked in the salvage yard?

23 A. Correct.

24 Q. You would describe him, then, as a working man?

25 A. Correct, yes.

1 Q. Someone who did not have post-secondary
2 education?

3 A. I believe so, correct.

4 Q. Someone you believed not to have a high school
5 degree?

6 A. Correct.

7 Q. So, at least the man you believed you were
8 speaking to, his highest diploma would have been
9 from 8th grade, presumably, correct?

10 A. From what grade?

11 Q. Eighth.

12 A. I can't remember that. I don't remember that.

13 Q. Okay. But no reason to think he had graduated
14 from 12th grade?

15 A. I was surprised that you said 8th grade, because
16 I put him, in the idea of his cognitive abilities
17 to understand me, as being a lot higher than an
18 8th grade education.

19 Q. I understand. What I was asking about was the
20 last diploma that you believed he had received,
21 or the last stage of schooling he had completed,
22 would have been junior high school.

23 A. I don't recall that being something that we
24 talked about.

25 Q. All right. The interview was one of many

1 interviews that you have conducted with people
2 during, at that point, roughly 16 years you have
3 been in law enforcement?

4 A. Yes.

5 Q. Probably hundreds of interviews you have
6 conducted with citizens during those 16 years,
7 roughly?

8 A. Yes.

9 Q. I'm talking about 1989 to November of 2005?

10 A. In some sort and fashion, yes.

11 Q. Sure. And then in about 1999, you took on the
12 duties of an investigator?

13 A. I believe it was '98.

14 Q. '98, I'm sorry. So, it had been about 7 years
15 that you had been an investigator by the time you
16 were conducting this interview?

17 A. Yes.

18 Q. The job of investigator regularly entails
19 interviewing citizens?

20 A. Yes.

21 Q. Some of those citizens are witnesses to crimes,
22 or potential crimes?

23 A. Yes.

24 Q. Some are victims of crimes?

25 A. Yes.

1 Q. Some are suspects in crimes?

2 A. Yes.

3 Q. Some are actually defendants charged with a

4 crime?

5 A. Usually, at that point, I'm not talking to them.

6 Q. But, occasionally, there have been occasions

7 where somebody has been charged with a crime,

8 later has talked to you about that charge, or

9 some other --

10 A. Yes.

11 Q. -- matter of interest, correct?

12 A. Correct.

13 Q. So you have acquired experience dealing with all

14 types of these categories of citizen interviews

15 that we have discussed?

16 A. Yes, sir.

17 Q. You have done that probably hundreds of times,

18 during your employment as a detective?

19 A. To some degree, yes.

20 Q. You have been trained, from the beginning of your

21 law enforcement career, that one, in this

22 country, always has a right to ask for a lawyer?

23 A. Yes.

24 Q. One doesn't need to be a suspect?

25 A. Correct.

1 Q. One doesn't need to be under arrest?

2 A. Correct.

3 Q. You are a scrupulous law enforcement officer?

4 A. Depends on how you define scrupulous.

5 Q. How do you define scrupulous?

6 A. One who takes his job serious and exemplifies

7 what you would expect in a law enforcement

8 officer.

9 Q. All right. Does that include honesty?

10 A. Yes.

11 Q. Does that include respect for constitutional

12 rights?

13 A. Yes.

14 Q. Does that include respect for the human beings

15 with whom you have contact, professionally?

16 A. Yes.

17 Q. That respect extends to respecting a request for

18 a lawyer?

19 A. Very much so.

20 Q. Doesn't matter to you whether the person is in

21 custody, or not?

22 A. Correct.

23 Q. If he asks for a lawyer, that's his wish?

24 A. That's his wish.

25 Q. That's something that you will respect?

1 A. Always have.

2 Q. As part of a serious and responsible law
3 enforcement officer?

4 A. Yes.

5 Q. You are familiar, as a matter of experience, with
6 the fact that people have all different states of
7 mind, when you come to interview them? By that,
8 I mean some are relaxed, correct?

9 A. Correct.

10 Q. Some are friendly?

11 A. Correct.

12 Q. Some are sober?

13 A. Correct.

14 Q. Some are not under the influence of drugs?

15 A. That's correct.

16 Q. And, then, some are hostile?

17 A. Correct.

18 Q. Some are drunk?

19 A. Correct.

20 Q. Some are under the influence of some sort of drug
21 or illegal substance?

22 A. Correct.

23 Q. Some are scared?

24 A. Correct.

25 Q. Some are highly formal?

1 A. Correct.

2 Q. Some want to be informal and jovial, or try to
3 play the joker, if you will?

4 A. I imagine so, yes.

5 Q. You have seen the gamut, in other words, of human
6 behavior, in the course of interviewing people?

7 A. Yes, I have.

8 Q. This one, Mr. Avery, was somebody who appeared to
9 you to want to be cooperative?

10 A. Yes.

11 Q. Your experience, too, with the hundreds of people
12 you have interviewed in various descriptions we
13 have covered, you have seen a range of levels of
14 facility with the English language, I guess we
15 could put it that way, couldn't we?

16 A. Including my own, yes.

17 Q. Yes, sure. I mean, you are at one point on the
18 scale of, you know, from inarticulate or
19 illiterate, to highly articulate, correct?

20 A. I would hope so.

21 Q. Sure. You are at some point in there, and you
22 have seen people who range pretty well across
23 that spectrum?

24 A. Yes.

25 Q. You have had people, in fact, who are mute or,

1 because deaf, are not able to speak ordinarily at
2 all?

3 A. I can't recall any, but I'm sure.

4 Q. Yeah. You have certainly interviewed people as
5 to whom you understood that perhaps Spanish was
6 their first language, and English only a second
7 and fragmentary language?

8 A. Yes.

9 Q. You have had people who had college degrees, or
10 maybe degrees beyond that, and had an excellent
11 grasp of the English language; you have
12 interviewed people like that?

13 A. Yes, I have.

14 Q. And you have interviewed simple, ordinary folks
15 who have, maybe, less ability to articulate their
16 thoughts than you do, for example?

17 A. Yes.

18 Q. Mr. Avery would fall into the group who would be,
19 you know, less articulate than you, correct?

20 A. I don't believe so.

21 Q. Somewhere about you, in terms of his ability to
22 articulate himself in English?

23 A. To a certain degree, yes.

24 Q. All right. But I guess the point is, you have
25 learned to deal with a range of English language

1 skills in your work?

2 A. Yes.

3 Q. You, therefore, do not hold people to a
4 dictionary standard of use of the language?

5 A. No.

6 Q. You don't correct their grammar?

7 A. No.

8 Q. You don't correct their diction?

9 A. No.

10 Q. You don't ask them to speak with precise phrases,
11 or specific magic words?

12 A. Unless there is a problem in me understanding
13 what they are saying, no.

14 Q. In which case, you will try to clarify so that
15 you could understand?

16 A. Correct.

17 Q. But you allow some room for communicating with
18 the interviewee at the level that the interviewee
19 communicates?

20 A. As long as we are both understanding each other,
21 and we have the same presence of the language --

22 Q. Sure.

23 A. -- that we're speaking.

24 Q. And that is the key, you want to make sure you
25 understand?

1 A. Project and receive the same language.

2 Q. Right. And that -- So if someone was using a
3 very elevated vocabulary, words you didn't
4 understand, you might ask that person to explain
5 in simpler terms?

6 A. As we have done, yes.

7 Q. Sure. And likewise, if someone was using very
8 imprecise, or poorly chosen words, you might try
9 to clarify what they were trying to tell you as
10 well?

11 A. Correct.

12 Q. There are no magic words, in other words, in your
13 business here, the point is to communicate?

14 A. That's correct.

15 Q. And to be fair in taking down what you believe
16 the person to mean?

17 A. Taking down?

18 Q. Well, recording, writing, taking in, you know,
19 perceiving on your part, you want to understand
20 the person, in other words.

21 A. During conversation, yes, I do. Taking down what
22 I take down, if you are referring to notes, or
23 anything like that, would be points that I feel
24 important to capture the moment.

25 Q. Yeah, fair enough. And I -- I sort of sent you

1 off in that direction.

2 A. I was trying to make a transition of work.

3 Q. Sure. But, initially, in conversation, you want
4 to understand them?

5 A. Yes.

6 Q. You want to understand them accurately?

7 A. Yes.

8 Q. That's part of doing your job fairly?

9 A. Yes.

10 Q. And then, if you can write something down, then
11 you may hone in, to clarify, or just make quite
12 certain that you have got an accurate description
13 of what the person is saying?

14 A. Okay. I think you kind of lose me there. If I
15 had a problem with what you were trying to say to
16 me, I might not necessarily write it down. I
17 might ask you clarify, or ask you another
18 question that may clarify it anyhow.

19 Q. You understood me perfectly. That's fine. The
20 report that we have marked as Exhibit 22,
21 actually bears a date, as you noted, 11 days
22 after the interview of Mr. Avery.

23 A. It does bear that date, yes.

24 Q. Okay. And I'm not familiar with your department,
25 so my question is, when would you first have

1 prepared the report marked as Exhibit 22?

2 A. I really can't say, except it may have been a
3 work in progress. And the date of 11/16/05 would
4 have been the date that I printed this out, upon
5 completing it, so sometime before -- on or before
6 November 16th.

7 Q. Let's back into it that way, then, okay. We'll
8 use your date, 11/16/05 would have been the date
9 you actually printed the report?

10 A. Correct.

11 Q. You would have printed it after reviewing it?

12 A. Yes.

13 Q. I mean, is that true?

14 A. I would hope to believe so, yes.

15 Q. Okay. You don't remember, specifically, this
16 report?

17 A. I reviewed it, but to review it upon being done
18 with it and saying, okay, I need to review it,
19 make sure it is correct. I'm sure it was done
20 over a period of time, with reviews done
21 intermittently, and in a final review.

22 Q. And that's what you recall doing as to
23 Exhibit 22?

24 A. I believe so because I think I do with every
25 report that I make.

1 Q. That's a habit of yours?

2 A. Yes.

3 Q. All right. I'm less worried now about the actual
4 date, but do you know how the report would have
5 come into being in the sense, would you have
6 typed it at a computer, would you have dictated
7 it, handwritten and had somebody type it; how
8 would it have come into being, initially?

9 A. I would have typed it.

10 Q. Yourself?

11 A. Yes.

12 Q. Okay. And then when you said, you told me it was
13 a work in progress, perhaps you may have revised
14 it over the course of 11 days?

15 A. Or stopped it, got back to it, stopped it, got
16 back to it. Usually revisions, I want to do
17 before I get done with my session.

18 Q. Using the tape that you made on November 5 to
19 help you in preparing the report and typing it?

20 A. Yes, to some extent.

21 Q. Were you satisfied when you printed the report on
22 November 16, 2005, that the report was complete?

23 A. I believe so, yes.

24 Q. Were you satisfied that it was accurate?

25 A. To the extent that a report can be, yes.

1 Q. Were you satisfied that it was fair?

2 A. Depending upon what fair is.

3 Q. Well, fair to you. I mean, were you satisfied
4 that it was fair?

5 A. A fair summary of what occurred during the day
6 that we have on report.

7 Q. All right. Now, Paragraph 4 --

8 ATTORNEY STRANG: And I think I'm getting
9 into this, so I will offer Exhibit 22 at this point,
10 your Honor.

11 ATTORNEY FALLON: No objection.

12 THE COURT: All right. Exhibit 22 is
13 admitted. You don't have an extra copy of that?

14 ATTORNEY STRANG: I do. I do.

15 ATTORNEY FALLON: There should be one
16 attached to the motion, Judge, if you have it.

17 ATTORNEY STRANG: I have an extra.

18 THE COURT: The motion is in the file, so I
19 think I will just take this.

20 Q. (By Attorney Strang)~ Exhibit 22, I'm looking at
21 page four, Mr, O'Neill; do you have that?

22 A. Yes, I do.

23 Q. Okay. And down at the bottom right, just a cross
24 check here, it should say, State 0148?

25 A. Yes, it does.

1 Q. Okay. Thank you.

2 ATTORNEY FALLON: Counsel, you might want
3 to clarify how that number got on the exhibit, 0148.

4 ATTORNEY STRANG: I would be testifying,
5 but I would be happy to do it. It's a number that
6 was added by the paralegal service that we're using
7 to compile discovery and keep it organized.

8 ATTORNEY FALLON: So that wasn't part of --
9 The point is, that wasn't part of the original
10 report.

11 Q. (By Attorney Strang)~ It was not part of your
12 original report, that number on the bottom right?

13 A. No, I have seen those numbers used before and
14 it's usually at the level of the attorneys, that
15 are discovery.

16 Q. Yeah.

17 ATTORNEY FALLON: Thank you.

18 Q. This otherwise looks like content that you put in
19 the report, correct?

20 A. Yes, sir, it does.

21 Q. All right. Down at the -- On the last paragraph
22 on Page four, you write, Steven returned to my
23 car stating, and then you put in quotes, "I guess
24 they don't want me to talk no more" closed quote,
25 period; do you see that?

1 A. Yes, I do.

2 Q. And then you go on to say, I asked Steven if that
3 was his wishes, that he didn't want to talk to me
4 anymore. And he replied, then you have another
5 quote from Mr. Avery?

6 A. Correct.

7 Q. The quotes were taken from the tape, or the
8 recording, correct?

9 A. I believe so, yes.

10 Q. I'm not going to play the tape, because you have
11 listened to it and the Court can listen to it.
12 But if -- if you asked Mr. Avery, after he said,
13 Well, I guess they don't want me to talk no more,
14 and if you asked him, You don't, you didn't
15 include that in the report, did you?

16 A. If it's on the audio and it's not in the report,
17 that would be correct.

18 Q. That's right. And if the audio reflects that
19 Mr. Avery then said, No, but here's his number,
20 case when you want to talk to me, contact them
21 and they -- they want to be there too; that's not
22 something you included in the report either is
23 it?

24 A. That they want to be there too, I don't recall
25 that.

1 Q. You certainly didn't put it in your report?

2 A. Correct.

3 Q. And then you saying, Okay, that's not in your
4 report?

5 A. The report is reflective of that paragraph.

6 Q. And it doesn't have you saying, Okay?

7 A. That's correct.

8 Q. If the tape then records you, at that point,
9 saying, Let me ask you this, Steve, although they
10 are telling you that they don't want you to
11 talk -- and you go on from there, that's not
12 something you put in the report either?

13 A. That's correct.

14 Q. If Steven then responded to your question about
15 whether it was his wish to talk, or not talk, by
16 saying, Well, I got to listen to the lawyer,
17 that's not something you include in the report,
18 is it?

19 A. If that's what the tape reflects, my report does
20 not reflect that.

21 Q. And then, if you said, Well, and we're not
22 talking about you committing any crime, and you
23 go on to talk about this just being a missing
24 person, you didn't include that in the report,
25 did you?

1 A. No, I didn't.

2 Q. And then you, as I understood the report -- and
3 you may remember this -- did you say, So, in the
4 interest of a missing person, last being seen by
5 you, that we're aware of, and trying to figure
6 out where this person may be, am I understanding
7 you correctly, in the idea that you could help in
8 this investigation, to find this missing person,
9 that you are refusing to cooperate, because your
10 attorney is telling you not to talk to us? Do
11 you recall making that statement, at this point
12 in the conversation, with Steven Avery?

13 A. If your quote is from the recording, I would say
14 yes.

15 Q. Okay. And Steven Avery says, Oh, no, no. Do you
16 recall him responding that way?

17 A. Again, yes.

18 Q. And then -- And here I'm not quoting you, I'm not
19 suggesting this is verbatim, but do you recall
20 going on to tell Mr. Avery, Look, you are a 40
21 plus year old man, you are an intelligent guy.
22 If you have nothing to fear, do you want to
23 finish this conversation? That's not verbatim,
24 but words to that effect?

25 A. I believe it's a fair representation of what was

1 on the recording, yes.

2 Q. Okay. And somewhere after that point, Mr. Avery
3 says, and I quote, "We can talk a little longer",
4 closed quote. And then he says, very shortly
5 after that, I want to help. Do you recall that?

6 A. With a little bit more detail to the quote, I
7 believe it was, If it's easy, as well. As long
8 as it's easy.

9 Q. He goes on to, makes the comment about it being,
10 as long as it's easy?

11 A. Correct. That's right.

12 Q. And that's where you pick up in the report, Well
13 as long as it's easy and whatever I know ... we
14 can.

15 A. Correct.

16 Q. Okay. Now, this may have gotten lost somewhere
17 in the direct examination by Mr. Fallon, but I
18 believe there was a time when you accepted the
19 telephone from Mr. Avery, correct?

20 A. Yes.

21 Q. And Steve says something to you like, Hang on,
22 and then just hands you the cell phone?

23 A. When he returns back to the vehicle, yes.

24 Q. This is shortly after he returns to the car on
25 one of the occasions. And at that point you talk

1 to the voice on the other end of phone.

2 A. Correct.

3 Q. The person on the other end of the phone

4 identified himself as a lawyer?

5 A. Yes, he did.

6 Q. Gave you his name?

7 A. Yes, he did.

8 Q. Gave the name, Steve Glynn?

9 A. Yes, he did.

10 Q. Was that a name you recognized as a criminal

11 defense lawyer in the State of Wisconsin?

12 A. No.

13 Q. Okay. Didn't know the name at all?

14 A. Rang no bells.

15 Q. Okay. Fair enough. And you had no reason to

16 doubt that the person was a lawyer?

17 A. No, I didn't.

18 Q. He identified himself, specifically, as

19 representing Steven Avery?

20 A. In a civil matter, yes.

21 Q. In a presently pending civil matter?

22 A. Yes.

23 Q. What else did he tell you about his

24 representation?

25 A. Besides being Madison, and what you just said,

1 nothing more than -- as far as representation.

2 Q. I'm sorry. You made a reference to Madison?

3 A. Yeah, that he was from Madison.

4 Q. Milwaukee, perhaps?

5 A. I thought it was Madison.

6 Q. That was -- I mean, that's your recollection?

7 A. Yes.

8 Q. Okay. You did not, in the report marked as
9 Exhibit 22, write down the details of your
10 conversation with the lawyer, on the telephone?

11 A. No.

12 Q. Neither were you able to record the conversation
13 with the lawyer, because the lawyer was on
14 Mr. Avery's cell phone?

15 A. I believe the recording reflects some of the
16 conversation that you can hear.

17 Q. Your end of it?

18 A. You may even also catch a little bit what
19 Mr. Glynn was saying as well, because of the
20 proximity of the phone to the recorder, I think.

21 Q. Right. I thought I heard that too. And to me
22 it -- if you have ever watched those old Charlie
23 Brown cartoons when Lucy's mother, the school
24 teacher, is talking, kind of a wha, wha, wha,
25 wha, (attorney demonstrates) that sort of thing?

1 A. I'm sure Mr. Glynn would probably not agree.

2 Q. Mr. Glynn probably will not agree with that. In
3 other words, I couldn't make out his words but,
4 I, like you, heard something that sounded like
5 your recorder was actually picking up a voice off
6 the cell phone.

7 A. Yes, sir.

8 Q. Could you make out, on your tape, what Mr. Glynn
9 was saying?

10 A. From my recollection, I think I might have made
11 out his name, because I remember writing down his
12 name on the note, as the well as the phone
13 number.

14 Q. Right. And if this will help refresh your
15 recollection, you are audible on the tape asking
16 him to spell his name and you are sort of, under
17 your breath, saying, why, and that kind of thing.
18 But in the meantime, we don't have Mr. Glynn's
19 voice recorded on there.

20 A. No.

21 Q. And you -- You've had nothing available to you
22 with which to refresh your recollection about
23 your conversation with Mr. Glynn that day?

24 A. Besides writing down his name on my notes at the
25 time, no.

1 Q. Okay. As far as you know, that's the only time
2 in your life you have spoken to Steve Glynn?

3 A. Yes, as far as I know, from my recollection.

4 Q. Okay. What I would like to do -- Actually, I
5 have one last sort of stray question, that was
6 just a follow up to Mr. Fallon's inquiry.

7 I don't have this verbatim in mind
8 anymore, but he asked you a question, something
9 like, was there any question that Steven Avery
10 refused to answer. And you paused for a little
11 bit, and then said something like, that Mr. Avery
12 never refused to answer a question relating to
13 Teresa Halbach.

14 And that struck me as a qualification.
15 Was there any other area, not relating to Teresa
16 Halbach, that Mr. Avery had not wanted to discuss
17 with you?

18 A. Yes.

19 Q. What was that?

20 A. I believe in our general conversation, when he
21 was explaining to me his fiance, and that he had
22 a problem, or issue, or what her issue was, that
23 she was incarcerated. And something to the
24 extent of, you know, she was curious of this, but
25 then and it's like, well, he didn't want to get

1 into that. And I said, Very well.

2 So, in answer to his question, going
3 back through that day, it gave me a little pause.
4 But, yet, I at least wanted to make it known that
5 that was the only time that I could recall that
6 he took us off the subject of that and moved on
7 to whatever else.

8 Q. Okay. And it's not that Mr. Avery, specifically,
9 or expressly told you, I don't want to talk about
10 my fiance, is it?

11 A. No, not at all.

12 Q. You just sensed he was uncomfortable?

13 A. Correct.

14 Q. You read him as being reluctant to talk about
15 that?

16 A. And he acknowledged that part.

17 Q. So, you respected that wish, not to discuss his
18 fiance?

19 A. It wasn't the fiance part, it was a different
20 part, relating to her being in custody, and what
21 the situation was that brought her there?

22 Q. Sure. But in any event, you respected that wish,
23 not to talk about that?

24 A. As part of our communication of understanding
25 each other, yes.

1 Q. And you moved on --

2 A. Right.

3 Q. -- to another subject right away?

4 A. Yes.

5 ATTORNEY STRANG: Okay. What I would like
6 to do, I'm done, I would like to pass the witness
7 back, your Honor. But then, rather than releasing
8 him, I would like to have him run out to his car,
9 get his notes. Maybe somebody here can make some
10 copies. And then I will take a look at those
11 during, or after, we're done with Mr. Glynn. And if
12 we need to recall Detective O'Neill, that would be
13 my suggestion, for the most efficient way to go.

14 THE COURT: All right. Well, when this
15 witness is done here, we'll let him get his notes
16 while we get started with Mr. Glynn. Mr. Fallon,
17 any redirect?

18 ATTORNEY FALLON: Just a couple questions,
19 Judge. Thank you.

20 **REDIRECT EXAMINATION**

21 BY ATTORNEY FALLON:

22 Q. There was a line of questionings -- questioning
23 by counsel, respecting the rights of other
24 individuals, including the right to a lawyer; do
25 you remember that line of questioning?

1 A. Yes.

2 Q. And you were asked the question, Well, it doesn't
3 even matter if the person is in custody or not;
4 do you recall that question?

5 A. Yes.

6 Q. All right. Now, in terms of one's Fifth
7 Amendment right to counsel, does it matter if
8 that right exists, if they were in custody or
9 not?

10 A. If I may, with my understanding, if a person is
11 not in custody, not under arrest, free to leave
12 any time, don't have to answer any questions,
13 didn't ask for an attorney, and if he did ask for
14 an attorney, I would honor that, by any means
15 possible.

16 Q. Well, maybe we'll ask the question this way. In
17 your mind, does his comment, words to the effect,
18 I guess they don't want me to talk no more, did
19 you take that as a request for counsel?

20 A. Unequivocally, no.

21 Q. Doesn't even mention counsel in there, does it?

22 A. No.

23 Q. Doesn't mention the word attorney, does it?

24 A. No.

25 Q. And on the tape, it doesn't mention -- When he

1 comes back, he doesn't mention attorney, right?

2 A. No.

3 Q. All right.

4 ATTORNEY FALLON: I'm not going to ask any
5 more questions. Let's move on.

6 THE COURT: All right. Mr. O'Neill, you
7 are excused to go to your vehicle and bring your
8 report back, at this time.

9 THE WITNESS: Thank you, your Honor.

10 THE COURT: Mr. Fallon, does -- the State
11 has no further witnesses on this motion?

12 ATTORNEY FALLON: No, your Honor, with the
13 receipt of the tape, which I think speaks for
14 itself, and the testimony, he was the only law
15 enforcement officer associated with that contact, on
16 that day, so I believe that is the basis.

17 THE COURT: I don't mean to make you feel
18 bad. It doesn't bother me that you don't have any
19 other witnesses. I just want to make sure I
20 understand.

21 ATTORNEY FALLON: That's the basis of their
22 motion, is that day of that interview.

23 THE COURT: All right. Mr. Strang, I
24 understand the defense has a witness.

25 ATTORNEY STRANG: I'm going to call Stephen

1 Glynn.

2 THE COURT: Very well.

3 THE CLERK: Please raise your right hand.

4 **ATTORNEY STEPHEN M. GLYNN**, called as a
5 witness herein, having been first duly sworn, was
6 examined and testified as follows:

7 THE CLERK: Please be seated. Please state
8 your name, spell your last name for the record.

9 THE WITNESS: Stephen, with a p-h, M, as in
10 Michael, Glynn, G-l-y-n-n.

11 **DIRECT EXAMINATION**

12 BY ATTORNEY STRANG:

13 Q. Mr. Glynn, what have you been doing with most of
14 your daytime hours, since 1971?

15 A. Defending criminal cases in state and federal
16 court.

17 Q. Do you recognize the gentleman immediately to my
18 right?

19 A. Yes, I do.

20 Q. Has he been a client of yours, at any point?

21 A. On probably two and a half occasions.

22 Q. Okay. Let's start with the whole occasions
23 first, earliest one.

24 A. 1995, my firm, which was then Shellow, Shellow
25 and Glynn, was retained by the Avery family, and

1 friends of the Avery family, to determine whether
2 there were post-conviction efforts that could be
3 brought on Steven's behalf, arising from a 1985
4 charge and, if I remember correctly, 1986
5 sentencing.

6 We filed post-conviction motions on his
7 behalf, relating to what we called newly
8 discovered evidence, consisting of DNA analysis
9 conducted on material found beneath the
10 fingerprints of the victim of a sexual assault,
11 for which Mr. Avery had been convicted.

12 Q. Fingernails not fingerprints?

13 A. What did I say, fingerprints? Yes, fingernails.

14 Q. Okay. This was about 1995?

15 A. Yes, I think the hearing on that would have been
16 in 1996. It was across the hall in Judge
17 Hazlewood's court.

18 Q. Okay. During that -- During the period of time
19 of that representation, was your practice
20 exclusively the defense of criminal cases?

21 A. Actually, from, gee, from 1972, roughly on, if I
22 had had a total of three civil cases in my
23 career, to today, that would a lot.

24 Q. Okay. All right.

25 A. The rest have all been the defense criminal

1 cases.

2 Q. And the firm, of which you were a partner at that
3 time, was almost exclusively a criminal defense
4 firm?

5 A. Yes, there was one partner who did family law.
6 There may have been the odd -- excuse me -- civil
7 rights action. I mean, I had handled civil
8 rights actions, as well. But by far, the vast
9 bulk of what we did was defense of criminal
10 cases.

11 Q. What was your second representation of Steven
12 Avery?

13 A. In a civil case, arising from the same conviction
14 that was the subject of the earlier
15 representation. And I was co-counsel on that
16 case with Walt Kelly, who was handling the civil
17 side of the case. I was involved to handle the
18 criminal law related side of the case, and to be
19 a trial lawyer on it.

20 Q. And what -- During what period of time, were you
21 representing Mr. Avery on that civil action?

22 A. My recollection is that Mr. Avery was exonerated,
23 and it was determined that Mr. Allen was the
24 actual assailant, in 2003.

25 And my recollection, again, is that that

1 was August or September and Walt and I were
2 involved in the case approximately 30 days later.
3 So, let's say, very early fall of 2003, up until
4 the settlement of that case, which was sometime
5 after Mr. Avery's charge in the present case.

6 Q. Were you representing Mr. Avery on that civil
7 case as of November 5, 2005?

8 A. I was. And if I may, that's the half that I made
9 reference to. I had had some conversations with
10 Mr. Kratz while I was, essentially, acting as
11 Mr. Avery's criminal defense lawyer, because he
12 didn't have another criminal defense lawyer at
13 that stage.

14 And I was still trying to determine
15 whether or not there were sufficient ethical
16 conflicts between being involved, simultaneously,
17 in the representation of Mr. Avery in a civil
18 case and getting involved in the criminal case.
19 Ultimately, that was resolved in favor of saying
20 such a conflict existed.

21 I talked to Mr. Kratz, by telephone,
22 told him I would not be involved, on behalf of
23 Mr. Avery, very much longer at all. My
24 recollection is that he and I then had a
25 telephone conference call with a Manitowoc County

1 Circuit Court Judge. I'm sorry, I just don't
2 remember which judge it was, at that time,
3 because it was just a scheduling conference, it
4 may have been even a scheduling conference on a
5 initial appearance. I'm not sure. It was not a
6 substantive appearance however.

7 And in that telephone conversation, I
8 informed the Court that I was prepared to act as
9 Mr. Avery's counsel, for purposes of the
10 scheduling, but would not be continuing to act as
11 his counsel in the criminal case.

12 Q. Let me locate you in time a little bit. We have
13 established here, and we're all clear, that
14 November 5, 2005, was a Saturday. All right.

15 Mr. Avery, at that point, was not under
16 arrest. I think the court records, and the
17 earlier evidence here, will show that he was
18 arrested on November 9, 2005, which would have
19 been the following Wednesday.

20 And just to give us some time frame on
21 the conversation with Mr. Kratz, and with the
22 Judge, here in this county, that you have
23 described; do you know whether those
24 conversations were before or after Saturday,
25 November 5?

1 A. I know they were after.

2 Q. On Saturday, November 5, 2005, and I think the
3 period of time we're interested in is, certainly,
4 the afternoon, perhaps between about 2:00 p.m.
5 and 5; do you recall talking with Steven Avery?

6 A. Yes, I do.

7 Q. Do you recall where you were when you talked with
8 Steven Avery?

9 A. Yes, I was in my office.

10 Q. Do you recall how you talked to Steven Avery?

11 A. By telephone, that would have been a wired line,
12 as opposed to a cell line, in my office.

13 Q. That is a landline in your office?

14 A. Yes. And when I say, my office, I mean the law
15 firm called Glynn, Fitzgerald, and Albee, located
16 in Milwaukee.

17 Q. Is the main number for that office 414/221-9600?

18 A. Yes.

19 Q. And then you have a number of rollover telephone
20 lines?

21 A. I think at least four additional ones. There's
22 9600, 9604, 9649, and then a couple of numbers
23 that I brought with us from the Shellow, Shellow
24 and Glynn telephones to the Glynn, Fitzgerald,
25 and Albee telephones, which included 271-8536 and

1 271, I think, 9417. And then there's, you know,
2 there's also a DSL line, and a fax line, and
3 others. But those are the five telephone lines.

4 Q. The voice telephone lines --

5 A. Yes.

6 Q. -- at least as you would call them. Were those 5
7 as of November 5?

8 A. Correct.

9 Q. Do you recall whether you were dialing a cell
10 phone number, or a landline number, for
11 Mr. Avery?

12 A. Can I expand on that a little bit?

13 Q. Sure.

14 A. My recollection is a cell phone. And I need to
15 back up a little bit to sort of set the scene, if
16 I can. I indicated that Walt Kelly and I were
17 representing Mr. Avery in a civil rights action,
18 based on his arrest and charging in connection
19 with the basis for his exoneration. We were in
20 the middle of depositions in that case and were
21 moving from what we considered to be less
22 important depositions to more important
23 depositions.

24 Q. This is as of November 5?

25 A. Yes. And Mr. Kelly and I would frequently meet

1 at my office, on Saturday mornings, to decide
2 what we were doing next in that case, and review
3 where he had been, and talk about where we were
4 going. And November 5th was such a meeting.

5 And we had decided to have that meeting,
6 because I started another case in Door County,
7 that was set for trial on restitution, complex,
8 white-collar crime, you know, multi-hundred
9 thousand dollar restitution issue and as well as
10 some sentencing issues.

11 And in the course of this meeting, Walt
12 Kelly asked me whether I had talked to a
13 particular newspaper reporter from the Milwaukee
14 Journal-Sentinel, and I said I had not. Walt
15 said that he had, and the person wanted to know
16 if either Walt or I had any comment on this
17 strange congruence between the fact that Steve
18 Avery is an exonerated guy who is in the middle
19 of a civil rights action, and there is now a
20 young woman who has disappeared, who has
21 apparently had some factual intersection with
22 him.

23 And I told Walt I didn't have the
24 slightest idea what this reporter was talking
25 about. Neither did Walt. We knew nothing of a

1 missing woman. And as a matter of fact, I think
2 at that time we thought this was somebody from
3 the Green Bay area.

4 So we talked to that reporter. He told
5 us he was running a story in the next day's
6 newspaper. And with respect to the presentation
7 of the Avery side of this issue, he was going to
8 be relying on some of the statements that
9 Mr. Avery had made to various media outlets.

10 Q. What day did you talk to this reporter?

11 A. I'm thinking it was the same Saturday that we
12 were in the office. And as a matter of fact, I'm
13 sure that's when it was.

14 And, again, as a lawyer, I'm sure you
15 can understand this, but for the record, I need
16 to say that this was a shock, to put it lightly.
17 Because the notion that a person who had been
18 wrongfully convicted of a crime he didn't commit,
19 is now sufficiently trusting of the media and law
20 enforcement, that he's making statements to them,
21 boggled my mind. I mean, I -- you know, it made
22 no sense to me at all. And so I said, I need to
23 try to get in touch with Steve. And here's where
24 my confusion is --

25 ATTORNEY FALLON: I'm going to interpose an

1 objection to the narrative at this time and ask that
2 we return to specific questions relative to the
3 issue at hand.

4 THE COURT: The objection is sustained.

5 Q. (By Attorney Strang)~ You made the decision you
6 wanted to call Steve, meaning Steven Avery?

7 A. Yes, and that's where the confusion was as to
8 your question --

9 Q. A point of confusion --

10 A. -- was this a cell line or was this a hard line,
11 did I call him one way or the other? And the
12 answer is, I'm not real sure. I believe that I
13 called him on his cell phone, and was then
14 requested, by him, or someone else who answered
15 the phone, to call back on a different cell
16 phone, that belonged either to his brother or his
17 mother. I think I was given both numbers. So,
18 yes, I did call him back. It was on a cell
19 phone. And I did speak to Steven Avery.

20 Q. Do you recall whether there was more than one
21 conversation that afternoon, in which you
22 actually spoke with Steven Avery?

23 A. Yes. I mean, I talked to him, I think, three
24 times during the course of what, I think, were
25 two calls. That is, I think in one call I talked

1 to him. And then there was an interruption.

2 Then I talked to him again. And then the other

3 call, I just talked to him the first time.

4 Q. Did you talk with a law enforcement officer that
5 afternoon, too, during the course of one of the
6 calls?

7 A. I did.

8 Q. Do you recall who that law enforcement officer
9 was?

10 A. Only by a refreshed recollection from your
11 showing me a report of his, whenever that was, a
12 month or two ago. And, frankly, a detective
13 outside introduced himself to me as Detective
14 O'Neill. We chatted for a little bit, and so I
15 understand his name to be O'Neill.

16 Q. So, if you talked to Steven Avery three times,
17 during the course of two calls, can you place the
18 conversation with Detective O'Neill in there
19 somewhere for me?

20 A. In that group? Yeah, I believe that it was
21 between the second and third, which I think were
22 part of the same telephone call.

23 Q. All right. What -- What was the thrust of your
24 conversation with Detective O'Neill, as you
25 recall it?

1 A. What can you tell me about this matter? Is
2 Mr. Avery under arrest? Is he a target of what
3 you guys are doing? Do you have warrants for
4 him? What can you tell me about this?

5 I mean, it was basically asking him
6 questions at the beginning, it was later telling
7 him, after we had gone through our question and
8 answer discussion, which was much more in the
9 nature of questions, and much less in the nature
10 of answers, that --

11 Q. Questions by whom?

12 A. Questions by me to him, and not a lot of answers
13 being received, or at least answers that weren't
14 terribly meaningful, that I said, Well, look, I
15 mean, I know I don't have the authority to make
16 you stop questioning him, but I'm telling you
17 that I don't want him questioned anymore, and I'm
18 going to talk to him again and make sure that he
19 tells you he doesn't want to be questioned
20 anymore.

21 Q. Do you recall O'Neill saying something to you
22 like, But Steven is well aware he is not under
23 arrest, he's free to leave at any time, he
24 doesn't have to talk with us, so that's not an
25 issue with us?

1 A. Something like that, yes.

2 Q. What was your response to that, if you recall?

3 A. He could -- He could have his view about arrest.

4 I could have my view about arrest. The point
5 was, that I didn't want Steven talking to him,
6 and that Steven would follow my advice and not
7 talk to him.

8 Q. Did you, then, ask to speak to Steven again?

9 A. Yes.

10 Q. Okay.

11 A. And understand, I had spoken to Steven earlier on
12 this same subject, as well. That's -- I don't
13 want to be volunteering stuff.

14 Q. Okay. And I'll try to get to it.

15 A. Okay.

16 Q. When you took the phone -- When Avery got back on
17 the phone, after O'Neill, what did you tell
18 Mr. Avery?

19 A. Well, actually, I repeated something that I had
20 said earlier, which is that I did not want him
21 talking to the officer, that even though the
22 officer said that he was not under arrest and at
23 that point not a target, and that there weren't
24 any warrants for him, that it just simply wasn't
25 in his interest to be carrying on these

1 conversations without the presence of a criminal
2 defense lawyer.

3 Not only did I want him to understand
4 that that's what I was telling him, but I also
5 wanted him to say that to the officer. So I
6 asked him to take the cell phone that he was
7 speaking on -- And I had the impression that he
8 was in a house.

9 He may not have been, he may have been
10 on a porch of a house. And when I say house, I
11 mean, I include trailer. I don't even know what
12 this place was, that he was visiting in Crivitz.
13 But at any rate, I wanted him to take that cell
14 phone with him, so that when he made the comments
15 to the officer, I could hear it.

16 Q. Did you hear him saying anything to the officer?

17 A. I did. And my best recollection of what I heard
18 him say is --

19 ATTORNEY FALLON: Objection --

20 A. -- I don't want to talk to you.

21 ATTORNEY FALLON: -- hearsay.

22 THE COURT: Just a sec -- Excuse me?

23 ATTORNEY FALLON: Hearsay, self-serving
24 hearsay by the respondent, the defendant.

25 THE COURT: Mr. Strang.

1 ATTORNEY STRANG: It's not an assertion
2 offered for it's truth. It's a verbal act, that was
3 audible to Mr. Glynn.

4 ATTORNEY FALLON: If it's not offered for
5 the truth, it's not relevant.

6 THE COURT: I'm going to sustain the
7 objection.

8 Q. (By Attorney Strang)~ Were you able to hear any
9 part of Mr. Avery's statements, or assertion,
10 comment of any kind, to somebody other than
11 yourself, on the phone?

12 A. Yes.

13 Q. What, in substance, did you hear?

14 A. What I heard --

15 ATTORNEY FALLON: Objection.

16 A. -- was Mr. Avery --

17 THE COURT: The objection is sustained.

18 ATTORNEY FALLON: He can ask what counsel
19 said, that's fine.

20 ATTORNEY STRANG: Again, your Honor, with
21 all due respect, I think the comment here is a
22 verbal act. Whether someone actually wants a lawyer
23 or not, only he can know, and that's really not --
24 the truth really isn't an issue here.

25 What's at issue is whether an assertion

1 that, I don't want to talk to you, or I want a
2 lawyer, or I'm going to stop this conversation,
3 anything like that, was made in a way that was
4 audible, both to the detective, we can infer from
5 Mr. Glynn hearing it.

6 THE COURT: I think it's a statement. I
7 think it's hearsay. I'm sustaining the objection.

8 ATTORNEY FALLON: I would note, it is on
9 the recording. It's already there. It's already in
10 evidence.

11 Q. (By Attorney Strang)~ What had been your earlier
12 advice in the first conversation with Mr. Avery?

13 A. The very first conversation I had with him was
14 one in which I told him not to have any
15 conversations with the officers, period.

16 Q. Did you ask, now, going back to the time when you
17 are on the phone with the officer, with O'Neill;
18 did you ask him, or was there a discussion
19 between the two of you, about whether Mr. Avery
20 was a suspect?

21 A. Yes.

22 Q. What do you recall yourself saying to
23 Mr. O'Neill, we have got his end of the
24 conversation but?

25 A. My recollection is that I used the word target.

1 And that's a term that I use in conversations
2 with prosecutors. It's a conversation that I use
3 in the relatively rare circumstances when I'm
4 talking to a state or city law enforcement
5 officer. And I believe that's the term I used.

6 Q. Would -- Would it help refresh your recollection,
7 in terms of the actual conversation, or the
8 further conversation with him, if I suggested to
9 you that at some point, as I have the tape, or
10 the recording, it reflects O'Neill saying to you,
11 For me to say he's a suspect, I haven't
12 determined that, no.

13 A. I mean, that certainly is consistent with my
14 recollection, but that doesn't -- I mean, I still
15 may have said to him, is he a target, and he may
16 have responded in terms of suspect. But,
17 clearly, what he communicated to me, was that he
18 was not prepared to say that Steve Avery was a
19 suspect, which, you know, I construed as a
20 outright lie.

21 Q. What, if anything, did you tell Mr. O'Neill about
22 your specific role representing Steven Avery that
23 afternoon, at the moment that you were on the
24 phone, alternately, with the two of them?

25 A. I told them that I was counsel in a pending civil

1 case, and if this was a criminal investigation
2 that Steve Avery was involved in, I was acting as
3 his lawyer in that as well.

4 Q. Do you recall him challenging that assertion at
5 any time?

6 A. You mean, telling me I couldn't be the lawyer, or
7 I wasn't the lawyer, or something, no.

8 Q. Do you recall him leading you to believe that he
9 would not respect your assertion that you wanted
10 the conversation with Steven Avery to stop?

11 A. I think --

12 ATTORNEY FALLON: Objection, speculation.

13 Q. I'm asking if you recall that.

14 THE COURT: Just a second repeat the
15 question please. Diane, can you read it back?

16 (Last question read back.)

17 THE COURT: I'm going to allow it.

18 A. I think that what he said was something to the
19 effect that Steve is going to have to make up his
20 own mind on that, or something to that effect,
21 that caused me to say, Well, look, I'm telling
22 you, I'm his lawyer, I don't want him questioned.
23 He certainly wasn't saying that, I don't believe
24 you are a lawyer, or I don't believe you are his
25 lawyer, or I don't believe that he wants to

1 listen to you.

2 Q. But as a practical matter, you had to leave it at
3 that, being on the telephone?

4 A. That's right.

5 ATTORNEY STRANG: That's all I have. Thank
6 you.

7 THE COURT: Mr. Fallon.

8 ATTORNEY FALLON: Thank you.

9 **CROSS-EXAMINATION**

10 BY ATTORNEY FALLON:

11 Q. Mr. Glynn, you have been actively engaged in the
12 criminal defense, or the defense of individuals
13 accused of crimes, since 1972, correct?

14 A. Actually '71.

15 Q. '71. And during that time you have had occasion
16 to advise many individuals regarding their
17 constitutional rights, correct?

18 A. Yes.

19 Q. You would consider yourself relatively proficient
20 in the scope of one's Fifth Amendment right to
21 counsel?

22 A. And Sixth, I think, yes.

23 Q. We'll take them one at time, Fifth Amendment
24 right to counsel?

25 A. Yes.

1 Q. Fifth Amendment right to remain silent?

2 A. Yes.

3 Q. And Sixth Amendment right to counsel --

4 A. Yes.

5 Q. -- correct? Okay. Now, with respect to the
6 events on November 5th, you were told, by
7 Detective O'Neill, that Mr. Avery was not under
8 arrest, correct?

9 A. Yes.

10 Q. And that he was not in custody?

11 A. Yes.

12 Q. That there were no warrants for his arrest?

13 A. Yes.

14 Q. And then there was a question of whether we --

15 A. I don't -- I shouldn't -- I don't know about the
16 for arrest business. I think I asked if there
17 were any warrants, and he said, no. So, I don't
18 know if -- I meant to encompass more than arrest.

19 Q. And there was a discussion regarding suspects
20 versus targets, you think you used the word
21 target, and he responded with the word suspect,
22 correct?

23 A. Yes.

24 Q. All right. And he said he is certainly not in a
25 position to say that he's a suspect, correct?

1 A. Yes, or words to that effect.

2 Q. Or words to that effect. All right. Now, you
3 also indicated that you, at that time, were
4 representing him primarily, first and foremost,
5 on the civil rights action involving Manitowoc
6 County, correct?

7 A. If, by first and foremost, you mean earlier, yes,
8 I was representing him on the civil case before I
9 was representing him on the criminal case.

10 Q. And as I understand it from your testimony, you
11 just said that you told Detective O'Neill, If
12 this is a criminal case, I'm representing him on
13 that, too?

14 A. Correct.

15 Q. But you had no discussion with Mr. Avery whether
16 or not you were going to represent him on any
17 criminal investigation, had you?

18 A. No.

19 Q. As a matter of fact, you didn't even know if
20 there was a criminal investigation, or a missing
21 persons complaint, correct?

22 A. I believed it was a criminal investigation and
23 the officer was telling me it was a missing
24 persons investigation.

25 Q. All right. But he told you it was a missing

1 persons case?

2 A. He did.

3 Q. All right. Nonetheless, without having any
4 discussions with Mr. Avery, you were asserting
5 that you were representing him on the criminal
6 investigation?

7 A. That's correct.

8 Q. Okay. Now, just so we're clear, one's Fifth
9 Amendment right to counsel does not exist unless
10 one is in custody and subject to police
11 interrogation, correct?

12 A. Correct.

13 Q. One's Fifth Amendment right to counsel -- excuse
14 me -- Fifth Amendment right to silence, likewise,
15 does not exist until one is in custody and
16 subject to interrogation?

17 A. Correct.

18 Q. And it's further -- With respect to one's Fifth
19 Amendment right to counsel, those rights are
20 personal to the person who is the subject of the
21 interrogation?

22 A. Correct.

23 Q. They cannot be invoked by their lawyer?

24 A. So it's been said.

25 Q. And, similarly, with respect to one's Fifth

1 Amendment right to silence, that is a right which
2 is personal to one who is accused?

3 A. Absolutely.

4 Q. That right cannot be invoked?

5 A. Same as we were saying before.

6 Q. All right. So it's incumbent upon the
7 individual, in person, to assert their rights on
8 their own behalf, correct?

9 A. Yes.

10 Q. And, again, those rights don't exist if one is
11 not in custody, correct?

12 A. Well, right, if at a later hearing one is
13 determined not to have been in custody, then
14 those rights, not being exercised, is
15 meaningless.

16 Q. Now, with respect to one's Sixth Amendment right
17 to counsel, one's Sixth Amendment right to
18 counsel does not exist until one is similarly
19 charged with the offense for which the
20 interrogation is to take place, correct?

21 A. Today, yes.

22 Q. Well, it was back then as well?

23 A. By then, you mean the time of the interrogation?

24 Q. Yes.

25 A. Yes.

1 Q. All right. And as a matter of fact, with respect
2 to the Sixth Amendment right to counsel, it is an
3 offense specific right, correct?

4 A. Yes.

5 Q. It doesn't cover any and all cases, only the
6 cases for which the person is charged?

7 A. There is some case law that disagrees with that,
8 but the general thrust of case law is as you
9 stated.

10 ATTORNEY STRANG: Your Honor, this is
11 afield, in the sense that we have raised no Sixth
12 Amendment claim, or correlative Wisconsin
13 Constitutional claim here. It's agreed that
14 Mr. Avery was not yet charged with a criminal
15 offense, the formal accusatory process had not
16 begun.

17 THE COURT: So it's a Fifth Amendment
18 question, you are saying?

19 ATTORNEY STRANG: It's a Fifth Amendment
20 question. And, again, the correlative provisions of
21 the Wisconsin Constitution, that's right.

22 Q. (By Attorney Fallon)~ All right. As a matter of
23 fact, in your discussions with Detective O'Neill,
24 as I understood your examination from defense
25 counsel, you said, quote, I don't have authority

1 to stop you from questioning him, you told
2 Detective O'Neill that, correct?

3 A. Right.

4 ATTORNEY FALLON: That's all.

5 THE COURT: Any redirect?

6 **REDIRECT EXAMINATION**

7 BY ATTORNEY STRANG:

8 Q. Assuming that a person is not under arrest, and
9 setting aside the very narrow circumstances of
10 when it can be a crime to refuse to provide your
11 name or your identity to a law enforcement
12 officer, I'm talking about *Hiibel*, most recently.
13 Setting aside that, if one is not in custody,
14 does one in this country have a perfect right to
15 assert a claim to silence, irrespective of
16 custodial status, when approached by a law
17 enforcement officer?

18 A. Absolutely.

19 ATTORNEY STRANG: That's all I have.

20 THE COURT: All right. The witness is
21 excused.

22 ATTORNEY FALLON: Pass. Thank you.

23 THE COURT: And, hopefully, Mr. O'Neill is
24 still hovering in the hall.

25 Mr. Strang, from my own benefit, is the

1 motion -- I don't recall if this was specified in
2 the motion, but is your motion triggered by the
3 portion of the interview that you questioned
4 Mr. O'Neill on earlier, that point forward? Is
5 there any challenge to any statements made before
6 that point? The language about, Well, I guess
7 they don't want me to talk no more, and I got to
8 listen to my lawyer; is that what the defense is
9 arguing here, is the assertion of the right to
10 remain silent?

11 ATTORNEY STRANG: Yes, and I don't want to
12 be pinned down to specific words, but we're talking
13 about the same point in time and it's -- it's in
14 part two --

15 ATTORNEY FALLON: It's reflected on the
16 bottom of page four and the remainder of page five
17 from the report status.

18 ATTORNEY STRANG: And I guess, more
19 importantly --

20 THE COURT: I think on the --

21 ATTORNEY STRANG: -- part three and into
22 part four on the --

23 ATTORNEY FALLON: On the tape.

24 ATTORNEY STRANG: -- on the tape, on the
25 recording.

1 THE COURT: Right. My recollection is the
2 part three ended with the officer waiting for
3 Mr. Avery to come back, after he was on the
4 telephone --

5 ATTORNEY FALLON: That's correct.

6 THE COURT: -- with his attorney, and then
7 part four --

8 ATTORNEY FALLON: Picks up --

9 THE COURT: -- starts with the language
10 that you questioned Mr. O'Neill about.

11 ATTORNEY STRANG: Yes.

12 ATTORNEY FALLON: Correct.

13 ATTORNEY STRANG: Right. We're in the
14 right location. That's right.

15 THE COURT: Okay. Mr. O'Neill, you are
16 still under oath. Mr. Strang, do you need a couple
17 minutes to go over that.

18 ATTORNEY STRANG: Yes.

19 THE COURT: All right. Let's take a short
20 break and then we will come back for some final
21 questions for Mr. O'Neill.

22 (Exhibit 23 marked for identification.)

23 (Brief recess taken.)

24 THE COURT: Mr. O'Neill, you are still
25 under oath and, Mr. Strang, you may begin.

RECROSS-EXAMINATION

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BY ATTORNEY STRANG:

Q. Is Exhibit 23 an accurate photo copy of the notes retrieved from your car?

A. Yes, it is.

Q. If you go to the first page, the top page, the entry at the top, 1415 is 2:15 p.m.?

A. Yes.

Q. That's roughly when you arrived to begin talking to Steven Avery?

A. Actually I'm leaving the car at the point and talking to Steve Avery, yes.

Q. I'm sorry?

A. I think we arrived at 2:00 p.m. Actually sitting down with Steven was at 2:15.

Q. All right. And then down at the bottom, at 5:57 p.m., which you have written in Zulu time or military time, 1757; do you see that?

A. Yes, I do.

Q. All right. And -- And what you are recording there is that the property owner revoked his consent for you to be on the property?

A. Correct.

Q. The property owner being Al, or Allen Avery?

A. Correct.

1 Q. What's 1055 mean?

2 A. In my notations, 1055 would mean alcohol --
3 alcohol was a factor in that notation.

4 Q. Okay. But you understood the property owner to
5 be revoking consent for law enforcement to be
6 present on the property?

7 A. Correct.

8 Q. If we go to Page three, you have got an entry of
9 1538; is that right?

10 A. Yes.

11 Q. That's 3:38 in the afternoon?

12 A. Correct.

13 Q. And you write, Attorney phoned to me, right?

14 A. Yes.

15 Q. What do you mean there?

16 A. I believe that was a point where, two minutes
17 before the connected phone call of Mr. Glynn, he
18 received, again, a phone call. And it was his
19 attorney. And they wanted to talk to me, but the
20 area that we're in is really bad for cell phones
21 and it disconnected. And he called back, as
22 noted in the second entry.

23 Q. And what's the -- I can't read the time on that,
24 can you?

25 A. 1540.

1 Q. So, two minutes later.

2 A. Correct.

3 Q. 3:40. The lawyer calls back, and the first line

4 I can't read, after 1540; what does that say?

5 A. Interview continue.

6 Q. Interview continued?

7 A. Yes.

8 Q. Okay. Meaning interview with Steven Avery

9 continued?

10 A. Correct.

11 Q. And then at that point, Avery actually offers you

12 the names and telephone numbers of the lawyer at

13 some point right in there, correct?

14 A. I don't believe Steven did. I don't know if this

15 is a notation I made when I was asking Attorney

16 Glynn to clarify the name, and I see that there's

17 another name as well in the log.

18 Q. Right. But as a matter of refreshing your

19 recollection, if the tape -- I think the

20 recording has Mr. Avery saying something to you,

21 very close to, if not verbatim, quote, "No, but

22 here's his number, case when you want to talk to

23 me, contact them and they -- they want to be

24 there too", closed quote. Do you remember

25 Mr. Avery saying--

1 A. I don't remember that, but if it's on the
2 recording, I would have to refresh my memory with
3 that.

4 Q. Okay. But do you recall Avery at least offering
5 you a number for one or more of his lawyers?

6 A. I don't remember. I don't remember if I got it
7 from Mr. Glynn, or if I got it from Mr. Avery, or
8 if I got it from both, or if it was at the
9 conclusion of our interview. I really don't know.

10 Q. Okay. But the comment here, interview continued,
11 it's referring to the interview with Avery, not
12 an interview with Glynn?

13 A. That's correct.

14 Q. Okay. And then below that you have written
15 Stephen Glynn, right?

16 A. Yes.

17 Q. And below that, you have written the name Walt
18 Kelly?

19 A. Yes.

20 Q. That's not a name that Mr. Glynn gave you?

21 A. It may have been, I'm not certain. In fact, I
22 didn't realize it until now that the name Walt
23 Kelly was below my note of Steve Glynn.

24 Q. Okay. So whether Glynn gave it to you, or Avery
25 gave it to you, or both, you just don't remember?

1 A. I remember talking to Mr. Glynn. But noting,
2 Mr. Kelly's.

3 Q. Okay. And you noted the attorneys, right?

4 A. I believe Mr. Kelly is an attorney, yes.

5 Q. Yeah. I mean, you have got a note to the right
6 of that, attorneys?

7 A. Correct.

8 Q. And then a telephone number?

9 A. Correct.

10 Q. Which is 414/221-9600?

11 A. Yes.

12 Q. Do you remember now whether you got that from
13 Glynn, Avery, or both of them, or do you just not
14 remember?

15 A. I don't recall.

16 ATTORNEY STRANG: That's all I have.

17 Thanks. And I move Exhibit 23.

18 THE COURT: Any objection?

19 ATTORNEY FALLON: No objection to the
20 exhibit. No questions.

21 THE COURT: Okay. Exhibit 23 is in and the
22 witness is excused.

23 THE WITNESS: Thank you, your Honor.

24 THE COURT: You're welcome.

25 ATTORNEY FALLON: I think that completes

1 the evidence on this motion.

2 THE COURT: On that motion, I believe it
3 does.

4 ATTORNEY STRANG: Yes, it does.

5 THE COURT: Counsel, what are the remaining
6 witnesses that the parties will be calling on the
7 multiple execution search warrant issue?

8 ATTORNEY FALLON: The burden is still on
9 the defense to go forward, that we have taken
10 testimony from one of their witnesses, Lieutenant
11 Lenk. So I'm not certain how many more they have
12 and how much more we're going to do this evening.

13 ATTORNEY BUTING: Judge, I have Detective
14 Remiker, and Sergeant Colborn. Neither of which
15 probably will be much longer than -- probably be
16 about the same length as Lieutenant Lenk, which was
17 what, about 45 minutes?

18 ATTORNEY FALLON: I think probably about an
19 hour total.

20 ATTORNEY BUTING: About an hour each, for
21 those. Sheriff Pagel, just briefly. And possibly
22 Sergeant Tyson tomorrow, but I don't know that we're
23 going to need that, and that would be it. Unless, I
24 don't think -- possibly Investigator Wiegert, if he
25 had some decision making or a signing type

1 authority, we could find that out later.

2 THE COURT: The -- And these witnesses are
3 all going to have something to say that's not just
4 cumulative to what the others have said?

5 ATTORNEY BUTING: They weren't all on the
6 exact same searches, right. They were paired up at
7 times, and other times they were separate, with
8 other individuals.

9 THE COURT: How much time do you think is
10 left to present the defense case, with those
11 witnesses?

12 ATTORNEY BUTING: I would estimate about --
13 Detective Remiker, perhaps a little bit longer,
14 because he actually did more searches than anybody.
15 Colborn maybe a half hour, Remiker maybe 45 minutes.

16 THE COURT: What about the others, or are
17 they contingent witnesses?

18 ATTORNEY BUTING: Wiegert is contingent
19 on -- I don't know, he didn't do any of the searches
20 directly, so his testimony would be only in the
21 event he is a -- was involved in the decision
22 making. And similar with Pagel. And Tyson, I think
23 there is really only a couple of searches that he
24 was involved in. So neither one of those witnesses
25 would be lengthy, on my motion.

1 THE COURT: I'm just wondering, if I
2 understand the nature of your motion, and the
3 multiple -- I understand the legal argument, I'm
4 just wondering if every officer who participated in
5 a search, has to testify for you to make your point.

6 ATTORNEY BUTING: The case law on these --
7 on this issue, is not entirely clear. And in
8 Wisconsin, there is none that has actually ruled on
9 it. But the other case law, I think the one thing
10 that is pretty clear and not surprisingly, because
11 most Fourth Amendment law is like this, is very fact
12 driven.

13 And although there are some -- there's
14 some sort of different approaches, although
15 there's some common themes that the other courts
16 in other state's have taken on this issue. But
17 the facts, and I anticipate the State is going to
18 be presenting some evidence as well --

19 THE COURT: Well, I don't want to prevent
20 you from fully presenting your case, I'm just
21 questioning whether the level of detail for each
22 witness will be necessary. What is the State
23 looking at in terms of its witnesses?

24 ATTORNEY FALLON: I can tell the Court
25 that, I'm looking for my check list at the moment,

1 but off the top of my head, I know that there will
2 be probably four witnesses, if they call all the
3 witnesses they are calling.

4 I believe we have some brief testimony
5 from Sergeant Tyson, some testimony from
6 Lieutenant Bowe and Lieutenant Sippel. And there
7 will be testimony from Special Agent Tom
8 Fassbender.

9 I think that's it. Because I suspect
10 that by the time defense is done presenting their
11 case, and we'll be able to elicit testimony from
12 some of the witnesses they are calling, that that
13 will -- that will help, although most of my
14 questioning for the other witnesses is unrelated
15 to the key points that the defense is apparently
16 trying to bring out.

17 THE COURT: All right. Well, it looks to
18 me like the testimony we're looking at is going to
19 take the better part of the day tomorrow. I don't
20 know that it pays --

21 ATTORNEY FALLON: I would say that's
22 probably true.

23 THE COURT: -- to do much more tonight. We
24 are going to have to finish tomorrow --

25 ATTORNEY FALLON: That's fine.

1 THE COURT: -- regardless of how long it
2 takes. I did have one matter I wanted to take up on
3 the record before we leave. I think we have
4 discussed it before. I know I have discussed it
5 with counsel and in correspondence, and I don't
6 believe there's been any objection to this.

7 But in order to address some of the
8 concerns, primarily raised by the defense on the
9 venue motion, and also under the Court's own
10 authority, to keep prejudicial evidence from
11 being made public, because of the level of
12 publicity that's attended to this case, I have
13 ordered a number of documents sealed. And I have
14 actually given the parties some authority on
15 their own to submit documents under seal.

16 A number of those documents have since
17 been opened, but a number of them are also still
18 sealed, and I would like to hear from the
19 parties, on the record, whether they have any
20 objection to the documents that are currently
21 sealed, or the method that the Court has been
22 using to this point. Mr. Fallon and Mr. Kratz.

23 ATTORNEY KRATZ: Yes, Judge, we do
24 understand that the items that remain under seal
25 include nine other acts motions, and one three-part

1 in limine motion by the State, that required a
2 probative versus prejudice analysis by the Court for
3 admissibility. We have no objection to those
4 matters remaining under seal.

5 It's my recollection, Judge, perhaps I'm
6 wrong on this, but it's my recollection that the
7 balance of the items that originally were ordered
8 sealed by the Court, have now been unsealed. And
9 if that is, in fact, a correct recollection, we
10 have no problem with that continuing.

11 We do anticipate a ruling, again, some
12 time prior to trial, at least enough in advance
13 of trial, as to the other acts and that one
14 three-part in limine motion. And we understand,
15 at least the Court's original indication, that
16 the items that would be ruled admissible, the
17 seal would be lifted; and those that the Court
18 believed, if any, would be inadmissible, would
19 remain sealed. The State has no objection to
20 that procedure as well.

21 THE COURT: Mr. Strang.

22 ATTORNEY STRANG: First, most broadly, I
23 have no objection to the procedure the Court is
24 using on both sealing and unsealing to date.

25 Second, more specifically, as I

1 understand the division between which specific
2 documents remain sealed and which do not, I have
3 no objection there either.

4 The proviso I guess I would add, is that
5 it probably would be a good time tomorrow, for me
6 to pause and just look to make sure that my
7 understanding of what is sealed and not sealed,
8 accords with reality.

9 THE COURT: I have not -- I know at the
10 last hearing, before a number of documents were
11 unsealed, I did my own inventory and attempted to
12 make sure that anything that could be unsealed was
13 unsealed. I have not inventoried the sealed versus
14 unsealed documents lately, so I'm not in a position
15 to know -- say whether Mr. Kratz is correct as to
16 the current state of affairs or not.

17 However, that -- if I didn't mention it,
18 the understanding is correct, that once the Court
19 rules that information will be admissible, it's
20 the Court's intention, at that point, to unseal
21 it. There's certainly a strong presumption in
22 favor of openness in our court system, and it's
23 only to maintain the integrity of the trial and
24 protect the defendant's rights to a fair trial
25 that some of the documents have been sealed.

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Counsel, let's do this, I'm going to excuse you for today, but let's plan on starting at 8:30 tomorrow, to make sure we don't run into troubles as the day goes on. Anything else today?

ATTORNEY KRATZ: Not from the State, Judge. Thank you.

ATTORNEY STRANG: We had a stipulation resolving one motion, should we make that of record tomorrow, or do we fear that we'll forget it.

THE COURT: Well, I think, actually, I have a list of some other things to possibly address after tomorrow's hearing, and that's one of them. So, we'll do it that way, along with some of the other matters to be addressed. All right. If there's nothing further, we're adjourned for today.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 14th day of August, 2006.

Diane Tesheneck, RPR
Official Court Reporter

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, PARTIAL MOTION HEARING

5 vs. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** AUGUST 10, 2006

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES :**

12 KENNETH R. KRATZ
13 Special Prosecutor
14 On behalf of the State of Wisconsin.

14 THOMAS J. FALLON
15 Special Prosecutor
16 On behalf of the State of Wisconsin.

16 DEAN A. STRANG
17 Attorney at Law
18 On behalf of the Defendant.

18 JEROME F. BUTING
19 Attorney at Law
20 On behalf of the Defendant.

20 STEVEN A. AVERY
21 Defendant
22 Appeared in person.

22 * * * * *

23 **PARTIAL TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery. It's Case No.
3 05 CF 381. We're here this morning for a
4 continuation of a hearing on some pretrial motions
5 that started yesterday. Will the parties state
6 their appearances for the record, please.

7 ATTORNEY KRATZ: State appears by Special
8 Prosecutors Kratz and Fallon.

9 ATTORNEY BUTING: Attorney Jerome Buting
10 appears on behalf of Mr. Avery. Also present is
11 Attorney Dean Strang.

12 THE COURT: All right. And I believe we're
13 taking testimony this morning on the defense motion
14 challenging the multiple execution of search
15 warrants. Mr. Buting, you may call your first
16 witness.

17 ATTORNEY BUTING: Thank you.

18 **DETECTIVE DAVID REMIKER**, called as a
19 witness herein, having been first duly sworn, was
20 examined and testified as follows:

21 THE CLERK: Please be seated. Please state
22 your name, spell your last name for the record.

23 THE WITNESS: Dave Remiker, R-e-m-i-k-e-r.

24 ATTORNEY BUTING: Good morning.

25 THE WITNESS: Good morning.

DIRECT EXAMINATION

BY ATTORNEY BUTING:

Q. We left off your last testimony with the efforts to obtain a warrant, search warrant, on November 5th, for the Avery property, correct?

A. I believe so.

Q. And I believe you said that you went with Investigator Wiegert, and one or more lawyers, to get the warrant itself, from Judge Fox?

A. Yes.

Q. And then you returned to the Avery property with the warrant at what time?

A. I believe it was about 3:30 in the afternoon.

Q. And then, what was your assignment after that?

A. Well, there were several discussions about how we were going to go about doing this. Obviously, the scope of our concern, in our search, was to locate Teresa. And eventually we put some teams together, some individuals.

What we tried to do is coordinate our efforts so that there was a Calumet County officer and a Manitowoc County officer together. And we were assigned different locations to go in and find Teresa.

Q. And by that time, you were aware that, because of

1 the possible appearance of a conflict of
2 interest, the Manitowoc Sheriff's Department had
3 turned over lead authority for the investigation
4 to Calumet, right?

5 A. Yes.

6 Q. And so, you first were paired with an
7 Investigator Steier, I believe?

8 A. Gary Steier, correct.

9 Q. From Calumet?

10 A. Yes.

11 Q. And you made your first entry, on the warrant, to
12 Mr. Avery's trailer?

13 A. Yes.

14 Q. And that would have been at 3:48 p.m., on
15 November 5th?

16 A. Correct.

17 Q. And you did that by force, by kicking in the
18 door, did you not?

19 A. Yes.

20 Q. And then, what did you do when you were inside?

21 A. We entered. There was two doors. The door to
22 the right, we entered. We entered into a living
23 room, the kitchen is to the right. There is a
24 hallway to the left that leads to the bathroom,
25 and then another bedroom way on the end.

1 Just went through the residence checking
2 closets, looking for Teresa, or any evidence that
3 Teresa was there, any clothing, anything obvious
4 that would indicate Teresa would be in that
5 residence.

6 Q. Now, so we're clear on the record, you testified
7 yesterday that you had actually -- the day
8 before, November 4th, you had been in the very
9 same trailer with consent?

10 A. Yes.

11 Q. So you had gone through and opened up doors and
12 closets, on that occasion as well?

13 A. Correct.

14 Q. And neither the 4th, nor the 5th, then, when you
15 made this first entry, did you see anything that
16 would indicate that Teresa had been there?

17 A. I did not find Teresa in his trailer.

18 Q. I'm sorry, the last part of that?

19 A. I did not find Teresa in his trailer.

20 Q. In the trailer?

21 A. Correct.

22 Q. So you were in it only about 10 minutes at that
23 time?

24 A. Well, I believe we went to the garage.

25 Q. Let's stick with the trailer, first?

1 A. I'm recalling the times, the garage was around a
2 little after 4 o'clock.

3 Q. If I told you that you entered the trailer at
4 3:48 on November 5th, and exited at 3:58 p.m.,
5 would that be --

6 A. Correct, yes.

7 Q. Okay. And then, after leaving the trailer, you
8 went immediately into the detached garage that
9 was located next door?

10 A. Yes.

11 Q. And if I told you that you entered at 3:58 p.m.
12 and left the garage at 4:06 p.m.; would that fit
13 with your recollection?

14 A. If that's what my report says, that would be
15 accurate.

16 Q. Okay. And, again, in the garage, you were
17 looking for Teresa or any evidence that would
18 indicate Teresa had been there?

19 A. I would say that's pretty accurate.

20 Q. And, again, you found neither?

21 A. Well, I didn't -- We didn't find her. There was
22 some shell casings on the floor.

23 Q. Did you pick those up at that time?

24 A. No.

25 Q. Okay. So, nothing else?

1 A. I don't believe so.

2 Q. All right. Now you -- You went back, I assume,
3 had some other duties elsewhere on the property
4 after that, but then you returned to the trailer,
5 that is, Steven Avery's trailer, at 5:35 p.m.,
6 with the dog handler; do you recall that?

7 A. No.

8 Q. Do you ever remember going in the trailer, in
9 Steven Avery's trailer, at any point, with the
10 dog handler?

11 A. I did not.

12 Q. Let's see. I'm going to show you an excerpt from
13 the Calumet County Sheriff's Department report,
14 Page 89, at the top, ask you to review that last
15 three paragraphs; are you familiar with that?

16 A. Yeah, I have had discussions about that entry.

17 Q. About that what?

18 A. About the entry on the report, that makes
19 reference to myself going into the residence with
20 a dog handler.

21 Q. Does that refresh your recollection on this?

22 A. No, that wasn't me.

23 Q. So you are saying that this report is in error?

24 A. It is not my report. My report indicates the
25 times that I was in the residence. For some

1 reason, my name was listed as an individual going
2 in on that occasion. That's not the case.

3 Q. Okay. So you, at no point, entered with a
4 cadaver dog, to look around the apartment?

5 A. Must have been somebody else that he documented.
6 That wasn't me.

7 Q. Were you aware that that was done?

8 A. I don't believe so.

9 Q. Okay. All right. In any event, you did go back
10 in the trailer, that is, Mr. Steven Avery's
11 trailer, again, on November 5th, correct?

12 A. Yes.

13 Q. And I'm talking about after the search warrant
14 was obtained?

15 A. Correct.

16 Q. And it was approximately 7:30, I believe?

17 A. Correct, yes.

18 Q. And so we have these times for the record, if I
19 told you that you entered the Avery trailer,
20 Steven Avery trailer, at 7:30 p.m. and exited and
21 10:05 p.m.; would that fit with your
22 recollection?

23 A. That sounds right.

24 Q. That's on Page 11 of 22?

25 A. Yup.

1 THE COURT: Was that 10:05, the time?

2 ATTORNEY FALLON: Yes.

3 ATTORNEY BUTING: Yes, 7:30 to 10:05 p.m.

4 Q. (By Attorney Buting)~ Now, on that occasion, you
5 also entered with Sergeant Colborn, correct?

6 A. Yes.

7 Q. And Lieutenant Lenk?

8 A. Yes.

9 Q. And Calumet Sheriff's officer, Sergeant Tyson?

10 A. Correct.

11 Q. So there were four officers, three of which were
12 Manitowoc Sheriff's Department officers, right?

13 A. Yes.

14 Q. And the 4 of you then spent 2 1/2 hours, 2 hours
15 and 35 minutes, searching the entire trailer; is
16 that right?

17 A. Yes.

18 Q. And you seized a number of items?

19 A. Yes.

20 Q. Including bedding, photographs, handcuffs; do you
21 recall that?

22 A. I believe so, yes.

23 Q. And you, yourself, were also searching, looking
24 at the walls, and the doorways, and areas like
25 that, to see if there might be any evidence of

1 blood as well, correct?

2 A. That's my job, yes.

3 Q. Okay. And you did locate some items that, at the
4 time, you believed might be bloodstains, later
5 determined not to have any relationship to Teresa
6 Halbach, but you did make note of those, right?

7 A. There were several areas within the residence
8 that contained a red dried substance.

9 Q. Okay. And you had photographed them?

10 A. I believe I took some digital photographs of
11 those areas, yes.

12 Q. Okay. And then you also took swabs of those
13 areas?

14 A. Yes.

15 Q. And by that, I mean, you were taking a -- Well,
16 you tell me, I don't want to lead you. Tell me
17 what taking a swab means.

18 A. Well, what you do is, you take a sealed, unused,
19 sterile cotton-tipped applicator, you remove that
20 from its packaging. Usually what you do is, you
21 prepare another package for that applicator to go
22 into.

23 You use a sealed, distilled water
24 container, and you apply a few drops to the end
25 of the sterile cotton-tipped applicator. You

1 then swab the dried, liquid substance with the
2 applicator. You place it into your evidence
3 packaging. You seal it. You label it. You
4 secure it.

5 And then a lot of times, in many cases,
6 you would also take a controlled swab, which is
7 another swab. You use the same technique. You
8 swab an area in close proximity to the area where
9 you took the first swab from.

10 Q. All right. And you did that more than once while
11 you were in the Steven Avery trailer, on November
12 5th, that evening, correct?

13 A. Yes.

14 Q. And the point of that was, you were looking for
15 trace evidence, right?

16 A. Yes.

17 Q. Specifically, to see whether or not there might
18 be any DNA associated with Teresa Halbach?

19 A. Well, many -- Many of the areas I observed looked
20 consistent with blood.

21 Q. Okay. And that's your job, was to do that and to
22 look for that?

23 A. Absolutely.

24 Q. And you were commanded by the warrant to do that,
25 right?

1 A. Yes.

2 Q. And so, you did do that, you took swabs? You can
3 refer to your report if you need to. It's on
4 Page 12, just to refresh your recollection. But
5 you identified three different spots on the
6 wooden frame area surrounding the doorway; is
7 that right?

8 A. Yes. Right outside of Steven's bedroom, there
9 was a wooden frame around the door. And along
10 the wall there was some dried, red substances on
11 the wall.

12 Q. Okay. And then you also found some -- a drop of
13 similar dried, red substance on the floor of the
14 bathroom, correct?

15 A. Yes.

16 Q. And you took a swab of that?

17 A. Yes.

18 Q. And you also found a similar type of a red
19 marking on the wooden molding on the right side
20 of the bedroom doorway? I'm sorry, right side of
21 the doorway, facing the doorway, from the
22 interior of the residence?

23 A. That's the first one I talked about, the molding
24 around the doorway.

25 Q. Okay. But now you took another one, second to

1 last full paragraph.

2 ATTORNEY FALLON: Your Honor, I'm going to
3 object, because it seems to me that, although they
4 were in there doing their search and that it does
5 take time, and we'll certainly concede that, I'm not
6 sure that the painstaking detail of what was
7 collected where, and how it was collected, other
8 than the fact that collecting evidence takes time
9 and is detailed work, beyond that, I'm not sure how
10 this relates to the multiple execution argument.

11 THE COURT: Mr. Buting.

12 ATTORNEY BUTING: Well, I could tighten it
13 up a little bit, but it is relevant in terms of, you
14 know, their evidence, whether or not he was
15 completing his search of the residence at that time.

16 THE COURT: Well, I agree that -- I can
17 understand why you have to get it in, but I don't
18 want to be here until midnight either. I think for
19 purposes of this hearing, the level of detail that
20 we're going into right now is probably unnecessary.

21 Q. (By Attorney Buting)~ All right. Let me ask you
22 this way, if you recall. Do you know how many
23 swabs, in total, you took of things that you
24 thought might possibly be bloodstains? I
25 understand later they have proven not to have any

1 relevance, but you were doing your job at the
2 time. How many swabs did you take from the
3 residence on that evening?

4 A. The entire residence?

5 Q. Yes.

6 A. I can't give you an exact number. In my
7 estimation, I would say probably between 10 and
8 20.

9 Q. So you found a lot of possible areas to look,
10 throughout the trailer, right?

11 A. Yes.

12 Q. Not just by the doorway, but also in the living
13 room, front door, areas like that?

14 A. There were some areas on the front door, wasn't
15 sure if it was paint, blood, other substance. I
16 wasn't sure. I believe I took some swabs in that
17 area. I don't know if there was anything in the
18 living room. It was more in the bathroom and
19 Steven's bedroom.

20 Q. Now, was it primarily your responsibility? Of
21 the four officers in there, was it primarily your
22 responsibility to be doing the trace evidence
23 search, or what?

24 A. We all played a part. We all had a section of
25 the residence, or the bedroom. I have done

1 collection similar to this in the past, the use
2 of those types of kits. I felt very confident in
3 my abilities, and we worked together.

4 One individual may have taken the
5 collection, the other individual may have
6 prepared the packaging, to put the collection in.
7 So, using my equipment --

8 Q. Sure.

9 A. -- it made the most sense.

10 Q. So, but do you know whether any of the other
11 three remaining officers that were in there, also
12 collected trace evidence, in the form of swabs?

13 A. In the form of swabs, I would say that it was
14 either myself or Sergeant Colborn who would have
15 done the swabs or participated in the collection
16 of those.

17 Q. Okay. Now, you also seized -- In terms of trace
18 evidence, you also found like a lint roller with
19 some sort of adhesive material on it?

20 A. Yes.

21 Q. And you seized that?

22 A. I did not seize that, I used that.

23 Q. Oh, I'm sorry. You used that in order to take
24 samples of fibers, hairs, things like that?

25 A. It's a technique you use. In this case, the

1 carpeting in Steven's bedroom, I used a lint
2 roller to just roll over the carpeting to collect
3 trace hair, trace items of evidence that may have
4 been in the carpeting.

5 Q. Okay. And you went all around the bedroom, or
6 all around the bed, anyway?

7 A. I think the main area that I -- that I used was
8 when you first walk into the bedroom, between the
9 doorway and the bed, near the night stand, that
10 area.

11 Q. Okay. And then, also a number of items, many,
12 many items, were seized. Do you know about how
13 many items were actually taken on that search?

14 A. It's my job to collect it, search, and then
15 everything was turned right over to Calumet
16 County. They did the list. I have no idea.

17 Q. Could it be as many as 50 items; would that fit
18 with your recollection?

19 A. It could have been.

20 Q. Okay. And I'm not going to go through all of
21 those, I'm sure your happy to hear.

22 A. Thank you.

23 Q. But it did include a vacuum cleaner bag and
24 filter, correct?

25 A. I believe that was taken. Whether that was taken

1 Saturday or Sunday, I'm not sure.

2 Q. You could look at the bottom of Page 22 -- I'm
3 sorry, 12 --

4 A. 12.

5 Q. -- of your report, last full paragraph.

6 A. Yes.

7 Q. The vacuum bag and filter were removed from the
8 vacuum cleaner on that search, right?

9 A. Correct.

10 Q. And the four of you searched and continued as
11 long as necessary, that evening; isn't that
12 right?

13 A. Yes.

14 Q. No one kicked you out of the trailer and said
15 it's time to go?

16 A. No.

17 Q. No one put any kind of time limit on when you
18 should get out of that trailer that night; is
19 that right?

20 A. No. That's right, I'm sorry.

21 Q. Okay. And then, when you left at 10:05 p.m., you
22 had completed your search of the entire trailer,
23 Steven Avery trailer; is that right?

24 A. Well, that search, yes.

25 Q. As far as you knew, at that point, you had

1 searched -- or you had seized everything that had
2 any apparent evidentiary value, from Steven
3 Avery's trailer?

4 A. No. I know we had some questions about certain
5 things. I mean, at that time, we didn't know a
6 lot. And there were magazine, after pornographic
7 magazine, in there. There was pictures. There
8 was stuff, we weren't sure at that time whether
9 it was relevant or whether we should take it, so.

10 Q. But anything that had obvious evidentiary value,
11 that fit within your parameters of the search
12 warrant, you took on that night?

13 A. No. We -- Obviously, we went back to get a
14 number of other things. There was a shotgun, or
15 a gun, in the bedroom.

16 Q. Answer my question though, is -- did you leave
17 the -- is there some reason you didn't take the
18 shotgun that night?

19 A. I don't recall. There may have been a question
20 whether it was included in the search warrant.
21 We had a lot of questions about what we should
22 take, what we shouldn't take.

23 Q. Okay. But in your actual words of your report,
24 at 2205, 10:05 p.m., the officers were completed
25 with the processing of the residence and out

1 of -- went out of the residence; isn't that what
2 it says?

3 A. That's what it says.

4 Q. While that was going on, by the way, Sergeant
5 Tyson, the Calumet officer, was also doing sort
6 of a written log of all of the items, and the
7 times that they were seized, and where they were
8 located, and all of that?

9 A. Right alongside of us.

10 Q. Okay. All right. Now, the next morning, this is
11 November 6th, did you return to the Avery salvage
12 property?

13 A. Yes.

14 Q. At about what time?

15 A. I believe I arrived at about, around 8 o'clock
16 a.m.

17 Q. Okay. And were you assigned certain duties
18 again?

19 A. Yes.

20 Q. And who gave you those assignments?

21 A. Well, again, we met Investigator Wiegert, Agent
22 Fassbender, Lieutenant Lenk. We were all
23 involved in discussions. And there was a
24 decision made to go process the garage. And we
25 made assignments, who would participate in that

1 search and went and did.

2 Q. My question is, who made those assignments, or
3 did you just sort of volunteer for it?

4 A. We all did, depending on who was there, who the
5 personnel was, who had the equipment, who worked
6 well together. It was a cooperative effort
7 amongst all of us making those decisions.

8 Q. All right. And on that occasion --

9 A. I had a say in that. Wiegert had a say in that.
10 We all did.

11 Q. And on that occasion, the team, the same team was
12 formed. I'm sorry, I take that back. It was the
13 same team of Manitowoc officers?

14 A. Correct.

15 Q. Yourself?

16 A. Yes.

17 Q. Lieutenant Lenk and Sergeant Colburn?

18 A. Yes.

19 Q. But a different Calumet officer, this time a
20 Deputy Kucharski was assigned to go along with
21 you?

22 A. Yes.

23 Q. His responsibility was primarily, he was going to
24 be taking custody, as well, of any of the items?

25 A. Correct.

1 Q. And when you went back to the Avery property, you
2 did not go into Mr. Avery's trailer residence at
3 that time, did you?

4 A. Not initially, no.

5 Q. Instead, you went into the garage, the detached
6 garage next to it?

7 A. Yes.

8 Q. Which you had not -- you had entered only once
9 before, for about seven minutes, on the day
10 before?

11 A. Correct.

12 Q. And if I told you that you entered the detached
13 garage next to Mr. Steven Avery's residence at 8
14 a.m. and left at 9:47 a.m; would that fit with
15 your recollection?

16 A. That sounds accurate.

17 Q. So, the four of you, the four officers were
18 inside the garage searching, for about 1 hour and
19 47 minutes?

20 A. Correct.

21 Q. And can you tell me how big the garage is,
22 approximate estimate?

23 A. About a standard two car garage size.

24 Q. Okay. And the four of you had went through the
25 garage, thoroughly looking for, again, any

1 evidence of Teresa Halbach or evidence that would
2 fit with what was sought in the warrant?

3 A. Correct.

4 Q. And no one kicked you out of the garage at any
5 particular time?

6 A. No.

7 Q. You were able to stay as long as you wanted?

8 A. Yes.

9 Q. And you did seize some items, including some .22
10 caliber shells, correct?

11 A. Correct.

12 Q. And also some, again, possible bloodstains that
13 you noted on the floor in the various areas?

14 A. Correct.

15 Q. And, again, you did the same type of a process of
16 collecting them with swabs, sealing them, for
17 possible DNA tests, and that sort of thing?

18 A. Correct.

19 Q. And I recognize, again, that those didn't turn
20 out like you thought they might but,
21 nevertheless, you were doing your job and were
22 looking for possible blood of Teresa Halbach; is
23 that right?

24 A. I guess I was -- If it was blood I was collecting
25 and whose it was, I'm not able to determine that.

1 Q. Okay. Or whether it was even blood at all?

2 A. Correct.

3 Q. Okay. And now you finished searching the garage

4 at 9:47 a.m., you were right next door to the

5 Steven Avery trailer, just a few feet away,

6 right?

7 A. Yes.

8 Q. Did you go back into the trailer at that time?

9 A. No.

10 Q. In fact, you didn't go back into the trailer

11 until -- that is, Steven Avery's trailer, until

12 about 12:25 p.m.?

13 A. Correct.

14 Q. That same day, November 6th?

15 A. Yes.

16 Q. And you went back, because you were asked to go;

17 is that right?

18 A. I believe so.

19 Q. By who?

20 A. I'm guessing those conversations took place with

21 Investigator Wiegert and/or Agent Fassbender.

22 Q. And if I told you that you entered at 12:25 p.m.

23 and left at 12:48 p.m., this is Mr. Steven

24 Avery's trailer, on November 6th; would that fit

25 with your recollection?

1 A. Sounds about right.

2 Q. And on that occasion you seized -- you went back
3 to get the weapons you saw?

4 A. We -- Earlier I talked about some of the
5 questions we had. Obviously, this was in
6 reference to some other items that we had
7 observed on the first search. And we went back
8 and collected some additional things.

9 Q. Some magazines, I think you mentioned,
10 photographs?

11 A. Photographs, the weapon above the bed, I believe
12 there was some additional bedding in the other
13 bedroom, within the residence. There may have
14 been a carpet shampooer that was taken also.

15 Q. And, again, you had as much time as you wanted in
16 that trailer, on that occasion, no one kicked --
17 Is that right?

18 A. Yeah, I mean, we had a lot of searches to do that
19 day. We had our work cut out for ourselves. So
20 I wouldn't say we were rushing, but we knew there
21 were other places that needed to be processed,
22 so.

23 Q. And, again, the officers who entered Mr. Avery's
24 trailer at 12:25 p.m., November 6th, were the
25 same ones that had gone into the garage; that is,

1 yourself, Detective Remiker, Lieutenant Lenk,
2 Sergeant Colborn, all from Manitowoc, as well as
3 Calumet's Deputy Kucharski; is that right?

4 A. I believe so, yes.

5 Q. So all four of you were back in there?

6 A. I believe so.

7 Q. And did you, at any time after that, go back into
8 Mr. Avery's -- or the detached garage next to
9 Mr. Avery's residence?

10 ATTORNEY FALLON: Your Honor --

11 A. Second time?

12 ATTORNEY FALLON: -- I'm going to oppose an
13 objection here. As I'm listening to the line of
14 questioning here, it seems remarkably similar, if
15 not identical, to the questions and information
16 obtained from Lieutenant Lenk in yesterday's call.
17 So this does seem to me, duplicitous.

18 I'm not quite sure how this adds to the
19 equation. I mean, it's quite obvious that they
20 entered the residence on a number of occasions
21 while conducting this overall search. So, I'm
22 not quite sure what we are accomplishing with
23 Detective, or Investigator Remiker's echoing what
24 Lieutenant Lenk testified to.

25 ATTORNEY BUTING: Actually, I think we are

1 done with his. That was going to be my final
2 question.

3 Q. (By Attorney Buting)~ Did you go back in the
4 garage, yourself?

5 THE COURT: You may answer.

6 A. No.

7 ATTORNEY BUTING: All right. Thank you.

8 THE COURT: Mr. Fallon, are you going to be
9 conducting cross?

10 ATTORNEY FALLON: I am. Thank you, Judge.

11 THE COURT: Go ahead.

12 **CROSS-EXAMINATION**

13 BY ATTORNEY FALLON:

14 Q. How long have you been an evidence collector, or
15 evidence technician, as they are sometimes
16 referred to?

17 A. Well, I don't recall when I attended the State
18 Crime Lab Evidence Tech School. I would guess
19 that's at least six, seven years ago, would be a
20 guess.

21 Q. All right. Is evidence -- Is the search for
22 evidence, particularly trace evidence, time
23 consuming?

24 A. It's very detail oriented. You have to be very
25 careful; yes, definitely.

1 Q. Does it take time?

2 A. Takes a lot of time.

3 Q. All right. And why does it take time?

4 A. Well, when you are looking for trace evidence, it
5 doesn't stand out. You have got to look for it.
6 You have got to find it. You have to be on your
7 hands and knees. And then, when you are
8 collecting those things, you are dealing with
9 very small samples, you are using tweezers. You
10 are using small patching material.

11 You are using cotton-tipped applicators
12 that you have to apply sterile water to. You are
13 doing a collection. You are doing a controlled
14 sample. You are packaging it. You are sealing
15 it. You are labeling it. Each item, there's a
16 process that you follow to make sure that that
17 evidence is secure and is as pure as you can
18 collect it.

19 Q. All right. So in effect, first of all, you have
20 to spend time to find trace evidence, right?

21 A. Definitely.

22 Q. And then there's an entirely separate process of
23 collecting the evidence, correct?

24 A. Yes.

25 Q. And that collection is sometimes painstakingly

1 slow?

2 A. It can be.

3 Q. Sometimes it's rather quick, for instance, if you
4 are just securing a gun from the wall; that takes
5 but a matter of a moment or two. Perhaps a
6 minute or two to collect it, log it in, and
7 secure it. But perhaps, as opposed to looking
8 for fiber evidence, or possible blood splots --
9 spots, that takes more time, doesn't it?

10 A. Definitely.

11 Q. And as I understand it, you are required to,
12 basically, once you find an item, you deal with
13 that item. You log it in; you picture it, if you
14 do take a picture; you collect it; you secure it;
15 you label it, before you go on to the next item.
16 It's one item at a time.

17 A. Correct.

18 Q. And that's to ensure the integrity of the piece
19 of evidence you are collecting?

20 A. Without a doubt.

21 Q. And as a matter of fact, especially when you are
22 looking for trace evidence and things like that,
23 there are environmental factors that affect the
24 collection of trace evidence?

25 A. Yes.

1 Q. For instance, would you say it's easier to find
2 trace evidence with natural daylight, as opposed
3 to artificial incandescent light?

4 A. Natural daylight is always advantageous.

5 Q. So -- So -- And your recollection was that you,
6 yourself, took anywhere from 10 to 20 swabs, each
7 one had to be individually processed?

8 A. Yes.

9 Q. All right. And as counsel suggested, there could
10 have been perhaps 50 or more items secured that
11 evening?

12 A. That's possible.

13 Q. All right. And each one had to be individually
14 found, right?

15 A. Correct.

16 Q. They had to be pictured or preserved, and then
17 they were collected, correct?

18 A. Correct. Packaged, labeled. Insert number,
19 date, and time of collection, everything.

20 Q. Before the next item could be processed?

21 A. Definitely.

22 Q. All right. Now, with respect to the assignments,
23 it's true, is it not, that although there was a
24 great deal of give and take and discussion
25 amongst the investigators, that notwithstanding

1 that, Investigator Wiegert and Special Agent
2 Fassbender were in charge of the overall
3 investigation, correct?

4 A. Definitely.

5 Q. So, in terms of the cooperative effort, in other
6 words, they sought your ideas and your input,
7 correct?

8 A. Yes.

9 Q. But the decisions, in terms of what was to be
10 done and when and how and allocation of
11 resources, those were decisions made by Wiegert
12 and Fassbender?

13 A. Correct.

14 Q. Based on your input and available resources?

15 A. You are exactly right.

16 ATTORNEY FALLON: That's all. Thank you.

17 THE COURT: Anything else, Mr. Buting?

18 ATTORNEY BUTING: Just one or two.

19 **REDIRECT EXAMINATION**

20 BY ATTORNEY BUTING:

21 Q. Mr. Fallon asked you a number of questions about
22 what you were trained to do, or what you might do
23 in certain cases, how long it takes to collect
24 trace evidence in general, correct?

25 A. Yes.

1 Q. But in this case, on November 5th, in those 2 1/2
2 hours, while you were in that trailer, you did,
3 in fact, get down on your hands and knees, right,
4 with a lint roller?

5 A. Yes.

6 Q. And to collect a swab off of the bathroom floor?

7 A. Correct.

8 Q. And you were doing all of those things that you
9 would normally do, to find trace evidence,
10 correct?

11 A. Yes.

12 Q. And you are a thorough officer, aren't you?

13 A. I believe so.

14 Q. And you did as thorough and complete a job as you
15 could that night?

16 A. I believe so.

17 Q. And Mr. Fallon mentioned that Agents Fassbender
18 and Investigator Wiegert were in charge?

19 A. Investigator Wiegert.

20 Q. Wiegert, I'm sorry, I say that half the time. Is
21 that right?

22 A. Well, yeah, they were assigned as the lead
23 investigators, correct.

24 Q. So they were the ones who -- Well, let me ask you
25 this, then, Lieutenants -- Lieutenant Sippel, are

1 you familiar with him? Maybe I'm pronouncing his
2 name wrong.

3 A. I've heard his name. If I would see him, I would
4 probably recognize him. I don't --

5 Q. Lieutenant Bowe, I think it is; do you know him?
6 Or Bowe?

7 A. I'm sure if I seen him, I would recognize him.

8 Q. So, neither of them were directing you or
9 advising you what to do during the entire week or
10 so that the Avery property was seized?

11 A. If I'm correct, I believe those individuals had a
12 lot to do with the security, or the watching over
13 the property, some of the layers of security that
14 we had out there.

15 Q. Okay. They would have been in the command post
16 area that was set up?

17 A. No, they would have been parked right next to
18 Steve's trailer, in a squad car, or standing
19 outside the trailer providing security, or
20 watching over that residence. There were several
21 layers of security out there.

22 Q. Are you talking about lieutenants?

23 A. Those Calumet County officers.

24 Q. Okay. But my question is, were they involved in
25 the direction or decision making of the search,

1 in particular, the search of Mr. Avery, Steven
2 Avery's residence?

3 A. I don't believe so, no.

4 Q. That was Wiegert and Fassbender, collectively,
5 with your cooperative decisions?

6 A. Yes.

7 ATTORNEY BUTING: Thank you.

8 THE COURT: Anything else?

9 ATTORNEY FALLON: I just have one question.

10 **RECROSS-EXAMINATION**

11 BY ATTORNEY FALLON:

12 Q. What did you mean when you said, we had a lot of
13 searches to do that day, in response to Counsel's
14 question, on your Sunday's questioning?

15 A. Well, we had about 37 acres, thousands of cars,
16 residences, shops, outbuildings. There was a lot
17 to do.

18 ATTORNEY FALLON: All right. Thank you.

19 ATTORNEY BUTING: One last.

20 **FURTHER REDIRECT EXAMINATION**

21 BY ATTORNEY BUTING:

22 Q. Do you know how many officers, law enforcement
23 officers, were out there on that 40 acre parcel,
24 besides yourself?

25 A. When?

1 Q. During the week.

2 A. No idea.

3 Q. As many as a hundred?

4 A. Could have been.

5 Q. So there were many others available to do
6 searches, besides yourself and your foursome that
7 was doing these searches, correct?

8 A. Based on our discussion, based on our confidence
9 in our abilities, based on our experience working
10 together, based on the access to equipment, and
11 the being comfortable with that equipment, and
12 being able to use that equipment properly --

13 ATTORNEY BUTING: Judge, he's not answering
14 my question. Would you please answer the question I
15 asked, which is --

16 THE WITNESS: I was getting to that.

17 Q. (By Attorney Buting)~ Were there other officers
18 available, that were searching in other areas,
19 besides just the four of you?

20 A. There may have been, but it didn't make sense for
21 those individuals to do those searches.

22 Q. To do what searches?

23 A. Of the residences, the garage, the buildings.

24 Q. Didn't make sense for them, for anyone but you
25 four, to search any of the buildings on that

1 property?

2 A. Well, you obviously want to use evidence techs,
3 people who are trained to do those types of
4 searches and collections of evidence.

5 Q. And you had --

6 A. It's limited.

7 Q. Well, you had plenty of evidence techs out there,
8 during that week, did you not?

9 A. No.

10 Q. Well, you had the Crime Lab?

11 A. They showed up with two people on Saturday --

12 Q. Okay. You had --

13 A. -- which one was a photographer only.

14 Q. You had DCI?

15 A. Fassbender may have been the only one out there
16 Saturday.

17 Q. But during the week, as we went on, up to
18 November 9th?

19 A. I was only there until Sunday night.

20 ATTORNEY BUTING: All right. Thank you.

21 THE COURT: All right. You are excused.

22 THE WITNESS: Thank you.

23 THE COURT: Defense may call its next
24 witness.

25 THE CLERK: Please raise your right hand.

1 **SERGEANT ANDREW L. COLBURN**, called as a
2 witness herein, having been first duly sworn, was
3 examined and testified as follows:

4 THE CLERK: Please be seated. Please state
5 your name, spell your last name for the record.

6 THE WITNESS: Andrew L. Colburn,
7 C-o-l-b-o-r-n.

8 **DIRECT EXAMINATION**

9 BY ATTORNEY BUTING:

10 Q. Sergeant, how are you employed?

11 A. I'm a patrol supervisor with the Manitowoc
12 Sheriff's Department.

13 Q. And how long have you been so employed?

14 A. 14 years.

15 Q. As a police officer, you say?

16 A. As a corrections officer until 1996. I have been
17 a police officer since '96.

18 Q. Okay. And how long have you been a sergeant?

19 A. Since 2002.

20 Q. Okay. And on November 5th of 2005, were you so
21 employed?

22 A. Yes, sir.

23 Q. And did you become involved in a Teresa Halbach
24 matter?

25 A. Yes, I did.

1 Q. And what date was that?

2 A. On Saturday, I believe it was the 3rd of
3 November.

4 Q. Could that have been Thursday, November 3rd?

5 A. Yes, sorry, Thursday, November 3rd.

6 Q. Okay.

7 A. That was my initial involvement.

8 Q. And you received a phone call from somebody at
9 Calumet?

10 A. Yes, sir.

11 Q. Advising you that there was a missing person
12 investigation?

13 A. Yes, sir.

14 Q. And were you asked to do something in your
15 jurisdiction, in Manitowoc?

16 A. Yes, the officer that called from Calumet asked
17 if we could send a deputy, or if I could go out
18 to the Avery Auto Salvage area and check to see
19 if that young lady was there.

20 Q. And that was that very same evening, November
21 3rd, is what they wanted you to do, right?

22 A. Yes, sir.

23 Q. And so did you do so?

24 A. Yes, I went out there personally.

25 Q. You did?

1 A. Yes.

2 Q. Okay. And the name, Steven Avery, was mentioned
3 to you; is that right?

4 A. No. When I was contacted, I was just told that
5 the last address that she had been at, they
6 thought, was an address on Avery Road. I didn't
7 know of any other residences on Avery Road, but
8 the Avery Auto Salvage area.

9 Q. Okay. And so when you went out there, did you
10 see Steven Avery?

11 A. Yes.

12 Q. And he was somebody that you were familiar with,
13 right?

14 A. Not real familiar with, but I knew who Steve was,
15 by sight.

16 Q. Well -- And you knew his involvement with your
17 department as well, right?

18 A. Yes.

19 Q. In fact, you had been deposed in his civil case
20 just three weeks earlier, right?

21 A. Yes.

22 ATTORNEY FALLON: Objection, relevance.

23 THE COURT: Mr. Buting.

24 ATTORNEY BUTING: I will move on.

25 Q. (By Attorney Buting)~ When -- Did you find

1 Mr. Avery at home, or outside the trailer, or
2 tell me what happened?

3 A. Probably the two -- the two Avery's that I'm most
4 familiar with are Charles and Earl. I knew Earl
5 doesn't live out there, so my initial -- the idea
6 in my head was to make contact with Charles.

7 And so I drove directly towards where I
8 knew Charles lived, which is in close proximity
9 to the shop building. Got out of my squad. And
10 before I could get to Charles' residence, Steve
11 came out of his parent's home and asked what I
12 was doing.

13 Q. Okay. And so what did you tell him?

14 THE COURT: Excuse me, I have a question
15 here. I think this testimony is for the multiple
16 execution of the warrant section. Is this testimony
17 necessary for purposes of this motion?

18 ATTORNEY BUTING: If it's whether it's an
19 entry or not, I don't know whether he went into the
20 residence at that time or not, it could be.

21 ATTORNEY FALLON: But what relevance is
22 that, in terms of once a warrant is obtained,
23 whether it was properly executed.

24 THE COURT: Right.

25 ATTORNEY BUTING: Well, it relates to

1 whether -- the necessity of how many times you need
2 to go back into someone's residence.

3 ATTORNEY FALLON: Well, we're talking -- If
4 you want argument, I'm prepared to argue more.

5 THE COURT: I think we have to get to the
6 point after the warrant was issued, to hear
7 testimony that's relevant to your motion. I mean,
8 I'm sure that the questions you are asking might
9 be -- may well be relevant at a different time,
10 during trial, for example, but I don't see how they
11 relate to the motion.

12 ATTORNEY BUTING: Well, I guess it's not
13 clear to me whether he entered. That's really what
14 I'm getting at, but I'm trying not to lead him, so
15 it's going a little bit slower. My real question
16 is, did he go into the Avery trailer on that night
17 or not.

18 THE COURT: How is that relevant to the
19 issue relating to multiple executions of the search
20 warrant, which wasn't issued until a couple days
21 later?

22 ATTORNEY BUTING: Well, I think it relates
23 to it because every entry makes it less necessary to
24 go in again.

25 ATTORNEY FALLON: We would disagree. We're

1 talking two conceptually different concepts, one a
2 breeze through based on consent and --

3 ATTORNEY BUTING: I don't know if there is
4 or not. I mean, I haven't asked the question yet
5 and don't have an answer on that yet. He may have
6 never gone in, I don't know.

7 THE COURT: I will let you ask a few brief
8 background questions, but I think we should move on
9 to the point fairly quickly once the point is
10 issued.

11 ATTORNEY BUTING: Sure. Let me just get to
12 the point.

13 Q. (By Attorney Buting)~ Did you, on that night,
14 November 3rd, accompany or go into Mr. Avery's
15 trailer?

16 A. No, I didn't.

17 Q. Okay. So you just talked with him outside?

18 A. That's correct.

19 Q. All right. Did you go in the next day, to his
20 trailer?

21 A. No, I didn't.

22 Q. Okay. Now, moving onto Saturday, November 5th,
23 did you -- can you tell me what time you arrived
24 at the Avery property?

25 A. Sometime between 6 and 6:30 in the evening.

1 Q. Is that when you are on duty?

2 A. No, I was on my day off.

3 Q. Okay. So you were called in?

4 A. Yes.

5 Q. And you -- Did you meet with -- with somebody who

6 was assigning you tasks to do?

7 A. Yes.

8 Q. Who was that?

9 A. I believe it was Investigator Wiegert from the

10 Calumet Sheriff's Office.

11 Q. Were you aware, at that point, that the --

12 because of the appearance of a conflict of

13 interest, because of Mr. Avery's pending 36

14 million dollar lawsuit against your department,

15 that Calumet had taken over -- supposedly taken

16 over the lead investigation?

17 A. Yes, I was told that the Calumet Sheriff's Office

18 would be the lead investigative agency and we

19 were to assist them.

20 Q. And do you know how many officers were out on the

21 scene of the property, on that day, when you

22 arrived?

23 A. No, I do not.

24 Q. Do you have an estimate of whether it's more or

25 less than 50?

1 A. I would hazard a guess at less than 50, but I
2 don't have an accurate head count of how many
3 officers were out there, sir.

4 Q. All right. Or what about the following day, do
5 you have any other -- the November 6, do you have
6 any information or knowledge about how many
7 officers were there then?

8 A. Again, approximately the same amount as on
9 Saturday.

10 Q. All right. Now, on November 5th, after you
11 arrived at the property, did there come a time
12 when you entered Mr. Steven Avery's residence to
13 conduct a search, based on a search warrant?

14 A. Yes.

15 Q. And who were you with?

16 A. A Sergeant Bill Tyson from the Calumet Sheriff's
17 Department, Detective Remiker from our agency,
18 Lieutenant Lenk from our agency, and myself.

19 Q. And how was it you were assigned to perform those
20 duties?

21 A. One of my additional duties or specializations in
22 the area of criminal investigation, is evidence
23 tech. And I was acting in that capacity.

24 Q. Let me ask you, in your department, as patrol
25 supervisor, are you among the top three

1 individuals qualified to search Mr. Avery's
2 trailer?

3 A. I'm not sure I understand the question, sir. Are
4 you asking for the rank structure of the Patrol
5 Division?

6 Q. No. No. I'm asking for your qualifications as
7 a --

8 A. I would probably be in the top three choices,
9 yes.

10 Q. To search a residence?

11 A. Yes.

12 Q. Okay. And you have done that a number of times?

13 A. Yes.

14 Q. Do you know how many, approximately?

15 A. 25 or better.

16 Q. Okay. And you completed your search of the
17 residence at some point around 10 o'clock that
18 night; is that right?

19 A. Yes, sir, that sounds right.

20 Q. And did you come back the next day and do some
21 more searches of the Avery property?

22 A. Yes, sir.

23 Q. Do you know what time you started?

24 A. Would have been around 8 o'clock in the morning.

25 Q. And did you go immediately into Mr. Avery's

1 trailer, again?

2 A. I don't believe we went immediately into his
3 trailer. I believe that we went into his garage,
4 though --

5 Q. Okay.

6 A. -- which is in close proximity to it.

7 Q. If I told you you were there in the garage from
8 about 8:00 a.m. to 9:47 a.m.; would that fit with
9 your recollection?

10 A. Yes, sir.

11 Q. And were you there with Detective Remiker,
12 Lieutenant Lenk, again?

13 A. Yes.

14 Q. And Deputy Kucharski from Calumet?

15 A. Yes, sir.

16 Q. And then you completed the search of the garage;
17 is that right?

18 A. Yes, sir.

19 Q. Were you asked to go back in Mr. Avery's trailer
20 sometime during the noon hour, 12:30?

21 A. I'm not sure of the time, but I believe, yes, we
22 were asked to go back into Mr. Avery's trailer.
23 Steve Avery, I'm talking about.

24 Q. And was that with a specific -- Was that from
25 Investigator Wiegert's direction?

1 A. I don't know who exactly gave the direction to go
2 back in there. One of the Calumet County
3 supervisors just said, the next thing we need you
4 to do is go back in, you know. I didn't -- Every
5 time I was directed to go into the trailer, it
6 didn't come directly from Investigator Wiegert.
7 Could have come from any number of supervisors
8 that were out there.

9 Q. At any rate, you were directed to go back in,
10 specifically, to seize some weapons --

11 A. Yes, sir.

12 Q. -- that were located in the bedroom of Mr. Steven
13 Avery?

14 A. Yes, sir.

15 Q. And you did that?

16 A. Yes.

17 Q. And you went in, the same four officers went in
18 on that occasion, right?

19 A. Yes, sir.

20 Q. And you completed your search on that occasion,
21 right?

22 A. Yes, sir.

23 Q. Now, there's a similar request the following day,
24 I believe, November 7th. Do you recall being
25 asked to go into the Steven Avery trailer again,

1 to simply get a serial number of a computer?

2 A. Are we talking Monday, now. Is it Monday?

3 Q. Yes, that would be Monday, November 7th.

4 A. Yes, I do recall being asked to obtain a serial
5 number for a computer.

6 Q. And you went in with Lieutenant Lenk and Sergeant
7 Tyson from Calumet?

8 A. I believe so, yes.

9 Q. And did you get the serial number?

10 A. Yes, I did.

11 Q. And then you left on that occasion, right?

12 A. Yes, sir.

13 Q. And then, on the following day, this would be
14 Tuesday, November 8th, did you again go back into
15 Mr. Steven Avery's residence?

16 A. Yes, I did.

17 Q. And if I told you 8:25 a.m. you entered and left
18 at 12:08 p.m.; would that fit with your
19 recollection?

20 A. That sounds accurate, yes, sir.

21 Q. And on that occasion, you went in with who?

22 A. That occasion I believe it would have been
23 myself, Lieutenant Lenk, and Deputy Dan
24 Kucharski, from Calumet County Sheriff's Office.

25 Q. So the three of you were inside the apartment for

1 almost four hours?

2 A. Yes, sir.

3 Q. On that same day -- I'm sorry -- Yes, on that
4 same day, immediately after you completed the
5 search of Mr. Avery's trailer, you went into the
6 garage again; is that right, the same three of
7 you?

8 A. On Tuesday are you talking about?

9 Q. Yes.

10 A. I don't recall if we went in the garage that day
11 or not.

12 Q. If I told you you entered at 12:19 p.m. and left
13 at 12:45 p.m. and you were looking for tools and
14 things, specific tool to match up with something,
15 did that -- would that -- that --

16 A. Yes, I do recall that.

17 Q. Okay.

18 A. I didn't know if that was on Tuesday but, yes, I
19 do recall that.

20 Q. And then, the following day, November 9th, do you
21 recall going back into Mr. Avery's trailer with a
22 specific intent to look for a garage door opener,
23 some gloves, and things of that nature?

24 A. It's possible; that, I don't recall.

25 Q. Do you recall going into his residence at all on

1 November 9th, that would be --

2 A. Wednesday?

3 Q. Wednesday.

4 ATTORNEY FALLON: Your Honor, I think this
5 question is -- I know it hasn't been asked
6 specifically of Sergeant Colborn, but I believe
7 Lieutenant Lenk did indicate that he was in there
8 that day. And I think we stipulated, if I recall,
9 that the entry was 10:39 to 10:59, with an
10 interruption at 10:59, and then resumed at 11:40,
11 and ended at 11:50. I think we agreed to that
12 yesterday, so I'm not sure what this adds to the
13 equation.

14 ATTORNEY BUTING: That's correct, your
15 Honor, I forgot that we had stipulated to that, so I
16 can move on.

17 THE COURT: All right.

18 Q. (By Attorney Buting)~ Did you have anything to do
19 with getting the search warrant?

20 A. No, sir.

21 Q. Did you have anything to do with the decisions of
22 when you went into his residence, or not?

23 A. No, sir.

24 Q. Lieutenant Lenk out ranks you; is that right?

25 A. That's correct.

1 Q. And on -- Let me go back to this first search for
2 a minute, the November 5th entry, in the evening,
3 when you were there from, like 7:30 to
4 10:05 p.m.; are you oriented for that?

5 A. Yes, sir.

6 Q. Okay. You said that you are an evidence tech;
7 does that mean you collect evidence as well?

8 A. Collect evidence, photograph evidence, locate
9 evidence, it's all, yes.

10 Q. Okay. I'm sorry. And did you do so on that
11 occasion?

12 A. Yes, I did.

13 Q. Were you collecting swabs and things that could
14 be trace evidence?

15 A. My -- excuse me -- My primary job, if you want to
16 use that term, was probably photographing and
17 assisting in collecting. I didn't do a lot of
18 the swabbing on Saturday.

19 Q. Okay.

20 A. I did assist Detective Remiker with that task,
21 though.

22 Q. Okay. And you did, I believe, find some fiber
23 evidence, or something, on the living room floor;
24 do you recall that?

25 A. It's entirely possible, yes.

1 Q. Okay. Do you know how many items you actually
2 collected yourself, that night?

3 A. Myself, personally, if you are talking about just
4 me, I didn't, like, collect any items myself, bag
5 them up and say I have this. I would locate
6 items that I thought were of evidentiary value
7 and I pointed them out to Sergeant Tyson of the
8 Calumet Sheriff's Office and, collectively, we
9 would pick those items up.

10 Q. Okay. And by the way, did you review anything
11 before your testimony today?

12 A. I did review these two reports that I have in my
13 hand here. The one is the Calumet County
14 Sheriff's Department report and the other one is
15 our Manitowoc Sheriff's Department report that
16 was compiled by Detective Remiker.

17 Q. That's the 22-page report?

18 A. My report indicates it's -- this is page one of
19 24.

20 Q. Twenty-four. May I see the Calumet report for a
21 minute, please? You have reviewed both of these
22 items?

23 A. Yes, sir.

24 ATTORNEY BUTING: May I have just a moment,
25 Judge, I think I have seen these, but there's a

1 couple pages that are different now.

2 THE COURT: Go ahead.

3 ATTORNEY FALLON: Your Honor, I would just
4 observe that, given the sequencing of that report,
5 those last pages, if that's what's in issue here, I
6 would be surprised if they are relevant to this
7 particular motion. I mean, they may be certainly
8 entitled to that under discovery, but I'm not sure
9 that it adds anything to Sergeant Colborn's
10 testimony relative to the events of the week of
11 November 5th.

12 Q. (By Attorney Buting)~ All right. Lieutenant, the
13 Manitowoc official report of the investigation in
14 this case is -- it's now 24 pages, right?

15 A. Are you asking me to count each page or?

16 Q. Well, I'm just asking you how many total pages it
17 is?

18 A. It says this is Page 1 of 24. I didn't take any
19 pages out, this is 24 of 24, so I'm assuming
20 these to be --

21 Q. Okay.

22 A. -- 24 pages.

23 Q. All right. How much of that report consists of
24 reports that you wrote or dictated into this
25 sequential system?

1 A. Oh, there's only a very few entries that I
2 personally have on here.

3 Q. In fact, the last couple of pages involve a
4 report that you did very recently?

5 A. Yes, sir.

6 Q. And -- But it deals with an investigation that
7 you did way back on November 3rd?

8 A. Yes, sir.

9 Q. Particularly, it's the encounter with Mr. Avery
10 that night that we talked about briefly at the
11 beginning of this testimony?

12 A. Yes, sir.

13 Q. But you only recently, within the last month or
14 two, prepared a report of that?

15 A. Only within the past month or so made an addition
16 on this report about that, yes.

17 Q. And until you did that report, you had almost no
18 personal reports in that entire Manitowoc
19 official report, right?

20 A. That is correct.

21 Q. And were you directed to add that report to it,
22 this newer one?

23 A. Yes.

24 Q. By whom?

25 A. We had a pretrial conference -- and I'm just

1 using the term pretrial, generically --
2 conference in Calumet County and all the officers
3 were talking about what involvement they had in
4 this case.

5 And when I mentioned that I had initial
6 contact with Mr. Avery on 11/3/2006, it was
7 suggested that I make an entry to this report,
8 the Manitowoc County Sheriff's Department report,
9 about the nature of that contact.

10 Q. Okay. That was one of your supervisors directing
11 you to do that?

12 A. Yes.

13 ATTORNEY BUTING: Thank you. I have no
14 further questions.

15 THE COURT: Mr. Fallon.

16 ATTORNEY FALLON: Pass. We have no
17 questions for this witness.

18 THE COURT: All right. You are excused.
19 You may call your next witness.

20 ATTORNEY BUTING: Your Honor, if you give
21 me just a minute here, we may be able to shorten
22 this.

23 THE COURT: All right. We'll take a 10
24 minute break at this time and then resume.

25 ATTORNEY BUTING: Thank you.

1 (Recess taken.)

2 THE COURT: All right. Mr. Fallon, you
3 may -- or -- Yes.

4 ATTORNEY BUTING: Judge, at this time we're
5 not presenting any other evidence on the multiple
6 entries motion.

7 THE COURT: Mr. Fallon, any witnesses for
8 the State?

9 ATTORNEY FALLON: Yes, the State will be
10 presenting witnesses. State would call as it's
11 first witness, Tom Fassbender.

12 **SPECIAL AGENT THOMAS FASSBENDER**, called
13 as a witness herein, having been first duly
14 sworn, was examined and testified as follows:

15 THE CLERK: Please be seated. Please state
16 your name, and spell your last name for the record.
17 Thomas Fassbender, F-a-s-s-b-e-n-d-e-r.

18 **DIRECT EXAMINATION**

19 BY ATTORNEY FALLON:

20 Q. What do you do for a living?

21 A. I'm a Special Agent with the Wisconsin Department
22 of Justice, Division of Criminal Investigation.

23 Q. How long have you been so employed?

24 A. With DCI, I have been employed 21 years.

25 Q. And prior to that, any law enforcement

1 experience?

2 A. I had five years as a patrol officer on the State
3 Patrol.

4 Q. What is your current assignment as an agent with
5 the Department of Justice?

6 A. I currently work within our Special Assignments
7 Bureau, which is primarily responsible for
8 homicide investigations.

9 Q. All right. And how long have you held that
10 particular assignment?

11 A. About five years.

12 Q. Prior to that, what duties or assignments did you
13 hold?

14 A. When I came in with DCI, I was a narcotics agent
15 for five years. And then I went into white color
16 and government corruption for about 11 years.
17 And during that period, I worked internet crimes
18 against children for about two years at the same
19 time.

20 Q. All right. With respect to your current
21 assignment, approximately how many homicide
22 investigations have you been involved in?

23 A. Well, if we're counting what we term "cold case"
24 homicide investigations, I have a file drawer
25 full of those, which would go anywhere from 8 to

1 15 cases there. Other homicide investigations,
2 probably anywhere from 5 to 10.

3 Q. All right. Now, during those particular
4 investigations, are they -- Where are those
5 homicide investigations? Where did they take
6 place? What is your jurisdiction or area of
7 operation?

8 A. Jurisdictionwise would be State of Wisconsin.

9 Q. All right. With respect to this particular case,
10 I would like to draw your attention to
11 November 5th, 2005; how did you become involved
12 in this case?

13 A. DCI was re -- Or the assistance of DCI was
14 requested by the Calumet County Sheriff's
15 Department and I was assigned by my supervisor.

16 Q. And did you arrive upon the scene of the Avery
17 Auto Salvage Yard on November 5th?

18 A. Yes, somewhere around shortly after 2:00 p.m.
19 that day.

20 Q. Had you had any association at all with the
21 missing person case involving Teresa Halbach
22 prior to that?

23 A. No.

24 Q. All right. When you arrived at 2:00 p.m., which
25 law enforcement agency was in control and in

1 charge?

2 A. Calumet County Sheriff.

3 Q. All right. At some point during the
4 investigation -- Well, let's ask the question
5 this way. What was your role? As a member of
6 the Division of Criminal Investigation, what was
7 your role in this missing persons case on
8 November 5th?

9 A. Initially, it was to come in and provide
10 assistance to the Calumet County Sheriff's
11 Department, investigating the scene. And shortly
12 after arrival and having some briefing sessions,
13 I took over role as a co-lead investigator.

14 Q. All right. Who was the other co-lead
15 investigator in the case?

16 A. Investigator Mark Wiegert, with the Calumet
17 Sheriff's Department.

18 Q. And approximately how long after your 2:00 p.m.
19 arrival did that take place, roughly?

20 A. I'm not real sure, probably within an hour, hour
21 and a half.

22 Q. All right. Were you on site when a search
23 warrant was obtained?

24 A. Yes.

25 Q. All right. And are you familiar with the area

1 which was the subject of the search?

2 A. Yes.

3 Q. All right. Specifically, I would like to first
4 of all draw your attention to, I believe it's
5 Exhibit 18, if I'm correct. Yes, Exhibit 18.
6 Are you familiar with what is depicted in
7 Exhibit 18?

8 A. Yes, it is the Avery's Salvage Yard, with some
9 additional properties up in the northwest corner,
10 I believe that is, Steven Avery's residence.
11 Barb Yanda's residence up in that area would be
12 an additional several acres up there.

13 Q. All right. And the overall area which was
14 subject to the search warrant that was obtained,
15 was how many acres?

16 A. Approximately 40 acres.

17 Q. All right. And what is depicted in Exhibit 18,
18 is that a fair and accurate depiction of the
19 Avery Auto Salvage Yard and the adjoining
20 properties?

21 A. Yes, that would be that, and that would be the
22 scene, the initial scene, we were dealing with.

23 Q. So what is depicted there is the 40 acres?

24 A. Yes.

25 Q. With respect to the 40 acres, are you aware of

1 the breakdown as to how much of that general area
2 contained the auto salvage yard business and it's
3 inventory?

4 A. Yes, approximately 37 acres would have been
5 attributed to that.

6 Q. All right. And during the course of the
7 investigation, were you able to determine a
8 ballpark estimate as to approximately how many
9 junked cars, for lack of a better term, are
10 located on that 37 acre portion of the parcel?

11 A. Initially, when we got there, we believed it to
12 be well over 1,000 junked cars. And, ultimately,
13 a rough count was taken by searchers, that put it
14 more in the neighborhood of 36 to 3800 junk cars.

15 Q. All right. And in terms of including residences
16 and commercial buildings, approximately how many
17 buildings are located on that parcel?

18 A. About 15.

19 Q. All right. Out of the 15, how many of them were
20 residences which were subject to the execution of
21 the search warrant?

22 A. Four.

23 Q. And did the four also include immediate out
24 buildings, such as garages?

25 A. That is correct, yes.

1 Q. All right. And the remaining buildings there
2 were commercial buildings, or support buildings,
3 for the business of the salvage yard?

4 A. Yes, with the exception of one, I guess you would
5 term it a house trailer, alongside the road going
6 down to Barb Yanda and Steven Avery's residence.
7 It was a large trailer alongside that road. I
8 would count that as a building that was searched.

9 Q. All right. Now, when the warrant was obtained
10 and about to be executed, were any precautions
11 taken to secure the overall premises, again,
12 directing your attention to Exhibit 18?

13 A. Yes.

14 Q. All right. And tell us about those.

15 A. Well, there were checkpoints established out on
16 the primary, or the main highway, running
17 parallel to the property, as well as a checkpoint
18 coming into the property on Avery road. There
19 was, as you got down to the end of Avery Road, or
20 the south end of Avery Road, and getting onto the
21 Avery property, business property, is where a
22 command post had been set up.

23 Q. All right. If I were to -- I'm going to have
24 you -- I'm going to give you a laser pointer. If
25 you would just direct out where the command post

1 was located.

2 ATTORNEY BUTING: Could he mark it?

3 THE WITNESS: I don't think I will have to,
4 it's real near No. 3, where 3 is marked, just maybe
5 a little south of 3 there, you can see some vehicles
6 and stuff. So it would have been right at that
7 nexus, right around 3.

8 Q. (By Attorney Fallon)~ Now, I would also like to
9 direct your attention to Exhibit, I believe it's
10 19, which is behind you on the chalkboard.

11 A. Yes.

12 Q. Are you familiar with what is depicted there?

13 A. Yes.

14 Q. All right. And just so that we're clear, what is
15 depicted in Exhibit 19?

16 A. That's an aerial view, a little broader version
17 of an aerial view, that shows the Avery salvage
18 yard and adjoining properties, about right in the
19 center of that view, and then the surrounding
20 parcels of land and property.

21 Q. All right. I believe we had a stipulation
22 yesterday, but just to illustrate your testimony,
23 can you refer to where this Highway 147 is
24 located on Exhibit 19?

25 A. Certainly, with the pointer, it's running

1 essentially east-west, east to southwest, right
2 there, which would be about one parcel of land or
3 field, north of the Avery property.

4 Q. All right. Now, you indicated there was a
5 checkpoint that was set up, can you describe the
6 locations on -- using Exhibit 19, to tell us
7 where the checkpoints were?

8 A. Okay. The day that I arrived, I can't remember
9 if the checkpoints out on the highway had been
10 set up yet; I'm not going to speak to that for
11 sure. But I know if they weren't, shortly
12 thereafter, the highway checkpoints would have
13 been set up.

14 Q. All right.

15 A. The highway checkpoints would have been out on
16 Highway 147, which would have been to the west of
17 the Avery property, somewhere toward the upper
18 left corner of this picture.

19 Q. All right. I'm going to give you a pen, if you
20 could just put a checkmark and the number 1, that
21 may illustrate that, please. Is the area where
22 the checkpoint located, is that on the map, or
23 could it be farther west or farther east of what
24 is depicted there; do you recall?

25 A. To my memory, the checkpoints may have moved

1 during the course of the week. They may have
2 expanded. They may have started, you know,
3 closer to Avery Road and then eventually expanded
4 out a little further.

5 Q. All right.

6 A. So that's where I'm having problems definitely
7 putting the X --

8 Q. All right.

9 A. -- on where it was at any given point.

10 Q. Okay.

11 A. I know at some times it was as far west as here,
12 but it may have been as close as this, earlier in
13 the week.

14 Q. All right. We'll put a check on each of those
15 locations then. The one farthest to your left,
16 we'll make that No. 1, and then -- right.

17 A. And if that is the little city I'm thinking about
18 here, I know there was an intersection of a road.

19 ATTORNEY BUTING: Could we identify what
20 road, the names of those roads are, if you know?

21 THE WITNESS: I'm not going to be able to
22 do that. It's just that there was Highway 147.
23 There was an intersection, and I'm going to, again,
24 put an X there and a 1, by that one, and it may
25 have been as close as what I'm designating as X-2,

1 to the west of Avery Road.

2 Q. (By Attorney Fallon)~ Is it possible there could
3 have been one even farther west, which is not
4 depicted on the map?

5 A. It's possible. And I'm not going to say for sure
6 at this point.

7 Q. Were there any checkpoints on Avery Road?

8 A. Yes.

9 Q. All right. And tell us about those.

10 A. The checkpoints on Avery Road, again, moved.
11 Generally, during the day, when we were there
12 working, the checkpoint was toward the north end
13 of Avery Road, out near Highway 147.

14 Q. Pretty close to the intersection of Avery Road
15 and 147?

16 A. That's correct.

17 Q. All right. So put a check there.

18 A. I will put an X there with a 3.

19 Q. All right. And you said it moved, tell us about
20 that.

21 A. At night, when most of the personnel, the
22 investigative personnel, left the scene, they
23 would often times draw that back in toward the
24 command post area.

25 Q. What was the thinking for that?

1 A. The thinking was to draw it back in, contain the
2 scene a little better, and actually have that
3 personnel right there at the corner of the scene,
4 to provide security for the scene, and also for
5 break purposes, because there were porta-potties
6 and stuff that were there, and food and water,
7 and shift changes, and stuff like that.

8 Q. All right. Now, were there any checkpoints east
9 of Avery Road, on 147, anything that you can
10 place on our map there, or were they farther east
11 than what is depicted?

12 A. I don't believe so. I think they were around
13 this intersection, in the vicinity of this
14 intersection, on Highway 147.

15 Q. All right.

16 A. I will put an X-4 there.

17 Q. All right. You may resume your seat. Directing
18 your attention, again, to Exhibit 18, the 40 acre
19 plot of land depicted there, once the initial
20 search warrant was obtained and you began the
21 searches, was that area under your continuous
22 control?

23 A. Yes.

24 Q. And when did you give up control of that 40 acre
25 plot of land?

1 A. Saturday, November 12, at about 11:28 a.m.

2 Q. All right. Now, during the course of the week
3 that you were there, was there plans made to
4 secure the premises -- the perimeter of the 40
5 acre plot on Exhibit 18?

6 A. Yes.

7 Q. All right. And what can you tell us about that?

8 A. The plans to secure the perimeter was to have law
9 enforcement personnel, at minimum, on each corner
10 of the property.

11 Q. All right. And was that around the clock
12 securance?

13 A. Yes.

14 Q. All right. At any point during the seven days,
15 did you ever leave -- were any of the guards
16 removed or any of the postings from the corners
17 of the property?

18 A. Other than changes, shift changes, to my
19 knowledge, no.

20 Q. All right. Was it Lieutenant Sippel and
21 Lieutenant Bowe, from the Calumet County
22 Sheriff's Department, who were in charge of the
23 overall perimeter security?

24 A. Yes.

25 Q. All right. Again, returning to the time on

1 November 5th when Detective Wiegert and Detective
2 Remiker and others returned with the search
3 warrant, what was the initial plan or focus of
4 executing the search warrant?

5 A. That would have been to do a protective sweep of
6 the buildings on that scene, and also to search
7 for Teresa Halbach.

8 Q. All right. And what did you mean by protective
9 sweep; what was the point or purpose of that?

10 A. When law enforcement executes a search warrant or
11 a search, we generally do a protective sweep for
12 our safety, or the satisfy of anyone on that
13 scene, to look for anything that could endanger
14 us people, people armed with weapons, whatever.

15 Q. All right. And that's so you could also see if
16 there were any other individuals who were
17 actually on the premises at the time the warrant
18 was being executed?

19 A. Certainly.

20 Q. All right. You also said that the other point or
21 purpose was to look for Teresa Halbach, tell us
22 about that.

23 A. Well, essentially, this was a missing case -- or
24 a missing person investigation at that point.
25 And the search warrant was to look for -- one of

1 the things, the search warrant, was to look for
2 the body or to look for Teresa Halbach, in the
3 hopes of finding her alive.

4 Q. All right.

5 A. And that was the primary purpose at that time.

6 Q. And given that primary purpose, were there any --
7 Well, given that as a purpose, how did you go
8 about attempting to accomplish that particular
9 aspect, what did you do?

10 A. Based on the personnel we had, teams were set up
11 to disseminate throughout the property and do
12 that sweep, through the buildings, looking for a
13 protective sweep and looking for Teresa.

14 Q. All right. Now, in your capacity as an agent
15 with the Department of Justice, have you been
16 involved in the execution of search warrants?

17 A. Yes.

18 Q. Numerous times?

19 A. Yes.

20 Q. In terms of the focus, for instance, is there a
21 difference in the way you approach things if the
22 focus is looking for a particular person as
23 opposed to looking for something like blood, or
24 narcotics, or something of a smaller size?

25 A. Most certainly.

1 Q. All right. Tell us about that.

2 A. If I'm looking for something larger size,
3 something obvious or evident, it's obvious that
4 that search is going to be a little quicker and
5 easier because it's much more visible and
6 apparent.

7 If I'm looking for evidence that might
8 constitute forensic evidence or trace evidence,
9 so to speak, blood, or hair, or fibers, that's
10 going to be a much more detailed search, which
11 may involve artificial lighting, may involve
12 getting down on hands and knees, using magnifying
13 glasses, etcetera. So there's a big difference.

14 One could -- conceivably could call it a
15 search, while the other one may be, you know,
16 searching for evidence and then the processing
17 and collection of evidence. So there's a
18 difference.

19 Q. All right. Now, in terms of organizing the
20 search teams, who organized the teams?

21 A. It would have been either myself, or Investigator
22 Wiegert, or someone in our stead at times. And I
23 believe that probably would have been, in this
24 instance, Investigator Wiegert, because I would
25 have been involved with a search of my own, or

1 with one of the dogs at that time.

2 Q. Now, on -- All right. How did you and
3 Investigator Wiegert assign responsibilities or
4 duties during the execution of this search
5 warrant?

6 A. Again, based on the personnel present, a decision
7 had been previously made that Calumet was going
8 to take over the investigation, and that
9 resources being as they were, we were going to
10 use Manitowoc County personnel to assist in the
11 investigation of this scene, and the search of
12 this scene.

13 And, basically, what we decided to do,
14 as the teams were set up, we would have either a
15 person or an investigator, from Calumet County or
16 DCI, accompany Manitowoc County personnel, if
17 they were on a search team.

18 Q. All right. Now, what kind of teams were actually
19 put together?

20 A. I'm not sure if I understand the question.

21 Q. Is there a difference, for instance, from a
22 search team and/or an evidence collection team?

23 A. Well, certainly. Again, this initial search, we
24 weren't concerned with having evidence collection
25 technicians on those particular teams

1 necessarily. It may have been deputies. It may
2 have been jail personnel. It may have been DCI
3 agents on the teams.

4 Again, their primary purpose was the
5 protective sweep and the searching for Teresa,
6 and not necessarily a concern of finding and
7 locating trace evidence, so to speak.

8 Q. All right. And once -- Did there come a time
9 when the focus shifted from looking for Teresa to
10 one looking more detailed, looking for more trace
11 evidence, as it were, or other evidentiary items,
12 found or listed in the warrant?

13 A. Yes.

14 Q. All right. Tell us about that.

15 A. What happened was, they did the protective sweep
16 and the search for Teresa in the buildings area.
17 After that, we had some trained cadaver dogs come
18 in. And I initially accompanied one of those
19 trained cadaver dogs, with some other personnel.
20 And we did a search all along the south end of
21 the property, where the dog alerted on Teresa's
22 RAV 4 vehicle.

23 We continued that search along that
24 south border of the property and actually into
25 the adjoining property owned by Radandt. During

1 that time, additional dogs arrived and additional
2 searches were done, utilizing the dogs, of some
3 of the buildings. Just a walk through, basic
4 search, with the dogs, to see if the dogs alerted
5 on anything.

6 Again, the thinking being, if the dog
7 alerted on something, that might be a clue or an
8 assist in helping locate Teresa or the body of
9 Teresa Halbach. And again, that was a fairly
10 quick search, walking the dogs through.

11 Q. When you say fairly quick search, are you
12 referring to the buildings?

13 A. Yes.

14 Q. All right. Were the dogs used to search other
15 areas on the property?

16 A. Yes.

17 Q. Tell us about that.

18 A. Again, Lieutenant Sippel and Bowe would probably
19 be better to address that. But the dogs were
20 used to take into the pit area, the salvage area,
21 walking through and around cars and to see if
22 they were alerting on anything there. So that's
23 that 37 acre area that we were talking about.

24 Q. So would it be fair to say that when you were
25 using the dogs, the primary focus was still

1 looking for Teresa, or something, some part of
2 her remains, for instance?

3 A. Certainly.

4 Q. All right. Now, you indicated you were -- You
5 mentioned something about the Toyota RAV 4; did
6 you have any involvement in securing that item of
7 evidence?

8 A. To a degree. After I arrived, sometime after I
9 arrived, we had approached the RAV 4 and used a
10 flashlight to confirm that there was no body in
11 the RAV 4. While we were there, we were getting
12 reports and seeing obvious signs of inclement
13 weather approaching, getting reports of serious
14 inclement weather approaching.

15 The Crime Lab, Wisconsin State Crime Lab
16 was involved and I was in contact with them. And
17 as such, we would be agreeing to attempt to put a
18 tarp over the RAV 4 vehicle, which we did.
19 Inclement weather arrived and there was some
20 rain, not the worst of it yet, but that was
21 accompanied by some high winds. And the winds
22 were blowing the tarp all over. So, ultimately,
23 we went back to that scene and we ended up
24 removing the tarp, because it was just flailing
25 around anyways.

1 Q. You couldn't keep the tarp on because of the
2 weather?

3 A. No.

4 Q. At some point, was the vehicle removed?

5 A. Yes.

6 Q. Approximately when?

7 A. Approximately 8:45 p.m.

8 Q. All right. You mentioned something about serious
9 inclement weather on the way; what concerns, if
10 any, did that pose for you during the course of
11 executing the search warrant?

12 A. Well, that, as well as other things. We were
13 getting into dark now, losing daylight.
14 Searching, anything, is much better and well done
15 during daylight as opposed to artificial light or
16 in the dark. Add to that the horrendous
17 rainstorm that ultimately moved in that evening,
18 very much limiting any of the outdoor search,
19 except the removal of the RAV 4, which we
20 accomplished in that storm.

21 Q. How bad was the weather?

22 A. It was raining extremely hard when the storm hit,
23 as hard as I have experienced.

24 Q. And how long did that rain persist?

25 A. You know, I don't remember exactly, but most of

1 the night that we worked there it was raining.

2 Q. All right. And did that create some concerns
3 with you, with respect to evidence detection and
4 collection?

5 A. Well, obviously, we had concerns with any
6 evidence collection and detection outside,
7 coupled with the dark. Lights were brought in to
8 illuminate the southeast corner where the RAV 4
9 was found, that area. But the rain affected that
10 quite heavily, also. So we were fairly or pretty
11 much limited to inside or in building searches at
12 this time.

13 Q. All right. I will come back to that in a minute.
14 I would like to direct your attention, again, to
15 Exhibit 19. And -- which is behind you -- and
16 ask, during the course of the week that you were
17 executing the search warrant on the premises
18 depicted in Exhibit 18, were you called upon to
19 investigate, or participate, or coordinate
20 searches of surrounding areas?

21 A. Yes.

22 Q. And tell us about that.

23 A. Ultimately, when we were done searching, it was
24 estimated that we had searched approximately six
25 to 800 acres of property.

1 Q. That's in addition to the 40 acres?

2 A. In addition to the 40 acres on the Avery
3 properties. And that property included a lot of
4 surrounding areas which were gravel pits, sand
5 pits; I think most of them owned by Radandt.

6 And then many ponds and lakes. I'm not
7 sure of the count, but numerous ponds and lakes
8 that had to be searched, either with dive teams
9 or walk-throughs of some sort. Again, all taxing
10 the personnel and resources during the course of
11 that week.

12 Q. With respect to your role and Investigator
13 Wiegert's role, were the two of you responsible
14 or more or less in charge of the perimeter
15 searches; in other words, the 6 to 700 acres, was
16 that your responsibility or someone else's?

17 A. That would have been more Lieutenant Bowe and
18 Sippel coordinating that, managing that part.

19 Q. But who oversaw their work?

20 A. Investigator Wiegert, myself.

21 Q. All right. And returning then to the weather on
22 Saturday night and limiting to building searches,
23 did there come a time where you, and/or
24 Investigator Wiegert, directed various search
25 teams to enter the buildings?

1 A. Yes.

2 Q. All right. And tell us how that came to pass.

3 A. I keep returning to this, but again, pertaining
4 to the personnel we had present and the resources
5 yet available that evening, now we're organizing
6 what we believe to be a search to look for
7 evidence, potential processing and collection of
8 evidence. And for such a search, we need
9 evidence technicians or trained officers who were
10 trained in the collection of evidence.

11 Q. All right. And on Saturday night, I would say
12 approximately 7:30 or thereabouts, how many
13 evidence technicians, or evidence collection
14 teams, were available on Saturday?

15 A. I believe we put one evidence collection team
16 together that night.

17 Q. All right. During the course of the week, were
18 other evidence collection teams put together?

19 A. Yes. And I'm going to back up, Saturday night,
20 if you count the Crime Lab, the two technicians
21 that came from the Crime Lab, we would have had
22 two.

23 Q. All right. What assignment did the Crime Lab
24 people have on Saturday night?

25 A. To process and seize and transport the RAV 4,

1 Teresa's vehicle.

2 Q. Did they actually do an examination or processing
3 of the vehicle itself, on scene, or just the
4 collection and removal?

5 A. The only thing they processed or looked at, on
6 scene, was the debris and the items that had been
7 used to conceal the vehicle, but the vehicle
8 itself, to my knowledge, no.

9 Q. All right. And what happened to the Crime Lab
10 after the vehicle was removed, the Crime Lab
11 personnel, after the vehicle was removed?

12 A. The Crime Lab personnel remained with the
13 vehicle. I believe one of the technicians rode
14 with the individual towing the vehicle, while the
15 other one followed the vehicle, or led the way to
16 Madison.

17 Q. All right. So in terms of after they left the
18 scene, you only had one evidence collection team
19 on site that evening?

20 A. Correct.

21 Q. All right. So in terms of using their
22 capabilities, what was the plan?

23 A. The plan was to start searching buildings. And
24 we started with Steven Avery's residence on the
25 northwest corner of the property, at about 7:30,

1 if I remember right.

2 Q. All right. And did there come a time that you
3 and/or Investigator Wiegert, directed additional
4 entries into Mr. Avery's trailer?

5 A. Yes.

6 Q. All right. And did there come a time where you
7 directed additional entries to other residences
8 during the course of the week?

9 A. I believe so, yes.

10 Q. And the businesses, or buildings associated with
11 the business?

12 A. Yes.

13 Q. All right. And there's been some testimony that
14 through the course of the week, and in particular
15 the first five days, there were as many as -- I
16 think perhaps eight entries, thereabouts, to
17 Mr. Avery, Steven Avery's trailer. And three or
18 four entries to the garage.

19 So what was it about the circumstances,
20 in your mind, that caused you to direct
21 successive or additional entries, first of all,
22 with respect to Mr. Avery's trailer?

23 A. I think that's a longer answer than you might
24 anticipate. But additionally, we have the
25 same -- you have got your protective sweep and

1 looking for a body, and using the dogs. I would
2 categorize those into, basically, the same type
3 of search, a walk-through, a sweep. So you have
4 two entries there.

5 I have got a search warrant for a scene
6 here, which is a 40 acre scene. I don't have a
7 search warrant specifically for any building or
8 Steven's house, or Barbara's house. I have got a
9 40 acre scene here. That's why I say I'm holding
10 that scene. Okay. Ultimately, that evening, we
11 get a team put together and we start the
12 buildings.

13 We start with Steven's residence. When
14 the technicians go in there, they are looking for
15 evidence that's obvious. And they are also
16 looking for trace or forensic evidence, which is
17 a little more difficult, sometimes, to detect.

18 At this point in time, you are talking
19 it's dark, it's night, you have got a horrendous
20 rain storm going on. We want to look, to the
21 best of our abilities, for that type of evidence.
22 Because of the rain, because of people maybe
23 going in and out of their house to get evidence
24 collection bags, gloves, whatever they need,
25 flashlights, you run the risk of evidence being,

1 in effect, destroyed or lost. So we look for
2 that type of evidence as quickly as possible,
3 because that is the most susceptible to that type
4 of danger.

5 So, they go in there about 7:30.

6 Keeping in mind also, at this point in time most
7 of those investigators that went in that trailer
8 are already going on 12 hours, or more, of work.
9 So you are talking that they are getting tired,
10 there could be safety issues, and exhaustion's
11 becoming a factor. So they go in there --

12 Q. Does that affect the ability to locate and
13 collect evidence --

14 A. I would think --

15 Q. -- based on your experience --

16 A. -- so, yes.

17 Q. Was that based --

18 A. I felt it, yes.

19 Q. All right.

20 A. So, they go in there until about 10:30 and they
21 clear Steven's residence that evening. They come
22 back and we have, Mark and I, as well as the
23 sheriff and other people that are involved,
24 Sippel, and Bowe, and whoever, are continually
25 having debriefing sessions, and planning

1 sessions, and assessing what's going on.

2 Taking in all the intelligence
3 information that's happening. We debrief that
4 team. And even as early as that night, in my
5 mind, I'm telling people -- or my mind I'm
6 thinking -- either that night or the next night,
7 I'm telling people, we are not done in that
8 house. We will be going back there, for several
9 reasons: Number 1, they noted guns. They talked
10 to us about a vacuum cleaner, and having taken, I
11 believe, the bag out of the vacuum cleaner.

12 But we talked about the roll -- about
13 the brush that's in the vacuum cleaner, how that
14 can collect -- possibly collect trace evidence.
15 And we're going to want to take that. Bedding in
16 a spare bedroom, yeah, we're going to want to
17 take that.

18 That's how these meetings occurred, you
19 know. What did you find? What did you see in
20 that residence? We're going to want that.

21 Q. All right.

22 A. That building is still part of my scene. This is
23 an ongoing search. So as early as that, we're
24 going to be returning there. That night, that
25 completed that night. The following evening is

1 when we continued the search in process,
2 involving going in the buildings, including
3 Steven's garage.

4 Q. Now, did the apparent evidentiary significance of
5 items observed in the buildings, in particular,
6 Mr. Avery's trailer; did that change during the
7 course of the week?

8 A. Certainly.

9 Q. Tell us about that.

10 A. Beginning just at that first night, I mean, we
11 have -- we have investigative personnel. To
12 start with, we have investigative personnel up in
13 Marinette, at the Avery's other property up
14 north, who are speaking with Avery members,
15 gleaning intelligence and information, which is
16 being reported back to us.

17 We have investigators at the scene that
18 are going out and doing interviews either of
19 relatives, family members, friends, or just
20 people who may have been involved in this scene.

21 We have neighborhood canvasses that are
22 started the following day. We're constantly
23 bringing in intelligence and information,
24 assessing that information and intelligence.

25 We have evidence teams that are finding

1 evidence and we're making determinations on:
2 What's been found; what we need to look for; do
3 we need to look somewhere else; are there things
4 that we're missing.

5 That's all affecting what's going on in
6 this ongoing process. This is not a static
7 process, that's just standing still. We have a
8 RAV 4 that went down to the Crime Laboratory,
9 that's being analyzed. I think it's as early as
10 Sunday that there is a presumptive positive test
11 for human blood in that vehicle. That's
12 affecting what we may be doing, or what we're
13 looking for, obviously.

14 Q. All right. Now, at some point did the Crime Lab
15 come down and assist further in the search of the
16 scene, and/or the collection of evidence, or the
17 identification of evidence?

18 A. Yes, they came back. The other team came back on
19 Sunday I believe, afternoon, later afternoon,
20 Sunday.

21 Q. And what did they do to assist in either the
22 identification or collection of additional
23 evidence?

24 A. They were being sent all over the place. Again,
25 on Sunday, we have search teams that are going

1 out and searching. We're accounting for the
2 vehicles, the trunks of the vehicles, underneath
3 the vehicles, and the insides of the vehicles;
4 the car crusher, the crushed vehicles, the
5 crushed vehicle in the car crusher; the
6 buildings, and even maybe starting some of the
7 surrounding areas.

8 As the search teams are going through,
9 again, they are not necessarily evidence
10 technicians, but they are looking for potential
11 evidence, or identifying potential evidence, and
12 either marking or flagging the potential
13 evidence. And that could include, and in many
14 instances did include, potential blood in junked
15 vehicles.

16 And the Crime Lab was being utilized to
17 go check or analyze those areas of potential
18 evidence, to see if it needed to be collected, if
19 it was blood, if it wasn't blood. They went to
20 vehicles. I think they went to a golf cart at
21 one time, to check something that had been found
22 in a golf cart.

23 Ultimately, they were directed to go
24 back -- or asked to go back into Steven Avery's
25 residence, to use alternate light sources to

1 check for the presence of blood.

2 Q. All right. And did they, in fact, go into
3 Mr. Avery's residence at some time during the
4 course of one of these searches, with alternate
5 light sources, to look for blood?

6 A. Yes, I believe they did that Sunday evening.

7 Q. All right. And did they actually collect what
8 they observed, or how did you work with them,
9 best utilizing their abilities?

10 A. Yes. Generally, they would be able to identify
11 and help process. And the collection of
12 evidence, if they collected it, it was
13 immediately turned over to Calumet County
14 personnel.

15 ATTORNEY BUTING: I'm going to object to
16 his testimony about what they did or didn't do, in
17 Mr. Avery's residence, unless this witness was there
18 and observed it.

19 ATTORNEY FALLON: I will clear up with a
20 foundation question.

21 Q. (By Attorney Fallon)~ Were you responsible --
22 Strike that. Let's try it this way. Once
23 someone entered a residence and did something in
24 the residence, was that information conveyed back
25 to you in the command post or -- and/or Detective

1 Wiegert?

2 A. Yes.

3 Q. All right. So in terms of your responsibility
4 and Investigator Wiegert's responsibility, you
5 were made aware of the results, or what the
6 observations were, during the course of entering
7 any of these residences?

8 A. I would believe so, in most of the cases, yes.

9 Q. Now, specifically, since the Crime Lab personnel
10 work also for the Department of Justice, did you
11 have constant contact with them regarding what
12 they were doing and how they were assisting?

13 A. The majority of time, yes, I agree.

14 Q. Now, with respect to their participation in one
15 of the searches of Mr. Avery's trailer, that
16 being Steven Avery's trailer, with respect to
17 using an alternate light source, were you made
18 aware of that?

19 A. Yes.

20 ATTORNEY BUTING: Objection, hearsay.

21 THE COURT: For purposes of this hearing, I
22 think it's relevant to determine how this witness
23 acted and what he did, rather than for the truth of
24 the matter, so I'm going to accept it on that basis.

25 ATTORNEY FALLON: Fine, thank you.

1 Q. (By Attorney Fallon)~ So, did the Crime Lab
2 collect evidence after they went through --

3 ATTORNEY BUTING: Same objection. It's
4 hearsay, as to what was done inside that house, if
5 he wasn't there. He can talk about why he did or
6 didn't do things afterwards, but he -- it is hearsay
7 for him to relate what someone else did, outside of
8 his presence, and came back and told him. What
9 other purpose does the State have to offer that?

10 THE COURT: Mr. Fallon?

11 ATTORNEY FALLON: Certainly. First of all,
12 it does go to the state of mind. After all, he is
13 one of the two people responsible for the overall
14 execution of this warrant. He's already established
15 the fact that he and Investigator Wiegert were in
16 charge of the investigation, so they were clearly
17 made aware.

18 He's already testified that there were
19 debriefings after each search. This is all
20 information that factors into the decision making
21 process as to how that warrant was executed.

22 Secondly, under 904.01, a certain amount
23 of hearsay under these circumstances is
24 permitted.

25 Third, taking the Court's previous

1 example, it does go relative to his state of
2 mind.

3 THE COURT: For purposes of this hearing,
4 what they found or what they didn't find isn't
5 really that important. It's hearsay if it's
6 introduced for the purpose of proving the truth of
7 the matter asserted.

8 In this case, I take the information to
9 be an explanation of why orders were given, why
10 searches were ordered to be conducted, why they
11 came back the next day. And I think so for that
12 purpose, which is most relevant to the defense
13 motion here, it is not hearsay because it's not
14 offered to prove the truth of the matter
15 asserted; therefore, I'm going to allow it.

16 ATTORNEY FALLON: Thank you.

17 Q. (By Attorney Fallon)~ What occurred with respect
18 to the Crime Lab's participation and what affect
19 did that have on you, in terms of what you were
20 doing and organizing, with respect to
21 continuation of the executing the search warrant?

22 A. They identified additional areas in Steven's
23 trailer that show the presence of blood, or the
24 potential presence of blood. They collected a
25 few of the areas. They identified the other

1 areas, as areas that were needed to go in and
2 collect yet.

3 Q. And subsequent to that, did you direct additional
4 entries to collect the information requested by
5 the Crime Lab?

6 A. Yes.

7 Q. All right. Are you an evidence technician, by
8 the way?

9 A. I have attended a week long evidence technician
10 course put on by the State Crime Laboratory.

11 Q. All right. After you directed the subsequent
12 entry suggested by the Crime Lab, in other words,
13 the collection of these additional samples, in
14 your mind, were you -- was the execution of the
15 search warrant, as a whole, completed?

16 A. Absolutely not.

17 Q. With respect to the part of the warrant
18 permitting entrance, authorizing entrance to
19 Mr. Avery's trailer, and his garage, for that
20 matter, after Sunday evening, did you, in your
21 mind, think that you had completed or, quote,
22 gotten everything there was to get?

23 ATTORNEY BUTING: I think what's in his
24 mind is really irrelevant. It's ultimately going to
25 be a legal question. It's more what he did and

1 didn't do. He's not --

2 ATTORNEY FALLON: It's a foundational
3 question to explain subsequent conduct.

4 THE COURT: Well, in a sense, you are both
5 right. Even what his thoughts were may not
6 necessarily control the outcome of the decision on
7 your motion, but as both parties have already
8 informed the Court, there's not a lot of case law on
9 this, and it may be that what was going through his
10 mind is important. So, for that reason, I'm going
11 to allow the question.

12 Q. (By Attorney Fallon)~ Did you feel you had
13 completed that portion of the execution of the
14 search warrant with respect to the defendant's
15 residence and garage?

16 A. Based on -- a lot on the factors I already talked
17 about, no.

18 Q. All right. And why not?

19 A. Reiterating a lot of those factors, and the
20 purpose of a lot of the searches up to that
21 point, we were not done with those areas. We
22 had, like I said, after that first forensic
23 search, based on the weather and lighting
24 conditions, exhaustion of the searchers, I knew
25 that building, even without Steven being the

1 primary suspect necessarily, was going to be
2 searched again. It was too likely that things
3 would have been missed, based on those factors.

4 They did see some things in there, guns
5 and stuff, that we needed to go back in and get
6 the following day, due to the lateness of hour,
7 etcetera. And we did. We knew there was a
8 computer in there that we had to obtain
9 information off of, which we got a separate
10 search warrant for.

11 And then the Crime Lab was asked to go
12 in because that first search team found evidence
13 of blood in there. So we asked them to use their
14 technology to determine if there was any other
15 blood in there. Again, as I said, this was
16 ongoing.

17 After they identified other areas of
18 blood, we knew we had to go back there and get --
19 collect those items. During this whole course of
20 things, through debriefings and interviews,
21 interviews being conducted, we're obtaining more
22 intelligence information that tends to indicate
23 that Steven is definitely the suspect, or a
24 suspect in this case, which makes it even more
25 relevant that we make sure we do a complete and

1 thorough search of that area before we release
2 the scene.

3 Q. With respect to that, what additional information
4 was uncovered on Tuesday, for instance, that led
5 you to continue the belief that you needed to
6 gain additional entry into the trailer and the
7 garage; what was happening?

8 A. Number one, Monday, we were -- we were busy in
9 other areas, again, in the junkyard, other
10 buildings, etcetera. So we did not get back to
11 Steven's trailer on Monday like we had planned
12 to, because of what the Crime Lab showed, and
13 just my beliefs.

14 So Tuesday, it was planned to go back in
15 there. I believe Tuesday they went back in there
16 and got the computer. And then Tuesday we were
17 going back in, that that's where we put the team
18 up to go back in there and hopefully do a final,
19 thorough search of that trailer.

20 Things that were coming in, I mean from
21 interviews and intelligence, we're interviewing
22 people and finding that Steven's initial story,
23 it was inconsistent with later stories that he
24 had given, whether to us or to the press.

25 We have other interviews of other

1 individuals that are contradicting --
2 contradicting his statements.

3 We have information coming in from the
4 Crime Lab, the presence of blood. And I believe
5 it was Tuesday, and I'm not sure, but I believe
6 it was Tuesday I was advised by the Crime Lab
7 that DNA analyzed from the RAV 4, matched up with
8 Steven Avery's DNA from the Wisconsin data base,
9 DNA data base. That may have been later on
10 Tuesday, but these are the types of things that
11 are coming in and we're analyzing and basing our
12 decisions on.

13 Q. Did the fact that there were bone fragments
14 uncovered from a burn pit on Tuesday factor into
15 the equation?

16 A. I'm sure that factored into the equation, to make
17 sure that the residence was searched properly and
18 held. I believe -- I'm not sure what time of day
19 the bone fragments were found, whether they were
20 found a little later, or the search had conducted
21 earlier, so I'm going to say I'm not sure.

22 Q. All right. During the course of overseeing the
23 execution of this search warrant, were you,
24 and/or Investigator Wiegert, more or less was
25 your attention drawn away from the scene to other

1 locales outside of the perimeter here?

2 A. Oh, yes, a lot of times.

3 Q. Tell us about that and why you felt that you had
4 to address those.

5 A. Again, you are getting information from many
6 different sources, whether it's evidence
7 technicians finding evidence, or agents or
8 investigators doing interviews and obtaining
9 information and intelligence. And you perform
10 sort of a triage, I guess. Is this something
11 that we need to address? Do we have the
12 personnel and resources to address it now, or
13 could it wait?

14 And a good example, we had the Crime Lab
15 personnel running around trying to address
16 different areas. During Tuesday, I think it was
17 Tuesday morning, license plates were found in a
18 vehicle on the yard that were Teresa Halbach's
19 license plates from her vehicle. At that point
20 we made the decision to pull the Crime Lab off
21 what they were doing to go address the seizure
22 and the processing of the plates from that
23 vehicle.

24 Other areas where maybe blood was found,
25 we were directing evidence technicians to go

1 there. We had search teams out that were
2 identifying these various areas of evidence.
3 They would report back to us and we would
4 determine, do we need to send someone there now,
5 or can we just hold that scene until we can get
6 someone available to go process that.

7 We need people who have been trained in
8 processing evidence to do that. And we only had
9 so many people that were trained to do that. So
10 we're constantly making those decisions. We had
11 a site that, potentially, could have been a
12 clandestine burial site, that we pretty much
13 pulled everyone off of, for quite a period of
14 time, until we determined that it wasn't.

15 Q. Where was that? Was that in the perimeter or
16 somewhere else?

17 A. That was outside the perimeter, to the west.

18 Q. And were individuals dispatched to areas such as
19 Maribel Caves Park?

20 A. We had intelligence coming in that some pants,
21 and I think some lotion or something, had been
22 found at this park. So, yes, we dispatched some
23 evidence technicians over there.

24 We had a report of a cell phone being
25 found in the ditch. We ultimately dispatched

1 people there. We had that clandestine site. We
2 had reports of some bones found on some property
3 west of this area, that Mark and I actually went
4 out on because there was no one available,
5 technicians available, that we checked that.

6 Q. When you say Mark, you mean Mr. Wiegert?

7 A. Our investigator, Wiegert. We had intelligence
8 coming in from interviews that someone may have
9 seen something; for example, a bus driver
10 dropping someone off, that we had to send people
11 out to interview and obtain information from that
12 person.

13 Q. All right. Now, during the course of this week
14 long event, did you have assistance of other law
15 enforcement agencies?

16 A. Yes.

17 Q. All right. What agencies assisted?

18 A. Wow, I don't even know the whole list, but the
19 State Patrol for sure. They were assisting in
20 perimeter security, I think from day one or day
21 two, and then en masse. I think on Tuesday was
22 the first day they were there en masse, where
23 upwards of 60 troopers arrived to help search
24 that, go over that yard, again.

25 Q. When you say the yard, you are talking about the

1 salvage yard?

2 A. The salvage yard, the vehicles. And they
3 actually came and assisted in searching the
4 properties adjacent to the Avery properties.

5 Q. All right. Other law enforcement entities
6 assist?

7 A. Of course, Manitowoc County Sheriff, Manitowoc
8 City, I think Two Rivers may have had some people
9 there, and then Calumet County Sheriff's
10 Department, obviously, and some various, I think,
11 police departments in Calumet County also
12 assisted in perimeter and scene protection, and
13 security.

14 Q. And did -- At some point did you receive
15 assistance from some local firemen?

16 A. Yes.

17 Q. All right. And how were they employed?

18 A. I believe the first day they were employed was on
19 Sunday, and they were employed in searching the
20 vehicles. And I believe they brought in their
21 Jaws of Life to open trunks of vehicles, and car
22 doors, and whatever needed to be opened. And
23 they were broken up into teams.

24 And I believe each of those teams had
25 one law enforcement -- at least one law

1 enforcement personnel with them. And they went
2 through the yard and went through every vehicle
3 to make sure that, again, Teresa, or evidence of
4 Teresa, was not apparent in those vehicles. And
5 that's in the vehicles, under the vehicles,
6 evidence that the vehicle had been moved, or not
7 moved. And if it was moved, we had to get
8 personnel in there to lift that vehicle up, move
9 it, check under it.

10 Q. All right. Now, with the -- in terms of having
11 at least the benefit of these additional
12 resources, did that ease the strain at all with
13 respect to the actual evidence collection
14 processing component associated with the
15 execution of a warrant?

16 A. Not nearly as much, no, because these people
17 weren't trained to process or collect evidence.

18 Q. Who was responsible for coordinating their
19 efforts?

20 A. The efforts of whom?

21 Q. The State Patrol, the firemen, the Two Rivers
22 officers; in other words, the supporting law
23 enforcement cast, as it were?

24 A. The hands on portion was probably more Lieutenant
25 Sippel and Bowe, but Investigator Wiegert and I

1 were ultimately responsible for what we were
2 going to do.

3 Q. All right. And you decided how they were going
4 to be employed, these law enforcement assists?

5 A. Yes.

6 Q. All right. During the course of the week, do you
7 recall, you mentioned two evidence collection
8 teams; were there other evidence collection teams
9 available at your disposal?

10 A. Off the top of my head, Sunday we had two primary
11 evidence collection teams made up of Calumet
12 County Sheriff's evidence technicians, Manitowoc
13 County and Manitowoc City.

14 And then we had the Crime Lab personnel,
15 who I would describe more as roving where needed.
16 And then later in the week, we actually brought
17 in an evidence technician from the Grand Chute
18 Police Department that assisted us.

19 Q. All right. Now, all this is going on, did you
20 have law enforcement personnel in other parts of
21 the state who were collecting information and
22 providing it to you during the execution on the
23 search warrant?

24 A. Yes.

25 Q. And tell us about that.

1 ATTORNEY BUTING: Objection, it's
2 irrelevant.

3 ATTORNEY FALLON: It goes to the resource
4 allocation issue and how they went about their
5 business. They keep questioning why it took eight
6 searches, or four days, to complete processing of
7 that. This is -- all goes to that explanation.
8 Now, the hallmark of Fourth Amendment is
9 reasonableness, under the circumstances.

10 THE COURT: I will let you ask a few
11 questions about it.

12 ATTORNEY FALLON: Thank you.

13 A. The primary area in question would have been up
14 in Marinette County where the Avery's have
15 property up there. And many of the Avery's were
16 there on that Saturday, November 5. So I had
17 to -- or I did, allocate special agents to go up
18 there. We had Marinette County personnel up
19 there.

20 I had special agents running definitely
21 throughout Manitowoc County as well as into other
22 counties, following up leads, reports of this or
23 that. I had many special agents transporting
24 evidence from the Avery property, or Calumet
25 Sheriff's Department, down to Madison Crime

1 Laboratory, to forensic anthropologists down
2 there. So, yeah, a lot of special DCI personnel
3 was eaten up doing a lot of that too.

4 Q. Were there other -- What I guess, for lack of a
5 better term, were there other volunteers which --
6 who assisted in the searches?

7 A. Yes.

8 Q. All right. And who is responsible -- When did
9 they come into the play?

10 A. For my part, or our part, I'm going to guess
11 mid-week, talking about the week of November 7.
12 Mid to early week, we had -- we realized we had
13 acres and acres and acres of property outside the
14 40 acre Avery scene that still needed to be
15 walked through and searched.

16 There was a point in time that we
17 weren't sure we had a body. And we decided to
18 utilize the searchers who were still standing by,
19 you know, hanging around; the civilian searchers
20 that Ryan Hillegas had kind of coordinated. And
21 so we decided to utilize them to walk through
22 some of those areas outside of that 40 acre area
23 accompanied by, again, a member of law
24 enforcement.

25 Q. All right. Now, were there other neighborhood

1 canvasses or leads called in by just citizens,
2 that impacted upon the allocation of resources?

3 A. Yes.

4 Q. Tell us about that.

5 A. We had leads coming in, like I said, I mentioned
6 the cell phone, someone found a cell found.
7 There were leads coming in that someone said --
8 or people said they saw Teresa or saw Teresa's
9 vehicle; we had to send investigators out to
10 that.

11 We were finding evidence on the property
12 that would lead investigators to go out; for
13 example, handcuffs or leg irons, and receipts for
14 the purchase of such things, and we sent people
15 out on. We had -- Just lost my train of thought.

16 Q. Okay. So you had received information, or
17 benefits from some community searchers?

18 A. Yes.

19 Q. All right. One second. During the course of
20 executing the initial search warrant here, at
21 some point did you become cognizant of the fact
22 that this was taking several days?

23 A. Oh, absolutely.

24 Q. And what, if anything, did you do, or what did
25 you do in recognition of that?

1 A. Well, if I understand your question correctly,
2 number one, holding the scene.

3 Q. Right.

4 A. Number two, attempting to get additional
5 resources and personnel in place.

6 Q. Right.

7 A. Number three, we did obtain additional search
8 warrants for various things and, ultimately,
9 mid-week, we obtained another search warrant for
10 the whole scene.

11 Q. Right. Now, in terms of your experience, have
12 you ever been involved in overseeing the
13 execution of a search warrant this comprehensive?

14 A. No.

15 Q. In terms of your experience with the Department
16 of Justice, have you ever been involved in the
17 execution of a search warrant of this magnitude?

18 A. That I was personally involved with?

19 Q. Yes.

20 A. No.

21 Q. All right.

22 ATTORNEY FALLON: That's all.

23 THE COURT: Mr. Buting.

24 **CROSS-EXAMINATION**

25 BY ATTORNEY BUTING:

1 Q. Let me start right, for the moment, with where
2 you ended. You said you got other search
3 warrants during that week, right?

4 A. Yes.

5 Q. And this is during the period from November 5th
6 to November 12th, when you had that property
7 under your control, right?

8 A. Correct.

9 Q. How many other search warrants did you obtain
10 during that week?

11 A. Related to the property.

12 Q. No, related to the case.

13 A. Related to the case.

14 Q. Investigation.

15 A. So you are talking about DNA --

16 Q. Everything.

17 A. -- search warrants. I can't give you a number.

18 Q. Dozens, would that be right?

19 A. It may be as many as dozens, yes.

20 Q. So you were going back and getting warrants
21 throughout the week, applying for warrants
22 related to this case, dozens of times?

23 A. I just -- I don't know about the dozens, but, yes
24 numerous times.

25 Q. Say as many as 20?

1 A. That would probably be fair, yes.

2 Q. Okay. But it wasn't until late in the day on
3 November 9th, that you went back and asked for an
4 additional warrant to allow you to search
5 Mr. Avery's residence and garage; isn't that
6 right?

7 A. Now, the 9th being Wednesday, if I'm correct?

8 Q. Yes.

9 A. I believe it was Wednesday, yes.

10 Q. 4:40 in the afternoon, I believe, would you --

11 A. I didn't -- I don't believe I went back and got
12 that search warrant. I think I served it, but I
13 didn't go get it.

14 Q. All right. So, you served it at 4:40 p.m. on
15 November 9th?

16 A. Without seeing that, I can't say.

17 Q. Well, let's see if I can find it for you. I'm
18 showing you a copy of the warrant, just to
19 refresh your recollection.

20 A. This warrant shows it was endorsed on November 9,
21 at 4:40 p.m.

22 Q. All right. And that warrant was intended to
23 allow you to continue searching Mr. Steven
24 Avery's property, as well as the other areas in
25 this 40 acre parcel, correct?

1 A. Yes.

2 Q. You were worried that the original warrant from
3 November 5th was going to expire, as a matter of
4 time, was going to expire with the five day
5 statutory limit, correct?

6 A. I believe so, it wasn't my decision. My
7 decision -- That wasn't my decision.

8 Q. And that warrant on November 9th -- I can show it
9 to you again if you would need to, but that
10 warrant contained more information, gathered
11 through your intelligence and your investigation,
12 to support a probable cause finding, than was in
13 the original warrant from November 9th, correct?

14 A. Yes.

15 THE COURT: The original one from the 9th
16 or the 5th?

17 Q. (By Attorney Buting)~ I'm sorry, from November
18 5th, correct?

19 A. Yes.

20 Q. So as you -- Throughout the week, the week
21 November 6th, November 7th, November 8th, you
22 talked about how you kept gathering all this
23 additional information, right?

24 A. Yes.

25 Q. There would have been nothing to prevent you from

1 going back to a judge, on Saturday, November 6th,
2 with new information, saying I want another
3 warrant to be able to go back into Mr. Avery's
4 trailer or garage, correct?

5 A. The only constraints would have been time and
6 personnel, but you're probably right, yes.

7 Q. Or November 7th?

8 A. Yes.

9 Q. Or November 8th?

10 A. The 8th, we served numerous other warrants and
11 that would have been a tough day, probably.

12 Q. Well, you are serving numerous warrants. You are
13 going to a judge. You are filling out
14 applications for other warrants, throughout that
15 time, up to 20 different warrants.

16 Nothing would have prevented you, on
17 those occasions, from getting another warrant to
18 allow you to go into Mr. Avery's house a second
19 time, or a third time, or a fourth time, or a
20 eighth time; isn't that right?

21 A. Except the fact that we had the scene.

22 Q. Except what?

23 A. The fact that we were still holding that scene.
24 In our estimation, this was ongoing.

25 Q. You had no lack of personnel, to go to a court

1 and get search warrants, from November 5th
2 through the 9th; isn't that right?

3 A. Yes. And that strained our personnel, getting
4 those search warrants, phone search warrants.

5 Q. But you did it, didn't you?

6 A. Yes.

7 Q. They were there, in front of a judge?

8 A. Yes.

9 Q. And all it would have taken was another affidavit
10 to present to the judge, saying, we think that
11 there's reason why we need to go back into
12 Mr. Avery's residence. That's all you would have
13 needed in order to get another warrant from a
14 judge, right?

15 A. Yes.

16 Q. You could have done that, right?

17 A. Yes.

18 Q. You chose not to?

19 A. Yes.

20 Q. You believed that this warrant gave you carte
21 blanche to go in and out of his residence and
22 trailer as many times as you wanted, right?

23 A. Yes.

24 Q. Now, meanwhile, you had that property secured
25 from the owner's and residents, the people who

1 lived and worked on that property, right?

2 A. Yes.

3 Q. For one solid week, the owners of the property
4 and the people who lived on that property, were
5 denied access to that property, right?

6 A. Yes.

7 Q. This was a business that was completely shut down
8 while you had it secured, right?

9 A. Correct.

10 Q. There were people who had to feed -- who had dogs
11 and pets on the property, who were unable to get
12 to it, right?

13 A. Yes. That was another one of our concerns,
14 taking care of them. And dealing with the
15 property owners and trying to help them get
16 things off their property. I dealt with the
17 Averys numerous times on the phone, taking them
18 into the property, helping them get things, yes.
19 It wasn't my intent to deprive them of the
20 property. We wanted to get that back to them as
21 soon as we could.

22 Q. But you did, in fact, hold it for an entire week?

23 A. Yes.

24 Q. Now, let's talk about the personnel you had.
25 Give me a number, how many officers -- how many

1 law enforcement officers, during that week, did
2 you have searching that property? Forget the
3 firemen. Let's just talk law enforcement
4 officers.

5 A. On any given day, or during the course of a week?

6 Q. During the course of a week, over 100?

7 A. I would say over 100.

8 Q. Easily over 100, right?

9 A. Yes.

10 Q. This was a high profile case, correct?

11 A. Yes.

12 Q. This was a case that was in the media everyday,
13 if not throughout the day, correct?

14 A. Certainly.

15 Q. This Toyota RAV 4, when it was brought to the
16 Crime Lab, they dropped everything and started
17 working on it right away, didn't they?

18 A. Yes.

19 Q. And we know how backed up the Crime Lab is on
20 other cases, right?

21 A. Yes.

22 Q. This case took priority for them?

23 A. Yes.

24 Q. Okay. And this case took priority for you?

25 A. Well, certainly. And one of the reasons was to

1 release that scene as soon as we could.

2 Q. How many DCI agents did you have working on this
3 case between November 5th and November 12th.

4 A. I can't answer that, but on and off, probably
5 upwards of 10.

6 Q. Okay. So you had at least 10 DCI agents
7 available to you during that week?

8 A. Yes.

9 Q. And are each of those agents -- did they have
10 evidence collection training?

11 A. No.

12 Q. Any of them have evidence collection training?

13 A. To my knowledge, no, but I'm not sure.

14 Q. Does DCI have anybody else in the state who
15 collects evidence?

16 A. I'm sure there are agents that collect evidence.
17 The arson agents would, obviously, collect
18 evidence. Have they been certified? Have they
19 gone to specific evidence training, or schools?
20 I don't know.

21 Q. This is the State Department of Justice we're
22 talking about, correct?

23 A. Yes.

24 Q. Criminal investigation?

25 A. Yes.

1 Q. How many agents work for that department, in the
2 state?

3 A. Approximately 60, I'm not sure.

4 Q. And they go through a lot of training, don't
5 they?

6 A. Yes.

7 Q. Probably more than your average police officer?

8 A. Yes.

9 Q. And you are telling me that those 10 agents, that
10 you had at your disposal, were not capable of
11 collecting evidence from a crime scene?

12 ATTORNEY FALLON: That's argumentative, the
13 question, did he have trained agents at his
14 available disposal? That's one question, but the
15 way the question is asked --

16 THE COURT: Well, I will ask you to
17 rephrase the question. I think what he's getting at
18 is relevant, but.

19 Q. (By Attorney Buting)~ Did you have -- Is it your
20 testimony that you had -- that those 10 agents
21 that you actually used, forget about the other 50
22 available somewhere in the state, but those 10
23 agents, are you telling me that they were not
24 capable, trained enough, to collect any evidence?

25 A. What I'm telling you is, a lot of the agents that

1 I had at my disposal were transferring evidence
2 to and from Madison, around Madison. Many of the
3 agents I utilized, I utilized for interview
4 purposes. Because DCI agents, in my estimation
5 at that time, would be better used to go out in
6 the field and do interviews because they're --

7 Q. Answer my question.

8 ATTORNEY BUTING: Judge --

9 A. I'm getting to it.

10 ATTORNEY BUTING: -- I would ask you to
11 direct the witness to answer my question.

12 ATTORNEY FALLON: If you would let the
13 witness finish his statement, you might get his
14 answer.

15 ATTORNEY BUTING: It's a simple question;
16 he can answer it, or he can say no.

17 THE COURT: Well, there is some ambiguity,
18 in trained to collect evidence. I have heard
19 references to evidence technicians who are
20 apparently trained in a special way to collect
21 certain types of evidence; and then there's other
22 officers who just collect evidence. So make your
23 question a little more specific, and then he can
24 answer it directly.

25 Q. (By Attorney Buting)~ As part of the training of

1 a police officer, you are trained to -- in crime
2 scene evidence searches, right?

3 A. Yes.

4 Q. All police officers go through that, do they not?

5 A. Yes.

6 Q. Every single one?

7 A. Yes.

8 Q. And they are taught how to avoid contaminating
9 evidence by touching it with their hands, or
10 smearing fingerprints, all of that sort of thing,
11 correct?

12 A. They are taught the basics.

13 Q. All right. And you had a hundred police officers
14 at your disposal that week, who would have that
15 training; isn't that right?

16 A. Yes.

17 Q. And then, some also have more specialized
18 training. Did they get some sort of certificate
19 that says they are an evidence collector, or
20 what?

21 A. When I went to the training, you got a
22 certificate that you attended and completed that
23 week long training.

24 Q. And you are a qualified evidence technician, are
25 you not?

1 A. I went to that training.

2 Q. Well, are you qualified to collect evidence, or
3 not?

4 A. I believe I'm qualified to collect certain
5 amounts of evidence, certainly.

6 Q. And during this week, isn't it true that you have
7 spent a total of 55 minutes in Mr. Avery's
8 trailer?

9 A. I don't know.

10 Q. Isn't it true that you never even entered his
11 trailer until November 10th, at 5:05 p.m., when
12 you did a brief walk through, looking for hacksaw
13 blades?

14 A. No.

15 Q. I'm sorry, isn't it true that's when you entered
16 the garage for the first time?

17 A. That may be true, yes.

18 Q. And isn't it true that the first time you entered
19 the residence of Mr. Avery, you personally, was
20 November 12th, at 8:20 a.m., and you left at
21 8:45 a.m., and seized some direct TV documents?

22 A. No.

23 Q. That's not true?

24 A. No.

25 Q. Well, what is true? You weren't there that day?

1 A. I was there that day, but that's not the first
2 day I was there.

3 Q. What's the first day you ever entered his
4 residence?

5 A. I believe Tuesday, when a key was found. We went
6 there and viewed that, entered the residence to
7 view that.

8 Q. Okay. And you just looked at what they found,
9 and left?

10 A. Essentially, yes.

11 Q. After that, the next time was this November 12th
12 date?

13 A. To actually go in the trailer, probably. I may
14 have been outside looking in. I know I was,
15 standing on the porch, looking in the door, but I
16 did not go in.

17 Q. And this November 12th, just so we're clear,
18 that's the day you released the whole property,
19 right?

20 A. Yes.

21 Q. That was a week later?

22 A. Yes.

23 Q. And did you ever collect any evidence from his
24 trailer?

25 A. I assisted in the collection of a small tin of

1 ashes. I didn't take it, but I assisted in that.

2 That was on Saturday, the 12th.

3 Q. So that was a week later?

4 A. Yes.

5 Q. Is Investigator Wiegert a trained evidence
6 collection, or at least as much as you are?

7 A. I don't know.

8 Q. Do you know how long or how many times
9 Investigator Wiegert went into Mr. Avery's
10 trailer?

11 A. No.

12 Q. So, out of that hundred police officers that you
13 had, that included the State Patrol, right?

14 A. Yes.

15 Q. State patrol has evidence collection teams, do
16 they not?

17 A. I don't know.

18 Q. Well, you utilized them in this case, right?

19 A. Yes.

20 Q. Did you ask whether they could provide any
21 assistance to you as evidence collection
22 technicians?

23 A. We wanted them for searchers and to identify
24 potential evidence, after which we would send
25 collection teams to take the evidence.

1 Q. Well, you just told us that you were strained for
2 resources, to collect evidence, isn't that what
3 you testified about earlier?

4 A. I would say that we were.

5 Q. Let's go into that. Did you ask any of the State
6 Patrol officers, that you were working with,
7 whether they were trained and capable evidence
8 technicians to collect evidence?

9 A. State patrol has no criminal authority and we
10 weren't going to use them to collect evidence.

11 Q. Did you ask them whether they had any --

12 A. No.

13 Q. -- experience? Okay. How about Calumet County
14 Sheriff's Department; how many officers did they
15 have who could collect evidence?

16 A. That we wanted to collect evidence?

17 Q. How many officers did they have, on their
18 department, who were capable of collecting
19 evidence?

20 A. I don't know.

21 Q. So, when you say you're strained and you didn't
22 have enough resources, it's because you didn't
23 even know what your resources were capable of
24 doing; is that it?

25 A. No, it's because we had a certain type of

1 individual that we wanted to collect the
2 evidence, that was trained, that had experience.

3 Q. Oh, you mean evidence people from Manitowoc
4 County Sheriff's Department?

5 A. Calumet, Manitowoc, Manitowoc City, Crime Lab.

6 Q. Well, in fact, you sent in Manitowoc County
7 officers to search Mr. Avery's residence?

8 A. Yes.

9 Q. After you knew that Manitowoc County had recused
10 themselves, or stepped down as the lead
11 investigators of this case, because of their
12 civil lawsuit that Mr. Avery had filed?

13 A. Absolutely.

14 Q. Did you decide to send Lieutenant Lenk into
15 Mr. Avery's apartment -- or trailer?

16 A. Whether it was me personally, or a combined
17 decision with Investigator Wiegert, I'm not sure.

18 Q. But between the two of you, you had made that
19 decision to send Lieutenant Lenk in?

20 A. Yes.

21 Q. And to send Sergeant Colborn in?

22 A. Yes.

23 Q. Did you know, at that time, that Lieutenant Lenk
24 had been deposed as a witness in the 36 million
25 dollar lawsuit that Mr. Avery had filed just

1 three weeks earlier?

2 A. No.

3 ATTORNEY FALLON: Objection, relevance.

4 This line is irrelevant.

5 ATTORNEY BUTING: He brought it up on
6 direct examination. He asked about the decision
7 making and who and why he decided to bring people
8 in. I'm entitled to cross-examine him on that.

9 ATTORNEY FALLON: The question, there was a
10 civil lawsuit pending, has little to do with the
11 collection of the evidence.

12 THE COURT: I don't know that to this
13 motion it has much probative value, but if -- there
14 were a few questions on direct, so I will allow a
15 few on cross.

16 ATTORNEY BUTING: Thank you, Judge.

17 Q. (By Attorney Buting)~ So you did not know, at
18 that time, that Lieutenant Lenk had been deposed
19 as a witness in this lawsuit?

20 A. No, I didn't.

21 Q. He did not tell you?

22 A. No.

23 Q. And did you know that Sergeant Colborn had also
24 been a witness, deposed in Mr. Avery's lawsuit,
25 just three weeks before you sent him into his

1 house to search?

2 A. No.

3 Q. Sergeant Colburn didn't tell you that either, did
4 he?

5 A. No.

6 Q. And if you had known that, would you have sent
7 those two officers into his house to search?

8 ATTORNEY FALLON: Objection, speculation,
9 relevance, argumentative.

10 THE COURT: For purposes of this hearing,
11 on this motion, I will sustain the objection.

12 Q. (By Attorney Buting)~ Now, Sergeant Colburn is
13 just a patrol supervisor, right?

14 A. To my knowledge.

15 Q. He is not a detective, right?

16 A. Correct.

17 Q. And yet you put him into a team to go search
18 Mr. Avery's residence, right?

19 A. To my knowledge, he has had experience and
20 training in evidence collection.

21 Q. Using this patrol supervisor as a benchmark, how
22 many other officers were that qualified to also
23 have gone in and searched for, or collect
24 evidence? Strike that search for, let's just
25 leave it with collect evidence.

1 A. How many other officers would have been qualified
2 to search for evidence?

3 Q. No, to collect it.

4 A. To collect it. That determination was made on
5 their experience and training, not whether they
6 were a road sergeant, not whether they were a
7 trooper, not whether they were a special agent.

8 Q. How many of these 100 officers had sufficient
9 training to collect evidence at a crime scene?

10 A. I don't know.

11 Q. Why do you not know?

12 A. I wasn't directly involved in that decision, when
13 they put the teams together, to determine who was
14 going to be on those teams.

15 Q. You said you were a co-leader.

16 A. Yes.

17 Q. Of this entire investigation, right?

18 A. Yes.

19 Q. And you just told us -- or tried to explain why
20 it took so long was because you didn't have
21 enough resources, right?

22 A. At times, yes.

23 Q. Is it your testimony, then, that you did not even
24 ask these 100 officers, what degree of training
25 they had, to see whether -- how many of them

1 might have actually been able and capable of
2 collecting evidence?

3 A. I don't know. For example, the first night, I
4 was assigned with the Crime Lab and the wrecker
5 operator, to go down and secure the RAV 4.
6 During that period of time, Mark was up --
7 Investigator Wiegert was up at the command post
8 organizing the evidence collection team. So,
9 him, along with Lieutenants Bowe and Sippel,
10 would have been more involved in a specific
11 detail of organizing and putting together those
12 teams.

13 Q. All right. So you don't really know then, you
14 would have to correct your testimony -- prior
15 testimony -- about whether you had any personal
16 knowledge of how much resources you did or didn't
17 have, from law enforcement, who could have
18 collected evidence?

19 A. I don't know if I have to correct my testimony.
20 I'm looking at what happened when teams were put
21 together. I mean, I'm in that command post, and
22 if there's officers that had had training, I
23 would anticipate that they would have come
24 forward and told us that they had training. My
25 assumption was that we had the people who had the

1 training experience, that we wanted to do that
2 task.

3 Q. How many teams did you have -- did you actually
4 put together? How many different teams did you
5 put together to search? Let's just talk about
6 the buildings on that property.

7 A. Again, if we're talking search teams, or teams
8 that were going in to collect evidence, these are
9 two different things, in my mind. My evidence
10 collection teams, to my knowledge, there were two
11 primary teams earlier in the week, a third team
12 if you count the Crime Laboratory.

13 And then, when we started processing the
14 bones and the burn pit area, it would have been
15 our arson guys, DCI arson guys, along with
16 someone collecting it from Calumet County.

17 Q. So how many of those -- You say your arson guys,
18 those are DCI agents who are trained to collect
19 evidence?

20 A. They are arson investigators and they collect
21 evidence related to arson, so I would imagine,
22 yes, they are trained and experienced in that
23 field.

24 Q. And how many of them were on the scene?

25 A. This would have been mid-weekish, probably, when

1 we had them come, had upwards of probably four or
2 five, at any given moment, four maybe.

3 Q. All right. You said you had the Manitowoc City
4 Police out there at the scene as well, right?

5 A. On Sunday, for sure.

6 Q. All right. How many officers from that
7 department did you use?

8 A. For evidence collection, I think two.

9 Q. So there were evidence collectors qualified, and
10 employed, and working for the Manitowoc City
11 Police?

12 A. Yes.

13 Q. And you had them out there on the scene?

14 A. Yes.

15 Q. What about Two Rivers Police Department, did they
16 have any trained evidence collection people?

17 A. I don't know.

18 Q. Did you bring any of them out to the scene?

19 A. I think they may have had some personnel out
20 there; in what capacity they acted, I'm not sure.

21 Q. Did you ever ask any of these law enforcement
22 departments who had come to your aid and
23 assistance, if they would have some evidence
24 collection teams that they could assist you --
25 that they could loan you and give you to work on

1 this case?

2 A. Yes, I went out and obtained the Grand Chute
3 evidence technician to come over.

4 Q. But you didn't ask that of Two Rivers; is that
5 what you're saying?

6 A. No, not me personally.

7 Q. And what about Mishicot Police, were also there?

8 A. I don't know.

9 Q. You mentioned some other police departments from
10 Calumet County?

11 A. Some of the small police departments there
12 allowed us to use personnel, I believe, but that
13 was mainly for perimeter and scene security, and
14 stuff like that.

15 Q. You said this was the most comprehensive, biggest
16 search you had ever done, right?

17 A. Yes.

18 Q. Did you ever go to your supervisor, call your
19 supervisor and say, hey, I need more evidence
20 collectors out here, give me everybody you've
21 got?

22 A. We talked about it.

23 Q. Did you ever ask for it?

24 A. She said I could have the personnel that I had
25 needed, I mean within reason.

1 Q. All right. You basically had the whole
2 department, within reason, at your disposal,
3 right?

4 A. Right. And I took what I could get.

5 Q. So, in truth, you had plenty of officers capable?

6 A. If you want to take officers off of scenes, off
7 of other searches, yeah. But those things had to
8 be done too. Interviews had to be done. It's
9 not that these officers were all sitting around
10 in a carton of eggs, waiting to be used. They
11 were being utilized in other areas.

12 Q. I understand that. And I'm not criticizing that.
13 But what I'm questioning you about, though, is
14 you have a search warrant that commands you to,
15 forthwith, search these places. You don't have
16 all day, or all week, or whatever. You don't
17 have an unlimited time to execute that warrant;
18 isn't that right?

19 A. Yes.

20 Q. You know that when the judge says you can go onto
21 someone's property, and go into their house and
22 search, you are to do that with all due dispatch,
23 right?

24 A. Correct.

25 Q. That's a priority?

1 A. Yes.

2 Q. And that if you have officers available to assist
3 you and do that, you should do that, right?

4 A. I believe I did.

5 Q. Mr. Avery's trailer, Mr. Steven Avery's trailer,
6 can you tell me about how big that is?

7 A. Kitchen, living room, hallway, bedroom, bathroom,
8 another bedroom, all average size.

9 Q. It's a single width trailer, right?

10 A. Yes, I believe so.

11 Q. It's not a double-wide, right?

12 A. Probably 12 to 14 feet wide.

13 Q. Okay. And maybe, what, 30 feet long?

14 A. No, probably longer than that.

15 Q. Forty, maybe; does that sound fair?

16 A. Forty, fifty feet, I'm not sure.

17 Q. But it's a regular common size house trailer?

18 A. Yeah, what you would commonly associate with a
19 house trailer.

20 Q. On the evening of November 5th, you had 4 trained
21 police officers going through Mr. Avery's
22 trailer, for 2 1/2, 3 hours, right?

23 A. Yes.

24 Q. And you had no concern about the capabilities of
25 that team of officers, to collect and seize any

1 evidence, right?

2 A. Other than what I mentioned on direct.

3 Q. What?

4 A. Other than what I mentioned on direct.

5 Q. I'm sorry. I don't know what you are referring
6 to?

7 A. Lighting conditions, weather conditions,
8 exhaustion.

9 Q. Well, did any of them tell you they were
10 exhausted?

11 A. Independent recollection, I don't remember.

12 Q. Okay. But, so to your knowledge, none of those,
13 Lenk, Colburn, Remiker, or --

14 A. Tyson.

15 Q. -- or Tyson, came to you and said, Hey, boss, I'm
16 beat; I'm just exhausted; I have to quit for the
17 night?

18 A. When they were done, yes. At 10, 10:30, whatever
19 time they cleared that.

20 Q. Did anybody of them ever come up to you and say,
21 we just got to quit, we're just too tired?

22 A. Did they ever say that, no.

23 Q. All right. This Steven Avery trailer had no
24 attic, did it?

25 A. No.

1 Q. Had no basement?

2 A. There may have been a crawl area, crawl space,
3 but I'm not sure.

4 Q. Okay. So if we take the dimensions of about
5 14 feet wide, by 50, that's maybe 700 square
6 feet?

7 A. If you say so.

8 Q. That's a really small area for a search, isn't
9 it?

10 A. Depends what you are looking for.

11 Q. Well, by Saturday, November 5th, you had cadaver
12 dogs on that property, didn't you?

13 A. Yes.

14 Q. You were searching not only for Teresa alive, you
15 also were contemplating the possibility she was
16 not alive, right?

17 A. Correct.

18 Q. So your investigation, in part, was a potential
19 homicide investigation, even then, was it not?

20 A. Yes.

21 Q. Did you ever take any of those cadaver dogs into
22 Mr. Avery's trailer?

23 A. Yes.

24 Q. And did the dog alert on any part of his trailer?
25 He did not, did he?

1 A. I don't believe so.

2 Q. And you said the dogs were kind of all over the
3 property, right?

4 A. Yes.

5 Q. This was Saturday, November 5th?

6 A. I was aware, because I was with one dog, where we
7 went, and I know that there were some other dogs
8 that swept through the buildings, and I believe
9 they were then utilized to sweep through the
10 salvage yard.

11 Q. Okay. And because you were a co-leader, you
12 would be told if there were any areas where these
13 dogs were alerted?

14 A. Myself or Investigator Wiegert.

15 Q. Okay. And the whole purpose of these dogs is
16 that they are trained to be able to -- I don't
17 know whether it's scent, or whatever training it
18 is, but they can assist in locating blood, as
19 well as deceased bodies?

20 A. The theory -- Yeah, the theory is, human blood or
21 cadavers.

22 Q. And I think you used the dogs only that one day,
23 Saturday?

24 A. No.

25 Q. You used them throughout the?

1 A. They were brought back on other occasions, along
2 with bloodhound.

3 Q. And isn't it true, that none of those dogs ever
4 alerted on a burn pit, behind Mr. Avery's
5 detached garage?

6 ATTORNEY FALLON: Objection, relevance.

7 THE COURT: Mr. Buting.

8 ATTORNEY BUTING: He's talking about
9 ability to search, and where to search, and what his
10 resources are, and he brought up the dogs on direct.

11 THE COURT: Mr. Fallon?

12 ATTORNEY FALLON: Just because -- I don't
13 see how that's relevant to the multiple execution
14 theory or the resource issue. The fact that they
15 used dogs, yes, that's admitted, they used dogs. So
16 what. Whether the dog hit on the burn pit or not,
17 how does that add to the -- why does that make
18 something more probative, more relevant, more
19 material?

20 ATTORNEY BUTING: Then why were we bringing
21 it up in the first place. It's a resource issue
22 that I can explore on cross-examination.

23 THE COURT: It's a resource that he used
24 the dogs. And the questions about how often he used
25 them and what they were used for, is fine. But

1 whether or not he hit on this particular case,
2 again, that's an issue that may be highly relevant
3 for the trial, but I don't think it's particularly
4 probative on this motion. So, I'm sustaining the
5 objection.

6 Q. (By Attorney Buting)~ Let me ask it this way.
7 When the dogs would alert on something, that
8 would cause you to devote some resources, you or
9 Wiegert, to devote some police resources to then
10 start searching, right?

11 A. Certainly.

12 Q. And that would, potentially, include evidence
13 collection officers if, upon search, they found
14 something that looked like it was of evidentiary
15 value, right?

16 A. Yes.

17 Q. And you talked about, for instance, a suspected
18 clandestine grave site, right?

19 A. Yes.

20 Q. The dogs alerted on that?

21 A. Yes.

22 Q. And you took a team over and you spent some time
23 working on that?

24 A. Yes.

25 Q. And it ended up being -- In fact, you were very

1 seriously thinking that this was potentially a
2 new grave site and that Teresa's body might even
3 be in there, right?

4 A. Yes.

5 Q. So you pulled a bunch of people over there to go
6 look at it?

7 A. To deal with it, yes.

8 Q. Okay. And then it ultimately determined -- was
9 determined to be nothing of value, correct?

10 A. Correct.

11 Q. So tell me, during that week, did you have to
12 take your resources, your evidence collection
13 team, to the burn pit behind Mr. Avery's garage,
14 before November 8th? On the 5th, 6th, or the
15 7th, did you have to take an evidence collection
16 team to the burn pit behind Mr. Avery's garage,
17 because a dog had alerted?

18 A. No.

19 Q. Thank you. Let me go back for just a minute. We
20 were talking about search warrants you could have
21 gotten. One of the search warrants you did get
22 was for Mr. Avery's computer, right?

23 A. Yes.

24 Q. You believed at that time that the original
25 warrant was not sufficient to allow you to seize

1 the computer; is that why you went back?

2 ATTORNEY FALLON: Objection,
3 mischaracterization. He's already testified it was
4 not his decision to seek a renewal of the warrant.

5 ATTORNEY BUTING: This is not a renewal.
6 This is a different warrant.

7 ATTORNEY FALLON: I'm sorry, is this the
8 November 9th or --

9 ATTORNEY BUTING: No, this is the computer.

10 ATTORNEY FALLON: Oh, I'm sorry, then I
11 withdraw it.

12 THE COURT: I will allow the question.

13 ATTORNEY BUTING: Could you read it back,
14 please.

15 (Last question read back.)

16 A. I would have to speculate. I don't think I was
17 involved in that decision, as it related to the
18 computer.

19 Q. Who was?

20 A. I would believe Investigator Wiegert, as the
21 other co-lead investigator, probably dealt with
22 that.

23 Q. Did you ever see the affidavit, the application
24 for that warrant?

25 A. Yes.

1 Q. And that included -- I mean, that was a warrant
2 to permit a specific search within Mr. Avery's
3 residence, right? Specific item?

4 A. I have seen it, but I don't really remember.
5 There's a warrant to seize the computer, I
6 imagine, and to search said computer.

7 Q. And there would have been nothing to prevent you
8 or Investigator Wiegert, to, at that same time,
9 seek an additional warrant to allow you to search
10 his trailer?

11 A. I imagine.

12 Q. And that was November 7th?

13 A. Seventh or eighth. Obtained on the seventh?

14 Q. I believe so.

15 A. Okay. And served on the 8th, I believe, yes.

16 Q. These checkpoints that were set up were
17 maintained either in their original spot, or in
18 some similar close area, for the entire week of
19 November 5th to the 12th, right?

20 A. Yes.

21 Q. Around the clock, correct?

22 A. Yes.

23 Q. Did you have a guard stationed outside
24 Mr. Avery's trailer, around the clock, for the
25 entire week?

1 A. I believe there was. Again, that would be more a
2 question to the Lieutenants, Sippel or Bowe.
3 Partly from the fact that that was one of the
4 corners of the property so, ultimately, there was
5 someone there from almost minute one, because
6 they had someone on each corner of that scene.

7 Q. So you had no concern about the -- somebody -- or
8 somehow the scene being compromised while you
9 went off to go get an additional warrant; that
10 wouldn't have been a concern, would it?

11 A. That's correct.

12 Q. When I say additional warrant, I mean an
13 additional -- potential, additional warrant for
14 Mr. Avery's residence or garage?

15 A. Correct.

16 Q. You also got telephone search warrants, telephone
17 record search warrants?

18 A. Subpoenas and search warrants, yes.

19 Q. And DNA?

20 A. Telephone records.

21 Q. Right, telephone records. And DNA search
22 warrants?

23 A. Yes.

24 Q. Seeking -- In other words, requiring individuals
25 to submit to examinations for DNA samples and all

1 of that?

2 A. Yes.

3 Q. Now, on November 9th -- I'm sorry, November 5th,
4 6th, 7th, 8th and 9th, you permitted or, indeed,
5 instructed Manitowoc Sheriff Department officers
6 to go in and out of Mr. Avery's residence, right?

7 A. Yes.

8 Q. But after that second warrant was obtained, at
9 4:40 p.m., November 9th, suddenly for the
10 remaining three days, no Manitowoc officers were
11 allowed to go into Mr. Avery's residence, or
12 directed to go into Mr. Avery's residence?

13 A. I don't know, if it wasn't.

14 Q. You wouldn't dispute that, that there was --
15 that, in fact, after a second warrant was
16 obtained, you no longer had any Manitowoc
17 officers go into his residence?

18 A. Do I not -- No, I don't dispute that.

19 Q. Did something happen? Were you -- Somebody tell
20 you, Hey, maybe we better stop using Manitowoc to
21 go into his office -- or his residence?

22 A. Not that I recall.

23 Q. Did you and Investigator Wiegert ever talk about
24 it and say, Hey, maybe we better stop using the
25 Manitowoc Sheriff people to go into Mr. Avery's

1 residence?

2 A. No.

3 Q. This rain that occurred on November 5th, what
4 time did that start?

5 A. There was an initial lighter rain, which would
6 have been in the afternoon, between 3 and 4, some
7 time. Then it bypassed, or stopped for a while,
8 and I can't tell you when exactly it started at
9 this time. Probably toward dark, after dark,
10 right in there.

11 Q. Now, there was nothing to stop your searchers
12 from searching the buildings while it's raining
13 outside, correct?

14 A. Correct.

15 Q. And you know, Mr. Avery's residence and garage
16 weren't leaking rain -- or leaking water during
17 the rain or anything of that sort, right?

18 A. Right.

19 Q. So, you can't say that the rain somehow prevented
20 your searchers from completing their search of
21 Mr. Avery's residence that night, can you?

22 A. I factored it as a condition, when I'm
23 determining whether or not I felt that search was
24 adequately done and complete.

25 Number one, it's darker when it's

1 overcast and raining.

2 Number two, it's affecting -- I mean,
3 there's wet, people going in and out of the
4 trailer are bringing in wetness and stuff. I
5 factored it.

6 Q. Well, the officers that you sent in there, or you
7 and Wiegert sent in there, the four officers,
8 into this little 700 square foot trailer, stayed
9 in that trailer for 2 1/2 hours; they didn't come
10 in and out, did they?

11 A. I don't know. If they had to go out to their
12 vehicle to get collection devices, or storage
13 things, I don't know.

14 Q. Well, indeed, the fact that it was raining, would
15 have been a benefit to you, to assist you to --
16 or to allow you to more quickly complete the
17 searches of the buildings, because you could use
18 all of your officers in those buildings, instead
19 of spread out over 40 acres; isn't that right?

20 A. That evening, that's correct. We didn't have a
21 lot of officers that evening.

22 Q. Well, how many officers did you have that
23 evening? This is the first day that this thing
24 is discovered, right?

25 A. Yes.

1 Q. You had helicopters flying over, doing aerial
2 flyovers, right?

3 A. I think so, I'm not sure.

4 Q. You had officers coming in on their days off,
5 right?

6 A. Yes.

7 Q. This was big news. We got this vehicle here.
8 We're going at it, right?

9 A. Whatever officers we could get in that amount of
10 time, we got, yes. Some were sent up to
11 Marinette, some were out doing interviews that
12 were important to do, and some were there.

13 Q. And were some also assigned to search the shop?

14 A. At some time during this search, yes.

15 Q. Were there other teams, on that night of November
16 5th, available to search Mr. Avery's residence,
17 other than the three Manitowoc officers you chose
18 to put in there?

19 A. My answer would be speculative, and it would be,
20 no. I was busy down in the pit. The decision
21 would have been made by Mark -- or Investigator
22 Wiegert that night. I knew our resources, our
23 personnel, were not that many, so my answer would
24 be, yes, it's speculation.

25 Q. So then your focus at the beginning was on

1 Mr. Avery's residence, of all those buildings,
2 that was your initial focus?

3 A. Yes.

4 Q. That's where you wanted to send the team in,
5 right?

6 A. That's where we started.

7 Q. And it was important for to you find -- At that
8 point, you were certainly considering this to be
9 a homicide investigation, potentially?

10 A. We were thinking dirty.

11 Q. Okay. That's a yes, is it not?

12 A. Yes.

13 Q. Okay. And so those officers were sent in there
14 to look for any possible evidence, including
15 trace evidence, that might indicate that Teresa
16 Halbach was killed in that trailer?

17 A. Certainly.

18 Q. And they did, in fact, seize trace evidence,
19 didn't they?

20 A. Yes.

21 Q. And they did, in fact, get down on their hands
22 and knees and use lint rollers, and swab stains
23 off of the floor, and all of that, didn't they?

24 A. Whether they got down on hands and knees, I don't
25 know, but I would assume, yes.

1 Q. And when the Crime Lab told you that they thought
2 there was maybe some other trace evidence that
3 might be worth searching, or seizing, you didn't
4 go and get a warrant on that basis, did you?

5 A. No.

6 Q. Nothing would have prevented you from going to a
7 judge and saying, Hey, now I have got some
8 additional evidence I can present to you. Crime
9 Lab has gone in with their expertise and they
10 found this spot or that spot, that should be
11 seized?

12 ATTORNEY FALLON: Objection, asked and
13 answered.

14 THE COURT: I don't recall if that specific
15 question has been asked and answered. I will allow
16 it.

17 A. No, nothing would have prevented that, other than
18 I was still holding that scene.

19 Q. Now, you mentioned that as part of this
20 intelligence and information you were getting,
21 you specifically mentioned that Mr. Avery's
22 story, initial story, was somehow inconsistent?

23 A. Yes.

24 Q. Give me examples of that, at that point I'm
25 talking about. Give me examples of what was

1 inconsistent about his story.

2 ATTORNEY FALLON: Objection, foundational,
3 relevance.

4 ATTORNEY BUTING: He's saying as part of
5 his decision making, it's taking --

6 THE COURT: The objection is overruled.
7 That was given as one explanation for the actions of
8 the witness, so I will allow the question.

9 A. Steven Avery's initial statement to, I believe
10 Investigator -- or Sergeant Colborn, was that he
11 never left his trailer, and that Teresa Halbach
12 never came up to the trailer, he never spoke with
13 Teresa Halbach.

14 Ultimately, we received information that
15 Teresa Halbach was seen walking up to his
16 trailer. We received information later,
17 obviously, that he did talk to her.

18 Q. So you are saying, in his initial story, he said
19 he never talked to her?

20 A. His initial statement to Sergeant Colborn was
21 that he never spoke with Teresa Halbach. He
22 never left the trailer. He watched her out of
23 the window, of the trailer.

24 Q. Okay. And some subsequent information was
25 that -- I'm sorry, you said someone saw her

1 walking up --

2 A. Subsequent interviews indicated that she was seen
3 walking from her vehicle up to the trailer, and
4 then that individual lost sight of her, and then
5 when he went outside, she was gone, and the
6 vehicle was still there.

7 Q. Who was this?

8 A. Bobby Dassey.

9 Q. Okay. And Bobby Dassey at one point was a
10 possible suspect too, wasn't he?

11 ATTORNEY FALLON: Objection, relevance.

12 THE COURT: Sustained.

13 Q. (By Attorney Buting)~ On November 5th, when you
14 got there, you said it was around 2 o'clock?

15 A. Yes.

16 Q. And you directed -- You drove down to the
17 southeast corner of the property where the RAV 4
18 was located?

19 A. By the car crusher, yes.

20 Q. And did you walk over to the RAV 4?

21 A. No, I viewed it from that distance, at that time.

22 Q. At some point, did you walk over to the RAV 4?

23 A. Yes.

24 Q. I believe you said you looked inside with a
25 flashlight.

1 A. Yes.

2 Q. You were looking for -- to see if anybody was in
3 there?

4 A. Yes.

5 Q. Did you see any blood?

6 A. No.

7 Q. Did you check the doors?

8 A. No.

9 Q. Did you touch it at all?

10 A. No.

11 Q. You put a tarp over it?

12 A. Yes.

13 Q. How long was that tarp on there?

14 A. No more than a half hour, probably.

15 Q. Do you know whether the tarp was on there when
16 there were flyovers?

17 A. I don't know.

18 ATTORNEY BUTING: I have no other
19 questions at this time.

20 THE COURT: All right. We'll take our
21 lunch break at this time, and resume at 1:15.

22 (Noon recess taken.)

23 THE COURT: At this time we'll go back on
24 the record. Mr. Fassbender, you are still under
25 oath, and I believe Mr. Fallon is up for his

1 redirect.

2 ATTORNEY FALLON: Right, just a couple
3 questions.

4 **REDIRECT EXAMINATION**

5 BY ATTORNEY FALLON:

6 Q. Now, as far as you know, in terms of utilizing
7 personnel from other jurisdictions, Kucharski,
8 Tyson, and Riemer are from Calumet County
9 Sheriffs Office?

10 A. Yes.

11 Q. And they were placed on the evidence collection
12 teams because they are evidence technicians?

13 A. Yes.

14 Q. Now, in terms of the Division of Criminal
15 Investigation and the Wisconsin Department of
16 Justice, in cases of homicides or other major
17 offenses, the Crime Lab is, in fact, the evidence
18 technicians or evidence collectors in those types
19 of cases?

20 A. Yes. If I go to a homicide, I get called to a
21 homicide, our evidence techs are the Crime Lab,
22 that's who we take.

23 ATTORNEY FALLON: That's all I have for
24 this witness.

25 THE COURT: All right, anything else?

1 ATTORNEY BUTING: No questions.

2 THE COURT: Witness is excused.

3 ATTORNEY FALLON: State at this time would
4 call Lieutenant Kelly Sippel.

5 THE COURT: Very well.

6 THE CLERK: Please raise your right hand.

7 **LIEUTENANT KELLY SIPPEL**, called as a
8 witness herein, having been first duly sworn, was
9 examined and testified as follows:

10 THE CLERK: Please be seated. Please state
11 your name, spell your last name for the record.

12 THE WITNESS: Kelly Sippel, S-i-p-p-e-l.

13 THE COURT: Counsel, before we proceed, is
14 everybody in compliance with the sequestration
15 arrangement here? Are there any other --

16 ATTORNEY FALLON: Yes, I only have one
17 other witness and I believe he is out in the hall.

18 THE COURT: Okay.

19 **DIRECT EXAMINATION**

20 BY ATTORNEY FALLON:

21 Q. Where are you employed?

22 A. Calumet County Sheriff's Department.

23 Q. How long have you been employed?

24 A. Since October 21st, 1981.

25 Q. What rank do you currently hold?

1 A. Lieutenant.

2 Q. How long have you been a lieutenant?

3 A. Since '94.

4 Q. All right. Prior to that, what duties or rank
5 had you held?

6 A. Patrol officer, patrol duties, related to street
7 level activities.

8 ATTORNEY BUTING: Judge, can I interrupt
9 for one second?

10 THE COURT: Yes.

11 ATTORNEY BUTING: With regard to
12 sequestration, I see that Investigator Wiegert is in
13 back. I understand the State is not intending to
14 call him; however, there may still be a possibility
15 I would -- It's unlikely, but it's still possible I
16 might call him after this, and I would ask that he
17 be sequestered.

18 ATTORNEY FALLON: I can ask him to leave.
19 He's right, I wasn't going to call him.

20 THE COURT: Mr. Wiegert, we'll ask you to
21 leave the courtroom then.

22 Q. (By Attorney Fallon)~ Directing your attention to
23 the events of November 5th, 2005, were you called
24 upon to assist in the execution of a search
25 warrant at the Avery property, located here in

1 Manitowoc County?

2 A. Yes, I was.

3 Q. All right. Approximately what time did you first
4 arrive upon the scene?

5 A. About 3:20 p.m., on the 5th.

6 Q. What were your duties?

7 A. Upon arriving at the scene, I was initially put
8 with two other Manitowoc County investigators to
9 assist in doing a sweep of the buildings on the
10 property, in an attempt to locate the potential
11 victim and/or other civilians that still may be
12 on the property, to secure them off the property.

13 Q. All right. And how long did that particular duty
14 take you, estimated time?

15 A. That went until about 5:30, 5:40 in the evening,
16 on the 5th.

17 Q. All right. And once those duties were completed,
18 what was your next assignment relative to the
19 execution of the warrant?

20 A. At that point in time, I began to contact
21 additional officers and staff from our
22 department, in an attempt to secure and lock down
23 the property, and start initiating shifts for the
24 upcoming hours.

25 Q. All right. And so would it be fair to say that

1 you were assigned, or in charge of perimeter
2 security?

3 A. That would be correct, of the inner perimeter.

4 Q. All right. Just so that we're clear, what would
5 be the inner perimeter; first directing your
6 attention to Exhibit 18, which is on the easel
7 resting on the jury box?

8 A. We took the inner perimeter utilizing the roadway
9 at the top of the map. If you would like I can
10 go over.

11 Q. You can have that, I think we have a laser
12 pointer there for you.

13 A. Above this roadway, there is a fence line located
14 here.

15 Q. And you're pointing to the roadway which goes
16 east, west across --

17 A. Travels east and west, due north would be to the
18 top of the photograph.

19 Q. All right.

20 A. We also had the roadway here, but we had another
21 fence line or berm, a property divider,
22 basically.

23 Q. Now, you are referring to the east?

24 A. East.

25 Q. East of the property.

1 A. And then the western half of the property, there
2 was another berm, and beyond that berm, it went
3 into some open gravel pit areas. And pretty much
4 the same across the bottom half of the property
5 here. And then we made a containment within this
6 general area.

7 Q. All right. Now, briefly, if I may direct your
8 attention to Exhibit 19, which is behind you.
9 And can you locate Exhibit 18, within the
10 confines of Exhibit 19?

11 A. This would be the property in question right
12 here.

13 Q. All right. Now, in terms of the perimeter
14 security here, starting Saturday night, what
15 efforts did you undertake?

16 A. Prior to my arrival on the 5th, the vehicle had
17 been located in this lower southeast quadrant of
18 the property. We had assigned a deputy to stay
19 at this location during the processing and the
20 removal of that vehicle.

21 We also had about -- I believe it was
22 around 1:30 in the afternoon, they had assigned
23 an officer to stay in this quadrant of the
24 property, in regards to the buildings here. That
25 officer was relieved at about 1430 hours by

1 another officer. And then --

2 Q. I'm going to stop you right there. The last
3 quadrant, that would be the northwest quadrant?

4 A. This would be the northwest corner of the
5 property.

6 Q. All right. That's the area for which Mr. Avery's
7 trailer, and garage, and his sister, Barbara's,
8 residences are located?

9 A. That would be correct.

10 Q. All right. Please continue, you said after that
11 area.

12 A. I had -- At this point, we had set up a command
13 post at the intersection here, coming off of
14 Avery Road and where these two roads come off of
15 that, heading south. And at approximately 7 or 8
16 o'clock in the evening, a sergeant from the
17 Manitowoc County Sheriff's Department informed me
18 of the area located in the southwest quadrant,
19 that vehicular traffic may be able to get into
20 the property.

21 Q. All right. Now, you just pointed to Exhibit 19,
22 so you are referencing what would be the
23 southwest corner of the property?

24 A. That's correct.

25 Q. All right. Once you learned that, what steps did

1 you take?

2 A. Both him and I, then, went around to that, to
3 take a look at what kind of access or easement
4 there would be into this particular area, and
5 determined that the vehicular access would
6 basically incur in this corner. At that point in
7 time, we made arrangements to cover that corner,
8 as well, with an officer.

9 Q. All right. And when you covered the area with an
10 officer, can you tell us what you meant by that?

11 A. We placed -- We were able to place a patrol
12 officer at that location for the remainder of the
13 week, 24/7.

14 Q. All right. Now, if I may, for a moment,
15 Exhibit 18 is a photograph with a flight date of
16 November 11th. I draw your attention, first of
17 all, to this corner, on the southwest side. Do
18 you recognize what is depicted there?

19 A. Yeah, this would be one of the units or patrol
20 vehicle that we used for staffing that corner.

21 Q. Now, is that -- would that be a typical location
22 where a perimeter security was set up for that
23 southwest corner?

24 A. That is correct. There was -- there is a -- this
25 line that you see here is an old rail, overhead

1 rail.

2 Q. Yes.

3 A. The unit would either be on one side, or the
4 other side, of that rail.

5 Q. Now, with respect to the upper quadrant, there is
6 a vehicle, which is depicted right here,
7 underneath the sign, Plymouth Voyager?

8 A. That's correct.

9 Q. Or the arrow points elsewhere, what is that
10 vehicle?

11 A. That is also a patrol unit that was used. Those
12 cars change periodically depending upon who was
13 covering that corner. But during the day we
14 would have the officer back up and allow the
15 investigators to do their work throughout this
16 area. Then at night we would move that patrol
17 car closer into the buildings, in about this area
18 here.

19 Q. All right. So, you are pointing to an area which
20 is directly in front of the residence of Steven
21 Avery, the garage; is that correct?

22 A. That's correct.

23 Q. All right. Now, how about in the southeast
24 corner, were there evidence of -- on this
25 photograph, for instance -- where it's

1 exemplifying perimeter security placement?

2 A. That's correct. We have a patrol car located
3 right here. This car would utilize this corridor
4 through here, through the day, and through the
5 evening, to cover this berm area.

6 This is a area that goes up, be
7 estimating 60 feet, an upward climb, basically,
8 to a hay field. And there was a bit of berm back
9 here. And he was -- he or she was able to cover
10 this corner and watch those berms.

11 Q. All right.

12 A. At night, the first two days, we actually had
13 that lit even.

14 ATTORNEY BUTING: Could we just let the
15 record reflect that when he was pointing to the
16 southeast corner, talking about a berm along the
17 south edge of the property; where were you talking?

18 THE WITNESS: There's two berms. There's a
19 higher berm of approximately 60 feet or better,
20 located along this edge. And then there's a
21 shallower --

22 ATTORNEY BUTING: This edge being the
23 eastern edge?

24 THE WITNESS: That would be the eastern
25 edge.

1 ATTORNEY BUTING: Okay.

2 THE WITNESS: And then along this southern
3 edge here, there is another berm that goes up
4 approximately anywhere from -- it varies, you know,
5 10, 15, 20 feet and then drops down into another
6 quarry, an actual old gravel or sand pit quarry.

7 ATTORNEY BUTING: That's fine.

8 ATTORNEY FALLON: Thank you.

9 Q. (By Attorney Fallon)~ All right. And in terms of
10 the northeast corner, what was happening there?

11 A. The northeast corner, on Saturday, the 5th, right
12 about in this area, we had a command post set up.

13 Q. Just for identification purposes, that's an area
14 to the right of the exhibit sticker and slightly
15 north --

16 A. Yeah.

17 Q. -- of the number three?

18 A. It would be just adjacent to the number three.
19 You can just kind of catch it on the photograph,
20 where we had the command post.

21 Q. All right. And now, in terms of perimeter
22 security, were there any other command post
23 locations, or anything that were -- that you
24 utilized?

25 A. Saturday we, and in through Saturday evening, we

1 utilized this command post. And Sunday morning
2 the Calumet County Sheriff's Department brought
3 in our own command post and we reorganized at
4 this location here, utilizing this command post
5 for the investigators, and this command post
6 became command security, basically, for the
7 property.

8 Q. All right. Would you put your initials on that
9 particular -- All right. Thank you. And you put
10 your initials -- For the record, what initials
11 did you put on there?

12 A. K.S.

13 Q. K.S. Thank you. All right. Now, in terms of
14 the perimeter security here, who else, if anyone,
15 assisted you in performing those duties?

16 A. The interior perimeter was pretty much maintained
17 by employees of the sheriff's department, with
18 assistance from various other agencies when we
19 couldn't fill staffing gaps. Basically, we had
20 to rely on other municipal agencies to assist us
21 on that, on the inner perimeter.

22 Referring to the map behind me, the
23 exterior perimeter, being the highway and the
24 roadways around the adjacent acreage, was
25 maintained by the Wisconsin State Patrol and

1 managed by the State Patrol. And they were also
2 assisted by various sheriff's departments and
3 municipal agencies.

4 Q. All right. Now, in terms of returning then,
5 again, to Exhibit 18, these postings on the four
6 corners of the property, was there always a car
7 there during the course of the week long
8 occupation of the property?

9 A. That is correct.

10 Q. All right. And during the course of the week,
11 were any artificial lights or anything used
12 during the evening hours to assist in keeping an
13 eye on things?

14 A. That is correct. In this lower quadrant here, in
15 the southeast quadrant, we did have lights set up
16 to cover these berms coming into the property,
17 where we could actually light up the physical
18 berm to see anybody breaching from the top.

19 Q. All right. At any point did those lights move,
20 or were they utilized for any other purpose?

21 A. As the week went on, through searching -- we
22 started searching properties adjacent to the 40
23 or so acres involving our inner perimeter. And
24 we started finding items what we felt that might
25 be evidentiary purpose -- or needed for

1 evidentiary purposes, and quarries to the
2 southwest of the property.

3 At that point, mid-week, going into
4 Thursday, we started putting officers, additional
5 officers, on those evidence areas, until we could
6 physically recover. Then we began to light these
7 quarry areas as well, at that point.

8 Q. And what was the purpose of that?

9 A. To secure, basically, the evidence or what we
10 felt was evidence, that we were finding in those
11 quarries.

12 Q. All right. Now, in terms of overall -- although
13 not your primary function, were you aware of
14 where certain checkpoints were located on the
15 surrounding roads?

16 A. Referring to the map behind me, primary
17 checkpoints --

18 Q. That's Exhibit 19 --

19 A. Exhibit 19.

20 Q. -- for the record.

21 A. I'm not sure how to pronounce the community,
22 Larrimore, I believe, or Larrame, I'm not quite
23 sure. It's a small community just off this
24 particular photo, where the highway meets here
25 with another county trunk. And the primary

1 checkpoint for the exterior perimeter was located
2 there.

3 Q. And that's Highway 147. And is the road that it
4 intersects with, is that -- any part of that road
5 depicted on the exhibit?

6 A. This part of the map here, or photograph, you can
7 see a portion of that roadway.

8 Q. All right. And you are referring to Exhibit 19,
9 the road that runs diagonally across the south --

10 A. Quadrant.

11 Q. Southwest quarter.

12 A. And then they had an officer located at this
13 intersection here. And this intersection was
14 also blocked at this location. And Manitowoc
15 County Sheriff provided an officer at the north
16 end of Avery Road, at 147, to manage individuals
17 coming in and out of the crime scene.

18 Q. All right. Now, in terms of access, was the
19 inner perimeter, as you say that you were
20 responsible for, was security maintained for the
21 entire seven days?

22 A. Correct.

23 Q. All right. At any time -- Well, let's ask this
24 question. You, yourself, in charge of perimeter
25 security, were you at the property the entire

1 seven days?

2 A. No.

3 Q. All right. Who else filled in your duties when
4 you were not there?

5 A. I was relieved by Lieutenant Bowe of the Calumet
6 County Sheriff's Department.

7 Q. All right. And in terms of that, how did you and
8 Lieutenant Bowe organize or supervise those
9 responsible for perimeter security?

10 A. We would supervise the security from the command
11 post. We would work approximately 30 hour
12 shifts. I would -- Lieutenant Bowe relieved me
13 Sunday morning. I stayed on Sunday morning, the
14 6th through the 7th, where we worked together in
15 trying to organize staffing as we were going on.
16 Approximately 6, 7 p.m., on Sunday evening, I
17 left. And then I would return on Monday morning
18 to relieve Lieutenant Bowe, who then would leave
19 sometime late afternoon, on Monday, early
20 evening.

21 So we always had a portion of at least 8
22 hours, the two of us working together, trying to
23 formulate and create and keep the security. And
24 then we always would have one of us working the
25 night shift.

1 Q. All right. And during the course of the week, to
2 your knowledge, were there any attempts by other
3 individuals, none law enforcement people, to come
4 in and see what's going on?

5 A. If I could refer to Exhibit 19, behind me, we did
6 have several attempts. First attempt would have
7 occurred, an incursion by the press, from this
8 farm located to the southeast of the property.

9 The press did come in and park at this
10 farm. And as the individual was walking across
11 this field, and as he began to breach the berm,
12 the officer at this location observed that
13 breach, contacted the command post. I then left
14 on an ATV, made contact with that press
15 individual, on that berm, prior to him setting
16 up. Removed him and walked him back to the farm,
17 to his vehicle, identified him, and removed him
18 from that area.

19 Q. As a result of that incident, were there any
20 additional precautions taken, with respect to
21 perimeter security?

22 A. At that point we then -- this town road, I
23 believe, that travels north and south here, was
24 then closed by the Manitowoc Sheriff's
25 Department, to local travel only at that point.

1 Q. All right. Any other concerns, or possible
2 interested bystanders who approached the area
3 while it was under your control?

4 A. We had another attempt by two individuals, two
5 local residents, curious residents, who as they
6 were coming down this fence line, approaching
7 from 147, from the north, heading south to the
8 northwest corner of the property, they got to
9 about halfway down this fence line when officers
10 from the command post area, as well as officers
11 that were working within the interior scene,
12 started to move towards them.

13 They then retreated up the fence line,
14 and were apprehended by Manitowoc Sheriff on a
15 driveway just off of 147. They were placed in
16 handcuffs, returned to my location at the command
17 post. I identified them, warned both individuals
18 that a return to the property would result in
19 their arrest.

20 Q. All right. Were they then escorted back to
21 beyond the checkpoint?

22 A. They were then escorted back out, up to the
23 checkpoint, back out to 147.

24 Q. All right. Now, at night time, just so that
25 we're fair here, is it conceivable or possible,

1 that there could have been a perimeter breach?

2 Could someone have hoofed it in, so to speak?

3 A. It's very possible that somebody coming in from
4 anyone of the quarries or wooded areas, could
5 have breached by foot.

6 Q. All right. Is that the reason why lights were
7 then placed down in the quarry area, later on in
8 the week?

9 A. Initially, those lights were placed at the
10 vehicle location, for the vehicle. And then we
11 began to use them when the vehicle was removed,
12 for that purpose.

13 Q. All right.

14 A. And, secondarily, at the command post here, we
15 had a state trooper sergeant at the command post.
16 He would relieve his staff for breaks and
17 bathroom breaks and meal breaks. And when he
18 would return, I would travel, or Lieutenant Bowe
19 would travel, through the property, periodically,
20 at night, and relieve our staff on the corners
21 for breaks and meals and so forth.

22 Q. During the course of the week, was it difficult
23 to navigate through the property to get from one
24 side to the other?

25 A. Unfortunately, on Saturday evening, we had a

1 heavy rainstorm and the roadways within this area
2 here filled, at locations, with water. Most
3 became fairly impassable -- you can see some of
4 the water still in some of the locations on this
5 photo -- with passenger vehicles.

6 We, as an agency, did have a four-wheel
7 drive Explorer. And that first day or two, we
8 did travel through, but because of how difficult
9 it became at times, we then, when we had to move
10 out to this location, we quite often went all the
11 way around the perimeter and off of the county
12 trunk here, through the quarries. But, yes, it
13 was difficult at times.

14 Q. All right. And do you have any approximate
15 estimate for us, approximately how many officers
16 you utilized or were assisting you, in just the
17 task of perimeter security?

18 A. Everyday, 24/7, we always had security here,
19 officer in this corner, this corner, and the
20 southeast corner. And then throughout the day,
21 due do searching, evidentiary reasons, there were
22 officers throughout the property as well.

23 And then we had the exterior covered,
24 you know, by other agencies. I would have to
25 resurrect logs to determine exactly how many

1 officers was on the security.

2 Q. All right. Now, one moment.

3 ATTORNEY FALLON: I have no other questions
4 for the witness.

5 ATTORNEY BUTING: No cross, your Honor.

6 THE COURT: Okay. The witness is excused.

7 THE WITNESS: Thank you.

8 THE COURT: The State may call it's next
9 witness.

10 ATTORNEY FALLON: Yes, we're -- I'm going
11 to call Lieutenant Bowe.

12 THE CLERK: Please raise your right hand.

13 **LIEUTENANT BRETT BOWE**, called as a
14 witness herein, having been first duly sworn, was
15 examined and testified as follows:

16 THE CLERK: Please be seated. Please state
17 your name, spell your last name for the record.

18 THE WITNESS: Brett Bowe, B-o-w-e.

19 **DIRECT EXAMINATION**

20 BY ATTORNEY FALLON:

21 Q. What do you do for a living?

22 A. I work for the Calumet Sheriff's Department as a
23 deputy.

24 THE COURT: Mr. Bowe, can you move the
25 microphone over, please.

1 Q. (By Attorney Fallon)~ Say that answer again.

2 A. I work for the Calumet Sheriff's Department as a
3 deputy.

4 Q. All right. What rank do you currently hold?

5 A. Patrol lieutenant.

6 Q. All right. How long have you been so employed
7 with Calumet County?

8 A. Sixteen years I have been there.

9 Q. And how long have you held the rank of
10 lieutenant?

11 A. Almost two years.

12 Q. What were your previous duties?

13 A. Prior to that, I was a patrol sergeant. Before
14 that, I was a patrolman. And I was a jailer for
15 a year and a half.

16 Q. All right. Directing your attention now to the
17 week of from November 5th to November 12th, were
18 you involved at all in the execution of a search
19 warrant on the property of the Avery Auto Salvage
20 Yard and the residences located therein?

21 A. Yes, I was.

22 Q. And in what role or capacity did you have with
23 respect to that?

24 A. I was in charge of the command post.

25 Q. All right. And specifically, what duty were you

1 assigned?

2 A. My main duty was to guarantee security on the
3 property, and also to coordinate the searches.

4 Q. All right. And in terms of the security, who
5 else did you share those responsibilities with?

6 A. Lieutenant Sippel.

7 Q. All right. And in terms of yourself and
8 Lieutenant Sippel, how did you work? In other
9 words, were you both there at the same time,
10 alternating shifts? What did you do?

11 A. During the day, we were there at the same time.
12 He started on Saturday morning, I arrived Sunday
13 morning. He left Sunday night, I would have
14 stayed through the night. He would have come
15 back Monday morning and then I would have left
16 Monday night. And we kept alternating that way.

17 Q. All right.

18 A. So we were both there during the day.

19 Q. All right. We have heard some testimony already
20 from Lieutenant Sippel, so I don't want to repeat
21 that, but I have a question for you, are you
22 familiar, yourself, with any attempted breaches
23 of the security that you were involved in, in
24 ferreting out?

25 A. Yes, I am.

1 Q. Tell us about that.

2 A. There were three that I was aware of. There was
3 one that I was personally involved with.

4 Q. All right.

5 A. Is that the one you want?

6 Q. If need be, there should be a laser pointer in
7 front of you and there's an exhibit to your
8 immediate right and one behind you. In terms of
9 the incident you were involved in, tell us about
10 that.

11 A. The incident I was involved in, the officer that
12 was stationed down in the southeast corner
13 notified us that he had observed a person on the
14 berm, to the south, which would have been located
15 a little further south than what this map shows.

16 Q. All right. And you just briefly turned and
17 pointed to Exhibit 19, the one on the chalkboard?

18 A. Yes.

19 Q. All right. And if that assists you better, tell
20 us about what you -- what incurred -- occurred,
21 excuse me.

22 A. The officer indicated that there was an
23 individual just south, on top of the berm. I
24 proceeded around to the quarry and got up on top
25 of the berm. And I could see a set of footprints

1 that came along there.

2 They were approximately 20 yards south
3 of the southeast corner of the property. And I
4 saw that the footprints led to a residence that
5 was just to the east of where the footprints
6 were. So I followed them up to that residence.

7 Q. All right. And were you able to ascertain who
8 was responsible for the footprints and/or the
9 attempted entrance?

10 A. I spoke with a gentleman there who indicated that
11 his wife had just left for work. He indicated
12 that she had gone out and had fed their dog and
13 was gone for approximately five minutes. And
14 that he had heard her car leave at that time and
15 that that was the only person on the property
16 that could have been back where we were.

17 Q. All right. In terms of your particular time,
18 while you were in charge, were there any other
19 attempted entrances to the -- the inner
20 perimeter, as it's been described?

21 A. Yes, there were. There was an individual that
22 was also in the southeast corner, further north,
23 so they would have been just east of the
24 property. And Lieutenant Sippel addressed that.
25 That was a member of the media.

1 And then there were two gentleman that
2 came in from the north, on the west side of the
3 property, were walking a line fence down, and I
4 believe they made it about two-thirds of the way
5 down through the 40 acre field. And when they
6 saw numerous officers approaching them, they
7 turned and headed back toward the north. And
8 they were apprehended --

9 Q. All right.

10 A. -- north of that property.

11 Q. All right. And during your time, when you were
12 solely in charge of the -- of the perimeter, were
13 there postings at each corner of the perimeter;
14 in other words, was there, the euphemism of
15 today, 24/7 security?

16 A. Yes, there was.

17 Q. All right.

18 ATTORNEY FALLON: That's all.

19 THE COURT: Mr. Buting, any questions?

20 ATTORNEY BUTING: None.

21 THE COURT: Witness is excused.

22 ATTORNEY FALLON: I believe Exhibits 18 and
23 19 have already been received, so that being the
24 case, just in the odd chance they aren't, I would
25 move for their introduction. And secondly, we would

1 rest the presentation of our evidence on this issue.

2 THE COURT: All right. With respect to 18
3 and 19, have they been admitted?

4 THE CLERK: Yes.

5 THE COURT: All right. They are already
6 admitted. Any rebuttal witnesses from the defense?

7 ATTORNEY BUTING: None. Are there any
8 exhibits that are not admitted? I should --

9 THE CLERK: Everything is received.

10 ATTORNEY BUTING: Everything is received.
11 Okay. Thank you.

12 THE COURT: All right. Does that conclude
13 the witnesses then, for all the outstanding motions
14 at this time.

15 ATTORNEY STRANG: The only thing I will add
16 is, I should have thought to do this yesterday when
17 I had Mr. Glynn on the stand, but I will make an
18 offer of proof on what his answer would have been,
19 had the hearsay objection not been sustained. I
20 expect Mr. Glynn would have testified that, as he
21 had said something to the effect that, he had told
22 Mr. Avery that he wanted Mr. Avery to tell the
23 officer that he didn't wish to speak to the officer
24 without a lawyer.

25 And Mr. Avery agreed to say that, with

1 the cellphone still -- the line still open, and
2 Mr. Glynn heard that. He thinks before Mr. Avery
3 got into the car, heard Mr. Avery saying to
4 somebody, you know, nearby, I don't want to talk
5 to you any more without my lawyer, or words to
6 that effect.

7 THE COURT: All right. Is that --

8 ATTORNEY FALLON: Obviously, we still hold
9 to our objection.

10 THE COURT: Let me ask this, is that
11 something that was on the CD transcript?

12 MR. STRANG: It's not on the transcript
13 but, you know, the tape goes off and then comes back
14 on as Avery, I think, is probably getting into the
15 car.

16 THE COURT: Okay. So that's a statement,
17 had it been admitted, that the defense would have
18 contended came in between parts three and four of
19 the tape recorded --

20 MR. STRANG: That's my best inference.
21 That's an inference only.

22 ATTORNEY FALLON: Then I have a second
23 objection to that. And the second objection is,
24 that's speculation on the part of Mr. Glynn, as to
25 when that occurred relative to the getting into the

1 vehicle or the turning on the tape, because he
2 wasn't there. So, now I have another grounds to
3 object.

4 THE COURT: Okay. I didn't understand that
5 Mr. Glynn would have said that. I understood --

6 MR. STRANG: Glynn thought it was before
7 Avery -- If you assume Avery was out of the car,
8 Avery says it right away, you know, before he would
9 have had a chance to go an open a car door. Glynn
10 doesn't hear car doors opening and there's no pause
11 in there.

12 THE COURT: All right. I would like to
13 take a short break at this time, to meet with
14 counsel and determine what else we're going to do
15 today.

16 ATTORNEY KRATZ: Judge, could we have just
17 one moment.

18 THE COURT: Yes.

19 ATTORNEY FALLON: Judge, before we do that,
20 I would like you to make a record on two points
21 since it appears that the testimonial part of this
22 motion has now ended. With respect to the Franks
23 motion and, more importantly, with respect to the
24 State's challenge to his standing to even raise a
25 challenge, that you engage in a colloquy with the

1 defendant, Mr. Avery, that he did, in fact, have a
2 right to take the stand and assert his reasonable
3 expectation of privacy in any of the locations
4 subject to the search.

5 Secondly, we would ask the Court to
6 engage in a second colloquy with the defendant,
7 relative to the circumstances surrounding the
8 taking of this statement by the Marinette
9 detective, Anthony O'Neill. If he had the right
10 to testify, he had the right to say, in his mind,
11 what occurred and when things occurred,
12 vis-a-vis, that statement. And he apparently has
13 chosen not to. So I would ask that you engage in
14 a colloquy with Mr. Avery, on both of those
15 matters, before we close and move to argument.

16 THE COURT: Let me --

17 ATTORNEY STRANG: May I -- I'm sorry.

18 THE COURT: Just a second, before I give
19 you a chance to speak, Mr. Strang. Your first
20 request, Mr. Fallon, was to what, the right to
21 privacy to?

22 ATTORNEY FALLON: His right to testify,
23 relative to his right to challenge the search
24 warrant. We had objected, demanded that he
25 establish standing to challenge the warrant and,

1 thus, standing to bring the Franks motion. So,
2 obviously, he has that right and he has chosen not
3 to exercise it.

4 So that would be the first colloquy,
5 that that was a decision that he made with,
6 presumably, advice of counsel, that he's given up
7 his right to testify and offer his point of view.
8 That's the first one. And the second one is, his
9 right to testify regarding the motion to suppress
10 the statement to Detective O'Neill.

11 THE COURT: All right. Mr. Strang.

12 ATTORNEY STRANG: I understand and
13 appreciate that the flow of Wisconsin law, in the
14 last 15 or 20 years, has advanced steadily toward
15 inserting the Court ever more frequently into
16 strategic decisions and decisions on which witnesses
17 to call, or whether to call the defendant in a
18 pretrial matter, and so I understand full well why
19 the State makes the request that it does.

20 I also acknowledge that I have invited
21 the Court, on at least one or two occasions so
22 far, to engage in a colloquy with Mr. Avery,
23 where we were requesting some relief or some
24 indulgence. And I thought that would be the
25 better way to make a record, or to make clear

1 that this was done with the accused's personal
2 consent.

3 That said, I'm not aware of any
4 authority here that would invite the Court to
5 insert itself, at this point, in the decision on
6 what witnesses to call on pretrial matters, or on
7 foundational matters in the case of the standing
8 question, or personal interest in privacy on a
9 pretrial motion.

10 And I think that, you know, obviously,
11 Mr. Avery has been present here. The record has
12 reflected that all along. He's been awake. He's
13 been an active participant at the defense table.

14 But I don't think it's a wise move to --
15 to have the Court, or then the adversarial party,
16 involved in every decision in the defense camp
17 about what witnesses to call or how,
18 strategically, to handle the pretrial motion.
19 So, you know, while the Court will do as it sees
20 fit, I don't think a colloquy on either of these
21 points is either required or appropriate under
22 the circumstances.

23 THE COURT: Let me -- Mr. Fallon, I'm not
24 sure -- I understand what you are saying about the
25 motion to suppress the statement to Officer O'Neill;

1 I'm not sure with respect to the Franks motion.

2 ATTORNEY FALLON: The Franks motion is
3 ancillary. The real issue is, does he have the
4 right to even bring a Franks motion. Does he have
5 standing to challenge the search? And he has to
6 establish standing by a preponderance of the
7 evidence. That's his burden.

8 And if it's the defense burden, then,
9 one rightly ought to assume that he has the right
10 to testify, to assert his constitutional
11 interests. And if he's choosing not to, that's
12 fine. I just want to make sure that it's his
13 choice, presumably with the advice of counsel.

14 If not, we would be more than happy to
15 accept a waiver of any subsequent claim in the
16 future of ineffective assistance of counsel for
17 not putting their client on the stand, for
18 purposes of completing the record on these two
19 motions.

20 THE COURT: All right. I want to make sure
21 that I'm understanding your point on the Franks
22 motion correctly. I understand, and I believe the
23 State has already asserted that the motion that was
24 filed by the defense did not constitute a
25 substantial preliminary showing that a false

1 statement had knowingly and intentionally been made,
2 or a statement with reckless disregard for the
3 truth; you have made that motion, have you not?

4 ATTORNEY FALLON: Yes, relative to the
5 Franks aspect of this.

6 THE COURT: Right. And argued that the
7 Court should not have even conducted an evidentiary
8 hearing because the defense motion does not meet
9 that initial plateau to be entitled to a hearing.

10 ATTORNEY FALLON: That's the second
11 argument. The first argument, they didn't have
12 standing to bring a Franks motion, except as it
13 pertains to the trailer and the garage. His
14 residence, the trailer. And the garage.

15 THE COURT: Okay.

16 ATTORNEY BUTING: Judge, it's the same
17 warrant. Mr. Fallon has been making this argument
18 for two days now. And the warrant, it's the same
19 warrant; it involves his trailer as well as all the
20 property. So, how can he say he doesn't have
21 standing to challenge a warrant that has his trailer
22 residence on it.

23 THE COURT: Well, I suppose the State could
24 argue that the Court should find in the State's
25 favor, and in the alternative, if the Court doesn't

1 find in the State's favor, it should only sustain
2 the argument made by the defense as it relates to
3 the trailer and the garage. I mean, I don't know if
4 that's where we're heading or not.

5 One of the things I was going to discuss
6 with counsel in chambers was what we were going
7 to do from here forward. And one of those was
8 going to be, to hear your arguments, because I
9 believe I told Mr. Fallon I would hear his
10 argument, which I have not heard yet.

11 ATTORNEY FALLON: That's right. So our
12 only question is, is it seems to me that wisdom
13 would suggest that we take colloquy from the
14 defendant so that we're sure that he had the right
15 to testify on these matters, if he wanted to, and
16 he's chosen not to.

17 THE COURT: Let me ask the defense, and I
18 don't know that this is self-evident in the
19 pleadings, is the defendant asserting that he has a
20 right to privacy that extends beyond the trailer,
21 the garage, and the immediate surrounding area, if
22 you will, that is, to the rest of the 40 acre
23 parcel? I don't know that I have -- that the
24 defense has asserted, to this point, that the
25 defendant has such an interest.

1 ATTORNEY BUTING: Judge, I think -- I think
2 it's pretty clear from the testimony that what we
3 focused on, and from the motion, is the entries to
4 his residence and to his garage and, you know, the
5 reasonable curtilage, or whatever, in that area.

6 The testimony regarding the other
7 aspects of the property is that he was basically
8 an employee or worked there, not an actual
9 ownership -- owner of it. But that testimony
10 went to the question of whether or not there was
11 probable cause for the officers to have been in
12 the location they were at, before consent was
13 given to the officers, such that the information
14 that Detective Remiker obtained, that is, the VIN
15 number, was improperly obtained and should not
16 have been considered in the warrant, as part of
17 the probable cause.

18 In other words, if the Franks motion --
19 if the Franks motion is granted and the Court
20 strikes that portion of it that is considered
21 deliberately false or recklessly untruthful, and
22 then you look at the remainder of the warrant to
23 see if there's still probable cause, and that
24 consideration has to -- in my estimation we can
25 argue all this, but that's what the testimony

1 went to, as to why that portion of the police
2 observations could also not be considered in
3 determining whether there was probable cause.

4 THE COURT: All right. Maybe I missed it,
5 I know there was testimony that Detective Remiker
6 didn't ask consent -- I don't think he asserted that
7 he asked consent -- before responding to the scene
8 on Saturday, and responding to the location of the
9 RAV 4, and looking at the VIN number.

10 But I guess to this point, I also didn't
11 understand that the defendant to be asserting
12 that he had a right to privacy with respect to
13 that portion of the property that required --
14 would have required Detective Remiker to ask for
15 the defendant's consent to visit it.

16 I don't know, I mean, it's not -- it's
17 not clear to me, in the motion papers that were
18 filed, what the arguments were going to be.
19 That's why -- one of the reasons I'm going to
20 permit each side to make oral argument, perhaps
21 some of those points can be clarified.

22 Is the defendant arguing that he had an
23 individual right to privacy that was violated,
24 that required Remiker to get consent or a warrant
25 before responding to the location of the RAV 4

1 and looking at the VIN number?

2 ATTORNEY FALLON: Excuse me, your Honor, I
3 think we're getting a little off track. Because we
4 are going to argue these points shortly, the only
5 issue on the table right now, as I understand it, is
6 whether or not we're going to take a colloquy from
7 Mr. Avery, that he was mindful that he had the
8 opportunity to testify and chose not to. And if
9 we're not, then that's fine, and then we can proceed
10 to argument. I mean that's the only -- I don't want
11 to mix up the two concepts.

12 THE COURT: Well, this is a pretrial
13 motion, let me ask you this, Mr. Strang or
14 Mr. Buting, have the two of you discussed this with
15 your client and made a decision, after your
16 discussions with him, that you would not be calling
17 him to testify?

18 ATTORNEY STRANG: We have not had extensive
19 discussion about it. And I think, beyond that, it's
20 privilege. And really this is the point. I mean,
21 if we could do a colloquy with Mr. Avery and,
22 essentially, what the State would be hoping to
23 accomplish is, his ratification of decisions that
24 haven't been his, strategic decisions about how to
25 proceed on a pretrial motion and which witnesses to

1 call, and not to call, him included.

2 If -- if these calls are so far wrong
3 that they fall below a reasonable level of
4 defense counsel's performance, then that's the
5 fact. And having him ratify them doesn't change
6 that. The decisions on what witnesses to call
7 here and which not to call, including Mr. Avery,
8 have been mine and Mr. Buting's.

9 THE COURT: Well, I understand that. I
10 guess my question is directed to something that's a
11 little -- that falls a little short of actually
12 conducting a personal colloquy with Mr. Avery, and
13 that is, whether or not the two of you have
14 discussed this with him. I'm not looking to get
15 into any privilege.

16 ATTORNEY STRANG: No, and in a very general
17 way, we have had very brief discussions about it, as
18 to the -- as to these two motions.

19 THE COURT: All right.

20 ATTORNEY STRANG: And I will say,
21 discussion to the extent that that implies a two-way
22 discourse, may be gilding the lily to some extent.
23 I know that, very briefly, I have expressed an
24 opinion or made an assertion. I'm not sure that
25 beyond that I should be implying a two-way

1 discourse.

2 THE COURT: All right. I'm going to take a
3 short break at this time. Before I ask counsel to
4 meet with me in chambers, I'm going to ask that
5 defense counsel address this issue with Mr. Avery.
6 And we'll discuss in chambers how to proceed further
7 when we come back out on the record, after that's
8 been completed.

9 ATTORNEY STRANG: Is there a place we can
10 talk in private?

11 THE COURT: Yes, I believe the jury room
12 would work for that purpose.

13 ATTORNEY KRATZ: Two-fifteenish?

14 THE COURT: Let's say 2:20, in my chambers.

15 ATTORNEY STRANG: We can use the jury room,
16 but that will require one of two things: First,
17 preferably all the law enforcement people or
18 representatives of the State, being outside a closed
19 door.

20 Or, second, much less preferably,
21 anybody who's within the room being deputized as
22 a defense investigator for purposes of that
23 meeting, and being instructed that he or she is
24 within the lawyer/client privilege, on the work
25 product doctrine, forever more, for purposes of

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what he or she would overhear.

THE COURT: Well, I will meet with who's
ever in charge of security and then address that
with you after I do that.

(Recess taken.)

(End of partial transcript.)

1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 1st day of September, 2006.

Diane Tesheneck, RPR
Official Court Reporter

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, MOTION HEARING - ARGUMENTS

5 vs. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8
9 **DATE:** AUGUST 10, 2006

10 **BEFORE:** Hon. Patrick L. Willis
11 Circuit Court Judge

12 **APPEARANCES :**

13 KENNETH R. KRATZ
14 Special Prosecutor
15 On behalf of the State of Wisconsin.

16 THOMAS J. FALLON
17 Special Prosecutor
18 On behalf of the State of Wisconsin.

19 DEAN A. STRANG
20 Attorney at Law
21 On behalf of the Defendant.

22 JEROME F. BUTING
23 Attorney at Law
24 On behalf of the Defendant.

25 STEVEN A. AVERY
Defendant
Appeared in person.

TRANSCRIPT OF PROCEEDINGS

Reported by Diane Tesheneck, RPR

Official Court Reporter

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I N D E X

ARGUMENTS OF COUNSEL

PAGE

ATTORNEY BUTING

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ATTORNEY FALLON

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ATTORNEY BUTING

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1 THE COURT: At this time the Court will go
2 back on the record. Before we hear oral argument
3 from the parties on the **Franks** motion, there's a
4 couple of other things to address. First of all,
5 it's my understanding from discussions with counsel,
6 that the parties have agreement on the media
7 statements motion that was filed by the defense, and
8 for which testimony has been taken; is that correct,
9 counsel?

10 ATTORNEY FALLON: Yes, that is correct. It
11 is my understanding, and I think Counsel would
12 agree, that neither side is conceding the merits of
13 the other side's argument, but in acknowledgment of
14 the overall circumstances of this case and the
15 number of statements at issue, we have reached this
16 following resolution:

17 And that is, that the State would agree
18 not to use any of the interview statements
19 obtained by News Reporter Kolbusz, which I
20 believe, if memory serves me, were November 18th
21 and December 14th. And in exchange for which the
22 defense is withdrawing their request to prohibit
23 our use of any of the statements, either
24 telephonically, or in person, obtained by
25 Investigative Reporter Matesic.

1 Again, neither side is conceding the
2 merits of the other side's argument; it's just a
3 concession due to the overall circumstances of
4 the case.

5 THE COURT: Mr. Strang.

6 ATTORNEY STRANG: There's nothing about
7 that with which I disagree. I will add a little bit
8 I think that matters and I believe we're also in
9 agreement on. The Emily Matesic interview was
10 November 12th, as I recall, the in jail televised
11 interview. And we are withdrawing our
12 constitutional objection to that, withdrawing the
13 motion in so far as that interview goes.

14 And as to the one later, telephonic
15 interview with Ms Matesic, and I will say that it
16 was -- that was a straddler, that was sort of
17 midway in between. Because the motion never was
18 intended to cover interviews or statements of
19 Mr. Avery where he initiated the telephone call.

20 And as I say, that one straddled a
21 little bit, because Ms Matesic initiated in one
22 sense by writing a letter asking Mr. Avery to
23 call, he initiated in another sense by making the
24 collect call. But in any event, no
25 constitutional objection and the motion is

1 withdrawn as to those two interviews.

2 At this time, I believe that the State
3 has not obtained the raw footage of the
4 November 12 interview, or any full tape, or raw
5 tape, so to speak, of the later telephonic
6 interview with Ms Matesic.

7 I know the defense doesn't have those
8 materials. And I think what we have agreed to do
9 at this point is just to table, until later,
10 questions of completeness, if in fact the State
11 is able to obtain raw footage, or the full
12 interview, on either of those occasions.

13 Assuming the State is not, we will not
14 object to introduction of the little two minute
15 or two minute plus segments of those interviews
16 that were actually aired in the Matesic
17 interviews.

18 And then I also agree, it's simpler as
19 to the Channel 5, or Jennifer Kolbusz interviews,
20 both in the jail, both televised or filmed,
21 November 18 and December 14, those the State will
22 make no use of at all at trial. And, again,
23 here, each of the two sides is utterly secure in
24 its conviction that the other side is completely
25 wrong on the legal merits, so.

1 THE COURT: All right. In light of the
2 detail involved in your agreement here, I'm going to
3 ask you to provide that to the Court in the form of
4 a written stipulation and then I will accept it.
5 Mr. Strang, I will have you draft it. And --

6 ATTORNEY STRANG: I would be happy to.

7 THE COURT: -- when the Court receives it,
8 then, I will deal with it.

9 With respect to some of the other
10 motions that are pending, because of the lateness
11 of today, and I'm still going to be hearing oral
12 arguments, what I am going to do is set a date
13 for August 22nd, that is a Tuesday, at 9:00 in
14 the morning.

15 And on that date, the Court will issue a
16 decision, or issue decisions, addressing the
17 issues of venue and the trial date, among other
18 things, but also, on most of the other motions
19 that have been heard, and that is, either heard
20 or for which briefs have been filed.

21 I understand that some of the motions
22 that were heard over the last couple days will be
23 dependent on the filing of written briefs and the
24 court reporter generating a transcript. So we
25 may not be in a position to deal with everything

1 on August 22, but certainly the venue and trial
2 date motions, and some of the other motions as
3 well.

4 With respect to the concerns raised by
5 the State just before we entered into the break,
6 Counsel, it's my understanding that defense
7 counsel has discussed more fully than even
8 before, with the defendant, his right to have
9 provided testimony at these motion hearings over
10 the last couple days, and that it's still the
11 defendant's decision, in consultation with
12 counsel, to elect not to testify. Mr. Strang, is
13 that correct?

14 ATTORNEY STRANG: We had -- Mr. Buting and
15 I had a meeting with Steven Avery in the Manitowoc
16 County Jail, during break. I'm going to guess, I
17 didn't time it, but I'm going to guess the meeting
18 was about 10 or 15 minutes long, something in that
19 neighborhood. It was a private meeting, law
20 enforcement was not in the room. We were within the
21 secure envelope in the jail.

22 And we -- we had a two-way discussion
23 about Mr. Avery's opportunity, if he chose, to
24 testify at the motions hearings, and his right to
25 maintain his silence as well, and choose not to

1 testify. Explained -- Mr. Buting and I explained
2 that these pretrial motions and their strategic
3 questions are at least predominantly issues
4 committed to a lawyer's judgment. And we
5 explained to him what our judgment was, and is,
6 on the presentation of evidence on those motions.

7 But this was a two-way discussion and
8 Mr. Avery, as always, is really a very, very
9 cooperative client, someone who's engaged in
10 discussions and cares about his case. And I
11 think he certainly treats us as if he respects us
12 as the two lawyers he chose to defend him in this
13 case.

14 THE COURT: Mr. Avery, do you concur with
15 that summary of your discussion, just placed on the
16 record, with Mr. Strang?

17 MR. AVERY: Yes.

18 THE COURT: You understand you have the
19 right, if you wanted to, to testify at these
20 hearings, but do I take it that you have made the
21 decision, in consultation with your attorneys, that
22 you elect not to testify at these hearings?

23 MR. AVERY: Yes.

24 THE COURT: Very well. The Court is
25 satisfied that the defendant has been adequately

1 informed by defense counsel of his right to testify
2 at these hearings and has made the decision, in
3 consultation with his attorney, not to testify.

4 With respect to the motions that the
5 Court has heard the last few days, first of all,
6 on the issue of the admissibility of the
7 statements made to the Marinette County Sheriff's
8 Department, it's my understanding that the
9 testimony that we have heard was fairly limited
10 on those, and that the court reporter expects to
11 get it out in short order, and the parties could
12 submit simultaneous written briefs by a week from
13 tomorrow.

14 ATTORNEY STRANG: Yes.

15 THE COURT: Both parties in agreement?

16 ATTORNEY FALLON: That's correct, Judge.
17 Although the record should reflect, that the
18 preference of the State was to argue it now. But
19 acknowledging the decision of the Court, we'll have
20 a brief for you the end of next week.

21 THE COURT: All right. The testimony taken
22 on the issue of the effective multiple executions of
23 the search warrant and the motion related to that, I
24 understand there is a good deal more testimony there
25 and the parties would like additional time in which

1 to brief that issue.

2 I have spoken to the court reporter, she
3 indicates she can have a transcript ready in
4 about three weeks. So I'm asking the parties at
5 this time, how much time would you like to submit
6 simultaneous briefs on that issue? So,
7 essentially, the transcript will be ready at
8 about the end of the month.

9 ATTORNEY BUTING: I could probably do it in
10 10 days after that.

11 THE COURT: Okay. How about
12 September 13th, it's a Wednesday?

13 ATTORNEY BUTING: Sure.

14 ATTORNEY FALLON: September 13th, I will
15 check my calendar, please. Right now, my written
16 calendar shows that that would be doable. I haven't
17 checked my computer calendar back at the office.
18 So, assuming I don't have anything else going on, I
19 think that's doable.

20 THE COURT: All right. We'll say briefs
21 due 9/13 on the multiple executions issue.

22 And the last matter is the **Franks**
23 motion. I will hear oral argument at this time
24 on that issue. Since there is an initial burden
25 there on the defense, I will hear from the

1 defense first.

2 ATTORNEY BUTING: Thank you, Judge.

3 Perhaps, before we -- before I argue that, though,
4 we did have some discussion off the record with
5 counsel for the State, that maybe crystallizes the
6 issue on standing a little bit better. I don't know
7 if you would like to state what your position is on
8 where Mr. Avery does or does not have standing?

9 ATTORNEY FALLON: The only thing I would
10 say is that the State hasn't challenged his
11 standing, or haven't contested his standing to
12 challenge a search of the house and the garage, and
13 the rest we're prepared to argue.

14 THE COURT: Okay.

15 ATTORNEY BUTING: Including the -- the burn
16 barrel and burn pit in the area of his house and
17 garage? That was something that wasn't clear to me.

18 ATTORNEY FALLON: It was clear in our
19 pleadings. And, again, the arguments and
20 discussions are relative to this particular motion,
21 exclusively.

22 ATTORNEY BUTING: All right. Judge, as we
23 pointed out in the motion that we filed, the --
24 although -- Let me talk about **Franks** first, and then
25 I will talk a little bit about standing. And in

1 order to complete my argument on **Franks**, I want to
2 play for the Court the second phone call that
3 Detective Remiker had with Investigator Wiegert on
4 the morning of November 5th, regarding the use of --
5 or the discussion about whether there was an intent
6 to use volunteers to search the Avery property or
7 not. And if I could play that, briefly, and then I
8 will argue from there. I have set up -- I have my
9 copy in there, I could put the original in if you
10 like.

11 THE COURT: All right. And this was, if I
12 remember correctly, the part of Detective Remiker's
13 testimony where the jail had tapes, the attorneys
14 went over and listened to them, so there's no
15 question that this is the tape; both parties agree?

16 ATTORNEY FALLON: I believe so. I believe
17 so, depending on what we hear, if it is as
18 represented by counsel, yes, it's a conversation
19 between Detective Remiker and Investigator Wiegert.

20 THE COURT: All right. Mr. Buting.

21 ATTORNEY BUTING: There were two phone
22 calls, the first one is more lengthy. It is the
23 second one that is very brief and is more of issue
24 in this.

25 THE COURT: Is it set up for the second

1 one?

2 ATTORNEY BUTING: It is set up and ready
3 for the second one.

4 THE COURT: Very well.

5 (CD played, Exhibit 20.)

6 DETECTIVE REMIKER: Remiker.

7 INVESTIGATOR WIEGERT: Yeah. Is it 323 or
8 373?

9 DETECTIVE REMIKER: 323.

10 ATTORNEY STRANG: I can't remember fuckin'
11 reading.

12 DETECTIVE REMIKER: 32319 -- the year you
13 were born, 1929.

14 INVESTIGATOR WIEGERT: You got 'er. Hey, I
15 have a change of plans here.

16 DETECTIVE REMIKER: Okay.

17 INVESTIGATOR WIEGERT: The boss has got
18 something he wants us to do.

19 DETECTIVE REMIKER: Okay.

20 INVESTIGATOR WIEGERT: He wants us to go
21 back over and reinterview Avery and Zipperer, again.
22 And as long as the search party is out there, he
23 wants us to ask them if they would allow us to have
24 the search party come on their property and go
25 through the junkyard. The search party.

1 DETECTIVE REMIKER: Okay.

2 INVESTIGATOR WIEGERT: So, if it's okay

3 with you, we'll meet you over at your Sheriff's

4 Department.

5 DETECTIVE REMIKER: Okay.

6 INVESTIGATOR WIEGERT: Talk about it a

7 little bit, and if you're not too busy.

8 DETECTIVE REMIKER: Okay. Man, Zipperer is

9 not going to be real happy.

10 INVESTIGATOR WIEGERT: I'm sure he is not.

11 If he tells us no, he tells us no.

12 DETECTIVE REMIKER: All right.

13 INVESTIGATOR WIEGERT: Later.

14 DETECTIVE REMIKER: Okay.

15 INVESTIGATOR WIEGERT: If you don't mind.

16 DETECTIVE REMIKER: Yup, that's fine.

17 INVESTIGATOR WIEGERT: We'll stop over.

18 Okay. We'll probably be there, I would say, within

19 the hour.

20 DETECTIVE REMIKER: Okay. Give me a call

21 before you get here, I will meet you.

22 INVESTIGATOR WIEGERT: Will do.

23 DETECTIVE REMIKER: Okay.

24 INVESTIGATOR WIEGERT: Thanks.

25 DETECTIVE REMIKER: Bye.

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(Transcribed to the best of my ability.)

ATTORNEY BUTING: That's it, Judge. And I told your court reporter beforehand, that it's a little hard sometimes for her to be able to take down what's being said in the CD like that, but I wouldn't have any objection to her listening to -- if she prepares a transcript on it, have her listening to the Court's exhibit, which is Exhibit No. -- I'm sorry -- 20, for accuracy on the transcription.

THE COURT: Okay.

ATTORNEY BUTING: The case of *Franks vs. Delaware* says that if an individual who applies for a search warrant, that is, the affiant, in this case, Investigator Wiegert, provides false information intentionally or with reckless disregard for the truth, and that information was necessary to establish probable cause, then the Fourth Amendment requires that a hearing be conducted.

If, at the hearing, it's proved that the false information was presented intentionally, or with reckless disregard for the truth, then what the Court does is set aside that portion of the affidavit and looks to the remainder of the affidavit, to see whether probable cause exists.

1 If, having struck that portion of the
2 affidavit, probable cause does not anymore exist,
3 then the warrant is -- the search must be voided,
4 the warrant is improper. It's our contention, in
5 the motion that we filed, that Investigator
6 Wiegert, either deliberately, intentionally, or
7 certainly with reckless disregard for the truth,
8 did just that.

9 In Paragraph 5 of the search warrant
10 affidavit, that's dated November 5th, 2005 --
11 it's been made part of the record -- in
12 particular, Investigator Wiegert stated in that
13 affidavit, that officers had received
14 information, from volunteer searchers, that they
15 had located a vehicle matching the description of
16 the vehicle owned by Teresa Halbach.

17 That is the first statement that is --
18 is inaccurate, that is incorrect. As I believe
19 also was made part of the record, the transcript
20 of the call from Pamela Sturm makes clear that
21 she did not say that the vehicle matched. In
22 fact, that she indicated that the vehicle color
23 did not appear to be correct, or did not appear
24 to be with the same that she had seen described
25 or had seen on the fliers that she was following.

1 And that it was, in fact, because of
2 that, and she hesitated to say that she thought
3 it was the matching vehicle because she wanted to
4 see the VIN number. And she was calling and
5 asking, do you know the VIN number.

6 Secondly, we also argued that the term
7 "volunteer searchers" was a bit of a stretch in
8 that we believe the officers used volunteers in
9 such a way, or citizens in such a way, as to
10 essentially make them part of a police search, by
11 trying to engage them in a Fourth Amendment
12 search.

13 Now, in that regard, the motion was
14 based upon statements made in the official
15 Manitowoc County Police -- Sheriff's Department's
16 report of this investigation, which I went over
17 with both Detective Remiker and Investigator
18 Wiegert. Investigator Wiegert denied making the
19 statement that was in Detective Remiker's report,
20 that Detective Remiker attributed to him, in
21 which stated, Wiegert indicated that several
22 searchers were willing to go to the Avery
23 property, on Avery road, to search the junkyard
24 and salvage area.

25 When I put the question to Investigator

1 Wiegert, he said that Detective Remiker just got
2 it wrong, I didn't say anything about that. I
3 think he said he didn't say anything about
4 volunteers coming to search the junkyard at all.
5 And here's where his credibility, in this court,
6 at this hearing, it is at issue. Because he
7 didn't know at the time, as neither did we when
8 he testified, that Manitowoc County had actually
9 recorded that phone conversation.

10 And I played that portion of it right
11 now, in which it's clear he did talk to Detective
12 Remiker about using these volunteer search party,
13 is what he calls it, to search the Avery
14 junkyard. And that if, in fact, he was using --
15 using volunteers to conduct a search, that
16 obviously by that time, Mr. Avery was also a
17 person of interest at a minimum.

18 Using them to get consent to try and get
19 in and search, would be a way to get around
20 Mr. Avery's Fourth Amendment rights with regard
21 to privacy and expectations on the search of the
22 Avery family property, and that that was
23 recklessly, if not intentionally, misstated in
24 the affidavit, again, Paragraph 5 of the
25 affidavit.

1 The other part of that paragraph that is
2 completely wrong, or nearly completely wrong,
3 Detective Remiker himself acknowledged, he puts
4 in the affidavit that -- I mean Wiegert, that
5 Wiegert acknowledged he, in fact, put false
6 information, or incorrect information, in here,
7 because he says in his affidavit, that the
8 searchers provided the entire VIN number.

9 And when pressed on that in court he had
10 to admit that that's not true, in fact, only a
11 part -- a portion of that VIN number, about half,
12 10 of the 17 numbers, could be provided by the
13 volunteers, that they evidently were unable to
14 read the rest of it.

15 Now, the State will probably argue, oh,
16 that's just a semantics, that's just a mistake,
17 negligence at most, it's not any kind of reckless
18 disregard for the truth. But we have got to
19 think about the timing of this as well. Wiegert
20 talks to Pamela Sturm on the phone at about
21 10:30, 11:00 in the morning.

22 This is only a matter of a couple hours
23 later he's -- at most, he's preparing this
24 affidavit. It's facts are obviously fresh in his
25 mind. It's clear from the transcript that there

1 was an extensive discussion -- extensive
2 discussion with Pamela Sturm about how many
3 numbers she could read in the -- on the VIN.

4 And it's very clear, as you look at the
5 transcript of that 911 call, or whatever you want
6 to call it, that there's back and forth, can you
7 read this, well, I'm not sure about that number,
8 might be a T, might be a 1. Very clear that she
9 did not have the full VIN number.

10 And yet here, within a couple of hours
11 or so, he's saying, in this affidavit to the
12 Court, that the searchers not only found a
13 vehicle that matched the description, but that
14 had a VIN number, complete VIN number that
15 matched. And that's a very big difference in my
16 mind, and in the Court's mind, I'm sure it is.

17 Because if -- if you are trying to get
18 probable cause for a warrant, it's much, much
19 easier to do so if you mislead the Court and tell
20 them, hey, there's a vehicle that these searchers
21 found, and it matches the description that was
22 given for Teresa Halbach's vehicle. And not only
23 that, they checked the VIN number and it's
24 completely a match, all 17 numbers.

25 Very easy to get probable cause with

1 something like that. It's another matter if they
2 point out the truth, if Wiegert was to point out
3 the truth to the Court, which is that, well, we
4 only have a partial VIN number. And there is
5 some hesitation on the part of the caller, the
6 searcher, as to whether this really matches or
7 not.

8 And in cross-examination, I believe it
9 was, Attorney Fallon was having Investigator
10 Wiegert point out all these other facts that he
11 knew, such as whether the model matched, whether
12 there was a sticker on it from Le Mieux Toyota,
13 all these other facts, but the point is not what
14 he knew in his mind, the point is what he
15 provided to the independent reviewer, the Court.

16 And he does not say anything in this
17 affidavit about the model year, or any comments
18 that the -- Pamela Sturm said about that, or any
19 of his subsequent investigation about whether or
20 not there's -- there were other reasons to
21 believe that the vehicle might have matched.

22 He skipped over all that. He just
23 assumed for himself that he could call it a
24 match, and that he could tell the Court that
25 these volunteer searchers believed it to be a

1 match, rather than telling the full truth, which
2 was -- which is something very less than that.

3 If in fact, the information that's left
4 out, or not -- or deliberately not included, was
5 reckless, or reckless disregard for the truth,
6 then the first couple of sentences in Paragraph 5
7 would be struck, or stricken. The only other --
8 Frankly, the only other part of that paragraph
9 that supplies probable cause is, Investigator
10 Remiker, once he got to the scene, it says
11 Investigator Remiker was able to confirm that the
12 VIN number, and then it lists all 17, is the
13 correct number for Teresa Halbach's Toyota RAV 4.

14 And then he talks about Investigator
15 Remiker's visual observation. And then here we
16 get to the point of whether or not Detective
17 Remiker was in a place where he can make --
18 lawfully make those observations, such that they
19 could be considered by the Court, in the search
20 warrant. If not, then that has to be struck as
21 well, stricken from this affidavit.

22 And without Paragraph 5, there is not
23 probable cause. I can spend some time on that
24 later if there's really a dispute about it. But
25 there's not probable cause in this affidavit, if

1 you take Paragraph 5 out, plain and simple.

2 So the question then is, at this point
3 anyway, did Detective Remiker have a right to be
4 in the position that he was, to go up to the
5 vehicle and to read the VIN number on it? Was he
6 lawfully there? Were his observations lawful?
7 And that does involve questions of standing, as
8 to whether Mr. Avery might have a reason to have
9 an expectation of privacy, as well. So let me
10 address those two points.

11 First of all, the testimony said, or
12 established, that Detective Remiker did not have
13 consent from anybody on that property, at the
14 time that he came up to the RAV 4 and, I believe,
15 shined his flashlight on it, or whatever, in
16 order to try and read the VIN number.

17 And the testimony from Pamela Sturm was
18 that she had gotten consent, holding herself out
19 to be a volunteer, but not a police officer. And
20 so that consent would clearly not carry over to
21 the police as well.

22 There's also some testimony, that later,
23 Earl Avery supposedly gave consent to the
24 officers to be there, but that was, I think the
25 record was at 11:17. That was a good 5 or 10

1 minutes, or 15 minutes, I think, after Detective
2 Remiker arrived at the scene.

3 Earl Avery, when he testified, in fact,
4 denied that he ever gave consent. He said the
5 officers made him sit around for three hours,
6 never talked to him until then, they just had
7 their way with it.

8 I don't think that there can be any
9 serious argument that -- that there was -- that
10 that part of the property was simply open to
11 public access and that -- that none of the
12 Avery's would have any expectation of privacy in
13 that area, the southeast quarter quadrant of
14 their property.

15 Testimony was, from Earl Avery, he
16 marked on Exhibit 18, where the public is
17 generally allowed and not allowed, without
18 permission. And the custom and practice is that
19 they drive up to the front of the office, they
20 come in, and they say, do you have a part for
21 this or that year car, and then they are allowed
22 to go in, sometimes with supervision, sometimes
23 without, and go into the yard. But only with
24 permission that they -- I think Earl's words
25 were, absolutely not, is the public allowed to

1 just go in there without -- into the pit, or into
2 the junkyard area, without permission.

3 Other facts which indicate a reasonable
4 expectation of privacy were testified to today by
5 Lieutenant Sippel. He talked about how there's
6 fence lines around the property, on the north and
7 east -- I'm sorry -- north and east edge, yes.
8 And that there are berms, one of them very high,
9 on the east edge, and 15 feet or so, 10 to
10 15 feet on the south edge, which would clearly
11 indicate that someone is trying to demark that
12 property as separate and private from public
13 access.

14 So the question that the State, then,
15 has raised is whether or not, I assume this is
16 the essential argument, is whether or not
17 Mr. Avery himself had standing. It's conceded
18 that he had standing in his house, or trailer,
19 and that he had standing in his garage. But they
20 contest that he had standing anywhere else. And
21 presumably that includes the location where the
22 RAV 4 was found, the so-called burn pit and burn
23 barrel, located outside of his residence and
24 garage.

25 The State has -- had filed a brief, or a

1 memo, to the Court, the day before this motion
2 hearing started yesterday. And I did not have a
3 chance to file a written response. I apologize
4 for that, but it was not received until the very
5 day before this. But I did have a chance to
6 review some of their cases and some of my own.
7 And I have some cites, and some references, and
8 legal authority that I think run counter to their
9 arguments.

10 First of all, the case of **Rakas vs.**
11 **Illinois**, which is at 439 U.S., at page 139, I
12 believe it is. Makes clear that the Fourth
13 Amendment -- a claim -- a Fourth Amendment claim
14 does not depend on a property right. It is a
15 personal right. It's a right, an expectation of
16 privacy in the invaded place. Fourth Amendment
17 does not protect property. It protects people
18 from unreasonable searches and seizures.

19 No single factor is determinative on the
20 question of standing. That's also from **Rakas**, at
21 152. And **State vs. Whitrock**, which I believe is
22 also cited by the State, at 161 Wis. 2d, at page
23 974, says that the Court must take a totality of
24 the circumstance approach when determining the
25 questions of standing.

1 It is true, defendant does have the
2 burden of establishing, however, just by -- just
3 by a preponderance of the evidence, that he had a
4 reasonable expectation of privacy in the -- the
5 things searched. But **Whitrock** and **Arizona vs.**
6 **Hicks**, which is the cite, 480 U.S. 321, 1987,
7 make clear that a defendant does not need to show
8 an ownership interest in the place or thing to be
9 seized, and that the thing, in fact, seized need
10 not even be his own property.

11 In both **Whitrock** and **Hicks**, I believe
12 stolen property was involved. And in **Hicks**, the
13 Court found that there was a reasonable
14 expectation of privacy, even in the stolen stereo
15 equipment that was found inside of this
16 individual's house.

17 And in that case, the police, in order
18 to determine whether or not the item was stolen,
19 it was not obviously stolen when they went in
20 there, but they moved pieces around, and they
21 looked at serial numbers, and they recorded
22 those. And they went back later and determined
23 that the property appeared to have been stolen,
24 or was reported stolen.

25 And on that basis, they went back with a

1 warrant. And the Court stated, no, no, you can't
2 do that, that was improper. And that's akin to
3 Detective Remiker going onto this property, using
4 a flashlight, in order to read the VIN number on
5 this vehicle.

6 The case law also shows that people have
7 a reasonable expectation of privacy in a variety
8 of areas, a number of different settings. The
9 **Trecroci** case, I think it's misspelled in the
10 State's brief, but that's T-r-e-c-r-o-c-i. The
11 cite for that is 246 Wis. 2d, 261. It's a Court
12 of Appeals case from 19 -- I'm sorry -- from
13 2001.

14 That case actually does a fairly good
15 job of summarizing what some of the factors are
16 and what some of the various areas where standing
17 has been found, even when someone doesn't own the
18 property. And I point out that the State used
19 Mr. Earl Avery to try and establish that Steven
20 Avery did not have an ownership interest, or
21 portion of the property.

22 But that that really is irrelevant on
23 the question of standing here. The numerous
24 cases say you don't have to own the property to
25 have a reasonable expectation of privacy in it.

1 I will get into a little bit more of that in a
2 minute.

3 Even in a workplace, employees have a
4 reasonable expectation of privacy, *O'Connor vs.*
5 *Ortega*, 480 U.S. 709 at 717, 1981, I believe, or
6 '87. Overnight guests in a house have an
7 expectation of privacy, *State vs. Whitrock*,
8 again. Even commercial areas, in garbage, if
9 steps are taken to exclude the public, can't
10 have -- are areas that one can have an
11 expectation of -- reasonable expectation of
12 privacy in.

13 The *Trecroci* case, at page 282, sort of
14 lists, gives a helpful list of factors to
15 consider in determining whether someone has
16 standing in a particular place. And it's not
17 necessary that all of them be met, but they are
18 considered in part -- as part of the totality of
19 the circumstances.

20 The first is whether the person had a
21 proprietary interest in the premises. And here,
22 clearly, he had a proprietary interest in the
23 house and the garage. He did not have -- He was
24 not an owner of the Avery Salvage business but,
25 on the other hand, he worked there.

1 It's a family business. He lived on the
2 property. Earl talked about how he did -- Steven
3 Avery did all the things that Earl did, including
4 dismantling vehicles, driving out to pick up
5 junks and bring them back and forth. And so the
6 fact that it's a family business, I think, makes
7 that factor somewhat less critical.

8 Second factor is whether the person was
9 legitimately on the premises that are searched.
10 Clearly, Mr. Avery lived on the Avery compound so
11 to speak, or right next to it, and he worked on
12 the compound every day. So he clearly was
13 legitimately there.

14 Whether the person had complete dominion
15 and control, and the right to exclude others,
16 perhaps he didn't have as much of complete
17 dominion as he would as an owner, but
18 nevertheless, he worked there, he lived there, he
19 worked the car crusher right near the area where
20 this was found. He had full access to all of the
21 property as a family member, and as a person who
22 worked in the family business.

23 The next factor is whether the person
24 took precautions customarily taken by those
25 seeking privacy. I have covered that already.

1 But I think the berms, the fences, it's clear
2 that the property itself does have attributes to
3 indicate that there is a reasonable expectation
4 of privacy in that property.

5 Whether the person had put the property
6 to some private use, clearly they did. There's a
7 business in the front. There's a public office
8 in the upper right, or northeast corner of the
9 40-acre parcel, but the rest of it is private.
10 There's private residences, both to the north
11 edge and down the eastern edge, where Chuck Avery
12 lives. All the land belonged to the family.

13 And, finally, whether the claim of
14 privacy is consistent with historical notions of
15 privacy. This is a fluid concept because --
16 that's probably changed over time -- but here,
17 people know, that if you enter someone's private
18 property, you must receive permission to do so.

19 Even the volunteer who testified, Pamela
20 Sturm, recognized that she had to get permission
21 from Earl Avery before she could go into any area
22 of the yard to do a search. So I think that
23 that's a factor that clearly indicates that there
24 is a historical and reasonable expectation of
25 privacy in that area.

1 Then, finally, there is the question of
2 the -- Well, let me just, before I turn to the
3 burn barrel and burn pit area.

4 If I make the first hurdle, if we pass
5 the first hurdle, and the Court finds that there
6 is sufficiently reckless or intentional
7 misstatements, falsehoods, in the affidavit, and
8 that, therefore, they are stricken, then the
9 Court, I think, sequentially, next, has to look
10 at the question of whether or not Detective
11 Remiker, therefore, was in a position where he
12 was not lawfully permitted to make the
13 observations -- the rest of the observations that
14 are included in Paragraph 5.

15 And if so, then there is no probable
16 cause for the warrant. The entire warrant is
17 void and the entire search is void, at least as
18 to that warrant. Later warrants were obtained
19 and we have to deal with those issues later, but
20 as to this warrant they would be void.

21 And that would also answer the question
22 as to any evidence found outside of Mr. Avery's
23 residence, such as the burn pit, or the burn
24 barrel, or whatever. We wouldn't even have to
25 get to the question of standing, because if the

1 warrant is void, it's void.

2 But as to the question of standing, it's
3 not clear to me just what position the State is
4 taking on this, but the testimony was, and the
5 exhibits show, that the burn barrel was right
6 outside the front residence, front area of the
7 trailer, and that the burn pit was behind the
8 detached garage.

9 So I don't know how they are going to
10 argue that he had a privacy interest in the house
11 and the garage, but not in those areas that are
12 close by. If that's their position, then they
13 will have to make it, but I don't see it. It's a
14 bit of a different argument, I think, when we get
15 to the far corner of the property, where the
16 vehicle is made. But as to those other areas, I
17 don't see any legitimate argument.

18 So, for those reasons, I think we have
19 established a reasonable expectation of privacy,
20 by a preponderance of the evidence. I think we
21 have established that there were material,
22 intentional or reckless disregard for the truth
23 in the affidavit. And I think we have
24 established, as well, that when those improper
25 falsehoods, or illegally obtained portions are

1 stricken from this warrant, there is no probable
2 cause left in the warrant. And so the search --
3 any searches based on this November 5th warrant,
4 would have to be voided and any evidence
5 suppressed. Thank you.

6 THE COURT: Mr. Fallon.

7 ATTORNEY FALLON: Thank you, Judge. Well,
8 the defense argument is stunning for the facts which
9 were omitted during the presentation of their
10 argument. So, in an effort, let's first all start
11 with a couple of general principles and then we'll
12 go through the evidence which I understand was
13 presented during the last day and a half.

14 Counsel is correct, it is a totality of
15 the circumstances analysis, with respect to
16 determination of whether or not Mr. Avery has a
17 reasonable expectation of privacy, in the areas
18 searched, and in the items seized.

19 If there is no reasonable expectation of
20 privacy, in the areas searched, and the items
21 seized, there is, as it pertains to Mr. Avery, no
22 Fourth Amendment event. There is no search.
23 There is no basis for a hearing. And there is no
24 basis to request suppression.

25 Now, first and foremost, Counsel is

1 correct and does cite *Rakas vs. Illinois*, which
2 is a case that we clearly cite in our brief.
3 It's a critical case. And counsel is right, in
4 fact, it's one of the few things that I do agree
5 with, and that is the Fourth Amendment reasonable
6 expectation of privacy is not conditioned upon
7 the existence of a property right. We agree.
8 Quite frankly, that supports the State's argument
9 that there is no standing, no reasonable
10 expectation of privacy.

11 In determination of whether there is a
12 reasonable expectation of privacy, the burden is
13 on the defense, to establish by a preponderance
14 of the evidence, whether it is more likely than
15 not, whether it's somewhere over 50 percent. Is
16 it likely that this person has two things,
17 whether the individual has exhibited an actual,
18 subjective expectation of privacy in the area
19 inspected or searched, and in the items seized.

20 The second part of the question is, is
21 the expectation, is it one that society is
22 willing to recognize as reasonable, as a
23 reasonable expectation of privacy, under the
24 circumstances. There has been no evidence of an
25 actual, subjective expectation of privacy

1 produced by Mr. Avery.

2 We have references to berms and we have
3 references to fence lines. We have no reference
4 to the fact that the berms were created with that
5 intent, with that subjective expectation. We
6 have no evidence that there's actually a fence
7 that goes along the fence line.

8 We have no evidence that Mr. Avery took
9 any -- any reasonable steps to secure the salvage
10 yard, the location of where Teresa Halbach's
11 vehicle was found, the vehicle in which her
12 license plates were found. The burn barrel,
13 which I might add and point out to the Court on
14 Exhibit No. 18, is located up here, Mr. Avery's
15 residence is here. We have a burn pit, which is
16 behind a garage, and I will get to that in a
17 minute.

18 There has been no demonstration of an
19 actual, subjective expectation of privacy that
20 has been provided to this court. All we have is
21 a berm line, a fence line. We have a rather
22 isolated geographical piece of property. That
23 alone is insufficient to justify, or a
24 conclusion, first of all, that there's an actual,
25 subjective expectation of privacy.

1 And more importantly, or equally
2 important, I should say, there's been nothing
3 here that demonstrates that society is prepared
4 to accept that Steven Avery has a reasonable
5 expectation of privacy in the location of the
6 Toyota RAV 4 vehicle, found at the bottom of
7 Exhibit No. 18.

8 More importantly, there's been no
9 evidence whatsoever that suggests he has a
10 reasonable expectation of privacy about anything
11 in that vehicle. And while he may not have a
12 property right, we agree he has no property right
13 with respect to her vehicle. He has no property
14 right with respect to the blood found in the
15 vehicle, unless of course it's his blood.

16 But then, again, we don't have any
17 testimony saying that. We don't have any
18 evidence of the fact, introduced in this hearing,
19 of those facts, justifying a reasonable
20 expectation of privacy there.

21 He did not drive that vehicle. He did
22 not own that vehicle. As far as we know, the
23 only time he touched that vehicle was sometime
24 during the week of October 31st.

25 With respect to the contents of the burn

1 barrel, the location of the burn barrel, where's
2 the reasonable expectation of privacy? Anyone
3 would drive up and down that upper road there,
4 stop and look in that burn barrel. Burn barrel,
5 anything in the burn barrel is discarded
6 abandoned property. It's the quintessential act
7 of abandoned property. Burned stuff is in there.

8 What reasonable expectation of privacy
9 actual -- First of all, what subjective, actual
10 expectation of privacy did that man have in the
11 contents of this burn barrel? What expectation
12 of privacy did he have in the remains of the
13 camera, in the remains of the cell phone, in the
14 remains of other items collected there? It's not
15 only an expectation of privacy in the place, but
16 also in the things. And there's been no
17 evidence, no argument, nothing whatsoever.

18 The burn pit, located behind the garage,
19 what special -- what evidence do we have there
20 are any special expectation of privacy there?
21 Yes, okay, it's located behind the barn. Great,
22 do we have any demonstration? Do we have any
23 evidence that there was an actual, subjective
24 expectation of privacy created by Steven Avery in
25 the burn pit?

1 There's no evidence in the record, not
2 one iota, that he did anything special to secret
3 that area, to shield it from anywhere else, other
4 than it's geographical location. And, quite
5 frankly, that's not enough.

6 More to the point, what reasonable, or
7 what actual, subjective expectation of privacy
8 does he have in the contents of the pit. What
9 subjective, actual expectation of privacy does he
10 have in the remains of Teresa Halbach? I
11 certainly didn't hear any evidence suggesting
12 that he has such an expectation of privacy
13 relative to the contents of the burn pit either.

14 Now, let's further address some of the
15 case law cited by the defense. It's been a while
16 since I read **Arizona Hicks -- vs. Hicks**, but it
17 seems to me the principle that Counsel cites in
18 that is that individuals can't have an
19 expectation of privacy in stolen items. That's
20 true.

21 But the search in **Hicks** occurred in the
22 house of Mr. Hicks, if I remember, and it's been
23 some time, so there is an expectation in the
24 place, which then, of course, provided an
25 additional expectation of privacy in the items

1 within the place. Well, that's a far different
2 set of facts than we have here.

3 Then they cite *O'Connor vs. Ortega*.

4 Ownership is not -- Let's see, *Ortega*, if memory
5 serves me, that was a case involving a search of
6 an individual at his place of employment. As a
7 matter of fact, *O'Connor vs. Ortega*, I believe,
8 was an actual search of the person's private
9 office. Again, that's an entirely different set
10 of circumstances that we have in this particular
11 case.

12 Again, they cite the *Whitrock* case,
13 which I also cite for the principle, the general
14 principle in my brief, for another point.
15 Certainly guests can have an expectation of
16 privacy in someone else's home. We're certainly
17 not contesting that but, then again, it's the
18 place that's searched and how reasonable is their
19 expectations.

20 And it's not a carte blanche, just
21 because you have a guest, they always, forever,
22 have a reasonable expectation of privacy in, for
23 instance, your home. There are other factors
24 that the Courts look at, but it's not uncommon.
25 I don't see how that case has any particular

1 relevance, or the principles therein, have
2 application to this case, because the facts are
3 so unique and so different.

4 Next, it's pretty much conceded in their
5 argument, and in the testimony, that by and
6 large, the vast area contained in Exhibit No. 18,
7 here, is attributed to the auto salvage yard.
8 Well, the last time I looked, an auto salvage
9 yard was a commercial enterprise and business.

10 And while one may have, and I use the
11 word one because I will come back to that, one
12 may have a reasonable expectation of privacy in
13 commercial property, but it is less than a
14 reasonable expectation of privacy one would have
15 in a private dwelling. The best case for that is
16 **New York vs. Burger**, B-u-r-g-e-r, 482 U.S. 691,
17 page 700, 1987. And if memory serves me, **Burger**,
18 I think, involved a search to a auto salvage
19 yard.

20 Now, with respect to the challenge here,
21 we have no reasonable -- no actual, subjective
22 expectation of privacy, which has been
23 established in the defense presentation of
24 evidence, in this particular case. Not only is
25 there no actual, subjective expectation of

1 privacy in the areas that we have just talked
2 about, there's no one that society is willing or
3 prepared to accept as reasonable under the
4 circumstances of this case. Again, this is a
5 commercial piece of property, by and large. It
6 is a property which is held open to the public.

7 It's the State's position that Mr. Avery
8 doesn't have a basis to challenge the search
9 warrant except, and only limited to, the search
10 of his residence and the garage. Any property
11 located elsewhere, he did not have a reasonable
12 expectation of privacy in.

13 Particularly in addition, the argument
14 is, with respect to the burn area and the burn
15 pits, you have abandoned property, you have burn
16 property. And more importantly, relative to the
17 expectation of privacy, there is no evidence,
18 there is no testimony, that there were any steps
19 taken by Mr. Avery, evincing an actual,
20 subjective expectation of privacy, other than
21 their mere location. And, quite frankly, in or
22 near the curtilage, to borrow the old common law
23 term, is not enough.

24 All right. Moving on to the challenge
25 to the **Franks** motion. The State's primary

1 argument, and I'm going to begin with the
2 procedural argument, and then I will reach the
3 merits. The procedural argument is, first and
4 foremost, the defendant's pleading. Its motion,
5 affidavit, supporting documentation, we believe,
6 was insufficient to justify the Court's taking
7 the evidentiary testimony in the first place.

8 First, there must be a substantial
9 preliminary showing that there was a false
10 statement, knowingly and intentionally, or with
11 reckless disregard for the truth, was included in
12 the warrant and affidavit, and that that
13 statement is necessary to the finding of probable
14 cause. We agree.

15 ***Franks vs. Delaware*** is the seminal case
16 in this matter. It has been adopted and it's
17 reasoning applied in a couple of Wisconsin cases,
18 most notably ***State vs. Anderson***. To make a
19 substantial preliminary showing there must be
20 allegations of deliberate falsehood or reckless
21 disregard. And those allegations may be -- must
22 be accompanied by an offer of proof.

23 When you look at the motion and
24 supporting documentation of the defense, they
25 raise conclusory allegations that there were

1 certain false statements made, but they don't
2 really show or demonstrate that there was any in
3 the pleadings, any intent on the part of the
4 affiant, in this case Investigator Wiegert, to
5 deliberately mislead and lie to the Court, in an
6 effort to obtain the warrant.

7 Their pleading is totally and completely
8 deficient. It is conclusory only. And I will
9 rely on the argument raised in my written brief
10 on that particular point. Again, a presumption
11 of validity attends to the affidavit.

12 In this case, there pleading fails to
13 establish that the key statement was false or
14 made with reckless disregard for the truth.
15 Defense hinges it's argument primarily on two
16 concepts, whether or not there were really
17 volunteers and this -- the manner in which the
18 vehicle identification number, commonly referred
19 to the VIN, was obtained. So let's take those
20 one at a time.

21 In their pleadings, they allege that
22 they weren't really volunteers. I believe I
23 specifically point pages, I think, it's 7 or 8,
24 or 8 and 9, where they raise the specter, that
25 there was this grand scheme to employee

1 volunteers to secretly invade the Avery compound
2 and conduct a search. At best, the pleadings
3 suggest that they might do something like that,
4 at best. In other words, might use the volunteer
5 searchers to help assist in a search.

6 This discussion, while there was a
7 meeting, that we were all going to meet at the
8 Manitowoc Sheriff's Department, that all, at
9 best, signifies an intent to have something
10 happen in the future. It doesn't exist --
11 doesn't establish the existence of any kind of
12 working relationship, or to take the legal phrase
13 now, an agency relationship, or a joint venture
14 relationship, with law enforcement, at the time
15 of Pamela Sturm's entry to that property.

16 At best, it's a -- suggests that maybe
17 at some point we will utilize these searchers to
18 assist us in the search. As it turned out, we
19 know from Mr. Hillegas, that several days later
20 he did assist in that capacity. But the
21 pleadings don't tell us that such -- or suggest
22 that such an agency existed at the time of entry.

23 There's no other evidence to suggest
24 that Pamela Sturm, in the affidavit, was working
25 at the behest, or for, law enforcement. There's

1 no evidence anywhere in the affidavit that
2 suggests that such an agency relationship
3 existed, or was established, prior to gaining
4 entry on the morning of November 5th. So their
5 pleading is deficient.

6 Secondly, with respect to the VIN
7 number, they say that there was a lie regarding
8 this whole concept of matching, primarily hinging
9 its argument on whether the -- Pamela Sturm found
10 all of the VIN characters upon her examination of
11 the vehicle. Well, regardless of whether she did
12 or she didn't, it is irrelevant.

13 Detective Remiker did have the
14 opportunity to examine the vehicle, did have the
15 opportunity to find all 17 characters. And that
16 was hours before the warrant and affidavit were
17 prepared and submitted to a judicial officer for
18 review and signature.

19 Again, with respect to the pleadings,
20 we'll come back on the technical argument and
21 make this point. I think if you were to remove
22 the discussion of the VIN number entirely from
23 Paragraph 5, the affidavit prepared by
24 Investigator Wiegert states probable cause,
25 easily.

1 We know at the time of the affidavit,
2 and the Court has the affidavit, I believe it's
3 marked as Exhibit 15, if memory serves me. Yes,
4 Exhibit 15.

5 We know that in Paragraph 2 of this
6 particular case, that a missing person Complaint
7 was filed with the Calumet County Sheriff's
8 Department, by Karen Halbach. We know that her
9 daughter had not been seen or heard from since
10 Monday, October 31st, 2005, and that it was
11 unusual for her not to have contact with family
12 friends or work people. We know further, from
13 that paragraph, that she was driving a 1999
14 Toyota RAV 4, dark blue in color.

15 We also know that on November 4th, we
16 have Mr. Avery informing the investigators, I
17 believe Investigator Remiker, that Teresa Halbach
18 was in fact on his property. He did see her on
19 October 31st, 2005, that she was there to take
20 photographs of the vehicle he was selling.

21 We also know, taking out the concern
22 regarding the obtaining of the VIN number, that
23 Pamela Sturm found a Toyota RAV 4, on the
24 property, on November 5th. That's less than five
25 days, a few hours less than five days after she

1 was last seen on the property.

2 The interesting thing about the Toyota
3 RAV 4, as she described it, the affidavit says it
4 was dark blue in color. She finds a RAV 4. The
5 RAV 4 that she finds, her attention is drawn to.
6 It is not an unfair inference to draw that it has
7 some similar appearance to the RAV 4 of Teresa
8 Halbach's.

9 But what really makes this case rather
10 interesting is the fact that, of all the vehicles
11 there, we have a RAV 4 which is secreted by brush
12 and other automobile parts, less than -- again,
13 less than five days after she was last seen and
14 known to be driving that vehicle. That in and
15 off itself is probable cause to justify a search
16 warrant, the issuance of a search warrant in this
17 particular case.

18 Now, additionally, let's assume for the
19 sake of argument that -- we don't have to assume,
20 but we will for purposes of the procedural
21 argument -- that Pamela Sturm was only able to
22 read four of the characters, not 10. But let's
23 say it was just four, let's just say it was the
24 last 4, 3044.

25 What are the odds, what are the

1 probabilities, that it is, in fact, Teresa
2 Halbach's vehicle, when you consider all those
3 facts. Easily meets probable cause. At 10
4 digits, does that make it closer? Ten digits,
5 we're at -- we're preponderance of the evidence.

6 All right. Now, to the merits of the
7 argument, and to the testimony that was
8 delivered. The testimony establishes, I think
9 critical testimony was provided by Pamela Sturm
10 and Ryan Hillegas.

11 With respect to Pamela Sturm, she
12 testified that she had no contact whatsoever with
13 any member of law enforcement regarding the
14 decision to participate in the volunteer search
15 program and, more importantly, in the decision to
16 go to the Avery property and look for Teresa
17 Halbach's vehicle. As she indicated, and was
18 confirmed by Ryan Hillegas, it was her idea.

19 No one told her anything. No one
20 suggested anything. In fact, she hadn't even
21 been given any instructions by Mr. Hillegas as to
22 what to do and how to do it. He gave her a very
23 generalized map of the area. And she and her
24 daughter, Nikole, went on their way and took the
25 initiative and decided they would go there.

1 Because, at least she knew in her mind,
2 from the media newscast, the last place Teresa
3 Halbach was seen, that anyone knew at that time,
4 was the Avery property. It was her decision to
5 go there, without any association with law
6 enforcement whatsoever. That was confirmed by
7 Ryan Hillegas.

8 The entire volunteer search effort,
9 especially in those early days, that being
10 Thursday night, Friday when the posters were
11 picked up, Friday afternoon when the posters and
12 information were distributed, was entirely his
13 workings, along with his friend, and Teresa
14 Halbach's roommate, Scott Bloedorn. They were in
15 charge of the volunteer efforts.

16 There's no testimony they took any
17 organization, any direction, any control, any
18 supervision, or any advice, for that matter, from
19 law enforcement, other than, perhaps -- and the
20 record is thin on this -- if you find something,
21 call us, here are the phone numbers. Hardly
22 evidence indicating, or establishing, the
23 existence of an agency relationship, or a joint
24 venture relationship.

25 In fact, as I recall the testimony of

1 Ryan Hillegas, it wasn't until later on Friday
2 that they decided that he would have a meeting at
3 the residence of Teresa Halbach and Scott
4 Bloedorn's, the next morning, and perhaps do some
5 searches.

6 And when questioned about the scope, or
7 purpose, or focus of these searches, he indicated
8 that they were searching the roads, the ditch
9 lines, the general fields, in the area from
10 Manitowoc to Mishicot, to the area where -- the
11 apartment where Teresa Halbach lived.

12 Their assumption was the fact that she
13 perhaps had some automobile accident. That was
14 their focus. They weren't looking to search
15 private premises or private property, per se,
16 other than something that might be associated
17 with an open field. That was the focus.

18 There was no law enforcement involvement
19 in that. And as indicated, Pamela Sturm and her
20 daughter, Nikole, show up a good hour after
21 everyone else has been dispatched. Again, the
22 decision to go there was entirely theirs.

23 The tape played by counsel is rather
24 interesting, but there's a couple of ways to look
25 at that. But more importantly, it supports the

1 argument made relative to the procedural point,
2 and that is, at best, it signifies that, well,
3 we're going to have the searchers, maybe we can
4 use those searchers do something later.

5 We want to go back. We want to get a
6 reinterview of Mr. Avery, want to get a
7 reinterview of Mr. Zipperer, and we're going to
8 ask for consent. We can get the searchers to
9 help us with a search. Again, doesn't signify
10 any agency existed, doesn't signify any joint
11 venture existed at that time.

12 At best, it signals that perhaps one
13 would occur in the future. It certainly doesn't
14 suggest, and it doesn't even come close to
15 suggesting, that there was an error, a lie, or an
16 omission, relative to just who these searchers
17 were and what they were up to.

18 Now, with respect to that, I would like
19 to direct the Court to the case of **State vs.**
20 **Anderson**, as an example of what would constitute
21 an error, a lie, or omission. **Anderson** was a
22 case that came out of Kenosha County regarding
23 the execution of a search warrant for narcotics
24 at a particular residence there.

25 In that case, the defense challenged the

1 search warrant on a **Franks** motion, alleging that
2 there were two lies, or reckless disregards for
3 the truth that occurred, in the presentation of
4 the affidavit.

5 One was a statement by the undercover --
6 or by the officer, the affiant, who said, Well, I
7 have reason to believe that the informant we use
8 here is reliable because we made two prior
9 purchases with that individual and they
10 demonstrated their reliability. Defense
11 challenged that as a reckless statement,
12 insufficient to justify credibility, reliance by
13 the Court on that.

14 Secondly, they challenged the statements
15 when the undercover officer said, Well, I saw the
16 ve -- I saw the informant go to and from the
17 residence of the defendant, return to and come
18 from the residence of the defendant. It turns
19 out that, actually, the investigator did lose
20 sight of the informant for a moment or two, and
21 never actually saw them enter the house and exit
22 the house, but it was a matter of moments.

23 The Court likewise determined, under
24 those type of facts, that those were not lies,
25 they were not reckless disregards to the truth,

1 they were reasonable inferences drawn from the
2 circumstances which were presented in the court.

3 And, again, under those circumstances,
4 and taking by analogy what's occurred here, there
5 is no unfair, unreasonable inference drawn from
6 the contents of this affidavit. And if those
7 statements, under those circumstances, were found
8 to be supportive of the issuance of the warrant
9 in that particular case, then certainly anything
10 that occurred in the affidavit here, meet legal
11 sufficiency.

12 The other thing which the **Anderson** case
13 notes, and I would again point out, in footnote
14 seven of **Anderson** --

15 THE COURT: What's the citation?

16 ATTORNEY FALLON: Yes, 138, Wis. 2d, page
17 451, specifically, page 464. The **Anderson** cite is
18 in my brief. Footnote seven, the Court noted that
19 they were, quote, "We are unconvinced that a hearing
20 was providently granted in that case."

21 The **Anderson** case is also significant
22 for another reason, which was discounted by the
23 defense, and so we take issue with that. And
24 that is, the defense says that what information
25 was contained in Investigator Wiegert's mind, in

1 other words, what information he had available to
2 him at the time he applied for the warrant, which
3 may or may not have found it's way into the
4 affidavit, was irrelevant.

5 Well, quite frankly, nothing could be
6 further from the truth. Because as **Rakas vs.**
7 **Illinois**, as **Franks v. Delaware**, and as **State vs.**
8 **Anderson** tell us -- specifically, I should say as
9 **Franks v. Delaware**, not **Rakas** -- as **Franks v.**
10 **Delaware**, and the **Anderson** case tell us, it says,
11 Because the defendant must show either intent or
12 reckless disregard, a **Franks** hearing, by
13 necessity, focuses on the state of mind of the
14 affiant.

15 So what Investigator Wiegert knew and
16 when he knew it, was important. That was the
17 basis for the testimony. He knew that they had
18 found a Toyota RAV 4. He knew from the telephone
19 conversations that it was a late model. In fact,
20 the Court can consult Exhibit 16 regarding that.

21 As a matter of fact, Exhibit No. 6 --
22 I'm sorry -- Exhibit 16 was the recording, so
23 either one, Exhibit 16, but Exhibit 17 is the
24 written transcription. Looking at page 62
25 question by Detective Wiegert:

1 Question: Does it look like a newer
2 one?

3 Caller: Yeah, it's the '99 to 2000.

4 Wiegert: Is there any --

5 Caller: It's more of a bluish-green,
6 though, that's why we don't want to put, you
7 know --

8 Question: Is there any license plates
9 on it?

10 Caller: No plates on it, but it's a
11 little covered up. It's weird, it's covered up.

12 There's also much discussion as to
13 whether it was dark blue, blue, bluish-green.
14 And the Court can consult the transcript on the
15 tape, but she says it's more blue than green.

16 During the course of that trip from
17 Calumet County, to Manitowoc County, to the
18 property itself, Investigator Wiegert knew that
19 there was a Le Mieux sticker, dealer sticker, on
20 Teresa's vehicle, and then confirmed with Ms
21 Sturm that the vehicle she found, likewise, had a
22 sticker. They knew some of the VIN numbers, upon
23 arrival they got the rest of the VIN numbers.

24 All of that information goes to the
25 state of mind. So when the officer uses the word

1 matching, that's what's in his mind. And
2 matching, by the way, doesn't have to be a hyper
3 technical term, as counsel would like to suggest
4 it is.

5 And perhaps in purposes of DNA analysis,
6 matching means hyper technical, dot your eyes,
7 cross your t's, perfect fit. But in every day
8 parlance, matching means matching. It looks like
9 it, it is, it's similar to, etcetera.

10 Again, and that becomes relevant,
11 because the whole purpose of the Fourth Amendment
12 search and seizure law, the whole determination
13 of probable cause is that it -- it's not a hyper
14 technical determination. It's based on reason.
15 It's based on common sense. It's based on
16 inferences. It's based on reasonable
17 possibilities and probabilities that the item
18 looked for will be found in the place searched.

19 Now, also did want to respond to some
20 concerns, because yes, first and foremost, Pamela
21 Sturm did have consent. I don't think that's
22 questioned. She had consent to enter the
23 property. She told us so. And Mr. Earl Avery,
24 likewise, confirmed that he allowed her in.

25 As a matter of fact, his words when

1 questioned about that, words to the effect:
2 Well, he was concerned. He wanted to help out.
3 He wanted to do what he could. And when I asked,
4 Well, if it was your sister, you would want
5 somebody to be willing to help out and let you
6 take a look around, and I believe his answer was
7 yes. So there's no question that Pamela Sturm
8 rightfully had a way to get on there.

9 Again, it is a commercial property.
10 Again, this occurred in the morning, when the
11 property, the salvage yard where the vehicle was
12 located, was in business. It was during business
13 hours, 8 to noon. They were there at 11.

14 So it's a property held open to the
15 public. There were other members of the public
16 milling about, through that yard. In fact, the
17 phone call, Exhibit 16 and 17, which the Court
18 is, again, free to peruse, indicates there was
19 observations of other individuals floating around
20 at the time the vehicle was found.

21 In fact, Ms Sturm was somewhat
22 concerned, because she didn't know who they were,
23 or what they were up to. And she had a pretty
24 good feeling that she had found the vehicle.
25 Otherwise, I don't think she would have been all

1 that concerned.

2 But not knowing who is there, what's
3 going on, I think the fact of her heightened
4 sensitivity, is further evidence. Also, a fact
5 in the mind of Investigator Wiegert and Sheriff
6 Pagel, that there was something to the finding of
7 that vehicle, that it was the vehicle everyone
8 was looking for.

9 Next, the defense would have us to
10 believe that, there is no basis for law
11 enforcement to even come in there. Well, excuse
12 me, but you have a situation where you have the
13 vehicle of the missing person, found in the
14 corner of a business piece of property. Law
15 enforcement had every right to go in there and
16 assist in, one, securing the vehicle, you have
17 exigent circumstances here.

18 It's interesting to note that, as was
19 pointed out in the testimony, the vehicle is
20 reasonably close to the car crusher. The vehicle
21 is also secreted from view. It is a vehicle, as
22 Mr. Avery told us, he didn't even know it was
23 there two or three days earlier.

24 So all of these factors come into the
25 equation as to the reasonableness -- and that's

1 the linchpin of Fourth Amendment analysis, the
2 reasonableness of law enforcement behavior upon
3 arrival at the scene. They went there. They
4 secured the vehicle. Took care of the safety of
5 Pamela Sturm and her daughter, Nikole.

6 Now, even if the defense wanted to make
7 the argument, I saw -- I heard inklings of it,
8 that there were somehow some kind of trespass
9 here, by law enforcement. Well, the reality is,
10 that doesn't matter. We don't believe there was.

11 But even if the Court were somewhat
12 concerned, I would ask the Court to direct, and
13 perhaps consider, the case of **United States vs.**
14 **Oliver**, Supreme Court case at 466 U.S. 170.
15 **Oliver** is not particularly noteworthy for the
16 Court's analysis, except with respect to one
17 point. And -- And that deals with the law of
18 trespass and it's possible application in Fourth
19 Amendment determination.

20 The law of trespass, this is page 183.
21 Law of trespass, however, forbids intrusions upon
22 land that the Fourth Amendment would not
23 prescribe. For trespass law extends to instances
24 where the exercise of the right to exclude
25 vindicates no legitimate privacy interest.

1 And then they go on to say -- there is a
2 footnote, which I will get to in a minute -- they
3 go on to say, less in the case of open fields,
4 the general rights of property protected by
5 common law trespass, have little or no relevance
6 to the applicability of the Fourth Amendment.
7 Well, by analogy, we're in a salvage yard here,
8 and whose expectation of privacy are we concerned
9 with, Earl and Charles Avery, or is it Steven
10 Avery.

11 With respect to trespass, the Court went
12 on in the footnote, the law of trespass
13 recognizes the interest, and possession, and
14 control of one's property, and for that reason,
15 permits exclusion of unwanted intruders. But it
16 does not follow the right to exclude conferred by
17 trespass law, embodies a privacy interest also
18 protected by the Fourth Amendment.

19 To the contrary, the common law of
20 trespass furthers a range of interest that have
21 nothing to do with privacy and that would not be
22 served by applying the strictures of trespass law
23 to public officers. And the footnote goes on.

24 In examining the totality of the
25 circumstances here, taking all of the evidence

1 that the Court has taken in, over the course of
2 the last day and a half, there is no basis,
3 whatsoever, under the Fourth Amendment law, to
4 suppress any of the evidence. One, there is no
5 standing, by Mr. Avery, to challenge any of the
6 searches, other than the search of his trailer
7 and his residence, although he attempts to do so.
8 And he attempts to do so on the basis of a **Franks**
9 challenge.

10 Again, there was no basis to hold a
11 hearing and, clearly, based on the testimony
12 which was established by all of the witnesses
13 here, there was certainly probable cause to
14 justify the search warrant and conduct the search
15 that law enforcement conducted. There is no
16 material omission, or material lie, affecting the
17 establishment of probable cause in this
18 particular case. As a result, this Court is duty
19 bound to deny the request and we ask the Court to
20 do so. Thank you.

21 THE COURT: Mr. Buting, brief rebuttal?

22 ATTORNEY BUTING: Yes, Judge, I will try to
23 be brief because I know it's getting late here.
24 The -- A couple things are not -- a lot of things
25 are not clear about what position the State is

1 really taking here. It seems to say that, because
2 Mr. Avery has no personal privacy interest in, for
3 instance, the remains of Teresa, he can't have any
4 standing.

5 That's totally irrelevant. The Court's
6 have made it clear that would also be true as to
7 stolen property, as in *Hicks*. One has no
8 expectation, or no personal interest in that
9 stolen property, you shouldn't even have it in
10 your house, but the Court said that's not the
11 issue. Ownership is really irrelevant when it
12 comes to standing.

13 So -- And that applies also to -- he
14 said it a couple times, I think he also mentioned
15 it when he was talking about the vehicle, he
16 didn't drive it, he didn't own it, etcetera,
17 etcetera. Again, that doesn't matter. The issue
18 is, is there an expectation of privacy. And,
19 frankly, if -- One factor that he ignored is, in
20 determining whether someone has an expectation of
21 privacy, if the State is going to argue that
22 there was some effort to conceal it, that would
23 seem to even more indicate that there was an
24 expectation of privacy, if it was not out in the
25 open.

1 The reference to the burn barrel somehow
2 being, and the burn pit somehow being, like
3 abandoned, and somehow no expectation of privacy,
4 absolutely, I totally disagree with. First of
5 all, it's not like garbage, even garbage you have
6 an expectation of privacy in until -- as long as
7 it's by your curtilage, until it is picked up, as
8 people often retrieve things from garbage.

9 This is entirely different. When you
10 burn, a burn barrel, expectation is it's not
11 being picked up. It's not ever going to go to
12 someone else. The contents of the burn
13 barrel are, it's going to be entirely burned up.
14 That's the point of it.

15 Moreover, the location of it, as we have
16 seen numerous times through these descriptions,
17 is it's probably a good half a mile, you have to
18 get off the highway and drive a half a mile down,
19 to the driveway that goes over to Mr. Avery, and
20 then back over to his property, going all the way
21 around this big parcel of --

22 ATTORNEY FALLON: I'm going to object. I
23 don't believe there's any evidence that's a half
24 mile ride from one point to the other. I don't
25 recall any evidence of that being introduced.

1 ATTORNEY BUTING: Well, whether it's
2 exactly a half mile, it's clearly a long way off the
3 highway. Would Mr. -- Suppose this analogy, would
4 Mr. Fallon say, that if you have a clothes line
5 hanging over the area where that burn pit is, with
6 your clothes on it, that any individual from the
7 public, or law enforcement, could drive down highway
8 147, turn right on Avery Road, and then drive around
9 the corner, take a left, go all the way over to the
10 Steven Avery residence, park, get out, walk around
11 to the back of it, and start going through your
12 clothes? Of course not. The location of that is
13 obviously not open to the public and there's clearly
14 an expectation of privacy.

15 By the same token, would he expect that
16 somebody would be allowed to drive off of Highway
17 147, down the road, turn left, go all the way
18 down the driveway and start sticking their nose
19 in the burn barrel? No, I don't think so. I
20 think the location clearly indicates an
21 expectation of privacy. And it's not like
22 garbage, because there's no expectation it's
23 going to be picked up by anybody.

24 The reference to commercial business, as
25 I want to mention for just one second, *O'Connor*

1 **vs. Ortega**, I think, did deal with a private
2 office and it was in a hospital, I think. But
3 the comparison of this, what I cited it for is to
4 point out that even -- there's even an
5 expectation of privacy in a commercial setting,
6 not just a private setting.

7 But, this is not strictly what you would
8 classify as an employment, or employee, employer
9 type of case, because this is a family run
10 business. It's not like Mr. Avery is just an
11 employee of GE or something, who has his own
12 private office and expectation in there, but
13 everything else in the big plant is not. This is
14 different. This is a small, family run business
15 where he is not just an employee, he's a member
16 of the family working there and living there.

17 And there is one other case that I would
18 cite to the Court on that point, and that's **State**
19 **vs. Schwegler**, S-c-h-w-e-g-l-e-r, 170 Wis. 2d,
20 487, 1992 case, which was a horse barn, again, it
21 was a commercial business. But where the horse
22 barn, and there was an inspection done, that the
23 Court ultimately found, the owner of that
24 business, even though it was a commercial
25 business, had an expectation of privacy in the

1 barn and the warrantless inspection was unlawful.

2 One last point on the question of
3 proximity and, used to be called curtilage, and
4 that sort of thing. Again, like in all Fourth
5 Amendment law, it is very fact intensive, the
6 Courts recognize the difference between a very
7 large property and a small one.

8 In **State vs. Martwick**, M-a-r-t-w-i-c-k,
9 that's 231, Wis. 2d, 801, I don't have the year,
10 I don't think, but it's at page 819. The Court
11 notes, On a smaller property, such as Martwick's
12 property, the curtilage may very well extend for
13 less distance than on a larger property, where
14 the owner has more room to conduct his or her,
15 quote, "intimate activities of life", citing a
16 U.S. Supreme Court case.

17 And they also -- In this case, they
18 found that it wasn't, but they also note in **State**
19 **vs. O'Brien**, which is at 223 Wis. 2d, 303, at
20 page 316, a 1999 Wisconsin Supreme Court case,
21 the Supreme Court found that a truck parked
22 approximately 200 feet from a farmhouse was
23 nonetheless within the curtilage. So, when one
24 is talking about a large, open, farm type, or
25 parcel like we have here, the whole concept of

1 curtilage is different than if you are talking
2 about a little city house.

3 Now, as to the question of probable
4 cause, and whether the State argues that even if
5 you take -- you strike certain parts from the
6 Paragraph 5 of the affidavit, there's still
7 sufficient probable cause. And one of the points
8 that he made is, he argues, Well, the rest of the
9 affidavit says, she's been missing since October
10 31st; they spoke to Mr. Avery, he conceded that
11 he did see her on October 31st; and that, then,
12 Sturm, the volunteer searcher, citizen searcher,
13 found a Toyota RAV 4 on the property, and as if
14 that alone, I think he says, would be probable
15 cause.

16 But -- And maybe in some settings it
17 would be, if this was a farm, with no other
18 vehicles, and you happen to have -- or maybe just
19 one or two vehicles, and you happen to find a
20 Toyota RAV 4. Well, perhaps that is probable
21 cause, probably would be.

22 This is a auto junkyard. There's 4,000
23 cars on there. So the mere existence of a Toyota
24 RAV 4 would not be unusual, and would not be so
25 significant that, in and of itself, absent any

1 other descriptions that match, that there would
2 be probable cause.

3 Now, I would concede, so there is no --
4 we don't waste anymore time on this, that in our
5 pleadings, we believe the evidence would indicate
6 that there was an agency type relationship
7 between these searchers, these citizens, and the
8 police, and that they were conducting -- using
9 them as an end around. And I will concede that
10 the way the evidence came out on this record, we
11 haven't established that.

12 Patricia (sic) Sturm and Ryan Hillegas,
13 whether truthful or not, clearly the record from
14 them is that they did not have any contact with
15 law enforcement. They weren't organized,
16 encouraged, or whatever.

17 My point in playing that segment of --
18 or that brief phone conversation today, of
19 Investigator Wiegert, was not to try and show
20 that his reference to volunteers proves that he
21 was using them for that, but it goes to his
22 credibility on the other matters that he's
23 testified to, because he swore under oath that he
24 did not say anything to Remiker on the phone
25 about using, or intending to use volunteers, to

1 search the Avery property.

2 ATTORNEY FALLON: I'm going to object,
3 that's a mischaracterization of his testimony.

4 ATTORNEY BUTING: Obviously it's --

5 THE COURT: His testimony will speak for
6 itself, I will take a look at the transcript.

7 ATTORNEY BUTING: Okay. So, yes, but
8 conceding that that -- that one part of Paragraph 5
9 we have not established our burden on, says nothing
10 about the rest of it, though. Granted, okay, so
11 they are volunteer searchers, according to this
12 record. But, Wiegert also says that the volunteer
13 searcher said they had a matching -- a vehicle
14 matching the description, and we know that that's
15 not true.

16 The reference in **Franks** and **Anderson**
17 that the State makes, to the state of mind of the
18 affiant being important, he totally
19 misunderstands, or he's taking it out of context.
20 What the Court is talking about is, sure, the
21 state of mind of the affiant is important,
22 because it's important as to the intent or
23 recklessness element, of the test.

24 It's not relevant what the affiant has
25 in his mind that he doesn't present to the Court.

1 Otherwise, why would we have search warrants in
2 the first place, if all that it needed was that
3 the officer, in his own mind, is convinced that
4 he's got enough evidence, but he feels like he
5 doesn't have to even tell the Court.

6 That's preposterous. That's turning on
7 its end, the whole process of requiring an
8 independent evaluation by a magistrate, not
9 allowing officers themselves to accumulate facts
10 or beliefs and come to some conclusion on their
11 own. Those facts and beliefs need to be
12 presented to the Court. It's not enough that he,
13 in his own mind, thought, oh, well, this is
14 enough for a match. He should tell the Court
15 what it is that makes him think that. And he
16 didn't do that.

17 Just two other quick points. One, yes,
18 this is a property open for business, and yes,
19 there are other people wandering around there at
20 the time. But all of them had permission. It's
21 clear, that the custom and practice was that
22 people don't go into that salvage yard, into the
23 pit, and start looking at cars, without -- that
24 is customers -- without permission from the
25 owners first. And that's what Patricia (sic)

1 Sturm did, that's not what Detective Remiker did.

2 It's not a question of trying to apply
3 trespass law, specifically, which is the **Oliver**
4 case. It's a question of, under the Fourth
5 Amendment, whether Detective Remiker had a lawful
6 purpose in being where he was and observing what
7 he saw.

8 Even if there is some exigent
9 circumstances to allow him to come down to the
10 property and to, quote, "secure the vehicle", he
11 did much more than that. And that's the point,
12 he didn't just come down here, secure the
13 vehicle, talk to the Sturms, then go get a
14 warrant, which is what he should have done.

15 He did more. He searched the vehicle,
16 because he went up to it with a flashlight and he
17 looked in and he used illumination to allow him
18 to see other evidence related to the car,
19 particularly the VIN. That's what happened.

20 It's analogous to what happened in
21 **Hicks**, where they recorded the serial numbers.
22 They moved them, the speakers or stereo
23 components, recorded the serial numbers. And
24 that was considered a search that was unlawful.

25 So, for all those reasons, I think the

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Court should find that we have met our burden,
under **Franks**, and that the motion to suppress
should be granted. Thank you.

THE COURT: All right. Given your
arguments, and my need to look at the transcript,
I'm not sure I will have a decision for you on this
issue on the 22nd, but we certainly will have some.
And I will see you then. Is there anything else
from either party?

ATTORNEY KRATZ: No.

ATTORNEY STRANG: No, your Honor. Thank
you.

THE COURT: If not, we're adjourned for
today.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
)ss
2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 15th day of August, 2006.

Diane Tesheneck, RPR
Official Court Reporter

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 _____
4 STATE OF WISCONSIN,
5 PLAINTIFF, JUDGE'S DECISION
6 vs. Case No. 05 CF 381
7 STEVEN A. AVERY,
8 DEFENDANT.
9 _____

9 **DATE:** AUGUST 22, 2006

10 **BEFORE:** Hon. Patrick L. Willis
11 Circuit Court Judge

12 **APPEARANCES :**

13 KENNETH R. KRATZ
14 Special Prosecutor
15 On behalf of the State of Wisconsin.

16 THOMAS J. FALLON
17 Special Prosecutor
18 On behalf of the State of Wisconsin.

19 DEAN A. STRANG
20 Attorney at Law
21 On behalf of the Defendant.

22 JEROME F. BUTING
23 Attorney at Law
24 On behalf of the Defendant.

25 STEVEN A. AVERY
Defendant
Appeared in person.

* * * * *
TRANSCRIPT OF PROCEEDINGS

Reported by Diane Tesheneck, RPR
Official Court Reporter

1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery, Case No. 05 CF
3 381. Will the parties present state their
4 appearances for the record, please.

5 ATTORNEY KRATZ: State of Wisconsin appears
6 by Calumet County District Attorney Ken Kratz,
7 appearing as Special Prosecutor. Also appearing as
8 Special Prosecutor is Tom Fallon, from the
9 Department of Justice.

10 ATTORNEY STRANG: Steven Avery is here in
11 person and he's represented by Jerry Buting of
12 Buting and Williams. And Dean Strang of Hurley,
13 Burish and Stanton. Good morning.

14 THE COURT: All right. We're here this
15 morning for the Court to issue its decision on a
16 number of motions that have been filed. Following
17 the decisions on those motions, the Court will take
18 a summary of the motions that are still outstanding,
19 just to make sure that they are all being dealt
20 with.

21 Court will first issue its decision on
22 the defendant's motion to dismiss on the grounds
23 that the State has made a trial in Manitowoc
24 County impossible. The basis for this motion is
25 alleged that the State has taken actions to make

1 a fair trial in Manitowoc County impossible.

2 Specifically, the defendant refers to
3 eight press conferences that were conducted
4 primarily by the Calumet County District Attorney
5 and Sheriff. Four of these press conferences
6 occurred after the defendant's arrest in this
7 case. The defendant also cites comments made in
8 a two-part news story in May of this year by the
9 Manitowoc County Sheriff.

10 The defendant asserts that his
11 constitutional rights under Article 1, Section 7
12 of the Wisconsin Constitution, as well as his due
13 process rights under the 14th amendment to the
14 United States Constitution, and Article 1,
15 Section 8 of the Wisconsin Constitution were
16 violated by the State's participation in pretrial
17 publicity.

18 The defense brief concludes on Page 11,
19 that, taken together, the State's actions
20 effectively have destroyed Avery's opportunity to
21 obtain an impartial jury in Manitowoc County.
22 That is, the basis for requesting dismissal as a
23 sanction is the claim that participation by
24 agents of the State in pretrial publicity has
25 precluded the defendant from receiving a fair

1 trial in front of Manitowoc County jurors. The
2 Court has reviewed the media account -- accounts
3 referenced by the motion.

4 The defendant cites no Wisconsin case
5 which has ever granted the remedy he requests;
6 that is, no Wisconsin case has ever found that a
7 defendant is entitled to dismissal of a criminal
8 charge because of the State's participation in
9 pretrial publicity.

10 The defendant does cite two Wisconsin
11 cases as being relevant: **State ex rel. Schulter**
12 **v. Roraff**, a 1968 Wisconsin Supreme Court case,
13 and **Briggs vs. State**, a 1977 Wisconsin Supreme
14 Court case.

15 In neither of these cases did the Court
16 order that the criminal charges involved be
17 dismissed. In fact, the Court specifically
18 rejected the remedy in **Schulter**, the one case in
19 which the defendant actually requested dismissal.
20 Continuance and change of venue have been the
21 only remedies approved, to date, where
22 prejudicial pretrial publicity threatens the
23 defendant's right to a fair trial.

24 The Court is not prepared to say that
25 the State's participation in pretrial publicity

1 could never justify dismissal of criminal
2 charges; indeed, there's language from the
3 **Schulter** decision which suggests that the Court
4 did not rule out the possibility entirely.
5 There's a sentence that reads as follows: In
6 **State vs. Woodington**, we considered the problem
7 of pretrial publicity and concluded that the
8 remedy was not necessarily the dismissal of
9 charges, but a change of venue, or continuance of
10 the trial, and the careful selection of the jury
11 on voir dire.

12 So it may be possible that, in an
13 appropriate case, the Supreme Court could justify
14 dismissal as a sanction. However, since no
15 reported decision ever -- ever sanctioned the
16 remedy of dismissal, this Court concludes that a
17 remedy as drastic as dismissal could only be
18 justified by very egregious behavior on the part
19 of the State.

20 The Court concludes in this case that
21 the State's role in pretrial publicity was not
22 egregious, or designed to jeopardize the
23 defendant's right to a fair trial. The Court has
24 reviewed the participation of the State
25 complained of by the defendant and makes the

1 following observations:

2 The first four of the eight cited press
3 conferences were more informational in nature and
4 also related more to the missing person report,
5 not to the involvement of the defendant in the
6 crimes that have been alleged in this case. The
7 last four press conferences did involve a
8 detailing of the accusations made against the
9 defendant, in some cases with more detail than
10 the Court believes was necessary.

11 But the content was largely confined to
12 information contained in the Complaints against
13 Mr. Avery, and the co-defendant in this case,
14 Brendan Dassey. While the content was somewhat
15 inflammatory in nature by virtue of the very
16 allegations of fact, similar to the situation
17 described in the *Briggs* decision, the information
18 was largely available to the press and the public
19 anyway, from the Complaints, which already were,
20 or were soon to become, public information.

21 The Court notes that the press in this
22 case has given publicity to a number of pleadings
23 and motions that have been filed, even before the
24 court proceedings dealing with those pleadings.
25 So, it is unlikely that the news conferences

1 resulted in the disclosure of any meaningful
2 information that would not have been publicized
3 in any event.

4 The Court also notes that, especially
5 early in these proceedings, there were media
6 reports that the defendant and members of the
7 defendant's family believed the police were
8 unfairly picking on him and suggested that the
9 defendant was being framed; indeed, the defense
10 in this case has filed motions indicating that
11 such a defense may be pursued at trial.

12 Supreme Court Rule 20:3.6(d) permits a
13 district attorney to make a statement reasonably
14 required to protect the State from the adverse
15 effects of publicity not initiated by the State.
16 Early in these proceedings, such adverse
17 publicity existed. The State was reasonably
18 entitled to respond to public allegations that it
19 was basing its decisions on bias rather than the
20 evidence obtained.

21 With respect to the two-part news story
22 involving the Manitowoc County Sheriff, the Court
23 notes that that took place in May, a number of
24 months before the scheduled trial date. At the
25 outset, the Court does conclude that a number of

1 the comments made by the Sheriff were ill-advised
2 and the Sheriff should not have participated in
3 the interview, even in the absence of a
4 prohibition order issued by the Court. The Court
5 does conclude, however, that his participation
6 was not so egregious or prejudicial as to justify
7 dismissal of the charges.

8 First, it had been previously reported,
9 and the May reports reiterated, that the Sheriff
10 was involved in the wrongful prosecution of
11 Mr. Avery back in 1985. The Sheriff's testimony
12 at the July 5 hearing in this case suggested he
13 may still not be convinced that Gregory Allen is
14 guilty and Steven Avery is innocent in the 1985
15 sex assault. But the Sheriff appears to be
16 largely alone in that belief.

17 As has been widely reported for some
18 time, the State has not only conceded that
19 Mr. Avery did not commit the 1985 crime, but the
20 State has concluded that another man, Gregory
21 Allen, did. Thus, any viewer of this report
22 would have serious reason to question the
23 Sheriff's objectivity.

24 To further balance the report, it
25 included prior statements from members of the

1 defendant's family that law enforcement
2 representatives were unfairly picking on the
3 defendant's family.

4 Sheriff's explanation as to why his
5 department would have had no reason to frame the
6 defendant may have been unfortunately worded, but
7 the Court is satisfied that the Sheriff was
8 trying to explain, in an admittedly awkward way,
9 why the allegation that his department was trying
10 to frame Steven Avery should not be believed. As
11 the Court has already noted, while the Sheriff
12 should not have granted the interview, his
13 participation is somewhat mitigated by a
14 perceived need to respond to publicized frame-up
15 allegations on the part of the defendant and his
16 family.

17 A person viewing the report may well
18 have come away with the impression that the
19 Sheriff believed the defendant is guilty of the
20 crimes charged in this case. That should not be
21 any more surprising than that the defendant's
22 family, friends, and his attorney in a civil
23 case, Stephen Glynn, publicly expressed their
24 belief in his innocence in the same report.

25 If law enforcement officials did not

1 believe the defendant was guilty, this Court
2 would certainly expect the State to move to
3 dismiss the charges against the defendant. The
4 Court gives the public more credit than to be too
5 unduly influenced by comments from either side.
6 The report was balanced and not so inflammatory
7 that persons who viewed it months ago could still
8 not provide the defendant a fair trial if
9 selected as jurors.

10 Finally, the Court notes that while the
11 defense is requesting dismissal because he
12 asserts the State's participation in pretrial
13 publicity has made a trial in Manitowoc County
14 impossible, the defendant acknowledges in another
15 motion that if the Court grants an adjournment of
16 the trial date to early next year, a fair jury
17 composed of Manitowoc County citizens could be
18 selected. At least, the Court believes that's a
19 fair inference for the Court to draw from the
20 defendant's contingent change of venue request.

21 The bottom line is that while there may
22 be a set of facts which would warrant the relief
23 the defendant seeks, there are no such facts
24 present here. The complained of publicity
25 occurred many months before the scheduled trial.

1 Early news conferences focused on the search for
2 Teresa Halbach, not the charges against the
3 defendant.

4 Later press conferences with the Calumet
5 County District Attorney and Sheriff were mainly
6 confined to information available in public
7 records. The Manitowoc County Sheriff's
8 participation in the May interview was
9 ill-advised, but not so prejudicial as to justify
10 the remedy the defendant seeks.

11 The defendant's own contingent change of
12 venue request demonstrates his belief that, with
13 adequate precautions, a fair jury can be selected
14 in Manitowoc County. For all these reasons, the
15 defendant's motion to dismiss is denied by the
16 Court.

17 Before I proceed to other motions, I
18 will note that there have been motions filed
19 relating to change of venue and scheduling of the
20 trial date. And it's my understanding that the
21 parties have a stipulation on those issues to
22 propose to the Court this morning; in fact, I
23 have been handed a written stipulation. Counsel,
24 does one of you care to put it on the record for
25 the Court?

1 ATTORNEY KRATZ: I certainly can, Judge. I
2 don't know how much in detail the Court wants me to
3 go. We have provided the Court a two-page
4 stipulation. That stipulation attempts to deal with
5 the issues of change of venue, as well as trial
6 schedule. The stipulation, and I will read at least
7 the part of the stipulation that is being proposed
8 towards the bottom of Page one.

9 The parties, that is, the defense and
10 the State, have agreed to the following: Number
11 one, that the jury trial in this case will
12 commence on or about February 5, 2007. The
13 parties continue to believe that the trial itself
14 will last approximately six weeks. I note for
15 the record that I'm paraphrasing, when
16 appropriate, in parts of the stipulation.

17 Number two, that the jury trial will
18 physically be held in the Calumet County
19 Courthouse.

20 Number three, that the Court has agreed
21 upon the county in which the jury will be
22 selected. The parties have identified and have
23 agreed upon that jury pool, and the Court may
24 wish to comment on that thereafter.

25 The stipulation is proposed by myself

1 and Mr. Strang, both as lead counsel for the
2 relative parties. The stipulation includes
3 acquiescence by Mr. Avery, and a statement as to
4 waiver of right to be tried physically here in
5 Calumet County. And also includes the agreement
6 of the Halbach family, by Tim Halbach, a
7 representative of the Halbach family.

8 I should note that the purpose of the
9 stipulation, or at least in part, as well as the
10 Halbach's acquiescence, is based upon the Halbach
11 family's ability to now fully participate, if
12 they choose, in all aspects of the jury trial, as
13 the physical location would be within Calumet
14 County.

15 Attached to the stipulation includes
16 proposals from Sheriff Pagel, with the agreement
17 of the Manitowoc County Sheriff's Department.
18 This sets forth reasons why Calumet County is a
19 preferred venue, or preferred place of trial in
20 this case, as to issues of security, transport,
21 and the physical evidence which is being held in
22 the Calumet County Courthouse.

23 Lastly, there is correspondence from
24 Mr. Rollins, who is Corporation Counsel, acting
25 on behalf of Manitowoc County. This county, that

1 is, Manitowoc County, has requested this Court
2 adopt the stipulation, based upon the physical
3 amenities that the Calumet County Courthouse may
4 have, Mr. Avery's location, the physical
5 evidence, again, and the participation of the
6 Halbach family.

7 For all of those reasons, and reasons
8 previously provided in more detail to the Court,
9 including this proposal having been made by me
10 back in, I believe it was February of this year,
11 the parties jointly, that is, Mr. Avery, his
12 lawyers, and the State, is asking the Court adopt
13 the stipulation.

14 THE COURT: Mr. Strang.

15 ATTORNEY BUTING: Counsel recited the
16 stipulation's terms, in their essence. He did it
17 fairly. He did it accurately, but for one small
18 item on which he misspoke, innocently, and that is
19 simply that Mr. Avery has agreed in writing here,
20 not to be tried in Manitowoc County, physically.
21 The trial will take place in Calumet County, but it
22 would be Manitowoc County in which he had a right to
23 insist upon the physical location of the trial. And
24 he's agreed instead to try the case in the Calumet
25 County Courthouse, just as counsel explained.

1 THE COURT: All right. I will note there
2 were some written modifications to the third
3 paragraph in the stipulation, that after the parties
4 approached the Court, I indicated I had a concern
5 with. At one point, it was my understanding the
6 parties wished the county from which the jury would
7 be selected to not be disclosed at this time. But I
8 understand the parties do not have an objection to
9 disclosure as of today.

10 ATTORNEY KRATZ: That's correct, Judge.

11 THE COURT: Mr. Strang.

12 ATTORNEY STRANG: That's true.

13 THE COURT: And I think that is important,
14 for the Court to make sure that Mr. Avery -- and I'm
15 going to conduct a brief colloquy with him on the
16 record today -- that everybody understands and
17 agrees what is being proposed here and,
18 specifically, that the parties both agree that the
19 jurors are to be selected from Manitowoc County. Is
20 that correct?

21 ATTORNEY STRANG: Yes.

22 ATTORNEY KRATZ: Yes.

23 THE COURT: Mr. Avery, is that your
24 understanding of the recommendation that the parties
25 are proposing to the Court today, and that you have

1 agreed to?

2 MR. AVERY: Yes.

3 THE COURT: Okay. I do have some questions
4 to ask of you, to make sure that you understand it,
5 and I want to make sure that you are knowingly
6 agreeing to this proposal.

7 First of all, do you understand that you
8 have a constitutional and statutory right to keep
9 venue in Manitowoc County, if you wish; that is,
10 a right to be tried not only by a jury of
11 Manitowoc County residents, but also, at least
12 arguably, to a trial physically held in Manitowoc
13 County. Do you understand that?

14 MR. AVERY: Yes, I do.

15 THE COURT: Do you also understand that the
16 venue statute, Section 971.225, only permits the
17 Court to order the trial to be held in another
18 county if I make a determination that an impartial
19 trial could not be held in Manitowoc County? That
20 is, if you were not requesting it, the Court would
21 not be ordering that this trial be held in Calumet
22 County; do you understand that?

23 MR. AVERY: Yes.

24 THE COURT: Is it your wish to be tried in
25 Calumet County in this case, with a jury composed of

1 Manitowoc County residents?

2 MR. AVERY: Yes.

3 THE COURT: Has anyone made any promises or
4 threats to you, to get you to request this
5 provision?

6 MR. AVERY: No.

7 THE COURT: Have you had adequate time to
8 discuss this decision with your attorneys?

9 MR. AVERY: Yes.

10 THE COURT: And do you have any questions
11 at this time? If you do, I would go off the record
12 and permit you to discuss the matter further with
13 your attorneys. Do you have any such questions?

14 MR. AVERY: No, I don't.

15 THE COURT: Very well. The parties had
16 alerted the Court a few days ago that this
17 stipulation would be being presented today, so I
18 have had some time to give it some thought. I also
19 took the opportunity, a few days ago, to travel to
20 Calumet County in order to tour the courthouse
21 facilities.

22 I agree that there are some advantages
23 to holding the trial in Calumet County, in terms
24 of security relating to both the defendant and to
25 the jurors. There also appears to be more space

1 at the courthouse for the media.

2 And the Court has been informed that
3 Manitowoc County officials believe it would be
4 more economical to hold the case in Calumet
5 County. That is not a major request, obviously,
6 in the Court's decision, but the Court is aware
7 that Manitowoc County officials concur in the
8 move. And I also understand that the victim's
9 family has joined in this request; in fact,
10 Calumet County, I believe, is closer to their
11 home than Manitowoc.

12 Based on those considerations, the
13 request that's been made by the parties, I'm
14 going to grant the joint request that's been made
15 here. I will also note the request calls for a
16 delay in the trial date, that will further
17 alleviate any prejudicial effects of any pretrial
18 publicity, avoid any potential conflicts with the
19 Thanksgiving holiday that might have occurred had
20 the trial started in mid-October, and allow the
21 defense more time to evaluate the evidence in
22 this case, which is somewhat voluminous. The
23 Court has been informed of such requests on the
24 defense in the past. So I will grant the
25 request.

1 The trial date here will be scheduled
2 for February 5, of 2007. I cannot foresee
3 anything at this time that would result in a
4 further continuance of that trial date, and the
5 Court will agree to hold the trial in the Calumet
6 County Courthouse.

7 The jury will be selected, composed of
8 Manitowoc's residents. Jury selection, I think,
9 will take place here. It will be more convenient
10 for everyone. But once the trial begins, it will
11 take place in Calumet County. Is there anything
12 further from either party on that matter?

13 ATTORNEY KRATZ: No, Judge.

14 THE COURT: If not, then the Court will
15 move on to the defense motion to exclude members of
16 the Manitowoc County Sheriff's Department from
17 testifying in this case. That motion initially
18 included a request, also, to prevent members of the
19 Sheriff's Department from overseeing the jury in
20 this case. But, Mr. Strang, it's my understanding
21 that with the move of the physical site of the trial
22 to Calumet County, that portion of the defense
23 motion is being withdrawn.

24 ATTORNEY STRANG: It is in the sense that I
25 think it's mooted. There are a number of logistical

1 details attending the stipulation just presented to
2 the Court, and adopted by the Court, that we have
3 not laid out here today, but on which the parties
4 are in accord. And one of those, in sum, is that
5 with a trial conducted in the Calumet County
6 Courthouse, the Calumet County Sheriff's Department,
7 in the ordinary course, would take charge of jury
8 assembly, jury management, the role of bailiff,
9 custody of Mr. Avery, if in fact he's in custody at
10 the time of trial.

11 And we see that as mooted the request
12 for relief as to a role with the Manitowoc County
13 Sheriff's Department, in prospective or actual
14 jurors, because under this proposal the Manitowoc
15 County Sheriff's Department will have no role
16 with, or contact with, actual or prospective
17 jurors.

18 THE COURT: Okay. All right. As the Court
19 noted, the defense has filed a motion to exclude all
20 members of the Manitowoc County Sheriff's Department
21 from testifying on behalf of the State, as part of
22 the State's case in chief.

23 The sole basis for the defense motion
24 arises out of comments made in an interview
25 Sheriff Kenneth Peterson provided to FOX 11 News

1 in Green Bay, portions of which were aired in a
2 two-part report on May 11 and 12 of this year.
3 The Court is not going to detail the Sheriff's
4 comments further here, other than to note that
5 they related to the Sheriff's involvement with
6 Mr. Avery in the past, including the Sheriff's
7 role in the prosecution of Mr. Avery back in
8 1985, relating to a sex assault charge, for which
9 he was subsequently exonerated. The Sheriff also
10 relayed in the report some of his own opinions
11 concerning the defendant's personality.

12 The defendant contends that he is
13 entitled to the remedy he seeks because the
14 Sheriff's's comments were calculated to interfere
15 with the defendant's right to a fair trial in
16 Manitowoc County, before a Manitowoc County jury.

17 The Court has reviewed the two-part news
18 report in it's entirety and I have also read and
19 heard the party's arguments; that is, the written
20 argument submitted by Mr. Strang, with his
21 motion; the written response submitted by
22 Mr. Fallon; as well as the arguments made at the
23 July 5, 2006 hearing. The Court makes the
24 following observations:

25 The Court has accepted, today, the

1 stipulation of the parties that the trial will be
2 held in Calumet County, with a Manitowoc County
3 jury. So the defendant has not lost his
4 constitutional right to a trial in the county
5 where the crimes are alleged to have been
6 committed. The place of the trial is being moved
7 at the joint request of the defendant and the
8 State.

9 Earlier in these proceedings, the
10 parties agreed, informally, to eliminate out of
11 court comments to the press; the State, through
12 the attorneys or representatives of the Calumet
13 County Sheriff's Department, and the defense
14 through defense counsel or the defendant himself.
15 There was, and is, no order at this time to
16 support this agreement. But it came about as a
17 result of the Court's reluctance to issue a gag
18 order, which the Court regarded as an extreme
19 remedy. The Court felt that this agreement,
20 along with the admonition to the parties to
21 comply with Supreme Court Rule 20:3.6 would
22 address the concerns initially raised by the
23 defense.

24 The informal agreement has proven
25 largely effective with respect to the parties

1 involved. No party mentioned any concern at the
2 time with comments originating from the Manitowoc
3 County Sheriff's Department. The Court did not
4 issue any type of gag order, and the Sheriff's
5 comments in this case did not violate any such
6 order.

7 There is no evidence that the Sheriff
8 initiated contact with FOX 11 News.
9 Representatives of that organization apparently
10 contacted him for the interview.

11 Nevertheless, the Court does believe
12 that the comments were inappropriate coming in
13 the context of these court proceedings. And the
14 Sheriff should not have -- should have used his
15 own discretion to avoid such comments. Those
16 comments fell within the scope of the type of
17 publicity the parties had agreed to stop and had
18 the potential to jeopardize the defendant's right
19 to a jury of Manitowoc County jurors.

20 Whatever the Court's decision is on the
21 defense motion, the Court believes that care
22 should be taken to make sure such comments do not
23 occur again before the trial in this case. The
24 Court notes that the comments involved were those
25 of the Sheriff alone.

1 His department does not have control of
2 this investigation. And the Court has not been
3 presented with any evidence to suggest that any
4 other member of the Manitowoc County Sheriff's
5 Department who participated in the investigation
6 in this case has been directly, or indirectly,
7 influenced in any way by the Sheriff. The Court
8 notes that the Sheriff has announced his
9 intention to retire at the expiration of his term
10 in early January of next year.

11 The Court makes the following
12 conclusions: The Court is unaware of any
13 precedent for granting the remedies the defendant
14 seeks where no court order was violated. The
15 cases cited by the defense, which sustain the
16 drastic remedy of exclusion of evidence, involve
17 violation of either a court order or a discovery
18 statute.

19 Participation by representatives of the
20 State in pretrial publicity has only been used in
21 reported cases as a grounds for change of venue
22 or a continuance. There is even less reason in
23 this case to exclude evidence from members of the
24 Sheriff's Department who did not themselves
25 participate in any allegedly improper comments.

1 The Court further notes that the report
2 was a one time, in two-part, news item on one
3 television station in May, approximately nine
4 months before what will now be the scheduled
5 start of the trial.

6 The Court agrees that the comments made
7 were inappropriate in the context of these court
8 proceedings and did constitute a threat to the
9 defendant's right to fair trial before a
10 Manitowoc County jury; although, the Court has
11 earlier today accepted a stipulation of the
12 parties to have this case heard by a Manitowoc
13 County jury.

14 While the attorney's did not cite
15 concern over comments from the County Sheriff's
16 Department, that is, the Manitowoc County
17 Sheriff's Department, at the time they reached
18 their informal agreement to refrain from public
19 comment in this case, the comments should not
20 have been made.

21 To make sure there are no further
22 problems of this nature, the Court is going to
23 issue an order prohibiting members of either the
24 Manitowoc County Sheriff's Department, or the
25 Calumet County Sheriff's Department, from making

1 any further public comment concerning this case,
2 or the defendant, Steven Avery, until the trial
3 is concluded.

4 The Court is satisfied that adherence to
5 the attorneys to Supreme Court Rule 20:3.6
6 precludes the need for any such order to apply to
7 counsel. I'm directing the counsel for the
8 defense to draft the order and submit it to
9 counsel for the State before submitting it to the
10 Court for signature.

11 Because the Court concludes that the
12 other remedy sought by the defense, that is, the
13 exclusion of testimony by members of the
14 Sheriff's Department of Manitowoc County is not
15 warranted, that portion of the defense motion is
16 denied.

17 ATTORNEY STRANG: As a matter of
18 clarification, your Honor -- and I'm happy to draft
19 the proposed order -- I will intend to include
20 proceedings related to Brendan Dassey within the
21 Court's definition of this case, even though,
22 technically, the Dassey proceedings are under a case
23 number different than the Avery proceedings.

24 THE COURT: Any objection from the State?

25 ATTORNEY KRATZ: I'm not sure you have

1 authority over the Brendan Dassey case, Judge.

2 THE COURT: I don't have authority over the
3 case, but -- and the Court's order would have no
4 affect in his case -- but I think it could extend to
5 comments relating to his role in this case. I
6 will -- I will do this, I will let it up to the
7 parties, in the form of your proposed order, to
8 attempt to resolve that matter. If it still winds
9 up being contested and the parties have alternative
10 versions of the proposed order to submit, I will
11 review them, give the parties a chance to be heard,
12 before I issue the Court's order.

13 ATTORNEY KRATZ: That's fine. Thank you.

14 THE COURT: The Court will next move on to
15 the State's motion in this case to admit statements
16 of Teresa Halbach to co-workers. The State seeks to
17 admit certain statements which Teresa Halbach
18 allegedly made to co-workers in October of 2005,
19 relating to her observations during an earlier visit
20 to the defendant's property and her state of mind
21 based on those observations.

22 The defense opposes the admission of
23 these statements. The admissibility of evidence
24 which the State seeks to introduce involves
25 issues relating to hearsay, relevance, and the

1 defendant's right to confront his accusers. The
2 Court will address each of these issues
3 independently, as they relate to the statements
4 which the State seeks to introduce.

5 First of all, with respect to hearsay,
6 the State asserts that Teresa Halbach's
7 statements relating to both her perceived
8 observations and to her state of mind fall under
9 the hearsay exception contained in Section
10 908.045 (2). That statute provides in relevant
11 part as follows:

12 The following are not excluded by the
13 hearsay rule, if the declarant is unavailable as
14 a witness. A statement which describes an event
15 or condition recently perceived by the declarant,
16 not in contemplation of pending or anticipated
17 litigation and while the declarant's recollection
18 was clear.

19 The statements which Teresa Halbach may
20 have made to her co-workers describing
21 observations from her earlier visit to the
22 defendant's home could fit within this hearsay
23 exception, subject to adequate foundation. At
24 this point, the State has not provided the Court
25 with a date the observations were allegedly made

1 by Ms Halbach, nor when the observations were
2 relayed to her co-workers.

3 However, it appears that any statement
4 relating to her observations may well constitute
5 a statement which describes an event she recently
6 perceived. Indeed, the defense does not
7 seriously dispute, that with proper foundation,
8 the hearsay exception in Section 908.045 (2)
9 could apply to statements relating to Ms
10 Halbach's observations.

11 The statements relating to her state of
12 mind, as opposed to her observations, do not fall
13 within the exception of Section 908.045 (2). A
14 statement of recent perception is exactly that,
15 it is a statement of something which the
16 declarant has perceived. It does not include
17 opinions of the declarant relating to her
18 perceptions or her state of mind.

19 Now, there is a hearsay exception not
20 advanced by the State which could arguably apply
21 to the defendant's state of mind; that is,
22 Section 908.03 (1), which reads, in relevant
23 part, as follows. The following are not excluded
24 by the hearsay rule: A statement explaining an
25 event or condition made while the declarant was

1 perceiving the event or condition, or immediately
2 thereafter. While the statements made by Ms
3 Halbach relating to her then existing state of
4 mind could arguably fall within this exception,
5 they would still have to be relevant before they
6 could be admitted.

7 In order for a statement of Teresa
8 Halbach relating to her state of mind to be
9 relevant, the statement would have to relate to
10 an element of the crimes which the State seeks to
11 prove. A similar issue was addressed by the
12 Court of Appeals in the case of *State vs. Kutz*, a
13 2003 Court of Appeals case.

14 The defendant in that case was charged
15 with first-degree intentional homicide, hiding a
16 corpse, and stalking, arising out of the
17 disappearance of his wife. The State sought to
18 introduce a number of statements attributed to
19 the wife in the time leading up to her
20 disappearance involving threats which the
21 defendant made to her. The State sought
22 introduction of the of statements as evidence of
23 her fearful state of mind at the time she made
24 the statements, shortly before her disappearance.

25 The Court of Appeals ruled that the

1 statements were not admissible, because while
2 they were evidence of the declarant's state of
3 mind, her state of mind was not relevant to the
4 charges in that case. The Court recognized that
5 the primary purpose of introducing the evidence
6 was to demonstrate that the threats were actually
7 made to the wife, not that she was in fear
8 because of the statements.

9 That is similar to the situation here.
10 While any statement of Teresa Halbach involving
11 her state of mind made a few weeks before her
12 disappearance would certainly be relevance as
13 evidence of her state of mind, her state of mind
14 is not really at issue in this case.

15 The State has suggested that her state
16 of mind has a relationship to the elements which
17 the State must prove on the kidnapping charge.
18 However, the Court views the probative value of
19 her sate of mind weeks before the crime as very
20 marginal. The Court does not believe that her
21 state of mind has sufficient probative value or
22 relevance to justify admission of the evidence.

23 The State asserts that the personal
24 observations of Theresa Halbach, as opposed to
25 her state of mind, have relevance as to the

1 defendant's intent and plan to sexually assault
2 her in the future. The Court has heard
3 references in prior arguments of the parties to
4 allegations that Mr. Avery specifically requested
5 Teresa Halbach to return to his residence.

6 Depending on what other facts are
7 introduced her observations, which were relayed
8 to her co-workers, may have probative value which
9 could justify their admission. However, the
10 Court is unable, based on the current state of
11 the record, to resolve that issue at this time.

12 Should the observations of Teresa
13 Halbach fall within the hearsay exception of
14 Section 908.045 (2) and have sufficient probative
15 value to justify their admission, the question
16 remains as to whether the admission of such
17 statements would violate the defendant's
18 constitutional rights under the confrontation
19 clause of the constitution.

20 The United States Supreme Court expanded
21 the scope of the confrontation clause in **Crawford**
22 **vs. Washington**, a 2004 case. The Court ruled in
23 **Crawford** that where testimonial statements are
24 involved, the defendant is entitled to confront
25 his accusers, regardless of the reliability of

1 the statements or whether they fall in firmly
2 rooted hearsay exceptions.

3 For purposes of the State's motion, the
4 key question is whether the statements offered
5 for admission are testimonial in nature. The
6 issue of what is a testimonial statement was
7 recently addressed by the United States Supreme
8 Court in *Davis vs. Washington*, a case decided on
9 June 19th of this year. The case involved the
10 question of whether statements made by an
11 emergency 911 caller were testimonial in nature.

12 The Court ruled that some of the
13 statements made in the course of a 911 call were
14 testimonial, while others were not.
15 Specifically, the Court ruled as follows:

16 Statements are non-testimonial when made
17 in the course of police interrogation, under
18 circumstances objectively indicating that the
19 primary purpose of the interrogation is to enable
20 police assistance to meet an ongoing emergency.

21 They are testimonial when the
22 circumstances objectively indicate that there is
23 no such ongoing emergency and that the primary
24 purpose of the interrogation is to establish or
25 prove past events potentially relevant to later

1 criminal prosecution.

2 Of particular significance to our case
3 is the following language, which the *Davis*
4 opinion quoted from the *Crawford* case: An
5 accuser who makes a formal statement to
6 government officers bears testimony, in a sense
7 that a person who makes a casual remark to an
8 acquaintance does not.

9 With this example the Supreme Court
10 comes very close to describing the statements
11 Teresa Halbach purportedly made to her co-workers
12 as a textbook example of what is not testimonial.
13 The observational statements which the State
14 seeks to admit were not made to the police and
15 were certainly not made in the context of any
16 investigation by anyone. They are much more in
17 the nature of a casual remark to an acquaintance,
18 which is not testimonial.

19 The Court concludes that the statements
20 by Teresa Halbach of her earlier observations of
21 Mr. Avery are not testimonial in nature and their
22 admission would not implicate confrontation
23 clause concerns.

24 In conclusion, any statement made by
25 Teresa Halbach to her co-workers concerning her

1 state of mind at an earlier point in time are not
2 admissible. Subject to proper foundation
3 establishing relevance and probative value,
4 statements that she made involving prior
5 observations may be admissible under the hearsay
6 exception contained in Section 908.045 (2).

7 Finally, for today's hearing, the Court
8 will address the defendant's motion challenging
9 the search of November 5, on the basis that it
10 violated the rule in **Franks vs. Delaware**. I'm
11 not addressing, today, the additional challenge
12 to the search based on alleged multiple
13 executions of the search warrant, because the
14 Court has not yet received from the briefs of the
15 parties on that issue.

16 As part of his challenge to obtaining --
17 to the obtaining and execution of the search
18 warrants, the defendant challenges the
19 November 5, 2005 search warrant on the basis that
20 it was obtained as a result of false statements,
21 knowingly and intentionally made, or with
22 reckless disregard for the truth, that were
23 included in the affidavit supporting the search
24 warrant request.

25 Under the rule of **Franks vs. Delaware**, a

1 1978 United States Supreme Court decision, if the
2 defendant makes a substantial preliminary
3 showing, and proves that such false statements
4 were made, and that they are necessary to the
5 finding of probable cause, a search warrant can
6 be voided and the fruits of the search
7 suppressed.

8 Initially, the defendant's motion
9 alleged that three separate knowingly false
10 statements were made in the affidavit of
11 Detective Mark Wiegert supporting the request for
12 the November 5, 2005 warrant. First, the
13 defendant alleged that Pamela Sturm and her
14 daughter, the two citizens who initially located
15 Teresa Halbach's vehicle on the Avery property,
16 were incorrectly characterized as volunteer
17 searchers, when in fact they were acting on
18 behalf of law enforcement.

19 Following the evidentiary hearing,
20 defense counsel acknowledged that the evidence
21 did not demonstrate that Ms Sturm and her
22 daughter were anything but volunteer searchers.
23 The motion goes on to allege, however, that the
24 affidavit falsely claimed that the volunteer
25 searchers located a vehicle matching the

1 description of the vehicle owned by Teresa
2 Halbach, at the Avery auto salvage.

3 Further the defendant alleges that the
4 affidavit falsely represented that the searchers
5 provided a complete VIN from the vehicle, when in
6 fact the searchers were only able to identify 10
7 of the 17 characters of the vehicle
8 identification number.

9 While acknowledging that Detective
10 Remiker was able to obtain the full VIN of the
11 vehicle when he responded to the scene, the
12 defendant's motion further alleges that Detective
13 Remiker did not have a search warrant, or consent
14 to be on the property, and his complete
15 identification of the VIN can, therefore, not be
16 considered because it was illegally obtained.
17 The defendant concludes that if the false
18 information and Detective Remiker's
19 identification are excised from the affidavit, it
20 lacks the required level of probable cause to
21 justify the issuance of the November 5 warrant.

22 The State asks the Court to deny the
23 motion for the following reasons: First, the
24 allegations made in the defendant's motion do not
25 constitute a substantial preliminary showing

1 justifying an evidentiary hearing under the
2 holding of the *Franks* case.

3 Second, that Steven Avery lacks standing
4 to challenge the searches of any portions of the
5 Avery Auto Salvage Yard, other than his trailer
6 residence and the detached garage, because he has
7 not demonstrated a reasonable expectation of
8 privacy in the other portions of the Avery
9 Salvage property.

10 Third, that no intentional
11 misrepresentations were made in the affidavit.

12 Fourth, even if the challenged
13 information is excised from the affidavit, it
14 still contains sufficient probable cause to
15 justify the issuance of the November 5 warrant.

16 And, finally, that Steven Avery lacks
17 standing to challenge the information gathered by
18 Detective Remiker when the detective responded to
19 the scene on November 5, because whether or not
20 Detective Remiker was legally on the premises,
21 Mr. Avery had no reasonable expectation of
22 privacy, either in Teresa Halbach's vehicle, or
23 the portion of the Avery Salvage property on
24 which Detective Remiker was present.

25 The Court will first address the State's

1 claim that the defendant has not made a
2 substantial preliminary showing entitling him to
3 a hearing on the alleged **Franks** violations. When
4 a defendant alleges that a search warrant is
5 based on knowingly false information, the United
6 States Supreme Court held in **Franks vs. Delaware**
7 that the following procedure governs:

8 Where the defendant makes a substantial
9 preliminary showing that a false statement
10 knowingly and intentionally, or with reckless
11 disregard for the truth, was included by the
12 affiant in the warrant affidavit, and if the
13 allegedly false statement is necessary to the
14 finding of probable cause, the Fourth Amendment
15 requires that a hearing be held at the
16 defendant's request.

17 In the event that at the hearing the
18 allegation of perjury, or reckless disregard, is
19 established by the defendant, by a preponderance
20 of the evidence, and with the evidence -- with
21 the affidavits false material set to one side,
22 the affidavit's remaining content is insufficient
23 to establish probable cause, the search warrant
24 must be voided and the fruits of the search
25 excluded to the same extent as if probable cause

1 was lacking on the face of the affidavit.

2 In this case the defendant's motion
3 alleged, first, that the two citizens who found
4 the RAV-4 were not truly volunteer searches, but
5 persons who Detective Wiegert told Detective
6 Remiker were willing to go to the Avery property
7 on Avery road to search the junkyard salvage
8 area.

9 The quoted language presumably was
10 obtained by the defendant as part of a discovery
11 from a police report. One possible inference
12 from the language could have been that the
13 volunteer searchers had in fact met with
14 Detective Wiegert and expressed their willingness
15 to assist the police in searching the Avery
16 property.

17 While neither party has argued the point
18 at any length, it is at least arguable that if
19 they had been enlisted to assist law enforcement,
20 the searchers may have had to disclose that fact
21 to Earl Avery when they obtained his consent to
22 enter the property, in order to conduct the
23 search. The State has not argued otherwise as a
24 reason for which the motion should be denied.

25 The defense also characterizes as an

1 intentional false statement, or one made with
2 reckless disregard for the truth, the assertion
3 in the affidavit that the searchers claimed they
4 had located a vehicle matching the description of
5 the vehicle owned by Teresa Halbach. The basis
6 for this assertion is that Pamela Sturm was told
7 to be looking for a green vehicle, but she
8 informed police that the vehicle was, quote,
9 "bluish green, though it's more blue than green",
10 end quote.

11 In addition, while the affidavit
12 indicates that Sturm provided the entire 17
13 character VIN, Sturm was actually able to report
14 only 9 or 10 of the 17 VIN characters. She was
15 not in a position to see the remaining
16 characters.

17 Detective Wiegert acknowledged in his
18 testimony that the portion of his affidavit
19 indicating that Patricia Sturm provided the
20 entire VIN was incorrect. He acknowledged that
21 while he obtained the full VIN from Detective
22 Remiker, Ms Sturm was only able to make out 10 of
23 the 17 characters.

24 In addition to the inconsistencies
25 listed in the defendant's motion, the defendant

1 also asserts that the State was not assisted by
2 Detective Remiker's ability to read the full VIN
3 because he did not have authorization or consent
4 to be on the property.

5 The Court was initially inclined to
6 conclude that the defendant's motion did
7 constitute a substantial preliminary showing that
8 false statements had been intentionally included
9 in the search warrant which called into question
10 the level of probable cause needed for the
11 issuance of a warrant. Had Patricia Sturm -- or
12 I believe it's Pamela Sturm -- and her daughter
13 been acting as agents of the State, their
14 discovery of the RAV-4 and it's identifying
15 information, which formed an important basis for
16 the issuance of the warrant, may have been
17 subject to suppression.

18 As the State correctly points out,
19 however, a close reading of the defendant's
20 motion reveals no substantial preliminary showing
21 that the Sturms were acting as agents of law
22 enforcement. The motion does refer to a
23 scheduled meeting of volunteers, which apparently
24 never took place.

25 But there is no assertion that the

1 Sturms had any specific relationship with any
2 member of law enforcement. Indeed, the defense
3 conceded at the conclusion of the hearing that no
4 evidence introduced added anything to the
5 allegations in the original motion.

6 In addition, while the motion describes
7 Detective Remiker's entry on the property as
8 unauthorized and non-consensual, which apparently
9 it was, there's no assertion in the motion that
10 Steven Avery had any legitimate expectation of
11 privacy over either Teresa Halbach's vehicle or
12 the portion of the Avery salvage property on
13 which the vehicle was located.

14 If Detective Remiker's presence on the
15 property had violated Steven Avery's reasonable
16 expectation of privacy, it could perhaps be
17 argued that the failure of the affidavit to
18 disclose his unlawful presence was a material an
19 intentional omission, which could support a
20 **Franks** claim under the Wisconsin Supreme Court
21 decision in **State vs. Mann**.

22 However, since there was no assertion in
23 the motion that the defendant had a legitimate
24 expectation of privacy over the area in which the
25 Halbach vehicle was located, Detective Remiker's

1 lack of permission to be on the property does not
2 measurably contribute to the substantial
3 preliminary showing required as a prerequisite
4 for a hearing on the defendant's **Franks** motion.

5 The Court concludes that the State is
6 correct, the motion does not make a substantial
7 preliminary showing entitling the defendant to a
8 hearing on the **Franks** claim. While the defendant
9 may not have been entitled to a hearing on his
10 **Franks** motion, the Court, nevertheless,
11 conditionally granted one.

12 The evidence introduced at the hearing
13 further supports the conclusion that there was no
14 **Franks** violation in this case. The defense
15 acknowledges that the volunteer searchers
16 referred to in Detective Wiegert's affidavit
17 truly were volunteer searchers; thus, there is no
18 basis upon which to delete their discovery of
19 Teresa Halbach's vehicle, from the Wiegert
20 affidavit.

21 While one can argue whether or not
22 Detective Wiegert was justified in using the term
23 "matching" in the affidavit, the Sturm's clearly
24 did discover a vehicle, which was very similar in
25 appearance to Teresa Halbach's vehicle, and which

1 turned out to be an exact match.

2 While Detective Remiker's entry on the
3 property may not have been authorized by an owner
4 or person in control of the property, there is no
5 evidence to suggest that the defendant had any
6 ownership interest or other expectation in the
7 area upon which the vehicle was located, or the
8 vehicle itself. Thus, the information provided
9 by Detective Remiker is also appropriately
10 included in the affidavit.

11 With all of this information included,
12 there is no question but that the affidavit was
13 sufficient to justify the issuance of the
14 November 5, 2005 search warrant.

15 The State also asserts in it's written
16 argument that Steven Avery has no standing to
17 challenge any of the searches that were
18 subsequently conducted at the Avery Auto Salvage
19 Yard, including searches of the burn barrel, burn
20 pit, the RAV-4, or any of the other buildings
21 located on the property, with the exception of
22 Mr. Avery's residence and detached garage.

23 Resolution of this argument is not
24 necessary to the Court's decision on the **Franks**
25 issue. The Court concludes that this argument is

1 more appropriately addressed in the portion of
2 the defense motion challenging the multiple
3 executions of the original search warrant.

4 For the reasons stated, the defense
5 motion to suppress the fruits of the November 5,
6 2005 search warrant on the grounds that it was
7 issued in violation of *Franks v. Delaware* is
8 denied.

9 Those are all the decisions on motions
10 the Court has today. I did want to take a brief
11 inventory of what I understand to be the
12 outstanding motions and confirm the status of
13 those motions at this time.

14 The State has filed a motion concerning
15 the admissibility of DNA evidence. And it's my
16 understanding that at least at one point the
17 parties were working on a stipulation to resolve
18 that motion. Counsel, where are we on that
19 motion?

20 ATTORNEY KRATZ: I understood, Judge, if
21 there was going to be a challenge to whatever it was
22 that Mr. Gahn had presented, that Mr. Buting was
23 going to alert us to that.

24 ATTORNEY BUTING: That's correct, Judge,
25 and Mr. Gahn has been trying to compile some

1 additional requests that I had made regarding those
2 tests and has not yet complied with that. And once
3 we receive that, I anticipate we'll either -- we'll
4 be in a position to either agree or not agree.

5 THE COURT: All right. I would like to
6 have a date by which the Court will be notified
7 either that the motion is going to be contested, or
8 that it's resolved.

9 ATTORNEY KRATZ: Judge, would the Court be
10 willing to adopt a scheduling plan that Mr. Buting
11 has 30 days after the receipt of our discovery?
12 Mr. Gahn is meeting with Mr. Fallon and myself
13 tomorrow. We should have an idea as to that date,
14 certainly won't be any later than perhaps
15 mid-September. Nonetheless, Judge, Mr. Buting
16 believes that he can have that done within 30 days
17 after receipt.

18 THE COURT: When you say receipt, is that
19 what's going to happen in the next couple of days?

20 ATTORNEY KRATZ: No, Mr. Gahn will be
21 meeting with us. And what I'm suggesting is that we
22 can -- if you wanted to set a date certain for that,
23 we can have that to him, let's say by the 15th of
24 September; Mr. Buting alerting the Court as to any
25 challenges by the 15th of October. That should give

1 us plenty of time.

2 THE COURT: All right. So, Mr. Buting,
3 with the understanding that you are going to get the
4 information by September 15th, the October 15th is
5 acceptable to the defense?

6 ATTORNEY BUTING: Yes, that's fine.

7 THE COURT: Very well. The State has filed
8 a number of other acts motions. The Court has
9 received written arguments and I'm going to be
10 issuing a written decision on those motions. Do I
11 have all of the briefs that are going to be filed.

12 ATTORNEY KRATZ: Yes, you have three from
13 the State, Judge.

14 THE COURT: Mr. Strang.

15 ATTORNEY STRANG: You have everything the
16 defense anticipates submitting.

17 THE COURT: Okay.

18 ATTORNEY STRANG: I think the most recent
19 was Friday, August 18. We submitted a brief on one
20 aspect of Paragraph 6 of the State's motion.

21 THE COURT: All right. And I understand
22 that each party has filed a motion. The defense has
23 filed a motion to admit evidence regarding the
24 defendant's prior wrongful conviction. The State
25 has filed a motion to exclude it. Where are the

1 parties on those motions?

2 ATTORNEY KRATZ: I note that a stipulation
3 was proposed, Judge. I think even Mr. Strang may
4 have provided us with his first suggestion as to
5 that stipulation. This kind of goes on the same
6 track as the stipulation regarding evidence of
7 victim history. That stipulation is to exchanged as
8 well. Would the Court allow us to exchange and then
9 perhaps alert the Court by, again, the 15th of
10 October, if we have a resolution. If we don't, we
11 can certainly tell the Court before that time.

12 THE COURT: Does that work for both
13 parties?

14 ATTORNEY STRANG: Yes. I followed the
15 Court's lead, I submitted a proposed stipulation on
16 the wrongful conviction evidence that really also
17 looks like an offer of proof. It's fairly detailed
18 and I gave the State a written draft of that
19 document either on August 9 or August 10, when we
20 were last here in Court. I don't -- I don't see any
21 difficulty in leaving that issue unresolved until
22 October 15 on the present schedule.

23 THE COURT: All right. So with respect to
24 that issue and the issue of the victim's history,
25 the parties will notify the Court by October 15th

1 either that you have an agreement, or that you
2 don't, and if it requires Court resolution --

3 ATTORNEY KRATZ: I'm sorry, we should
4 probably be using the 16th, the 15th is a Sunday.

5 THE COURT: All right. The 16th.

6 ATTORNEY KRATZ: I don't if it makes that
7 much difference. The 16th I think is --

8 THE COURT: I will use that for the DNA
9 evidence issue as well.

10 ATTORNEY STRANG: Okay.

11 THE COURT: With respect to the suppression
12 motion regarding Marinette County statements, I have
13 received briefs from both parties, but it's my
14 understanding that there may be a related issue the
15 parties want to alert the Court to.

16 ATTORNEY FALLON: Yes, Judge. After
17 reviewing counsel's brief on the matter, the thought
18 occurred to me that I think each counsel would like
19 to be heard. If the Court for one reason or another
20 decides to suppress the statement obtained by the
21 Marinette County Sheriff on Saturday, November 5th,
22 from the point on -- from the point of contention,
23 we would like to be heard as to whether the
24 subsequent statements obtained on November 6th ought
25 to be suppressed as well. And that's because

1 there's a different set of arguments and issues
2 presented.

3 Neither party really briefed those this
4 time around, waiting and preferring to see if
5 there was a need to. So we -- I think each
6 counsel would reserve our right, if we may, to
7 address further those issues if, and only if, the
8 Court finds anything suppressible on the
9 November 5th statement.

10 THE COURT: Mr. Strang, is that a fair
11 statement?

12 ATTORNEY STRANG: That's been the defense
13 intention from the start, both on the motion to
14 suppress statements after the point of contention,
15 as Mr. Fallon puts it, on November 5, 2005. And I
16 might add on the Fourth Amendment suppression
17 motions, as to which Mr. Buting took the lead role,
18 I think the Court properly ought to decide on, is
19 the exclusionary right -- exclusionary role rightly
20 invoked here? Does it have a role to play? If it
21 does, we can be heard later, both parties, on the
22 scope of exclusion, or what potential evidence would
23 derive from any unconstitutional conduct by law
24 enforcement.

25 And I will add, it's not out of the

1 realm of possibility that the State or the
2 defense might wish to offer some evidence on the
3 scope of application in the exclusionary rule;
4 although, it's also quite possible that just
5 would be a matter of written or oral argument.
6 So not only am I in agreement with Mr. Fallon on
7 this point, it's really been my intention from
8 the start as I think a much more orderly and
9 measured way to proceed on those issues.

10 THE COURT: All right. So the -- Whether
11 or not the parties are going to be looking to make
12 further argument, or possibly even introduce
13 additional evidence, will depend on the Court's
14 decision. And the parties are both asking the Court
15 at this time to only make a decision with respect to
16 the November 5 statements. Is that a fair summary?

17 ATTORNEY FALLON: Yes.

18 ATTORNEY STRANG: And there -- Yes, it is.
19 And there, just to endorse the suggestion the Court
20 made during the August 9 and August 10 evidentiary
21 proceedings, there's no challenge to the
22 admissibility of Mr. Avery's statements on
23 November 5 prior to, again, as Mr. Fallon puts it
24 elegantly, the point of contention, and we have both
25 briefed where exactly that arises in the recorded

1 interview.

2 THE COURT: All right. There is a defense
3 motion, filed some time ago, entitled -- it's
4 actually not a motion, but a notice concerning
5 interference with right to counsel. I have been led
6 to believe a number of times that's been resolved,
7 but it's still technically hanging out there.

8 ATTORNEY STRANG: Well, it is resolved. It
9 was not a motion or a request for relief, it was a
10 notice of a concern. Since I had it -- had the
11 concern on June 16, I treated that deadline as one
12 by which I ought to raise the concern in good faith.
13 I did.

14 The State provided me the information it
15 promised about the inmate at issue, his name is
16 Orville Jacobs. I'm satisfied at this point with
17 the information I have gotten from the State. I
18 don't perceive a Sixth Amendment right to counsel
19 concern arising with respect to Mr. Jacobs. Of
20 course, if future information comes to light, or
21 future events warrant it, I will raise the
22 concern again, but I don't anticipate either of
23 those events coming to pass.

24 THE COURT: All right. Since it was
25 entitled a notice and not a motion, I don't believe

1 there's any need for a formal withdrawal document or
2 anything like that.

3 ATTORNEY STRANG: But neither is there any
4 need for a ruling.

5 THE COURT: All right. Then with respect
6 to the defense motion to suppress the fruits of the
7 search, or searches, based on multiple executions of
8 the search warrants, those written briefs are due
9 September 13.

10 ATTORNEY STRANG: Yes, it's a simultaneous
11 exchange, as I understand it, of one round.

12 THE COURT: For my benefit, and I haven't
13 seen the written arguments yet, but it appeared to
14 me possible, based on the way the evidence came in,
15 that there could be different lines of arguments
16 relating to different individual searches. Are the
17 parties -- Are the briefs going to be structured
18 such that different searches are addressed
19 individually?

20 ATTORNEY BUTING: I suppose we could do it
21 that way. I anticipate -- Really, if the Court can
22 recall from the testimony, I anticipate that the
23 major point of contention is going to be after that
24 first three hours or so search was made on the night
25 of the 5th, Saturday night. Thereafter, there was a

1 number of entries and -- and I can address each one
2 of those separately, but I think the primary issue
3 is going to be on that.

4 THE COURT: Let me just ask this, I don't
5 want to tell each party -- either party how to argue
6 their case, but if you have arguments that relate to
7 some searches and not others, please let those be
8 differentiated in your briefs so that I know what
9 you are trying to argue.

10 ATTORNEY BUTING: Okay.

11 THE COURT: And then there's also a State's
12 motion regarding statements to other inmates. I
13 believe I have recently received a written brief
14 from the defense on that. Is there anything more
15 coming from the State, or do I have everything I'm
16 going to have on that?

17 ATTORNEY KRATZ: We just talked about that,
18 Judge. We will discuss that in detail tomorrow and
19 if the Court would allow us an opportunity, perhaps
20 to the 13th of September, we can get that to the
21 Court as well.

22 THE COURT: All right. Any objection from
23 the defense?

24 ATTORNEY STRANG: I don't. That's an issue
25 that's under seal, or we have treated it as sealed

1 to date.

2 THE COURT: Very well. I will give the
3 State until September 13 then to respond.

4 ATTORNEY BUTING: Judge, could we return
5 for just one moment to the multiple execution of the
6 search warrant issue. As the Court framed it, I
7 don't know whether that -- the way these -- the
8 arguments may come out then might really be more
9 amenable to a reply by either party as well.

10 In the event that there are -- that the
11 State has certain arguments on certain searches
12 and not others, or that I have likewise, it might
13 be easier to just reply to them, rather than try
14 and anticipate -- each of us anticipate what the
15 arguments of the others would be. We have a
16 little bit more time to do that now and I just
17 raise that as one way of resolving that.

18 THE COURT: Mr. Fallon.

19 ATTORNEY FALLON: Yes. Thank you. It
20 seems to me that the way -- excuse me -- the way the
21 defense pled the issue and proceeded with its
22 proofs, that the issue has been fairly well narrowed
23 to complain of the searches occurring to Mr. Avery's
24 trailer and garage, starting on Sunday, the 6th,
25 until the second or subsequent warrant was obtained

1 late afternoon, I believe on the 9th.

2 Those were the issues which were the
3 subject of the testimony and it seems to me that
4 that's the context in which the case is going to
5 be argued. So I'm not really sure that we need
6 to separate out the searches per se other than,
7 as the testimony reflected, there was, you know,
8 an entry on Sunday, for instance, and one or two
9 on Monday, and then one on Tuesday, that type of
10 itemization or reflection.

11 I'm not sure it's to our benefit to
12 separate them out any further, because as I
13 reviewed the case law in preparation for writing
14 this brief, it's not much -- it's not the issue,
15 really. And I don't -- I don't know if we really
16 need to reply, and counter-reply, or what have
17 you. It seems to me it's been narrowly pled and
18 the testimony was narrowly produced. So I'm not
19 sure we have a whole lot of range of other
20 searches at issue, so to speak.

21 THE COURT: Let's do this, after each party
22 receives a copy of the other party's brief, if
23 either party feels there's a need to reply, you can
24 ask the Court for permission, in writing, just fax
25 it to me, I will take it up at that time.

1 ATTORNEY STRANG: Thank you.

2 THE COURT: I would ask also on that issue,
3 I think I mentioned it before, I did not have access
4 in our law library, or my online law library, to all
5 of the secondary sources that necessarily relate to
6 that issue. So if you have -- if you're going to be
7 citing any secondary sources, please give me copies.
8 I have got ALR and Amger and those types of things,
9 but I think it was --

10 ATTORNEY BUTING: La Fave.

11 THE COURT: -- La Fave I do not have.
12 Right. I'm not looking to make the file any bigger
13 than it is, but if you cite to La Fave, give me a
14 copy. I think I have already gotten one from the
15 State.

16 ATTORNEY FALLON: I think you got the copy.
17 I think, unless counsel disagrees, I think we have
18 got the relevant portions of La Fave for the Court.

19 ATTORNEY BUTING: I believe so. If there
20 are any -- so the Court has access to case law.

21 THE COURT: Other jurisdiction case law is
22 fine, I have got Lexus Nexus, but La Fave is not on
23 there.

24 ATTORNEY BUTING: So anything like Law
25 Journals, Law Reviews, things of those nature that

1 might -- you do not have access to?

2 THE COURT: If you have got access to Lexus
3 and it's on Lexus, you don't have to send it to me.

4 ATTORNEY BUTING: I use Lexus.

5 THE COURT: Right. So, if it's not on
6 Lexus, send it, otherwise you don't have to. I
7 certainly have access to case law from all other
8 jurisdictions and a number of secondary sources, but
9 not La Fave.

10 ATTORNEY FALLON: Your Honor, may I have
11 just a moment to talk to Mr. Buting on this.

12 THE COURT: Go ahead.

13 ATTORNEY FALLON: I thought we might have
14 one other point of interest for the Court, but I
15 guess we'll have to defer comment until we consider
16 it further.

17 THE COURT: All right. Is there anything
18 further from either party today?

19 ATTORNEY STRANG: Yes. One, just a point
20 of clarification. This may have been implicit in
21 the Court's rulings both on the motion to dismiss
22 and the motion for sanctions to exclude the
23 Manitowoc County Sheriff's Department, since the
24 Court referred to having reviewed the eight news
25 conferences, but I just want to make sure that the

1 record is complete and that, in fact, a viewable,
2 either VHS tape or DVD arrived from WFRV-TV to the
3 Court as I had arranged to happen.

4 THE COURT: Yes, the VHS tape arrived and
5 that's workable.

6 ATTORNEY STRANG: Terrific. Second, I
7 anticipate some further motions, not just motions in
8 limine. Conceivably, for example, some discovery
9 that I received -- was received at my office, I have
10 lost track of the dates now, but it's more than a
11 week and less than two weeks ago. Some new
12 discovery suggests a further non-evidentiary motion.

13 It's also entirely possible, as
14 Mr. Dassey's case proceeds here, that an issue
15 may arise under *Samuels* -- under *State vs.*
16 *Samuels* in this case. We can't know that at this
17 juncture of the proceedings in Mr. Dassey's
18 separate case.

19 But what I would propose is that I treat
20 the October 16 deadline as a good time to file
21 any other motion, other than an in limine issue
22 properly addressed much closer to trial, you
23 know, that has arisen with new discovery, or new
24 information, or new events since June 16.

25 For that matter, September 13, I also

1 could treat as a date for raising any new issues.
2 I know there's at least one that I intend to
3 raise so, that's disclosure. And I guess also
4 jointly request that the Court set a date, fix a
5 date for me to do that, or accommodate new issues
6 that have arisen.

7 THE COURT: Mr. Kratz.

8 ATTORNEY KRATZ: We are going to need a
9 scheduling conference anyway, Judge. We talked
10 about jury questionnaires. We talked about exchange
11 of experts and some other more definite scheduling
12 order from the Court. And whether the Court wants
13 to do that by a phone conference, to at least
14 schedule that meeting, or wants to set that meeting,
15 we're certainly amenable to that.

16 THE COURT: All right. Because of the
17 contemplated adjournment of the trial date, I didn't
18 give that as much attention as I might have before
19 today. I agree that we're going to need a
20 scheduling conference at some point to establish
21 timelines for filing motions in limine, jury
22 questionnaires, those types of things. Do either of
23 the parties have any suggestions about when that
24 could be effectively accomplished?

25 ATTORNEY STRANG: Well, we'll know where we

1 are on some things on October 16, particularly DNA,
2 and the wrongful conviction, and victim's history
3 information.

4 ATTORNEY KRATZ: Perhaps later that week,
5 Judge, we know it's blocked off our calendar so.

6 THE COURT: I know I have got time that
7 week. All right. I'm having the clerk get me my
8 calendar.

9 ATTORNEY KRATZ: Could either be that
10 Thursday or Friday, those work best for us, Judge.

11 THE COURT: Thursday the 19th, morning or
12 afternoon?

13 ATTORNEY KRATZ: Morning would be just
14 fine.

15 THE COURT: Should we say 10:00.

16 ATTORNEY BUTING: That's fine.

17 ATTORNEY KRATZ: That's good, Judge. Thank
18 you.

19 THE CLERK: What date was that?

20 THE COURT: October 19th.

21 ATTORNEY KRATZ: Will that be on the record
22 or in chambers, your Honor?

23 THE COURT: I will notify you about that a
24 little closer to the date, whether it will be on the
25 record, or simply a scheduling conference, or

1 something that involves going on the record. For
2 now, it will be an off the record scheduling
3 conference, but I'm going to hold the time in the
4 event there is anything to deal with on the record.
5 Does either party have anything else that needs
6 addressing?

7 ATTORNEY STRANG: So we'll address
8 deadlines for further motions and the whole sort of
9 schedule before trial at that point?

10 THE COURT: Yes.

11 ATTORNEY STRANG: Fine.

12 THE COURT: Anything else today?

13 ATTORNEY KRATZ: No, Judge. Thank you.

14 THE COURT: If not, we're adjourned for
15 today.

16 (Proceedings concluded.)

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1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 29th day of January, 2007.

Diane Tesheneck, RPR
Official Court Reporter

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, MOTION HEARING

5 vs. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** DECEMBER 20, 2006

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
12 Special Prosecutor
On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
14 Special Prosecutor
On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
16 Special Prosecutor
On behalf of the State of Wisconsin.

17 DEAN A. STRANG
18 Attorney at Law
On behalf of the Defendant.

19 JEROME F. BUTING
20 Attorney at Law
On behalf of the Defendant.

21 STEVEN A. AVERY
22 Defendant
Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery Case No. 05 CF
3 381. This matter is scheduled for a status
4 conference today. And I will indicate for the
5 record that I met with counsel before we began today
6 and they informed me of the status conference.
7 There were a few matters to take up on the record.
8 Will the parties state their appearances for the
9 record, please.

10 ATTORNEY KRATZ: Your Honor, the state
11 appears by Calumet County District Attorney Ken
12 Kratz appearing as Special Prosecutor. Also special
13 Prosecutors Norm Gahn and Tom Fallon.

14 ATTORNEY BUTING: Good morning, your Honor,
15 Buting and Williams by Attorney Jerome Buting
16 appearing on behalf of Mr. Avery. Also Dean Strang
17 appearing on behalf of Mr. Avery. Mr. Avery is
18 present in court.

19 THE COURT: Very well. Mr. Buting, I
20 believe you indicated you wish to take up a matter
21 concerning a motion recently filed by the defense.

22 ATTORNEY BUTING: Yes, Judge, we filed --
23 the defense filed, on December 6, a motion to allow
24 the Court to grant us access to a particular exhibit
25 that we discovered has been sitting in the Clerk's

1 Office in Manitowoc County, in Mr. Avery's 1985
2 wrongful conviction case. We discovered that a vial
3 of his blood, or what we believed was a vial of his
4 blood, was in a box in that file. And we filed a
5 motion.

6 We could see that the box itself, the
7 seal, the evidence tape seal, had been broken and
8 that it had been resealed with a piece of scotch
9 tape. We did not want to open that to see if
10 there really was a vial of his blood in that box
11 until the Court allowed us. So we filed this
12 motion.

13 The Court initially sealed it. I
14 understand the Court is unsealing it today. The
15 Court granted the defense request. The parties,
16 including the prosecution team, went to the
17 Clerk's Office last week. The box was opened and
18 there was, inside of it, a styrofoam box that had
19 also at one point been sealed with evidence tape.

20 That evidence tape had been opened, cut
21 open, and inside the styrofoam package was a
22 liquid vial of Mr. Avery's blood, in a tube, that
23 also was unsealed, and therefore available to
24 anyone who would want to use it to plant evidence
25 against Mr. Avery in this case.

1 We filed our motion and set forth some
2 of the links that we believe will establish at
3 trial. And the issues that remain now are
4 whether or not any sort of forensic tests can be
5 done on the blood that will shed any further
6 information for either party and that is
7 something that the State and I will be working on
8 in the next week.

9 THE COURT: All right. Mr. Gahn, are you
10 handling this one for the State?

11 ATTORNEY GAHN: Yes, I am, your Honor.

12 THE COURT: With respect to the defendant's
13 motion, specifically, what's going to be done with
14 this blood, what's the State's position.

15 ATTORNEY GAHN: Your Honor, the State's
16 position is that we would like to have access to
17 that vial of blood. Our initial investigation in
18 looking into this matter has revealed that although
19 we cannot determine who was the source of drawing of
20 this blood and that there may be some questions on
21 chain of custody. At this point we just haven't had
22 time to fully investigate this matter.

23 In any event, we would like to have
24 access to the blood. There is some chemical
25 testing that we would like to do with this blood.

1 We're confident that the testing that we
2 anticipate doing is going to show that this blood
3 had absolutely nothing to do with the case that
4 is in front of this Court.

5 And we also are in the process of
6 interviewing individuals who did have contact
7 with that blood and -- but that was under the
8 Court's approval back in Manitowoc County and
9 that the individuals who did unseal the blood, it
10 was done under the auspices of a court, and there
11 was nothing really surreptitious, or some type of
12 lapse of security where this could be taken or
13 planted. And we're confident we'll be able to
14 show that.

15 But in order to do that, we would ask
16 the Court to unseal that blood and give us access
17 to it so that we can send this for testing.
18 We're so confident in our position that we're
19 more than willing to split that sample, if the
20 Court wishes, with the defense. In any event, we
21 certainly would like to get on with the testing
22 that we believe will show that this vial of blood
23 had absolutely nothing to do with the case before
24 us.

25 THE COURT: All right. With respect to how

1 this matter is to be handled, Mr. Buting, has the
2 defense determined yet whether or not it wishes to
3 test the blood?

4 ATTORNEY BUTING: Judge, it's my
5 understanding, I don't believe there are any tests
6 that can be done on this vial of blood that are
7 really going to shed any more light to either side.
8 I may be wrong, Mr. Gahn may find someone who thinks
9 that something else can be done. But I very much
10 object to unsealing the evidence and allowing the
11 State to have free access to this blood at this
12 time.

13 What we discussed in chambers I think is
14 a fair way to deal with this, which is that
15 Mr. Gahn and I will talk between now and the end
16 of the year, December 31st, to see if there is a
17 joint proposal we can present to the Court. But
18 my feeling at this time is if there is any
19 transfer of that evidence, I want notice to the
20 defense, I want potentially a representative from
21 the defense present during change of custody, if
22 not even perhaps during the testing itself.

23 But I think we can work that out between
24 the two of us. And if we can't, then we can
25 bring it back to the Court for a decision on how

1 it should be handled. At this time, though, I do
2 strongly urge the Court to keep this evidence
3 locked in the safe at the Clerk's Office in
4 Manitowoc County.

5 THE COURT: All right. Mr. Gahn.

6 ATTORNEY GAHN: May I address that, your
7 Honor?

8 THE COURT: Go ahead.

9 ATTORNEY GAHN: What I would ask the Court
10 to do is this. Again, as we're confident in our
11 position with this vial of blood, I would ask the
12 Court to -- what would be the mechanism. Assume
13 that firstly, wherever we find a place to send this
14 blood, I will call Mr. Buting. They would be
15 welcome to accompany our people, or whoever is doing
16 the testing. They would be welcome to hire an
17 expert to watch the testing. They could even send
18 someone along to accompany the vial of blood
19 wherever it goes. We'll make that opportunity
20 available to them.

21 My concern is this, we're coming up
22 quickly upon this trial date. And there are some
23 places that I believe we may be able to send this
24 vial of blood. Assume that this Friday I come up
25 with a place that I believe is going to give us

1 the -- accomplish the testing that we believe
2 would be appropriate in this case. I will notify
3 Mr. Buting where that will be. And he will be
4 welcome to send his expert or his people along.

5 And the main thing I'm concerned is, if
6 I want to send one of our investigators to
7 Manitowoc County to get that blood, will we be
8 able to have access to it. That's why I'm asking
9 that that be unsealed and the Manitowoc County
10 officials know that, should a representative from
11 the State, and it may either be a Calumet County
12 sheriff or someone from DCI to come to pick up
13 that blood and they can take that blood from the
14 safe.

15 ATTORNEY BUTING: And that's exactly what I
16 don't want to happen. If something happens this
17 Friday, then Mr. Gahn can contact me. If we reach
18 agreement, we can certainly notify the Court by
19 stipulation. You know, we could fax, email motions
20 back and forth. And the Court could certainly sign
21 an order promptly. I don't see that there is any
22 need at this time to say -- to give carte blanche
23 access to this.

24 I have had this experience in other
25 counties, that the only way that I know of that

1 you can insure that the defense is notified --
2 sometimes the Clerk doesn't realize that that's
3 part of the requirement and they go ahead and
4 release it to the State without telling us. The
5 only way to do it, it is in a secured place now,
6 sealed in a safe, with very -- we hope very
7 limited access. And it should remain that way
8 until -- unless and until the State can find
9 somebody, if they wish, who is going to do some
10 of the tests.

11 And with regard to the closeness of
12 trial, this has been sitting in the Clerk's
13 Office throughout the time of this prosecution.
14 This was not some hidden evidence that the
15 defense is dumping on the State at the last time.
16 They had every bit the same opportunity we did to
17 go search the record, particularly since
18 Mr. Avery and his family, from the very
19 beginning, have been claiming that the blood was
20 planted against him by someone in this case.

21 And now we discovered that blood did
22 exist where that could have happened. It was
23 unsealed. The seals have been broken. And I
24 think that the parties can work this out. If
25 Mr. Gahn is concerned about the delay, part of

1 that is because they just chose not to
2 investigate the case and Mr. Avery's claims
3 thoroughly, like they should have.

4 THE COURT: All right. I will make the
5 following observations. And I hear the parties, I
6 don't understand really there to be a dispute
7 between the two parties as to the mechanism for
8 testing the blood. The defense doesn't feel it
9 necessary for the blood to be tested. The State
10 indicates it does and is willing to allow the
11 defense to participate in really, without
12 restriction, in overseeing and the testing of the
13 blood.

14 And the defense is indicating, if the
15 blood is tested, that's what it wants. So I'm
16 anticipating that the parties are going to reach
17 an agreement here. I will give you until --
18 December 31st is a Sunday, yes, Sunday. So I
19 will give you until Tuesday, the 2nd, to agree.

20 If the parties don't agree, the State
21 can file a motion to examine the blood on such
22 terms as it deems appropriate. And the Court
23 will take up that motion and set it for a hearing
24 in very short order, if that's determined to be
25 necessary. But I have to say, based on what I

1 hear the parties telling me on the record today,
2 I'm not sure why that should be necessary.

3 ATTORNEY GAHN: Your Honor?

4 THE COURT: Yes.

5 ATTORNEY GAHN: May we also have relief
6 from your January 19th date where you set that for
7 the turnover, the list of rebuttal witnesses. Since
8 I don't know if we'll be able to make that date, I
9 would like to have relief from that also.

10 And the other final question I have is,
11 assume on Friday there is a place we want to send
12 this blood, is it -- would the mechanism of
13 getting that blood into one of our sheriff's or
14 DCI agent's custody to get it into the mail,
15 simple as I will call Mr. Buting, we try to do a
16 conference call Friday, and would it be as simple
17 as you making a phone call to Manitowoc County
18 saying so and so is going to come down on this
19 date, say next Tuesday, you may release it to
20 him. Is it that simple?

21 THE COURT: Well, you can fax me a
22 stipulation. And certainly based on the
23 stipulation, I can order that it be released under
24 the terms of your stipulation. If you don't reach a
25 stipulation, then it gets a little more complicated.

1 With respect to the rebuttal witnesses,
2 before I would allow a party to have relief from
3 the deadline that's been set, I would like to
4 make alternative arrangements for when the
5 rebuttal witnesses would be notified.

6 I will say on the record, that based on
7 the late notice to the State of the development
8 of this evidence, that certainly sounds like
9 grounds for from relief from the existing
10 deadline. But as far as acting on the motion
11 that you just made on the record, I would take
12 that up at such time as it's coupled with a
13 description of when the notice would be provided.

14 Is there anything else that either party
15 wishes to take up on the record at this time? It
16 was my understanding that the State, specifically
17 Mr. Kratz, was looking for some clarification of
18 discovery items.

19 ATTORNEY KRATZ: I am, Judge. In chambers
20 we discussed the lack of materials being provided to
21 the State on February 1st. The State filed a
22 reciprocal discovery demand with the defense. It
23 was our hope that by the 15th of December, the date
24 that the Judge had ordered for exchange of
25 discovery, that we would have received the witness

1 statements, or reports from investigators that
2 summarize the statements from witnesses.

3 We understand that expert reports may
4 accompany an expert witness list sometime in
5 early January. But the lay materials we had
6 hoped would have been provided by the 15th, and
7 if they are forthcoming, we would appreciate
8 notice of that fact.

9 THE COURT: Mr. Strang.

10 ATTORNEY STRANG: The State had every right
11 to expect that by December 15. Indeed, the Court's
12 order set that as a general discovery deadline. I
13 dropped the ball, or let it pass, being focused on
14 the witness list at the time. We have a limited
15 amount of material that I think does fall within the
16 discovery statute. We discussed this in chambers.
17 And I will make every effort to get that to
18 Mr. Kratz, if not this week, then certainly between
19 Christmas and New Years.

20 THE COURT: Mr. Kratz, anything else?

21 ATTORNEY KRATZ: No, Judge. If I get it by
22 the first of the year, that will provide plenty of
23 opportunity for preparation. Thank you, Judge.

24 THE COURT: Very well. Is there anything
25 else either party wishes to bring up on the record

1 at this time?

2 ATTORNEY KRATZ: Could we just have a
3 moment, Judge?

4 THE COURT: Yes.

5 ATTORNEY KRATZ: We understand, Judge, that
6 some scheduling of logistic matters will be
7 addressed by the Court later on today in a meeting.
8 And there were some other scheduling and other
9 agreements that were placed -- or were discussed in
10 chambers, but nothing that I believe needs to be
11 placed on the record at this time.

12 THE COURT: Thank you. Mr. Strang.

13 ATTORNEY STRANG: The only other matter I
14 would have to raise, your Honor, is just a
15 reiteration of our concern and our request that in
16 any proceeding, telephonic or otherwise, in which
17 the Court and the parties go beyond a discussion
18 strictly limited to scheduling, we would like
19 arrangements to be made for the participation in
20 person or by telephone of Mr. Avery.

21 I realize that the schedule is fluid and
22 that the Court may have to convene other
23 hearings. Purely scheduling matters, of course,
24 need not involve Mr. Avery. But to the extent we
25 get into anything other than scheduling, we

1 simply reiterate the request that he be included,
2 present in some practical fashion.

3 THE COURT: All right. Well, certainly
4 there is a statute, aside from fundamental fairness,
5 that requires that that take place. And if there is
6 anything else that we have to go on record for that
7 doesn't involve scheduling, that's what we'll do.
8 Today's hearing was only scheduled to be a status
9 conference, but the parties notified the Court ahead
10 of time that there were some items to be dealt with
11 on the record and that's how we wound up here today.
12 If necessary, we'll do that again in the future.

13 ATTORNEY STRANG: Thank you.

14 THE COURT: Anything else today?

15 ATTORNEY KRATZ: Not on the record, Judge.

16 THE COURT: Very well. If not, we're
17 adjourned for today.

18 ATTORNEY BUTING: Thank you, Judge.

19 THE COURT: Let's go back on the record.
20 Mr. Buting, you had a clarification question?

21 ATTORNEY BUTING: Just the -- did the Court
22 rule then that the motion we filed is going to be
23 unsealed, or is unsealed?

24 THE COURT: I intend to issue that order to
25 unseal the motion.

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ATTORNEY BUTING: Okay.

THE COURT: With respect to the evidence that's the subject matter of the motion itself, I indicated that I would withhold ruling on that at this time pending what I anticipate will be an agreement between the parties. And if the parties do not come to an agreement, and the State asks for a motion to have the evidence unsealed, I will rule on that motion when it comes in.

ATTORNEY BUTING: So, in the meantime, the evidence that's the subject of the motion will remain sealed?

THE COURT: Yes.

ATTORNEY BUTING: Thank you. I just wanted to clarify that.

THE COURT: Very well. We're adjourned for today.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this day of , 2007.

Diane Tesheneck, RPR
Official Court Reporter

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,
4 PLAINTIFF, MOTION HEARING
5 vs. Case No. 05 CF 381
6 STEVEN A. AVERY,
7 DEFENDANT.

8
9 **DATE:** JANUARY 4, 2007

10 **BEFORE:** Hon. Patrick L. Willis
11 Circuit Court Judge

12 **APPEARANCES:** KENNETH R. KRATZ
13 Special Prosecutor
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
16 Special Prosecutor
17 On behalf of the State of Wisconsin.

18 DEAN A. STRANG
19 Attorney at Law
20 On behalf of the Defendant.

21 JEROME F. BUTING
22 Attorney at Law
23 On behalf of the State of Wisconsin.

24 STEVEN A. AVERY
25 Defendant
Appeared in person.

* * * * *

TRANSCRIPT OF PROCEEDINGS

Reported by Diane Tesheneck, RPR

Official Court Reporter

1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery, Case No. 05 CF
3 381. This matter is scheduled this afternoon for a
4 hearing on a motion that was filed yesterday by the
5 State; specifically, a motion to exclude blood vial
6 evidence, or in the alternative, to analyze the vial
7 of blood. Will the parties present state their
8 appearances for the record, please.

9 ATTORNEY KRATZ: The State appears by
10 Calumet County District Attorney Ken Kratz,
11 appearing as Special Prosecutor. Norm Gahn also
12 appears as Special Prosecutor. And I should alert
13 the Court that this is Mr. Gahn's motion.

14 ATTORNEY STRANG: Good afternoon. Steven
15 Avery is here in person this afternoon. Jerome
16 Buting of Buting and Williams appears on his behalf,
17 as do I, Dean Strang of Hurley, Burish and Stanton.
18 I think that covers it.

19 THE COURT: All right. I will indicate for
20 the record that I have received -- I received by
21 fax, it probably came in last night, I read it this
22 morning, that is, the State's motion and the
23 memorandum that was submitted in support of the
24 motion.

25 I have also received and read the

1 defendant's response to the State's motion to
2 exclude the blood vial evidence. I will give the
3 parties a opportunity to briefly supplement the
4 memoranda with oral argument, if they wish.

5 Mr. Gahn.

6 ATTORNEY GAHN: Thank you, your Honor. I
7 believe that the Court can make an analysis under
8 the cited cases in our brief of **State v. Richardson**
9 and **State v. Denny**. The State will concede that
10 there may be some relevance to this vial of blood to
11 this trial, but I think that the analysis must go
12 further by the Court and to look at the probative
13 value of this and then to make a determination under
14 904.03 whether this would be a delay of the trial,
15 confusion of issues for the jury. And this complete
16 analysis must be done by the Court.

17 I note from the response by the defense
18 that at no time do they suggest or state that
19 there is -- this vial of blood is admissible.
20 And I believe that under the case law, that the
21 Court should rule that this is inadmissible
22 evidence for these reasons.

23 Conceding there may be some relevancy, I
24 believe that the probative value is very low.
25 And if one makes an analysis akin to the analysis

1 the Court made in *State v. Richardson*, you have
2 to look at all the assumptions that a jury is
3 going to have to make about this vial of blood.

4 Now, I'm making these assumptions along
5 a *Richardson* analysis knowing that the defense
6 has not filed or given any type of offer of proof
7 of how they plan to connect the vial of blood to
8 Teresa Halbach's SUV. But the jury is going to
9 have to make the assumption that the blood in the
10 vial is Steven Avery's. They are going to have
11 to assume that it was planted some time between
12 November 3rd and November 5th, or if they --
13 maybe it was planted October 31st, or
14 November 1st, or 2nd. But that type of
15 assumption implies that perhaps a police officer
16 murdered Teresa Halbach and cut up her body and
17 planted this to try and frame Steven Avery.

18 They would have to assume that the
19 police, or whoever planted it, knew that Teresa
20 Halbach was dead. And how could they know that.
21 The only way they could possibly know that would
22 be is if Steven Avery told them, or Mr. Dassey
23 told them -- and Mr. Dassey didn't say anything
24 until March 1st -- or one of the police actually
25 did the killing, or perhaps they got an anonymous

1 tip.

2 But there are so many factors out here,
3 and so many assumptions that would have to be
4 made, that this lends itself to confusion of
5 issues and misleading the jury and, really, a
6 purposeful attempt to distract their attention
7 from focusing on the true issue in this case, and
8 that is, whether Steven Avery murdered Teresa
9 Halbach.

10 But there's also going to have to be
11 assumptions made that some law enforcement
12 officer had access to this vial of blood somehow,
13 or was there complicity by the Clerk of Court's
14 in Manitowoc County, or was it just --

15 This isn't a case of negligence we're
16 talking about, you know, an intentional crime
17 committed by law enforcement officers, and
18 possibly along with the Clerk of Court's. This
19 is an appalling allegation that's being made.

20 And there's so many assumptions, as I
21 said, would have to be made by the jury, that I
22 believe that this is a very low probative value
23 to this evidence. And when you have a low
24 probative value to the evidence, the analysis
25 under a 904.03 examination certainly shows how

1 this would be such a waste of time and confusion
2 of issues and distraction to the jury.

3 Because the Court, I believe from prior
4 ruling, especially when we argued the 904.04 (b)
5 other acts, other wrongs and crimes evidence, the
6 Court wants this trial to focus on whether Steven
7 Avery murdered Teresa Halbach and not get
8 sidetracked on other issues and collateral
9 issues. But if this vial of evidence comes in,
10 it is just fraught with other issues such as is
11 it Steven Avery's, who drew it, what happened
12 when it was at Laboratory Corporation of America,
13 who had access to it, what are the security
14 procedures at the Manitowoc County Clerk of
15 Court's Office.

16 There are just so many side issues and
17 collateral issues, that I believe that it
18 necessitates under a 904.03 analysis that this
19 evidence lacks, number one, probative value and
20 also would be a waste of time and confusion of
21 issues, for the jury. And we ask the Court to
22 not allow this evidence to come in.

23 I also want to address, I guess, sort of
24 a preemptive strike I would like to make on this
25 knowledge on our part, the State, and our access

1 to this vial of blood and the untimeliness of
2 notifying us about the existence of it.

3 I want the Court to know that the
4 prosecution team, I believe, exercised due
5 diligence in looking for this vial -- a vial of
6 blood. We recognized this early on and asked our
7 detectives to search for it. And we have
8 searched in all the places that one would expect
9 to find a vial of blood, crime labs, Manitowoc
10 County Sheriff's Department, law enforcement.
11 And as I said, we exercised due diligence looking
12 for it.

13 This vial of blood turns out to be in
14 existence, but there's really a few people who
15 knew about it. It was never in the control of
16 law enforcement. And to try and associate the
17 Manitowoc County Clerk of Court's office with law
18 enforcement is a stretch. This is a public
19 service. They serve the public. These are
20 people who have taken, I imagine, an oath of
21 office, and they have jobs, civil, and criminal,
22 and all the other things that go along with the
23 Clerk of Court's. They are not associated with
24 law enforcement at all.

25 And I was very surprised to see that a

1 vial of blood, to turn up there. But we did
2 look, and we looked to try and find it, because
3 we felt that if they want to pursue a planting
4 defense, fine, but how do you plant evidence if
5 there is no blood.

6 Now they have come up with this, but
7 this is information that was in the possession of
8 Mr. Avery, he could tell them, hey, blood was
9 drawn from me up in Fox Lake, or whatever it was,
10 in 1996. And this was also a Innocence Project
11 case, and that is something I think the defense
12 is more aligned with than prosecution are aligned
13 with.

14 And they had more of an opportunity to
15 know and find out the existence of this vial of
16 blood. And they knew about it at the latest in
17 July, July 20th. It could have been earlier.
18 But I believe that they viewed -- if they viewed
19 it so importantly, and wanted it sealed, they
20 should have told us about it.

21 I think they had a responsibility under
22 971.23, the discovery statute, to tell us about
23 this and give us the opportunity to test this.
24 Because this is -- this is the crux of the case,
25 this vial of blood now. And we need to meet the

1 defense and have the opportunity to test this
2 vial to meet their defense.

3 And the defense in this case, and I just
4 want to reiterate to the Court that, you're
5 talking -- this is -- you're talking about
6 people's reputations here. There is an
7 allegation that are going to be made by the
8 defense, and they have made them already, that
9 perhaps some law enforcement officer, someone
10 from Manitowoc County, who is sworn to protect
11 the public, to serve the public, took this vial
12 of blood -- and so callously disregard for the
13 Halbach family -- planted this evidence in a car
14 and didn't care who murdered Teresa Halbach.
15 This is appalling. This is a despicable defense.

16 And also they are saying that someone in
17 that Manitowoc County Courthouse, whether it be
18 through complicity, or slipshod operations, that
19 this place was just wide open for anybody to
20 willy-nilly walk in and get access to it. And
21 that's not what I found when I visited the
22 Manitowoc County Clerk of Court's Office. I
23 didn't find that at all. And it's just a
24 despicable allegation and defense and we need to
25 meet it, your Honor. We need to meet it full on.

1 And I'm asking the Court, first, to rule
2 that under a **Richardson** and also a **Denny**
3 analysis, how is the defense going to connect the
4 vial of blood in the Manitowoc County Clerk of
5 Court's Office to the SUV of Teresa Halbach. How
6 do they make that connection? Just by saying so,
7 it exists?

8 I mean, you could make that same
9 argument that if Mr. Avery donated blood, or one
10 was taken for a medical procedure, or blood was
11 drawn for any myriad of reasons, that, oh, just
12 because it exists, therefore, somehow, under all
13 those possible scenarios, the blood was taken by
14 someone and planted in the SUV. The connection
15 is there. It is not there. They have not met
16 the law under **Denny** or under a **Richardson**
17 analysis, so it should be excluded.

18 But if the Court does not wish to
19 exclude it, we ask the Court to allow us time to
20 test it. And we want to test it with the FBI.
21 That may take three to four months to test it, so
22 we would be asking for a continuance.

23 And the other concerns that we have are
24 the many, many potential appellate issues that
25 could come up, especially under a **Hicks, Moran,**

1 and **Armstrong** analysis on whether it be in the
2 interest of justice, or ineffective assistance of
3 counsel. There is evidence, a blood vial that
4 can be tested chemically, that can be
5 scientifically tested. And it can tell us
6 whether the blood in Teresa Halbach's car came
7 from that vial of blood. And I believe this case
8 is too important, we have come too far, too long,
9 and too many vicious allegations, against people
10 who are public servants or law enforcement
11 officers, have been made, that we must have the
12 opportunity to have that vial and do the testing
13 that we believe is suitable to meet their
14 defense. May I just have one moment, your Honor?

15 THE COURT: Go ahead.

16 ATTORNEY GAHN: That's all I have. Thank
17 you.

18 THE COURT: Mr. Buting. Or I got the brief
19 from Mr. Mr. Buting; is it Mr. Strang?

20 ATTORNEY BUTING: We may both respond at
21 different times, depending on the issues that come
22 up, but Mr. Strang will take the lead here.

23 ATTORNEY STRANG: One of the good things,
24 your Honor, that 8 or 900 years of history, with the
25 English common law and coming across the Atlantic to

1 the United States, has done for us is to make combat
2 in a courtroom ritual. And when the language
3 becomes very charged and the emotions become very
4 charged, as inevitably they will in a case in which
5 the most serious, horrible, and heinous crime is
6 alleged, it's good to have this tradition of
7 civility, and ritual control of a combat, to fall
8 back upon.

9 And I agree that the potential
10 implications, as opposed to the allegations that
11 we made, because we have made very few
12 allegations, we have tried to present facts at
13 this point and to explore things that we have
14 found in the Manitowoc County Circuit Court. But
15 I agree with my friend, Mr. Gahn, that the
16 potential inferences from this are, indeed,
17 despicable in the sense of being unspeakable, in
18 the sense of being horrible, and in the sense,
19 particularly, impossibly true.

20 And I go back to the starting point here
21 in noting the allegations that Steven Avery
22 murdered Teresa Halbach are despicable in the
23 very same way. The allegation that he had sex
24 against this young woman's will with her are
25 despicable, and vicious, in the very same way.

1 And unlike every law enforcement officer
2 of Manitowoc County, Mr. Avery doesn't go home at
3 night while he is under these sorts of
4 allegations. Presumed innocent though he may be,
5 he sits here today in custody.

6 And in large part, the issues that the
7 State raises now, the Court already has
8 addressed, after thorough briefing from both
9 sides, briefs filed in June, State's may have
10 actually been filed in May, I don't remember. I
11 know ours in response to the State's motion to
12 prohibit evidence of third party liability was
13 filed on or about June 26th.

14 And the Court has ruled, on July 10 of
15 last year, just exactly what the disclosure
16 obligation was on the defense for extrinsic
17 evidence of planting, has ruled on what
18 inferences we might pursue, or argue, without
19 extrinsic evidence of planting. And I am glad to
20 hear this afternoon that counsel for the State
21 does not reiterate the written argument made
22 yesterday, that our disclosure was untimely,
23 under this Court's orders. Because by the time
24 this Court set a schedule on July 10 for
25 disclosure of this sort of evidence, the trial

1 had been moved to October 16. That meant July 10
2 set a September 16 deadline.

3 Long before that deadline arrived,
4 August 22 arrived, and the trial was moved to
5 February 5. And after very thorough discussion
6 and disagreement to be worked through and an
7 exchange of drafts and going round and round and
8 making at least two, and maybe three trips,
9 between Mr. Buting and the defense investigators
10 and the Manitowoc County Circuit Court, we
11 decided to disclose this extrinsic evidence, or
12 arguably extrinsic evidence of possible planting
13 of Steven Avery's blood, to the State.

14 Not 30 days before trial as the Court's
15 order required, but 60. And not to pursue this
16 ex parte, as we had intimated in chambers we were
17 considering at one point, but to pursue it in
18 open court, in an unsealed fashion, and with
19 service upon our adversaries.

20 Those weren't easy decisions, but the
21 fact is that disclosure was not just timely here,
22 it was 30 days before the deadline that the Court
23 set after considering exactly the **Richardson**
24 argument and the **Holmes vs. South Carolina**
25 argument to which Mr. Gahn harkens back today.

1 The issue, as I understand it here,
2 primarily, is disclosure, and now, where do we go
3 from there. To the extent the State is arguing
4 to exclude evidence of possible planting, the
5 Court's ruled on that. I don't know, unless
6 there are questions from the Court that there's a
7 need to revisit the briefing and the rulings on
8 that earlier, particularly since the timing of
9 disclosure now ought be resolved, because we more
10 than complied with the Court's timing order.

11 The vial clearly will be admissible.
12 Its availability and proximity to members of the
13 Manitowoc County Sheriff's Department comes in on
14 undisputed facts to the extent of the location of
15 the Clerk's Office, the location of the Sheriff's
16 Department, the location within the Clerk's
17 Office of two boxes or cartons that contain the
18 1985 Avery file.

19 And the 904.03 analysis, I think,
20 benefits in a sense, from stepping back just a
21 little bit, again, and understanding that from
22 the beginning counsel for the State has
23 estimated, as I recall, that it would take four
24 to five weeks to present the State's
25 case-in-chief against Mr. Avery on the despicable

1 allegations that the State hopes to prove. And
2 that perhaps a week would be sufficient for the
3 defense case-in-chief in responding to those
4 allegations.

5 Now, recently the State has suggested
6 that if there aren't some stipulations from the
7 defense this maybe four to five weeks is tight
8 for the State's case-in-chief. And I will say
9 this, one week is still adequate, or better than
10 adequate, for the defense case.

11 So if we're to have a discussion about
12 all the linkages that would have to be made, and
13 all the witnesses that would have -- who would
14 have to be called, the balance pretty clearly
15 here tips in favor of the defense and against an
16 argument that this is collateral, or a waste of
17 time.

18 This evidence goes directly to the
19 integrity of some of the most damning evidence
20 against Mr. Avery that the State intends to
21 offer. And that's the very small amounts of his
22 dried blood that the State will say were found in
23 Teresa Halbach's Toyota.

24 He's been saying from the beginning, to
25 anybody with a microphone and TV camera,

1 initially in early November, 2005, that if his
2 blood was in the Toyota, somebody planted it. So
3 that hasn't been any secret about his defense and
4 his view of the facts.

5 We, as his agents, to a large extent,
6 played the hand that he dealt us, looked down the
7 road to which he pointed us. That the State
8 didn't look in the same places we did, alters not
9 one wit this irreducible fact, the evidence here
10 uncovered in the Manitowoc County Circuit Court,
11 in the Clerk of Court's Office, was as available
12 to the State, or to a member of the public, as it
13 was to the defense.

14 I don't know that I'm going to go
15 farther on arguing admissibility, because that's
16 not primarily what we're here for today. But I
17 do want to address the matter of further testing
18 and an adjournment, and I think Mr. Buting is
19 better equipped to speak to the specifics of
20 possible testing.

21 We have tried and failed to get him,
22 Steven Avery out on bail. It's been 14 months.
23 It's been solitary confinement. And it's been
24 under conditions where the taping of his every
25 word, other than to counsel, for one reason, has

1 been used assiduously for the other reason, of
2 gathering evidence by the State. And if he is to
3 remain in custody, we will and do oppose the
4 adjournment of this trial. We want it to go
5 forward on February 5, if he is to remain in
6 custody.

7 Now, the question of the State's ability
8 or interest in testing can be separated from an
9 adjournment. And, again, after talking about it
10 with Mr. Buting, and his conversations with
11 Mr. Gahn, who is a candid and accessible
12 adversary, we believe that the blood in the vial
13 that was found in the Clerk's Office can be
14 partitioned, divided in a way that does not
15 prejudice the defense and that would allow the
16 State to undertake the testing it seeks to do.

17 I am assured by Mr. Gahn, and I accept
18 his word entirely that, moreover, even the very
19 small amounts of dried blood in the Toyota RAV
20 are sufficient to allow partitioning or to allow
21 testing by the State, without full consumption or
22 spoliation of that dried blood evidence. I take
23 him at his word. He is an expert in the area of
24 blood and DNA.

25 So I think, that as a matter of testing,

1 the Court can fashion conditions that do not
2 prejudice Steven Avery and that would allow the
3 State to pursue the course of testing, any course
4 of testing it may wish. The admissibility or
5 relevance of the results of that testing, I
6 cannot address and the Court cannot address at
7 this point. Nobody has briefed it. We know very
8 little about the proposed EDTA testing.

9 The track record of admissibility in
10 case law is not good, but it is also not terribly
11 extensive. But, again, this is a separable
12 issue, in the sense that testing can go forward.
13 Admissibility and relevance of results of
14 testing, or opinions formed on the basis of
15 testing, can be addressed later, when there's
16 more, factually, to work with.

17 But if the State wants to test, and if
18 Mr. Avery is to remain in custody, the trial
19 ought go forward while the testing process is
20 going forward. If Mr. Avery is instead to be
21 released on stringent conditions that would
22 assure the community's safety, and realistically
23 remove any slight risk of flight he may
24 represent, then the calculus changes entirely
25 for the defense.

1 We would not oppose an adjournment under
2 those circumstances. We don't pursue testing
3 ourselves. We don't know that we will. We
4 aren't asking to. But we understand why the
5 State wants to pursue that testing. And we also
6 understand the potential ramifications, largely
7 unknowable now, but certainly imaginable, of
8 testing results that might cast doubt about a
9 verdict previously rendered in this case.

10 So, if this man could go home at night,
11 as the law enforcement officers do, and as the
12 rest of us do, with a GPS bracelet on his ankle,
13 or checking in every day to the Two Rivers Police
14 Department, or whatever the conditions are that
15 send him home, we would not oppose the State's
16 request for an adjournment to test.

17 We may well oppose in the end the
18 admissibility, the relevance of those test
19 results, but that, again, is something the Court
20 could address with the benefit of knowledge of
21 the test results, presumably, and a chance to
22 look at the type of testing that was done, the
23 protocols, and what the case law may have to say
24 about the admissibility of similar tests.

25 We have not sought defense testing at

1 this point ourselves, because as Mr. Buting said
2 the last time we were in court, we don't know of
3 a test that can be done that would be productive
4 or helpful. A federal decision from 2005 that
5 Mr. Buting uncovered, has a federal judge writing
6 in her decision that the FBI stopped doing the
7 very testing that Mr. Gahn now says the FBI will
8 do.

9 Mr. Gahn's information is fresher and,
10 again, this is a man who knows what he's doing
11 and is candid. But our best information had been
12 that the FBI wasn't in this business.

13 Mr. Buting can address the other lab
14 that the State has identified as being a possible
15 site for testing, and I have no basis on which to
16 dispute the State's assertion that there are, in
17 this whole country, but two laboratories capable,
18 presently, of doing this testing, the FBI and a
19 private laboratory the State has named.

20 Realistically, for reasons Mr. Buting can
21 address, the private laboratory may not be a good
22 choice for either the State or the defense.

23 So, I hope I have been clear. I
24 understand why the State wants to test. If the
25 presumption of innocence that he enjoys were

1 undergirded and backstopped here by letting him
2 sleep where innocent people, or presumptively
3 innocent people sleep, we would not oppose an
4 adjournment.

5 The Court may deny the adjournment for
6 its own reasons, but not over our objection, if
7 bail were modified so that he didn't spend 4 more
8 months, after 14, in jail, presumptively
9 innocent, in solitary confinement, and with his
10 every word to his loved ones listened to by
11 police, for potential evidence.

12 If that state of life is to continue
13 until he is tried, then Steven Avery opposes an
14 adjournment, thinks that testing could go forward
15 without prejudice to him, but reserves the right
16 to challenge or support, conceivably,
17 admissibility or relevance of test results and
18 opinions flowing from those test results.

19 And I would like to turn it over to
20 Mr. Buting to go give the Court a little bit
21 better sense of why the 30 day testing option
22 with a private lab may, in the end, not be
23 feasible for either the State or the defense.

24 THE COURT: Mr. Buting.

25 ATTORNEY BUTING: Judge, just to give you a

1 little bit of background, I looked into this. And
2 part of what we were doing when we discovered the
3 possibility that Mr. Avery's blood vial may be in
4 the Clerk's Office and recall that all we knew was
5 that there was a box that said it was in there, the
6 books we did not open until the Court granted
7 permission in December.

8 But in my research, it did not appear
9 that there was a credible lab available to do the
10 kind of testing that Mr. Gahn now says the FBI is
11 doing. And I don't know anything about their
12 protocol and whether this is credible or not.

13 But what I do know is that the kind of test he is
14 talking about, this EDTA test, to be able to try
15 and measure whether there is this preservative
16 that is found in blood vials, certain blood
17 vials, whether that can be detected in a
18 bloodstain at a crime scene, never came up until
19 the middle of the O.J. Simpson trial, at which
20 point the FBI, for the first time, while the
21 trial was going on, developed some sort of
22 testing protocol.

23 Their expert was called, actually by the
24 defense in the O.J. case, and was very helpful to
25 the defense, and ultimately very embarrassing to

1 the FBI, who was part of the whistle blower
2 allegations in the very lengthy investigation
3 that the FBI lab did of misconduct, or
4 negligence, or sloppy practices in their lab.
5 And that analyst, who had testified about the
6 EDTA test, was called to task for that very
7 testimony and that very test.

8 Since that case, a few cases have gone
9 forward where it's almost -- in fact, it is
10 always the defense that seeks to use this kind of
11 a test to determine -- and in most cases I think
12 it's been post-conviction -- but to determine
13 whether or not the blood may have been planted
14 that was found at the crime scene.

15 The alternate lab that the State
16 mentions in their motion, National Medical
17 Services located in Willow Grove, Pennsylvania,
18 has been severely discredited. And for that
19 reason, we didn't come to the Court and ask that
20 they do such a test.

21 The federal case that Mr. Strang was
22 referring to, for some reason I could not find on
23 Westlaw, but it is in public record. It is on
24 the website, PACER website, for the United States
25 District Court and the Southern District of

1 California, it's **Kevin Cooper vs. Jill Brown**,
2 Warden of San Quentin. And the District Court
3 Judge issued a very thorough, 160-page decision,
4 describing the protocol that was used for EDTA
5 test in that case.

6 About 26 pages of the 160 concerned that
7 one issue, the EDTA protocol, how it was devised.
8 There were affidavits filed by the FBI in that
9 case, that federal judge says in a footnote that,
10 Although the FBI had been testing during the O.J.
11 Simpson case, they were no longer in the business
12 of doing EDTA tests. So when I saw that, my
13 knowledge was that, really, there was nobody
14 credible still doing these kinds of tests.

15 THE COURT: What's the year of the case?

16 ATTORNEY BUTING: The decision came out in
17 June of 2005. I didn't copy the whole 160 pages so
18 I don't have that, but the Case No. -- the local
19 Case No. is 04-CV-656 and I have a PDF I could
20 certainly forward to the Court, that I was able to
21 download from their website.

22 In that case the defense used
23 Dr. Ballard from this National Medical Services.
24 And he was so severely discredited by not only
25 this court, but a prior court, **New Jersey vs.**

1 **Pompey**, that I just want to read this so that you
2 realize that, frankly, that alternative is not on
3 the table as far as I can see, from either side,
4 to try and submit testing to there.

5 What the court found in **Pompey**, as
6 repeated in this **Cooper** case, is that
7 Dr. Ballard's analytical methods were haphazard
8 and unreliable.

9 In sum, he used valid science, gas
10 chromatography/mass spectrometry, to obtain a
11 product, glibly and unscientifically dismissed
12 EDTA sources other than the purple-topped tubes,
13 and took a gargantuan leap to a conclusion that
14 is unsupported by science, facts in the record,
15 or even common sense.

16 Ballard skewed the presentation of his
17 data, obscured the significance of his findings,
18 and changed his hypotheses to suit defendant's
19 tampering theory. Ballard did not demonstrate
20 that his conclusions were predicated on a
21 reliable foundation. Rather, his constant
22 equivocations discredited his method of reasoning
23 and, thus, rendered his ultimate conclusion
24 worthless.

25 So I say this just so that it is very

1 clear, I do not see that lab as any option for
2 either side. And, therefore, we're left with, if
3 Mr. Gahn's information is correct, I have no
4 reason to doubt, but his information apparently
5 now is that the FBI is back in the business of
6 doing this. I don't know how they do it. And I
7 would certainly reserve the opportunity to
8 challenge the reliability or methods of protocol
9 that they use, and may want to discuss with this
10 Court further, how that should be done if that's
11 -- testing is granted. But, clearly, the FBI is
12 the only option, so I can understand why that is
13 the State's preference. Thank you.

14 THE COURT: Mr. Gahn.

15 ATTORNEY GAHN: Just very briefly, your
16 Honor. I think you can see that the defense at
17 least agrees that there's something important about
18 doing this testing, that traditionally it's been
19 requested by the defense and has generally come up
20 on post-conviction motions. The FBI does do this
21 testing. I have spoken with them on a number of
22 occasions, yesterday was the latest that I spoke
23 with the chemist, toxicologist who would be doing
24 this testing for us.

25 I do not, as I stated in the brief, for

1 the Court's information, I said there were two
2 places. I do not care to send it to National
3 Medical Services. We want to send it to the FBI.
4 That's where I believe the history, and
5 experience, and methodology used by them is --
6 will be to our benefit, should there be an
7 admissibility hearing down the road.

8 But I think that the defense recognizes
9 the importance of doing this testing. And if, as
10 they say, this vial of blood goes to the
11 integrity of our evidence, we have to test it,
12 your Honor. And we have to test it at a
13 credible, meaningful laboratory.

14 I don't think there is any way around
15 this. We either test it now, or test it later.
16 And the cases, I believe, under whether it be
17 ineffective assistance of counsel, or whether it
18 be the interest of justice, it's going to be
19 tested later. That's my belief. And I think
20 that our -- the history of these cases in
21 Wisconsin indicates that it would be prudent to
22 do it now instead of later.

23 THE COURT: Do I understand that, although
24 the National Medical Services Laboratory is
25 mentioned in your brief, that you share Mr. Buting's

1 opinion of their capabilities of doing this testing?

2 ATTORNEY GAHN: Let me put it this way, I
3 share that there has been prior cases, or especially
4 the case, the **Cooper** case, Mr. Buting, that that is
5 in existence, and the National Medical Services,
6 Dr. Ballard, did not fair well. Yes, I agree. And
7 I do not care to send it there. Now, whether they
8 have -- No, I agree, I do not believe that that is
9 an appropriate lab to send it to.

10 THE COURT: And with respect to the FBI
11 testing, has something changed at the FBI since
12 Mr. Buting indicates they were criticized in the
13 previous case.

14 ATTORNEY GAHN: I don't know, your Honor I
15 don't know that they stopped doing it. I'm not
16 aware of that. When I talked to the FBI -- I just
17 do not know about that. All I know is that they can
18 test it and they can quantify it.

19 I want to say something else. There are
20 a few differences, though. And I know that
21 Dr. Ballard did get beat up in some courts, and
22 he did make some stretches and leaps in his
23 conclusions. But as I recall the cases I read,
24 and they are probably the same that Mr. Buting
25 read, you were talking about, he was a defense

1 witness.

2 And they were talking about blood that
3 was on fabrics, like on a person's shirt. There
4 is a diffusion of that blood throughout the
5 shirt, and it is difficult to try to determine
6 the volume of what that blood would be, or what
7 would be the volume of the EDTA in that, as
8 compared to the volume of EDTA that's in the
9 blood.

10 I don't ever recall a case that I read
11 where they had the actual purple-topped tube
12 where they say it's coming from to make a
13 comparison, so that's a difference.

14 The other difference is is that
15 according to the records that the defense
16 provided me, Laboratory Corporation of America,
17 two days after this blood was drawn by the nurse,
18 made a spot card of it. So that is almost a
19 control that would be very helpful in the
20 interpretation of this case, if that control is
21 still in existence.

22 Now, I have a call out to Laboratory
23 Corporation of America. I talked to a Meghan
24 Clement, and as I said in my brief, there are a
25 lot of questions still we have to investigate and

1 look at. But if that spot card is available,
2 then you have sort of like a control, that was
3 taken right after the blood was drawn.

4 And that spot card, usually, are very
5 fresh. They are free of any type of
6 contaminates. And that's the purpose of them.
7 You could get an EDTA level right there. And the
8 other thing is, that we have blood that is on,
9 like, the vinyl of the car, on the metal portion,
10 and good photographs of it, things that there
11 isn't any excuses, that one could possibly make a
12 rational determination of the volume that is
13 there.

14 And that's the difference with this
15 case, than the ones I read where Dr. Ballard, I
16 think did make some leaps, a few leaps from this
17 fabric evidence, and whether it contained blood
18 that would have come from a purple-topped tube.
19 But we have the tube here. I also believe that
20 if we get it, we could make some type of
21 quantitation.

22 The problem is this, if you look on that
23 Exhibit 3, that the defense sent us in their
24 initial brief, from Laboratory Corporation of
25 America, I can't tell whether they removed one or

1 two milliliters. I don't know what tube this is.
2 I don't know if the nurse drew the full container
3 of the tube. I don't even know the size of the
4 tube.

5 All these questions we are trying to
6 answer. And we have only -- And it's been very
7 difficult over the Christmas and New Year's
8 holidays finding people, mostly everyone is
9 operating under a skeletal crew in their offices.
10 We are trying to do, which in contact people,
11 that had we known about this back in July we
12 could have done it. And apparently the defense
13 has not pursued any of that.

14 And I believe that they just like the
15 fact that there's this vial there. And they are
16 going to just draw their conclusions and try and
17 get the jury to speculate what all the
18 possibilities could have happened to that vial.
19 That's a -- We want to get to the truth. We want
20 to test this. And I believe we must test it.

21 THE COURT: And what's the -- your brief
22 indicates that -- that the FBI will require three to
23 four months, is that because the test takes that
24 long or some other reason?

25 ATTORNEY GAHN: I think it's a

1 recalibration of their instrumentation.

2 THE COURT: Explain that to me.

3 ATTORNEY GAHN: Well, from my
4 understanding, is that every -- during
5 accreditation, you have to recalibrate all your
6 instruments that you do whatever your tests are on.
7 They are in that process of doing the recalibration
8 of their instrumentation. That's my understanding
9 of why it's three to four months.

10 THE COURT: And is there -- Do you know
11 whether or not there's anything that can accelerate
12 that schedule? Do they understand that this case is
13 scheduled to go to trial in a month?

14 ATTORNEY GAHN: Yes, I have made that clear
15 as far as -- and I asked and, no, they cannot do
16 that within that time frame.

17 THE COURT: All right. What I'm going to
18 do today is take under advisement this weekend the
19 request of the State to adjourn the trial. That's
20 one of the issues that's raised here. And I want to
21 spend some time to think about that.

22 With respect to the other issue that's
23 raised concerning the frame-up evidence, if you
24 will, I did go back and take a look at my notes
25 from July. And this is one case where I didn't

1 pay enough attention to my own notes. I did
2 indicate in my notes to myself, that if there was
3 going to be evidence introduced in support of a
4 frame-up defense, that it should be dealt with by
5 a motion in limine ahead of time.

6 At this point, the Court has been
7 informed by the defense that the blood vial in
8 the Clerk's Office would form the basis, or maybe
9 the key element, of a defense case regarding an
10 alleged frame-up. I don't know what other
11 evidence the defense may be contemplating
12 introducing as part of that defense. And in
13 order to conduct an appropriate analysis under
14 **Richardson** as to whether such evidence should be
15 admissible, I have to know what it is.

16 We have a motions hearing scheduled for
17 January 19th. What I'm going to order is that
18 the defense provide the Court, in the form of a
19 motion in limine, that whatever evidence it
20 intends to introduce on the issue of a frame-up
21 defense, by next Friday, so that I can review
22 that evidence and we can be prepared to deal with
23 the motion on the 19th of January. I will, on
24 the issue of the request for and adjournment, get
25 back to the parties early next week --

1 Is there anything else today, keeping in
2 mind we still have, and I think we're still going
3 to keep it, the 9:00 status conference tomorrow?
4 I want a telephone status conference. I want
5 to -- just to inventory things that have to be
6 addressed before we proceed on the 19th.

7 ATTORNEY STRANG: There's one more thing
8 today. We have, tomorrow, at the end of the day, a
9 deadline on expert disclosure and also **Denny**
10 disclosure. I think we can hit -- I think we can
11 hit the expert disclosure.

12 We could hit the **Denny** disclosure, but I
13 have lost a lot of time this week because of this
14 issue, and an unexpected trip to court, and also
15 because of the cancellation of a flight on
16 Tuesday morning, back from a weekend away, and
17 would like the opportunity to file, by Monday at
18 noon, the **Denny** response, rather than by tomorrow
19 at 4:30. I ran that by Mr. Kratz, I'm sure he is
20 not wild about it but, as always, he is courteous
21 and I think doesn't have any objection, but of
22 course that's the Court's call.

23 THE COURT: Any objection from the State?

24 ATTORNEY KRATZ: That's a professional
25 accommodation I'm willing to provide, Judge, not a

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problem.

THE COURT: All right. That's acceptable to the Court. Anything else today?

ATTORNEY KRATZ: No, not today, Judge. Thank you.

THE COURT: Very we'll, we're adjourned for today.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
)ss
2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 19th day of February, 2007.

Diane Tesheneck, RPR
Official Court Reporter

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, MOTIONS HEARING

5 vs. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** JANUARY 19, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
12 Special Prosecutor
On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
14 Special Prosecutor
On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
16 Special Prosecutor
On behalf of the State of Wisconsin.

17 DEAN A. STRANG
18 Attorney at Law
On behalf of the Defendant.

19 JEROME F. BUTING
20 Attorney at Law
On behalf of the Defendant.

21 STEVEN A. AVERY
22 Defendant
Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery, Case No. 05 CF
3 381. We are here this morning for a motions
4 hearing. Will the parties state their appearances
5 for the record, please.

6 ATTORNEY KRATZ: On behalf of the State of
7 Wisconsin, your Honor, Ken Kratz, Calumet County
8 District Attorney; Norm Gahn, Assistant District
9 Attorney for Milwaukee County; Tom Fallon, from the
10 Department of Justice, all appear as Special
11 Prosecutors.

12 ATTORNEY STRANG: Steven Avery appears in
13 person. Jerome Buting of Buting and Williams, to my
14 left, on his behalf. And Dean Strang of Hurley,
15 Burish and Stanton, as well.

16 THE COURT: All right. I will indicate for
17 the record that I met briefly with counsel in
18 chambers before we began, to take an inventory of
19 motions that are outstanding and set up the order in
20 which they will be addressed this morning. The
21 first motion is the State's motion for relief from
22 pre-trial scheduling order. Mr. Kratz.

23 ATTORNEY KRATZ: Mr. Gahn will handle that
24 motion.

25 THE COURT: Okay. Mr. Gahn.

1 ATTORNEY GAHN: Your Honor, I believe that
2 the motion that we filed speaks for itself. We're
3 just asking the Court -- Today was the deadline for
4 us to turn over rebuttal witnesses, and in light of
5 the recent events, we're asking to be relieved from
6 that, because we may need to do some additional
7 testing. We don't know yet if we will, but we're
8 asking the Court to relieve us from that
9 responsibility to reveal any of our rebuttal
10 witnesses, expert witnesses especially, today.

11 And I have cited a *State v. Konkol* in
12 support for this request. And also our own
13 discovery provisions under 971.23 (1)(d) which
14 basically excludes rebuttal witnesses from what a
15 district attorney must disclose to the defendant.

16 THE COURT: All right. Will it be
17 Mr. Strange or Mr. Buting?

18 ATTORNEY BUTING: I have got it, Judge. We
19 don't have a real concern about their request,
20 assuming that it relates -- it's limited to this
21 issue of the blood vial and whether there's any
22 other testing that can still be done on it. I don't
23 know that at this point that there is any, and they
24 haven't decided if there is anything yet at all.

25 But assuming that it is limited to that

1 and that something is ongoing between now and the
2 next few weeks, we don't have any objection to
3 extending the time for them to file any kind of
4 notice. And, frankly, I'm sure that Mr. Gahn
5 would share with us whatever results they are
6 going to come up with anyway. I don't think that
7 he's intending to do some ambush on this issue.

8 THE COURT: Mr. Gahn.

9 ATTORNEY GAHN: Your Honor, I don't want
10 this to be limited to just the blood vial situation.
11 It may involve other witness' testimony as far as
12 the whole -- the fording or attacking the defense
13 that may be presented in this case. So I don't want
14 to just limit to that one area.

15 We have some additional investigation to
16 do to look at in light of some recent documents
17 also that have been filed by the defense. So we
18 may not want that limited at all to just the
19 blood vial, but all aspects of the defense; the
20 location of the vial, where it was, who had
21 custody of it, all -- everything. It's all
22 related. It surrounds all of that issue. But
23 it's not just to that, it may be other
24 testimonial evidence.

25 THE COURT: Your motion refers to the blood

1 vial and other related evidence. So I take it that
2 you are not looking for blanket relief from the
3 requirement of the pre-trial order, but you are
4 pointing out, that to the extent that other evidence
5 relates to the blood vial, that's the nature of your
6 request?

7 ATTORNEY GAHN: That's correct your Honor.

8 THE COURT: Mr. Buting.

9 ATTORNEY BUTING: Well, I'm not sure how
10 that other related evidence would involve expert
11 witnesses. I thought that's what he was referring
12 to here. The Court's order, Paragraph 4 B 4, I
13 don't have right in front of me, but.

14 THE COURT: It provides that the State
15 shall provide to the defense the identity of any
16 rebuttal expert witness the State intends to call,
17 along with copies of reports of any such expert, on
18 or before January 19. Goes on to provide, the State
19 may request additional time, if necessary, based on
20 the nature of any proposed but previously
21 unanticipated testimony of any named defense expert.

22 ATTORNEY BUTING: So, again, I'm not sure
23 what other kind of expert testimony might be
24 involved in this, but as long as it's not a blanket
25 exemption from the Court's -- I think the Court does

1 have discretion to pose these kinds of deadlines.
2 The Court did impose the deadlines, and imposed the
3 deadlines against the defense as well, which we have
4 complied with. So, I think maybe there needs to be
5 more clarification later if there is something that
6 we're not anticipating here. But otherwise --

7 THE COURT: Let me ask this, I understand,
8 based on the previous arguments and information
9 presented to the Court related to the type of
10 testing that might be involved, that it may be
11 difficult for the State to put any timetable on when
12 information might be presented to the defense. But
13 can there be a description, in terms of so much time
14 before such evidence would be offered, that the
15 information would be presented to the defense?

16 ATTORNEY GAHN: I don't know if I can
17 commit to that, your Honor. Because it's just -- I
18 don't know exactly, depending on future rulings,
19 where we are going to be going. I guess at this
20 juncture I would inform the Court that, as far as
21 expert testimony, I suspect that testimony will be
22 pertaining to the vial, but there may be other lay
23 witnesses that we'll be presenting to thwart the
24 overall defense of, we're talking the location, the
25 security, and everything involved in the defense.

1 And I simply would ask the Court to
2 perhaps recognize *State v. Konkol* and what the
3 Court has held, and also the statutory language
4 which basically states that the State does not
5 have to turn over its rebuttal witnesses to the
6 defense.

7 THE COURT: Mr. Buting.

8 ATTORNEY BUTING: Well, on the other hand,
9 the Court did impose the December 15th deadline for
10 discovery, of all types of discovery. Now,
11 obviously, some discovery may be forthcoming based
12 on additional investigation that they have been
13 doing, but I would expect that the State would be
14 required, or should be required, to turn over such
15 discovery immediately, as soon as they get it,
16 rather than, you know, holding it back as some
17 ambush that they are going to present in the
18 rebuttal, whether it's lay or otherwise.

19 I think that the discovery, the ongoing
20 duty to supplement the discovery, should require
21 prompt compliance, as we have been doing. We
22 have turned over some reports just in the last
23 few days, in fact.

24 THE COURT: All right. What I'm going to
25 do is this, the motion as I understand it requests

1 relief from the pre-trial scheduling order in order
2 to allow the State to conduct scientific testing on
3 the blood vial and other related evidence. I
4 believe that this type of an extension was
5 contemplated at the time the pre-trial order was
6 issued, and so I'm going to grant the request as
7 it's framed.

8 I'm gathering from the argument of the
9 parties that other issues could arise that may be
10 contested, but they haven't been presented,
11 specifically, to the Court at this time and I'm
12 not going to speculate about those. However,
13 given the recent time frame within which the
14 evidence described in the motion was first
15 presented to the State, I'm going to grant their
16 motion.

17 The next item is the State's demand for
18 compliance with discovery requests. And I
19 believe that relates to the January 5 defense
20 disclosure of potential expert witnesses. Who
21 will be arguing this motion for the State?

22 ATTORNEY GAHN: I will, your Honor.

23 THE COURT: Mr. Gahn, you may proceed.

24 ATTORNEY GAHN: Your Honor, I'm basically
25 going to rely upon the brief we filed in this

1 matter. I simply would highlight what is stated in
2 our statute of 971.23 (2m)(am), which simply states
3 that if -- that any relevant written, or reported
4 statements of a witness named on a list under
5 Paragraph A, including any reports or statements of
6 experts made in connection with the case; or if the
7 expert does not prepare a report, or statement -- or
8 statement, a written summary of the expert's
9 findings, or the subject matter of his or her
10 testimony, including the results of any physical or
11 mental examination, scientific test, experiment, or
12 comparison that the defendant intends to offer in
13 evidence at the trial.

14 It clearly states that, summary of the
15 expert's findings. And reading what the
16 defendant has submitted, certainly does not come
17 anywhere close to telling us what are the
18 findings of their expert.

19 They have not supplied any written
20 reports which have been prepared by their experts
21 but -- and they have not provided us with a
22 summary that is telling us what the findings are.
23 They have simply told us that their experts may
24 or may not testify to something. They may agree
25 with, they may challenge, they may disagree with,

1 what our experts have come up with.

2 This is telling us absolutely nothing.
3 I don't believe they are complying with the
4 statute and I believe that the case that we
5 cited, the **Schroeder** case, certainly stands for
6 that proposition, that they tell us something. I
7 mean this isn't really difficult. It's quite
8 simple.

9 If they are going to call these experts
10 to testify, tell us what they are going to say,
11 what is the issue, and what are their findings,
12 what are their conclusions, not this general
13 broad, they may discuss some topic that is so
14 broad in nature that there's no way for us to
15 determine exactly what, you know, what their
16 testimony is going to be. So I would ask the
17 Court to require them to make this more definite
18 and more certain. And provide us with a written
19 summary of what their findings are.

20 I did speak with Mr. Buting, in our
21 motion we also talked about the October 6th
22 discovery demand that we filed that pertains to
23 the DNA evidence specifically. Mr. Buting is
24 going to look at that motion that we filed, that
25 discovery motion that we filed. And my

1 understanding is that he's going to get with his
2 expert and will comply as best he can with that,
3 so we needn't discuss that. I believe that
4 Mr. Buting will do that and take him at his word,
5 and will provide us with the necessary
6 information that we have asked for.

7 But overall, we still believe that we
8 have not been -- that the statute has not been
9 complied with.

10 THE COURT: Mr. Buting.

11 ATTORNEY BUTING: Judge, I assume the Court
12 got the letter that I faxed yesterday.

13 THE COURT: It did.

14 ATTORNEY BUTING: Okay. I think we have
15 more than adequately complied with the statute.
16 And, in particular, the way the statute reads is,
17 really, one of three things can be done. If a
18 report is prepared, then the report is turned over.
19 However, if there is no report prepared, then the
20 statute says a written summary of the expert's
21 findings or, and that's the important thing, or the
22 subject matter of his or her testimony.

23 And as I understand, the State's
24 complaint is that the disclosure doesn't
25 specifically list each and every finding, if

1 that's the way that they want to term it, but the
2 statute doesn't require that. The statute
3 requires a summary of the subject matter of his
4 or her testimony in lieu of that.

5 Now, we actually do include certain
6 findings. There's some opinions specifically
7 expressed in there of what we anticipate
8 Dr. Fairgrieve may testify about, in particular,
9 as well as Dr. White. It's perhaps a little
10 less -- it's a little more vague maybe on the DNA
11 expert, Dr. Friedman, but in part that's because
12 we explain in the last paragraph that we're not
13 offering any specific test results or
14 manipulation of data through the genotype or
15 various software types of thing.

16 So, I think clearly we have complied
17 with the statute as to description of the subject
18 matter. And really the **Anderson** case that I
19 point out to the Court, -- First, before I get to
20 that, the language of "this witness may testify
21 about that" or, you know, rather than "will
22 testify" is, really, simply a reflection of the
23 fact that none of these experts may testify at
24 all. The defense doesn't have to present any
25 evidence.

1 And so what we're saying by using that
2 language is that obviously this witness may or
3 may not testify. If the witness testifies, this
4 will be the subject matter of their testimony.
5 So to clear up any confusion about that, there's
6 no uncertainty as to what the subject matter will
7 be if they will testify.

8 And in **Anderson**, the State was permitted
9 to introduce a witness at trial without any kind
10 of expert disclosure under the discovery statute,
11 but simply by saying in a motion in limine that
12 an expert will testify about the dynamics of
13 child sexual abuse and -- or actually the -- I
14 think the specific phrase was -- I don't recall
15 it exactly, but the witness was not even named,
16 much less any written summary of what they were
17 going to say.

18 All that was disclosed was that there
19 would be an expert, unnamed, in the area of the
20 effects of child abuse, and disclosure, and all
21 of that. And the Court said that, in their view,
22 satisfied this discovery statute requirement of a
23 written summary of an expert's finding, or
24 subject matter of his testimony.

25 So if that was adequate in **Anderson**,

1 this is way more than adequate under the statute.
2 As *Schroeder* says, *State vs. Schroeder*, that the
3 State cites, the purpose of the discovery
4 statutes is to enable the other side to prepare
5 for the trial, not to do the preparation for
6 them.

7 We have done that, we have presented the
8 witnesses, the experts that we may use. If they
9 testify, these are the subject matter. I think
10 we were very specific as to what it is, what
11 subject matter they would testify about, and
12 there are some actual findings included in there.
13 So I think that we have more than adequately
14 satisfied the State's request.

15 As to the DNA, I did speak with Mr. Gahn
16 beforehand. Some of what he asked for in his
17 October discovery demand I didn't turn over
18 because I thought it related only if Dr. Friedman
19 had performed separate independent tests. I will
20 take another look at that and I think that we
21 will work out whatever remains in that. I will
22 turn over whatever protocol, if he still wishes
23 that, even though tests weren't done. But as to
24 the others, I think we have more than satisfied
25 the requirements.

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THE COURT: Mr. Gahn.

ATTORNEY GAHN: Your Honor, even the **Anderson** case, when I read the **Anderson** case that Mr. Buting has provided under Westlaw printout, this is a 15 page decision. And as far as the portion on the statutory section, 971.23 (1), it's a mere one paragraph of -- looks like 20 lines, and it really is sort of an aside in the **Anderson** case.

In fact, under **State v. Anderson**, the Supreme Court case at 291 Wis. 2d, 673, this **Anderson** case that the defense has cited was reversed by the Supreme Court. And they don't even mention this aspect. They don't even bring it up that I could find in the 40 page decision.

So the case being cited was reversed and they didn't even address this very, very minor issue. But even what is said in the **Anderson** case is -- what their response to us has been: These experts may testify to something; they may not. They may agree. They may challenge.

This is telling us absolutely nothing. This isn't the spirit of the statute or the spirit of the **Schroeder** case. If your expert is going to testify, tell us what their findings are and what their conclusions are so that we can

1 address that issue at trial. It is something
2 that to state, as the defendant just said, that
3 they gave a summary, I think he said -- if I
4 could have just one moment here while I get that
5 -- that it was, or the subject matter of his or
6 her testimony.

7 Well, to state something like they may
8 testify to DNA frequencies, well, that's not --
9 that's such a broad expansive topic that tells us
10 nothing. What exactly is your finding or your
11 conclusion as to the statistical analysis.

12 They may or may not testify as to DNA
13 protocols. Well, what, what, the protocols are a
14 100 pages long, and they are all different types
15 of, you know, quality assurance, quality control.
16 What exactly is the finding or conclusion of your
17 expert, that they have come up with. And they
18 just have not provided us with anything close to
19 that.

20 And I don't believe that's in the spirit
21 of *Schroeder*, or in the spirit of the statute.
22 And we would ask that they make a more definite
23 and certain explanation to us of what their
24 experts will testify to. Thank you, Judge.

25 THE COURT: All right. I took the

1 opportunity to review the legal authorities cited by
2 the defense and also some other cases that
3 interpreted the statute in this case. I also read
4 the defense disclosure of potential expert witnesses
5 that was offered.

6 And the Court concludes as follows:

7 First, I think the defense adequately explained
8 its use of the term may in the sense that it
9 meant, not that this may or may not be this
10 expert's opinion, but rather that the State is
11 not -- or the defense is not required to produce
12 any expert testimony. And the defense used the
13 term may to indicate it was not committing to
14 call these experts, only that it may call them.
15 And I think that's perfectly appropriate.

16 With respect to the meaning of the
17 statute, the operative statutory language reads
18 as follows: If an expert does not prepare a
19 report or statement, a written summary of the
20 expert's findings or the subject matter of his or
21 her testimony are what must be provided.

22 In the case law I examined, I found the
23 most helpful explanation of that statutory
24 language, which admittedly when it uses the term
25 subject matter, could be somewhat ambiguous, the

1 most helpful explanation I found was in the case
2 of *State v. Revels*, R-e-v-e-l-s, reported at 221
3 Wis. 2d, page 315. And at 330, the Court
4 summarized its interpretation of the statutory
5 language as follows:

6 We agree with the State, that given the
7 language of Section 971.23 (2m) and its obvious
8 purpose, it must be construed to require
9 disclosure of relevant substantive information
10 that a defense expert is expected to present at
11 trial, whether in the form of findings, test
12 results, or a description of the experts proposed
13 testimony.

14 The Court also finds that to be the most
15 reasonable interpretation of the statutory
16 language, given the purpose for which discovery
17 is supposed to be provided. As I take that
18 standard and apply it against the disclosure that
19 was presented by the defense, I find that some
20 cases, that some of the information provided by
21 the defense has met the standard, in other
22 situations it falls short.

23 For example, I'm not going to read it
24 verbatim, but if counsel has the defense offer in
25 front of it, the first full paragraph on page 3,

1 describing what Dr. Fairgrieve may testify about,
2 I view as consistent with the type of information
3 that is called for by the statute.

4 If I look back at page 2 and read, for
5 example, that Dr. Fairgrieve may testify about
6 identification of human remains, including
7 specific deficiencies in the recovery of the
8 remains at issue in this case, the Court finds
9 that that type of information falls short of what
10 the statute requires. The other side is entitled
11 to know what are the specific deficiencies that
12 are going to be testified about.

13 Otherwise, the discovery doesn't serve
14 its purpose. It doesn't allow the State to
15 prepare for the type of evidence that's going to
16 be admitted. And that's not to say that the
17 defense is required to do the State's work for
18 them, it's just to let the State know what work
19 it is going to have to perform on its own to
20 answer the claims made by defense experts.

21 Another example, a little further on
22 page 2 is the role of temperature and duration in
23 the rendering of a human body to cremains. Well,
24 what is that role? The State is entitled to know
25 what the opinion -- or what the position of the

1 defense expert is, so that it can determine
2 whether or not it agrees with that position, or
3 whether or not it intends to dispute the
4 findings.

5 Likewise, moving on to the statement of
6 Dr. Friedman on page 5: It says he may be
7 offered to testify about the reliability or lack
8 thereof of the Wisconsin Crime Lab conclusions in
9 this case. That's a conclusory statement that
10 doesn't really address the type of information
11 the statute calls for.

12 The defense is entitled to know, what is
13 it that the defense expert finds unreliable about
14 the Wisconsin Crime Lab conclusions, again, so
15 that the party can answer it. And although its
16 not at issue here, I would hold the State to the
17 same standard -- standards in providing its
18 expert information to the defense.

19 So the Court, necessarily in this case,
20 cannot say with specificity exactly what the
21 defense must do, but I do indicate that, with the
22 examples I have given, I find that the defense
23 disclosure of potential expert witnesses and
24 summary of their expected testimony falls short
25 of what the statute requires. And the Court will

1 grant the State's demand for compliance, along
2 the lines outlined by the Court.

3 The next item the Court will address is
4 the defendant's motion for disclosure of
5 exculpatory information, which was filed on
6 January 17th. Will that be Mr. Strang?

7 ATTORNEY STRANG: Yes, that's I. Buting
8 gets the hard things and I get the easy ones. The
9 case law on the State's due process obligation under
10 the -- here the Fourteenth Amendment, to provide
11 exculpatory information known to it is not entirely
12 clear in terms of what request, or what specificity
13 of request a defendant must make to trigger fully
14 the State's obligation of disclosure of exculpatory
15 information.

16 And it -- I think it used to be clear
17 that absent a defense request, with some
18 specifics about what it is the defendant thought
19 the State might have that is exculpatory, the
20 State did not have a due process duty. Now, I
21 think since **Brady** against **Maryland**, and assuming
22 almost 44 years, the defendant's obligation to
23 ask has somewhat eroded and been replaced by an
24 affirmative obligation of the State to tender.

25 But, this is the only way, I suppose, in

1 which I'm conservative, but I'm conservative on
2 this in the sense of, I thought it better
3 practice to ask, with as much specificity as I
4 could, for what it is I think the State may have,
5 and in doing so invoke the State's due process
6 duty to disclose to me.

7 So this is a bit of a
8 belt-and-suspenders approach. It was preceded by
9 a narrower request, in writing to Mr. Kratz, that
10 I didn't file with the Court. But I thought,
11 given developments in the last couple months,
12 that it would be a good idea for me to make
13 specific requests and thereby trigger the State's
14 duty.

15 These are ethical lawyers at the other
16 table, I expect them to comply with the duty.
17 And I don't know at this point the State -- or
18 the Court, really needs to take any action other
19 than inquiring of the State. And I will say that
20 I already know some information within the scope
21 of my request.

22 And so it's not that I'm completely in
23 the dark necessarily on some of the information I
24 seek, rather in a case this serious, I'm seeking
25 to make sure that I have got it all. That if

1 there's something that goes to bias of a State's
2 witness, or honesty, credibility of a State's
3 witness, a State's -- a State witness' motives to
4 testify falsely or to shade testimony, evidence
5 that might support a defense or some mitigation
6 of sentence, that I have asked for it and I have
7 gotten everything they have of that stripe.

8 So that -- that's the reason for the
9 motion. We don't have a specific dispute today.
10 And as I say, other than inquiring probably of
11 the State, I'm not sure that there's a ruling the
12 Court needs to make on the **Brady** motion today.
13 But it was better practice to file it in my view.

14 THE COURT: All right. Who'll be
15 addressing this matter for the State? Mr. Fallon.

16 ATTORNEY FALLON: Yes, thank you. I would
17 frankly acknowledge that I would have liked a little
18 bit of time to digest the request of the defense as
19 it is framed in the context of an exculpatory
20 evidence request. I did not receive the document
21 until last evening as I, likewise, was out of the
22 office on Wednesday.

23 The first thing I guess I would like to
24 address in response to counsel's comments, much
25 of what he says I do not disagree with. This is,

1 as he would say, a particularized or specific
2 demand as opposed to the general demand that is
3 part and parcel of every criminal case.

4 But I think, again, his argument and his
5 request puts the cart before the horse to the
6 extent that just because one says it is
7 exculpatory, or potentially exculpatory, doesn't
8 necessarily make it so. And I recognize that
9 whether a bit of evidence or information is
10 admissible is not the determinative standard as
11 to whether something is exculpatory or
12 potentially exculpatory.

13 So I acknowledge that and I wanted to
14 say that upfront. But in having said that, in
15 making a determination as to whether evidence is
16 exculpatory or not, there is a materiality
17 component here. And within the analysis of
18 materiality there is this overlapping concern,
19 overlapping of arguments as to whether such
20 evidence would even be admissible. So I think we
21 have to acknowledge that.

22 And as I look at the information
23 requested, that's what I am struck by and that
24 is, is this information significantly material,
25 given all that we know now. And the Court has

1 had pretty extensive pleadings and briefs filed
2 to evaluate the context in which this request is
3 made. I have serious reservations as to whether
4 it's truly material in the context of **Brady**. And
5 I guess I would like to digest that and think
6 about that further.

7 Secondly, I'm not convinced that the
8 information is solely or exclusively in the
9 domain or the possession of the State per se. We
10 have, as counsel readily acknowledged, six
11 additional pages of discovery from their
12 investigator regarding information that he has
13 unearthed in his interview of members of the
14 clerk staff, buildings and grounds, maintenance
15 individuals, and the like.

16 The question is, they have subpoena
17 capability as well as the State to get
18 information. I can represent that in terms of
19 the prosecution files and information that we
20 have available, we don't have any of the
21 information available to us. It's not in our
22 possession.

23 We will certainly look for the
24 information, but I'm not conceding, for the sake
25 of our argument here, that it's necessarily

1 material, or that they are entitled to it, or
2 it's solely in our possession and we have the
3 obligation to get it.

4 We will look at the information but,
5 again, much of the import of what's being asked
6 here will be the subject of additional motion and
7 argument at the end of the day today. And that
8 may or may not have an impact as to the
9 materiality component.

10 I wish I could say more, but only having
11 it an evening to digest this, that's about all I
12 can say. We'll look at it. We'll make some
13 inquiries, because there are some interesting
14 questions there. But we by no means accept, for
15 purposes of this, that it is an exculpatory
16 information demand. We do not except that it is
17 necessarily material. I'm not saying it's not
18 relevant, I will concede that, but then we have
19 that whole materiality component.

20 So that's our statement on this. We'll
21 look into some of these matters, both as a
22 courtesy and for our own information. We would
23 certainly like to know some of this. I also
24 believe that most -- much of this has been
25 complied with, with respect to some of our recent

1 pleadings.

2 And I would acknowledge, for instance,
3 Paragraph 2, our last pleading, I think we have
4 answered that. Paragraph 5, I think recent
5 discovery information, which should have been
6 sent to defense regarding the vial of blood, I
7 think that has been complied with already.

8 I would indicate with respect to item
9 number 10 for instance, we are, ourselves,
10 correctly so, we're waiting for a report from
11 Mr. McCurdy at the FBI. We do not have that
12 report. We have a request in. We're told it's
13 coming, but we don't have it yet. So, in terms
14 of those specifics, those I think I can provide
15 to you.

16 With respect to the absence or presence
17 of keys, I can tell you after the recent
18 discovery that we sent to defense and discovery
19 we received from them, I'm not sure with respect
20 to keys and access issues that there are -- there
21 is any more. We can certainly look.

22 But I think Investigators Wiegert and
23 Fassbender did a round of interviews regarding
24 that point and Defense Investigator Baetz, I
25 believe it is, likewise did some. I'm not sure

1 there's much more to be had there.

2 Again, raising the question, I'm not
3 convinced this is entirely in our bailiwick. But
4 that's my comments at the moment. If I may
5 confer with counsel for a second.

6 THE COURT: Fine.

7 ATTORNEY FALLON: And, again, as I said, I
8 think a further discussion, perhaps regarding the
9 two motions, at the end of the day, this can be
10 discussed even more freely, so I will pass on that.

11 THE COURT: Mr. Strang.

12 ATTORNEY STRANG: There are three things I
13 can add that will, I think, be helpful in reply.
14 First, it's of course not at all uncommon that
15 prosecutors dispute the materiality of information
16 that may be exculpatory or dispute with the defense
17 whether something is exculpatory.

18 Common situation, advocates on both
19 sides look at facts from their peculiar
20 perspective and experience, of course. I request
21 that in such situations, the State follow -- take
22 the high road in the sense of erring on the side
23 of disclosure, recognizing that as lawyers who
24 defend people, rather than prosecuting them, we
25 may have a better sense of how to use something

1 in an exculpatory fashion, or of what exculpatory
2 admissible evidence, something inadmissible may
3 lead to.

4 If the State is unwilling to do that in
5 its announced pursuit of the truth, which would
6 suggest erring on the side of disclosure, there
7 is available the option of tendering something
8 that's questionable from the State's advantage
9 point, to the Court, for an in camera and neutral
10 determination.

11 I think for a lot of reasons that's less
12 preferable than simply disclosing it and fighting
13 later about what it means, but it is an available
14 option. And if nothing else, ought be used here
15 if the State has information about which
16 materiality might be in dispute.

17 Second, and this is quite specific to
18 this case, I recognize, and I want to make sure
19 that the Court and counsel recognize here, the
20 contours, as I see them, of the application
21 particularly of a case like **Kyles vs. Whitley**,
22 the 1995 U.S. Supreme Court decision that
23 discusses, essentially, what is the State, or the
24 prosecution mean.

25 Does it mean only the lawyers who sit at

1 counsel table or who are employed by a District
2 Attorney's Office? Does it include law
3 enforcement officers; if so, how deep within the
4 department, so to speak, or within the
5 investigating agency. And this case, happily, is
6 not typical in this sense.

7 It's a Manitowoc County case, as a
8 matter of venue and as a matter of original
9 statutory law enforcement obligation. We can
10 fight about how completely or what this means,
11 but on November 5, 2005, some steps were taken to
12 turn over some level of investigative control to
13 the Calumet County Sheriff's Department. And
14 there is no question that on or about November 5,
15 I think it was November 5, but I could be off, a
16 judge in this county entered an order appointing
17 a Special Prosecutor from outside the county,
18 hence, Mr. Kratz's appearance.

19 In my view, though, this lessens not at
20 all the obligations of the Manitowoc County
21 Sheriff's Department, to yield to the
22 prosecutors, exculpatory information within its
23 possession, at least if that's known by officers
24 who took an active role in the investigation that
25 led to the charges here.

1 I further acknowledge that not only are
2 there institutional problems in out-of-county
3 people relating to in-county-people and, you
4 know, maybe the informal working relationships
5 aren't what they would be within a county,
6 between the D.A.'s Office and the Sheriff's
7 Department, but here, of course, the Manitowoc
8 County Sheriff's Department's conduct has been
9 put at issue by the defense. And we have had the
10 unusual situation of DCI investigators engaged in
11 interviews, quasi formal at least, law
12 enforcement interviews of Manitowoc County
13 Sheriff's Department or other Manitowoc County
14 personnel.

15 So there are practical problems, but it
16 doesn't change, in my view, the due process
17 obligation in the end to route out information
18 that the Manitowoc County Sheriff's Department
19 may have, and to which the prosecution is
20 entitled, and as to which it has a due process
21 obligation to disclose to the defense.

22 Third, the due process obligation, of
23 course, is ongoing. So if compliance is complete
24 today, it doesn't necessarily mean that it's
25 complete for all time, obviously, as information

1 is gleaned.

2 And counsel acknowledges, faithfully,
3 that the information covered by Paragraph 10
4 should be disclosed to the defense and says that
5 he can't disclose it yet, because he doesn't have
6 it. Well, if he doesn't have it, that's true, he
7 can't. So he has an ongoing obligation.

8 We were told by a Calumet County officer
9 at the last hearing in Chilton, that this
10 information had been received from the FBI. But
11 that I was told, in fairness, the very same day,
12 was news to Mr. Kratz. And so I don't know, it
13 doesn't matter. The point is that the obligation
14 is ongoing and I'm sure the State will comply
15 with that.

16 As to Paragraph 5, in specific, the
17 State has made reference in a recent filing to
18 what it says a phlebotomist says. But of all the
19 interviews recently disclosed to us concerning
20 the general topic of the blood vial, that's the
21 interview that's missing.

22 We don't have a report of any interview
23 from the, I think the now retired, phlebotomist.
24 And I would expect to get that, if in fact the
25 State is representing what she says in a

1 pleading. I'm sure the State is doing that
2 accurately, but I would expect to have the
3 underlying witness statement. And I'm sure it
4 will be disclosed by my friends at the next
5 table.

6 So, this is an ongoing process and I
7 will end where I started, which is to say the
8 request has been made, the obligation triggered.
9 And I don't know that the Court can enter
10 specific rulings today, necessarily, but I wanted
11 to make a record of it. And the nuances here of
12 the relationship of some ranking members of the
13 Manitowoc County Sheriff's Department with this
14 particular prosecution team complicate, but don't
15 alleviate, the State's duty.

16 THE COURT: Mr. Fallon.

17 ATTORNEY FALLON: Yes, one final point.
18 And I guess this dovetails back into the recent --
19 the discussion that we just held regarding relief
20 from the pre-trial scheduling order. Because this
21 is a perfect example of what is rebuttal testimony.

22 If the defense wants to put forth the
23 defense that they are suggesting and implying in
24 their pleadings to date, then they do so at their
25 peril. The State has indicated -- sought relief

1 from that order on the specific vial and the
2 other related matters, well, here is a related
3 matter.

4 Now, admittedly, the whole concept of
5 rebuttal does not excuse one's obligations with
6 respect to what is potentially exculpatory
7 evidence, so I acknowledge that. But, again, it
8 is an example of the complexity of this case, and
9 the issues, and the import.

10 Again, the State doesn't have to show
11 all of its cards with respect to how it will
12 respond and refute certain defenses which are
13 going to be proffered. We only have to show our
14 hand, or tip our hand, if such information is
15 going to be, quote, "truly exculpatory", in the
16 meaning of that phrase.

17 And, again, as I had said, I would like
18 to review some of the law on that. I'm aware of
19 counsel's representations. In fact, I don't
20 disagree with much of what he said at all in
21 terms of what our obligations are. I'm quite
22 aware of those obligations. And the fact that
23 the prosecutor's obligation is to look in areas
24 immediately beyond their own office is pretty
25 well settled in the law. So, I don't take issue

1 with that.

2 But, again, there is the relationship
3 here between what is truly rebuttal and what is
4 truly exculpatory. And if it is truly
5 exculpatory, then counsel is absolutely correct.
6 Anything short of that, then they go down the
7 road at their peril, because we are entitled to
8 respond as the law permits.

9 And that's why the statute is written
10 the way it is. And that's why rebuttal is set up
11 the way it is, such that the State has a fair
12 right to reply, since we have the burden of
13 proof, beyond a reasonable doubt. Thank you.

14 THE COURT: All right. First of all, I
15 believe Mr. Strang is correct in the sense that I
16 don't know there's much the Court can decide about
17 this motion today. I'm just going to make a couple
18 of observations. To the extent -- and I believe the
19 parties agree with this -- to the extent the State
20 possesses information that may be exculpatory, the
21 obligation to share that with the defense goes
22 beyond the need for the defense to make a motion.

23 Case law requires it. Section 973 -- or
24 971.23 (1)(h) requires it by statute. And
25 certainly the State is aware of a number of

1 criminal cases where convictions have been
2 reversed because of a failure to provide
3 exculpatory information.

4 The motion for disclosure, to the extent
5 it draws attention to any exculpatory information
6 that the State may not have been aware of before
7 would assist the State, if you will, in
8 determining the existence of the information and
9 turning it over to the defense, if both parties
10 agree that it's exculpatory, the State, in any
11 case, runs a risk if it doesn't turn over
12 evidence that is later determined to be
13 exculpatory.

14 If there's any evidence requested in the
15 motion that doesn't fall under the heading of
16 exculpatory evidence, and has not been previously
17 requested, the discovery deadline ended on
18 December 15th, so it would not have to be turned
19 over.

20 In addition, I will note that whether or
21 not evidence may be exculpatory and may be
22 material to this case may depend on the outcome
23 of rulings on motions on which the Court has yet
24 to rule. And as defense counsel points out, the
25 State's duty is ongoing, so there may be a duty

1 to turn over evidence that hasn't been turned
2 over yet, depending on future court rulings.

3 Having made those comments, which I
4 think for the most part the parties reflect in
5 their statements to the Court today, I'm not
6 going to issue any ruling on the motion at this
7 time. If at some point in time the defense
8 doesn't receive something it feels it is entitled
9 to receive that is in existence and wants to
10 specifically renew the motion, I will take it up
11 at that time.

12 But it appears to be, at this point,
13 more of a work in progress, for the reasons that
14 I have said. Some of the items the State
15 contends that it has turned over, the materiality
16 of other types of evidence, may still yet to be
17 determined and may trigger at some point in the
18 future -- in the near future -- an obligation to
19 turn over additional information.

20 Next, the Court will take up the
21 defendant's motion to exclude computer generated
22 animations. And when I say take up, I'm just
23 going to address it and recognize it as being
24 outstanding. The Court has been provided earlier
25 this morning with the information that is the

1 subject of the defendant's motions.

2 I will, because of the proximity of
3 today's date to the start of the trial, get an
4 explanation from the defendant of the basis for
5 the motion, on the record. And also, hopefully,
6 get some idea from the State of the reasons for
7 which the information will be provided, as they
8 may have relevance in determining whether or not
9 the information is admissible. Who is going to
10 present the State's position, Mr. Strang? Excuse
11 me, the defense position. It's your motion.

12 ATTORNEY STRANG: I will. I understand the
13 Court hasn't had a chance to look at the three
14 animations at issue and, indeed, neither have we.
15 We received the same CD's or DVD's today. We have
16 had, and the Court has not until now, had copies of
17 slides, for want of a better word, for two of the
18 three animations.

19 The simple point, though, that ought not
20 get lost in the shuffle here, is that I believe
21 early on, in fact probably before Mr. Buting and
22 I entered our appearances, Mr. Avery invoked his
23 discovery rights under Section 971.23, without
24 reservation. And it's a little bit unclear to me
25 here how the State would explain or justify, with

1 good cause, the failure to disclose these
2 exhibits, particularly the FBI animation, as to
3 which we have seen nothing at all until today, I
4 assume on the CD or the DVD we have, as gauged
5 against the December 15, 2006 discovery cut off.

6 The underlying information I think in
7 these animations isn't something newly
8 discovered, isn't something that the State got
9 only from the defense, and does relate to
10 information and physical items that the State has
11 had in its sole custody, at least as to the
12 Toyota, since November 5, 2005.

13 And as to the Avery property, the
14 underlying information as I understand it is
15 drawn from the State's seven or eight day
16 exclusive possession of the entire Avery
17 property, again, from about November 5 to
18 November 12, 2005, where even family members and
19 people who lived on the property were excluded,
20 by the State.

21 So there is a -- there is a tardiness
22 issue here that is separate from, and stands
23 independently of, the question then of relevance,
24 completeness, fairness, and a 904.03 balancing
25 that I have addressed at greater length on brief,

1 as to which there's no point in my offering
2 further argument until the Court has had a chance
3 to look at the exhibits. And for that matter the
4 State hasn't had much chance here to respond in
5 writing, if that's its wish.

6 THE COURT: All right. Who will be
7 handling this for the State?

8 ATTORNEY KRATZ: I will, Judge.

9 THE COURT: Mr. Kratz.

10 ATTORNEY KRATZ: First and foremost, your
11 Honor, let me explain what we're talking about.
12 There are three different areas of the generation of
13 summary exhibits that the State has had performed.
14 Those include a computer generated virtual tour, if
15 you will, of the Avery property itself, which
16 includes buildings and curtilage which basically
17 surround the Steven Avery trailer.

18 We have also asked for, and have
19 received, a representation, or series of
20 representations, to assist one of our expert
21 witnesses, the anthropologist in this case, in
22 describing what human remains were recovered to
23 better assist the jury to understand from where
24 on the human body, where on the skeleton, to be
25 blunt about it, these items may be found.

1 And lastly, we had performed, through
2 assistance of the FBI, a representation of the
3 victim's vehicle, which was recovered, which as
4 this Court and defense knows, is of a highly
5 probative nature, and items found within.

6 Mr. Strang's submission, which I do
7 request an opportunity to respond to in more
8 detail, makes claims like, the angles depicted in
9 the computer generated animations are not such
10 that a human could make, and -- and that's true.
11 I guess that's the point of demonstrative
12 evidence.

13 Demonstrative evidence, rather than
14 original evidence, rather than the thing from
15 which the demonstrative evidence is generated, is
16 to assist the trier of fact. And the only thing
17 that a Court has to determine, at least from an
18 admissibility standpoint, is whether or not it's
19 a fair representation of what it purports to
20 show.

21 Now, the State today, so that the Court
22 understands what we were talking about, has
23 provided 3 CD's, 3 discs, which are examples of
24 those summary exhibits. I couldn't disagree with
25 Mr. Strang more about the State's requirement or

1 obligation to provide these things to the
2 defense.

3 The defense is entitled to the actual
4 items that are seized, or measurements of, or
5 business records, or phone records, or photos.
6 But they aren't entitled to summary exhibits.
7 They are not entitled to maps, or timelines, or
8 charts, or diagrams. And even though these three
9 animations are computer generated, they are
10 clearly within the category of diagram.

11 If we go to the most basic kind of a
12 diagram that juries sometimes see in an
13 automobile accident, the diagram of an
14 intersection, kind of an overview, where was the
15 car coming from. Well, that's not an angle that
16 is available to the human eye. But nobody would
17 suggest, that because it's from a different
18 angle, that it's somehow not relevant or not of
19 assistance to a jury.

20 So to suggest that because it's -- I
21 think Mr. Strang is arguing, so nicely done,
22 because it is of a high-tech nature, because it's
23 computer generated, somehow that goes to its
24 admissibility, it is somehow prejudicial to
25 Mr. Avery. We do disagree.

1 We will be able, at trial, or before if
2 the Court wishes, a more detailed offer of proof
3 to demonstrate how this demonstrative evidence,
4 how these summary exhibits, will be of benefit to
5 the jury, so that the jury can see in an
6 overview, or an overall representation, where
7 specific evidence is found, how it may relate, or
8 interrelate, to other evidence, and how,
9 certainly, it is not going to be cumulative.

10 These are very well done. The timing of
11 them was for the State's presentation of its
12 case-in-chief. I provided them to the Court and
13 to the defense as a matter of courtesy. That's
14 how I'm looking at my provision of these. Again,
15 I don't think the entitlement to summary exhibits
16 occurs until the very moment, that day witness
17 intends to refer to them at trial.

18 But in order to speed up the trial
19 process, which we're all, I think, sensitive to
20 in this case, I'm happy to have the Court review
21 these matters and to issue a pre-trial ruling.
22 And, again, would ask for an opportunity for more
23 detailed argument if, in fact, after reviewing
24 these, the Court has a question as to their
25 materiality or to their relevance at the time

1 that that might come up. That's all I have at
2 least for today, Judge. Thank you.

3 THE COURT: Mr. Strang.

4 ATTORNEY STRANG: I agree with counsel up
5 to a point, that if this properly is viewed as a
6 summary exhibit under 910.06, which certainly the
7 State is free to argue on brief, that it's the
8 underlying physical items that the defendant is
9 entitled to see, or examine, or to have, as a matter
10 of the principle discovery statute, Section 971.23.
11 I don't agree that the timing of the disclosure of
12 this exhibit, therefore, is unimpeachable.

13 The defendant certainly is entitled to
14 have his jury not consider irrelevant, unfair,
15 overly suggestive, or unhelpful demonstrative
16 evidence to the jury. This Court set a
17 December 15 deadline for motions in limine, which
18 would ordinarily be the way to address
19 demonstrative evidence, or summary exhibits, or
20 other things that might be excludable as not
21 relevant or -- under Section 904.03.

22 And to time that with a discovery
23 deadline, on the same day, by disclosing this
24 after December 15 I'm, of course, in no position
25 to make a motion in limine by December 15. And

1 my motion in limine to that extent necessarily is
2 tardy, although I think without fault, because I
3 can't move to exclude that which I haven't been
4 told will be offered, or shown.

5 So timeliness in that sense here, very
6 much remains an issue. And, again, the other --
7 the other details about the fairness of the
8 presentation are probably best addressed on paper
9 and then by the Court's review, and ours, of the
10 exhibits themselves.

11 THE COURT: All right. Neither party is
12 asking the Court to make a ruling on this particular
13 matter today. And since I haven't seen it, I think
14 that's appropriate. The only comment I would
15 reiterate is that this offered exhibit, or set of
16 exhibits, whether they are admissible or not, may
17 not be determined simply intrinsically by the
18 exhibit, but the purpose for which it's offered.

19 At this point I don't know that yet.
20 You know, the fact that they don't show
21 shrubbery, or foliage, I think that was mentioned
22 in the defense's motion, for some purposes that
23 may be significant, for other purposes it may not
24 be. So in order for the Court to evaluate the
25 defendant's motion, I'm not only going to have to

1 see the exhibit, but be informed as to the
2 purpose for which it's offered. And it's my
3 understanding, counsel, that we're going to take
4 this up at the final pre-trial on February 2nd.

5 ATTORNEY KRATZ: That's fine, Judge.

6 THE COURT: Okay. The next item, which I
7 believe should be brief, is the Court, based on the
8 stipulation submitted by the parties concerning the
9 exclusion of witnesses at the trial, drafted a
10 proposed order. The Court received a response from
11 the defense with a couple of suggested
12 modifications. I didn't receive anything back from
13 the State. But do I take it, at this point, that
14 with the modifications suggested by the defense,
15 that the form of the order is acceptable to both
16 parties?

17 ATTORNEY KRATZ: The Court may recall that
18 this was the subject of a written stipulation by the
19 parties. And since Mr. Strang and I jointly drafted
20 that, we don't have an objection. Mr. Strang
21 included, in at least in the Court's form of the
22 exclusion order, one suggestion. With that -- with
23 that one variance to the Court's offer, the State
24 doesn't have any objection that the exclusion order
25 be adopted and the Court can enter that order.

1 ATTORNEY STRANG: Just so we're not going
2 past each other, I think I actually made two
3 changes. I don't have it in front of me.

4 THE COURT: Right. Just for my own
5 information, Conrad Baetz, is he a defense
6 investigator?

7 ATTORNEY STRANG: Yes.

8 THE COURT: Very well. The next series of
9 motions that has been presented for the Court's
10 consideration deals with evidentiary matters, which
11 for the most part I believe the State wishes to
12 argue are inadmissible for, among other reasons,
13 being not probative and unduly prejudicial. And the
14 State has asked that the Court hear argument on
15 those motions in camera. So, before getting to the
16 motions, I will hear from the State on its request
17 to consider these matters in camera.

18 ATTORNEY FALLON: Yes. Thank you, Judge.
19 The State does request that these matters be
20 addressed in camera. As the Court and the parties
21 are aware, there's been a flurry of briefing which
22 occurred since the first of the year on third party
23 liability and blood vial evidence.

24 I have asked in our pleadings for oral
25 argument and that -- that the argument be an in

1 camera argument. My reasons are these:

2 First and foremost, there will be a
3 great deal of discussion amongst the parties
4 regarding facts which may or may not be facts
5 heard by the jury. For instance, if the Court
6 determines the evidence to be inadmissible, then
7 those are facts which are not going to be
8 disclosed or heard by the jury.

9 And given the nearness in time to the
10 jury selection process and the potential for such
11 prejudicial and possibly inflammatory argument,
12 and fact, and statement being made this close in
13 time to the selection process, runs a risk of
14 contaminating the jury pool.

15 Additionally, the three matters to be
16 discussed are all interrelated. The State sees
17 the interrelationship far stronger than the
18 defense, but I think the defense would agree,
19 that to adequately discuss these motions, there
20 will be a variety of facts that need to be
21 brought out on the record, and discussed, and
22 argued.

23 As a result of which, we do not want to
24 run the risk of potential contamination of the
25 jury pool this close to the jury selection

1 process. So, that's why the issues of third
2 party liability, the admissibility of the blood
3 vial evidence and, thus, the subsequent bias
4 issues, need to be addressed in camera until a
5 ruling is obtained. And that is the basis for
6 our request.

7 THE COURT: Mr. Strang.

8 ATTORNEY STRANG: The State -- The Court is
9 correct that this is the State's request, that the
10 Court take up facts and available possible evidence
11 that will have a great bearing on this trial outside
12 of public scrutiny and outside the hearing of the
13 media. The State has offered some good reasons for
14 that.

15 I don't stand to oppose that today, in
16 part because I am relying on counsel's assessment
17 of where this factual discussion could take us.
18 In the end, of course, this is one of these
19 issues on which the Court cannot defer to the
20 parties, because the Court has to speak for the
21 broader public and speak for the First Amendment.
22 And I don't presume to undertake that role, or to
23 tell the Court how it should exercise its
24 overriding public duty in that respect.

25 I do say that I -- I don't understand

1 the State, by the use of the term "in camera" to
2 be seeking to exclude the defendant himself. And
3 I would ask that he participate. I understand it
4 to be the public and the public's representatives
5 of the media that would be excluded. And I
6 tender the decision to the Court.

7 THE COURT: All right. First of all, that
8 is also the Court's understanding of the State's
9 request; I don't believe the State is asking that
10 the defendant be excluded. I will state for the
11 record that when I received the written arguments of
12 the State and read the request, I took the
13 opportunity to explore this issue a bit.

14 Under Section 757.14 of the statutes,
15 they provide that sittings of every court shall
16 be public. And that is certainly the general
17 rule. It is extremely rare that a session of
18 court can be closed. I have been on the bench
19 for almost 10 years and I don't believe I have
20 ever closed a session of court.

21 However, the law is that in certain rare
22 situations a sitting of court can be closed. The
23 leading case on the issue, as far as I can tell,
24 is ***State ex rel. La Crosse Tribune vs. Circuit***
25 ***Court***. It's a 1983 reported court decision.

1 Some of the most important language in that
2 decision for our purposes reads as follows:

3 It has long been recognized that the
4 requirement for public trials is subject to
5 certain inherent powers of the court to limit the
6 public nature of trials in certain respects where
7 the administration of justice requires it.

8 The circumstances necessary to trigger
9 the discretion to close a courtroom must be
10 compelling. One circumstance which arguably
11 could trigger a trial judge's discretion to close
12 the court is that a fair trial could not
13 otherwise be had.

14 The trial judge should recite on the
15 record the factors that impel him to close the
16 courtroom and why such factors override the
17 presumptive value of a public trial. Findings of
18 fact must be made with specificity, process must
19 be a rational one and the rationality of it must
20 be demonstrated on the record, showing that the
21 conclusion was reached on facts of record, or
22 which are reasonably derived by inference from
23 the record.

24 A trial court is required to hold a
25 hearing and publicly reach a conclusion based on

1 the exercise of discretion prior to ordering a
2 closing. The parties and members of the public
3 present in court may appear at such hearing, that
4 is, the hearing that we have today, which is on
5 the record.

6 As I said before, closing court
7 proceedings is rarely done, but I do find that in
8 this particular circumstance there are
9 circumstances which justify that decision. I
10 will be repeating some of the arguments made by
11 the parties, or primarily by the State here.

12 But I first want to note for the record,
13 the Court is aware that this case has received,
14 at least for purposes of this county,
15 unprecedented public coverage. This has included
16 live television coverage of most of the court
17 proceedings, and in addition, video of the court
18 proceedings in their entirety have been posted on
19 media websites for persons who are not otherwise
20 available to view the proceedings.

21 As a general rule, the Court views this
22 as a positive situation, that is, it enables the
23 public to see the court system in action. Court
24 proceedings are supposed to be public and the
25 participation of the media significantly assists

1 in that regard.

2 However, it can pose a problem in a case
3 such as this where the publicity concerning the
4 pre-trial hearings is widespread. And we're
5 dealing with disputed matters relating to
6 important pieces of evidence to the parties that
7 some of which may determine -- be determined to
8 become inadmissible and could be highly
9 prejudicial and threaten fairness of the trial.

10 In this particular case, we're within 10
11 days of beginning the jury selection process.
12 This trial has already been delayed once for a
13 number of months. And one of the important
14 reasons advanced for the delay was the existence
15 of previous publicity that could well be
16 considered prejudicial and threaten the fairness
17 of the trial. Given the fact the trial is not
18 going to be starting until approximately 15
19 months after the alleged offense, it's important,
20 I think, not to unduly create a reason for
21 another adjournment.

22 The Court also notes that it's
23 impossible in this case, particularly, to
24 successfully insulate potential jurors from the
25 publicity that comes out of today's hearing. The

1 jury is going to be selected from Manitowoc
2 County. This is not a case where we're bringing
3 jurors in from a far-flung part of the state
4 where they might not be exposed to the publicity
5 from this hearing.

6 As I indicated, it's not just a normal
7 motion hearing, it's a motion hearing that deals
8 with evidence which is alleged by one party, in
9 this case the State, to be inadmissible, to be
10 arguably inflammatory, and highly, potentially
11 prejudicial to threaten the fairness of the
12 trial.

13 Finally, I will note that I believe the
14 disadvantages of holding the hearings in camera
15 can be somewhat alleviated by the fact that, to
16 the extent the Court issues a decision -- and I
17 will indicate in open session it's not likely to
18 be issued today, I'm going to want an opportunity
19 to review the arguments of the parties and their
20 written submissions, many of which have been
21 received simply in the last few days -- but at
22 such time as the Court issues a decision,
23 determining that any evidence is admissible, that
24 ruling will be made public and immediately
25 available to the public and to the media.

1 So for those reasons the Court finds
2 that consideration of the evidentiary motions
3 that remain, and that have been described by the
4 State on the record, will necessarily be
5 conducted in camera; that is, out of view of the
6 public.

7 I will take a recess at this time in
8 order to permit the courtroom to be cleared and
9 then we'll resume with the hearings. Mr. Gahn.

10 ATTORNEY GAHN: Judge, just -- I have just
11 one very quick matter and I believe Mr. Kratz also
12 does. Regarding our issue number two this morning,
13 the demand for compliance with discovery, we had
14 asked on Page 8 of our brief that the compliance be
15 completed within three days. I would ask the Court,
16 would you make that part of your ruling?

17 THE COURT: First, I would want to hear
18 from the defense as to the feasibility of that.

19 ATTORNEY BUTING: Give me just one second
20 to look back in my notes here, for what I have to
21 do. And three, we're talking about three business
22 days, or I'm going to have to contact --

23 THE COURT: Lets' name a day. Next week, I
24 assume you're talking about.

25 ATTORNEY GAHN: Yes, you'll not include the

1 weekend.

2 THE COURT: Wednesday?

3 ATTORNEY GAHN: That will be fine, your
4 Honor.

5 ATTORNEY BUTING: I think that should do.
6 Yes, that would be the --

7 THE COURT: 31st.

8 ATTORNEY BUTING: No, 24th.

9 THE COURT: I'm sorry, I'm a week ahead,
10 Wednesday, the 24th.

11 ATTORNEY GAHN: Thank you.

12 THE COURT: Mr. Kratz.

13 ATTORNEY KRATZ: Two things, Judge. The
14 Court set today as a date by which the State should
15 file proposed jury instructions, and recognizing
16 that these may change and evidentiary rulings may
17 affect them, I have that document for the Court and
18 I wanted the record to reflect its filing.

19 Secondly, the Court had asked that, if
20 either party contemplated the inclusion of any
21 images, that is, photographs or other images,
22 within its opening statements, power point
23 presentation, or however else they may be
24 included in its opening, that those be provided
25 to the Court by today's date. I have prepared a

1 CD with the images the State intends to include
2 in its opening. Both of these submissions, I
3 should tell the Court, have been provided to
4 Mr. Strang before the start of this hearing.

5 ATTORNEY STRANG: I acknowledge receipt of
6 both, just as Mr. Kratz says. And I will note as
7 well that we provided two letters by facsimile to
8 the Court and counsel, both dated January 18, 2007;
9 although, I think one only faxed early this morning
10 to the Court and counsel relating to proposed jury
11 instructions.

12 THE COURT: All right. I understand, I
13 believe when I read Mr. Strang's letter, he
14 indicated that because of the outstanding motions
15 that have not yet been resolved, it was impossible
16 to submit, necessarily, all jury instructions
17 requested by the defense. I understand Mr. Kratz to
18 be saying the same thing for the State. And the
19 Court understands that, that both parties will be
20 given a chance to supplement their requests for jury
21 instructions pending the outcome of outstanding
22 motions.

23 ATTORNEY KRATZ: Do we know whether the
24 defense intends to offer any images during their
25 opening statement, or whether they even intend to

1 give their opening at the start of the case?

2 ATTORNEY STRANG: I --

3 ATTORNEY KRATZ: If so, I ask for some
4 notice or opportunity to object, just like the State
5 has given.

6 THE COURT: I don't believe they are
7 required to state today whether they are going to
8 make an opening statement.

9 ATTORNEY STRANG: I'm not, but I will. And
10 I will, I will be giving an opening statement, or we
11 will, probably I will, I expect immediately after
12 the State's. And my present intention is not to use
13 exhibits in that opening. If that changes, I will
14 disclose that to the State and to the Court if it
15 wants, just as soon as I change my mind about that.
16 But that would be a change of mind.

17 ATTORNEY KRATZ: That would be just fine,
18 Judge. I don't need more notice than that, that's
19 fine.

20 THE COURT: Anything else before we take
21 our break?

22 ATTORNEY FALLON: No.

23 ATTORNEY KRATZ: No.

24 THE COURT: If not, lets report back in 15
25 minutes.

1 (Recess taken.)

2 THE COURT: At this time we're back on the
3 record. As I announced previously, this portion of
4 the proceedings is being conducted in camera and the
5 public is not present in the courtroom at this time.
6 The next motion that I had up for consideration was
7 the *Denny* motion.

8 Specifically, the defense filed a
9 statement on third party responsibility
10 indicating that as a first point that *Denny* did
11 not apply to this case, but in the alternative,
12 if the Court determined that *Denny* did apply, the
13 defense identified a number of persons who could
14 be considered possible perpetrators of the crime
15 and explained the offer that would be made, of
16 evidence to support those allegations. The State
17 filed a memorandum to preclude third party
18 liability evidence. Will Mr. Strang or
19 Mr. Buting be handling? Mr. Strang, you may
20 proceed.

21 ATTORNEY STRANG: Thank you. Let me just
22 take care of a housekeeping issue first. We have a
23 Manitowoc deputy in the courtroom who is a court
24 officer. And I think for -- as much for his own
25 good as anything, since his possible testimony or

1 facts about which he knows may come up at some point
2 along the line here, we may want to excuse him so
3 that he is clean, so to speak, and not subject to a
4 cross about what he may have overheard bearing on
5 the subject matter of his possible testimony. I
6 don't have any -- again, I don't have any problems
7 with this guy in particular, just probably is a good
8 thing to do. Deputy Riddle.

9 THE COURT: Well, we have --

10 ATTORNEY STRANG: Oh, and we have Deputy
11 Tackes too. Okay.

12 THE COURT: Does the State wish to be
13 heard?

14 ATTORNEY FALLON: This seems to be a
15 security based issue. We'll defer to the Court and
16 counsel as to how you wish to proceed on this. To
17 me, I don't see it as much of an issue at all. But
18 if Mr. Strang has some significant concerns and the
19 Court has agreed, that's fine. I think the
20 determination should be made from a security based.
21 And if there's another officer available, great, if
22 not, then we'll have to -- Court will have to make a
23 determination whether you want to proceed with just
24 one bailiff.

25 THE COURT: Let me suggest this. We're in

1 here on an in camera basis, what if the Manitowoc
2 County bailiffs step just outside this door instead
3 of just inside, and that way we'll have some level
4 of security. But to the extent some of the motions
5 involving testimony by Manitowoc County Sheriff's
6 Department employees have not been addressed yet, I
7 assume that can take care of the defendant's
8 concern.

9 ATTORNEY STRANG: Absolutely, I'm looking
10 to avoid an issue rather than create one. Stepping
11 outside the door would be fine. Mr. Avery has been
12 fitted with a stun belt, I don't know who has the
13 control on that, but.

14 THE COURT: We have two Calumet county
15 officers here.

16 ATTORNEY STRANG: Then we're fine. Then
17 we're just fine.

18 THE COURT: Very well, we'll wait just a
19 couple minutes. If you want to stand outside this
20 door, Gary.

21 OFFICER TACKES: Okay.

22 THE COURT: Mike will be out one door, you
23 will be out the other.

24 ATTORNEY STRANG: You know, your Honor, I
25 wrote a fair amount on **Denny** and I really have no

1 desire to blather for the sake of hearing myself
2 talk, so if there's some focus the Court can give
3 me, or particular issue to address.

4 THE COURT: Actually, I'm just giving you
5 an opportunity to supplement your memo. I will
6 indicate that I have read the written submittals by
7 the parties on these remaining issues at least four
8 or five times already. But at the time you wrote
9 yours you perhaps did not have the benefit of having
10 receiving the State's response, so if there's
11 anything else you wish to present at this time I
12 will receive it.

13 ATTORNEY STRANG: Okay. Well, I -- I do
14 think it's important here at least to try to
15 separate *Denny* which, you know, is maybe
16 significantly different on its facts than this case,
17 to begin with, from *Richardson*. If only because the
18 Wisconsin Supreme Court in *Richardson* said this
19 isn't *Denny*, we're not going to apply *Denny* in this
20 context; indeed, we're going to reject the State's
21 invitation to apply *Denny* in the frame-up context
22 that *Richardson* addressed.

23 And I -- *Denny* is not even a good fit to
24 begin with, as I argued on brief, and I shan't
25 repeat that. But the nitty-gritty here is, when

1 we -- when we suggest that there are others at
2 the Avery property who had the same or no less
3 apparent motive than Steven Avery to commit the
4 crimes alleged in the Amended Information, and
5 who had about the same opportunity and about the
6 same direct connection, that really is about as
7 far as the facts allow the defendant to go here,
8 where the defense -- where the defendant's own
9 assertion that I'm not guilty, always factually
10 has been, at bottom, an assertion that I just
11 didn't do it, and I can't shed any light for you
12 on who did.

13 And there's no real persuasive motive
14 that the State can offer for the crime; that is,
15 you know, this isn't a case where the victim owed
16 the defendant money, or there was a divorce
17 ongoing or, you know, any -- any of the usual
18 sort of causes of human action, or usual reasons
19 that might lead to a homicidal anger, or to
20 passion getting out of control, you know,
21 murderous passion, not amorous passion.

22 We're really in no better position to
23 tender a motive on the facts here than is the
24 State. And that really is very different than
25 **Denny**, where the very evidence the defendant

1 wanted to offer was evidence of someone else's
2 motive. He had, you know, a motive that he
3 wanted the jury to consider, that another person
4 had. So it's a tough fit.

5 THE COURT: Let me ask this.

6 ATTORNEY STRANG: Sure.

7 THE COURT: **Denny** doesn't require a
8 defendant to come up with **Denny** evidence. The
9 defendant certainly, here, is not obligated to say
10 these other persons could have done it, so I didn't
11 do it. The burden is on the State to prove that the
12 defendant did do it.

13 ATTORNEY STRANG: Right.

14 THE COURT: But I didn't understand your
15 pleading to be saying that you didn't want to offer
16 evidence that others did it; that is, not just --
17 the defense, as I understand it, is not simply going
18 to be that the evidence is not sufficient to prove
19 that Mr. Avery committed these crimes, but rather to
20 identify if not one person, a group of other people,
21 who did. And it seems that type of thing does get
22 you into **Denny**, does it not?

23 ATTORNEY STRANG: It can and, certainly, as
24 I see the argument and the trial unfolding
25 factually, you know, we will be saying, what

1 investigative scrutiny did some of these other
2 people get. Steven Avery became, very quickly, the
3 focus of the investigation. And the State will say,
4 well, that's right and we have got good reasons for
5 him having been the focus.

6 What we want the jury to understand is
7 that there were others who, at least initially,
8 looked about equally situated as potential
9 suspects. And not much investigative effort was
10 expended on exploring whether they were good
11 suspects, or whether they were easily excluded
12 and, therefore, not viable or good suspects.

13 And at that level, if I understand the
14 Court, I think that's not **Denny** at all. That's
15 something we're free to do. And this is where I
16 do agree with the Court that much of what we have
17 presented in writing and orally, overlaps at some
18 very -- connects up at some very general level in
19 that you are getting into bias issues, an
20 investigative bias, or a tunnel vision on one
21 person of particular interest, when in fact an
22 objective investigation might have looked at
23 other people more seriously than the State did.

24 THE COURT: Let me stop you there. Who is
25 going to handle this for the State? Mr. Fallon, if

1 the -- one of the State's investigators is on the
2 stand and the -- they give their testimony and the
3 defense says, well, why didn't you investigate
4 further other people who you determined to be on the
5 scene, on the date of the alleged crimes; does the
6 State take the position that they have got to make a
7 **Denny** showing to ask that question, or can they ask
8 it, from the State's perspective?

9 ATTORNEY FALLON: Your Honor, I think
10 that's just a backdoor way of introducing the
11 potential of a third party liability suspect. And I
12 guess as I'm sitting here listening to the Court and
13 counsel begin the argument, the first thought that
14 came to my mind is simply this, does the defense
15 want to introduce the evidence set forth in their
16 statement on third party responsibility, either in
17 their case-in-chief or on cross-examination? Do
18 they want to do that?

19 THE COURT: I wonder the same things, but
20 we haven't gotten to that yet.

21 ATTORNEY FALLON: Because I'm treating it
22 as a motion for introduction of that evidence, and
23 do they want to argue that one of those individuals
24 could have, or did, commit this offense. Then I can
25 respond to that. I think we're miscasting the

1 issue.

2 THE COURT: I'm trying to take this in the
3 order in which it may come in. I'm saying that --
4 and I asked myself this as I was reading the
5 briefs -- if the State -- or if the defense, on
6 cross-examination, asks a investigating officer, or
7 officers, why they focused in on the defendant and
8 did not investigate other suspects further -- or
9 maybe they did investigate other suspects, at this
10 point I have no way of knowing -- without referring
11 to a specific other suspect, my own feeling is that
12 at least that question doesn't get you into **Denny**.

13 ATTORNEY FALLON: Depends on what they want
14 to do with the answer. And then the question is,
15 well, then why is that relevant? Counsel will say,
16 well, it goes to bias. Since when is bias and an
17 institutional conundrum?

18 THE COURT: It may go to bias.

19 ATTORNEY FALLON: Then why is it relevant?
20 Why is it material to whether or not Mr. Avery
21 committed the offense? Sure, they can ask the
22 question, my concern is, what are they going to do
23 with the answer? What are the arguments to be made?
24 It's a backdoor attempt at pointing a finger that
25 somebody else committed the offense. Otherwise, the

1 jury is going to get sidetracked. That's the whole
2 idea behind *Denny*. That's my take. I will let the
3 Court and counsel continue.

4 THE COURT: All right.

5 ATTORNEY STRANG: Let's go at this from an
6 element standpoint on the homicide charge. The jury
7 has got to find that someone has been killed. And
8 let's suppose the jury finds that they are satisfied
9 that Teresa Halbach is killed. Then the next two
10 things they have to decide are, was it Steven Avery
11 who killed her, and did he do it intentionally.
12 Those are the elements. And, you know, we can't hop
13 over that second element, which is, is it the
14 defendant who killed her.

15 One of the reasons that a jury
16 reasonably might doubt whether the State has
17 proven that he killed Teresa Halbach is to say to
18 themselves, gee, I haven't heard any reason he
19 would have to kill her that's any more compelling
20 than the reason that his brother might have had
21 to kill her, or that Scott Tadych or Robert
22 Fabian might have had to kill her.

23 And I understand that they were there,
24 and I don't think the police looked very hard at,
25 for example, the fact that Earl Avery and Robert

1 Fabian give very different times for when they
2 are out on the rabbit hunt, which is a short
3 hunt, strange to do at darkness and, gosh, both
4 of them probably have .22 rifles in their hands;
5 although the police didn't bother to ask that
6 either.

7 And we understand that Mr. Avery's back
8 door to his trailer was broken open. And we
9 don't know why a member of this family, or
10 somebody who's riding around on a golf cart on
11 the property, couldn't have gone into the back
12 door of his trailer, either to put the .22 rifle
13 there, or to take it from there, or both.

14 And we're interested in the fact that a
15 cadaver dog hit on the golf cart that Earl Avery
16 and Robert Fabian said they were riding around
17 on, which then gets concealed in Mrs. Avery's,
18 Delores Avery's, garage. And we have got some
19 doubts here about whether the State got the right
20 man.

21 I don't see that as being a **Denny**
22 argument, although clearly it relates to other
23 people in the same way that evidence would have
24 to relate to other people if, you know, we were
25 trying, you know, the 1912 attempt to assassinate

1 Theodore Roosevelt outside the Gilpatrick Hotel
2 in Milwaukee where there is a whole crowd of
3 people and the issue might have been who's the
4 gunman. And --

5 THE COURT: Well, let me ask you this, I'm
6 reading from **Denny** now and they conclude, while our
7 decision establishes a bright line standard
8 requiring that three factors be present, that is,
9 motive, opportunity, and direct connection, our
10 holding is consistent with the **Lasecki** language
11 regarding the term "tendency".

12 So how can you argue that to be entitled
13 to show **Denny** evidence you have got to have these
14 three factors, but somehow if you only have two
15 you don't?

16 ATTORNEY STRANG: No, I guess what I'm
17 arguing is that I have got just as much as the State
18 does on all three. You know. I can't tender a
19 motive for one of these other people to have done
20 this, but the State can't tender a motive for Steven
21 Avery to have done it.

22 So it seems to me surpassingly odd that
23 the defense, which bears no burden, is in the
24 position here of having to jump hurdles that the
25 State, in seeking to prove Mr. Avery guilty,

1 doesn't have to jump. And, indeed, on request,
2 will get a jury instruction saying that they
3 don't have to prove motive, but I do, if I want
4 to challenge his guilt by pointing out --

5 THE COURT: How's that different from
6 **Denny**? I assume the jury instruction was there at
7 the time of **Denny** and they showed motive.

8 ATTORNEY STRANG: Because in **Denny**, it's
9 motive that the defendant wanted to offer. And the
10 facts of **Denny** are that he was excluded from
11 offering the motive of a particular third person,
12 evidence of that motive. **Denny's** tough, I mean, it
13 really is.

14 And, you know, everybody talks about it,
15 myself included, for years, as if it's an
16 immovable and unchallengeable feature of
17 Wisconsin law. It never went above the Wisconsin
18 Court of Appeals. And the footnote in
19 **Richardson**, where the holding is we're not
20 applying **Denny** here to frame-up, the footnote is,
21 we have never approved **Denny** at all. So I take
22 it **Denny** is a published decision it stands, but
23 --

24 THE COURT: There's a Supreme Court
25 decision authored by Justice Crooks that applied

1 **Denny**, I forget --

2 ATTORNEY STRANG: Yes.

3 THE COURT: -- the name of the case, but.

4 ATTORNEY STRANG: **Scheidell**, there is. And
5 have -- And, again, I accept **Denny** as the law. It's
6 not a great fit here, and how far beyond its facts
7 it can be applied isn't clear to me, and that's what
8 I tried to address in writing.

9 The proffer and, you know, Mr. Fallon
10 asks a fair question, do you want to offer this.
11 Yes, we do want to be able to offer the facts we
12 proffered alternatively, if the Court finds that
13 **Denny** applies. And we want to be able to offer
14 them if it finds that **Denny** doesn't apply.

15 These are fair areas to explore, both as
16 a matter of simple reasonable doubt, and as a
17 matter of the bias that each individual
18 investigative officer may have brought to the
19 task where the person at issue was Steven Avery.

20 I guess, you know, specifically, as I
21 read **Denny**, the defense that I want to offer,
22 this evidence of a third person's motive. And I
23 think the actual holding as opposed to the
24 discussion in the dictum in **Denny** is that, if you
25 want to offer evidence of motive of a particular

1 third person, motive alone is not enough. You
2 also have to offer some evidence, you know, a
3 plausible showing, or whatever the phrase is, of
4 opportunity of that third person and of some
5 direct connection to the offense.

6 So it's not enough that you say, hey, I
7 want to show that the decedent had a bookie who
8 was mad at him because, you know, he hadn't made
9 good on his bets and had a reason to kill him.
10 And when the facts are that the bookie,
11 undeniably was in the City of New York, when the
12 homicide occurred in Milwaukee, Wisconsin, and
13 had no opportunity to have committed it, you
14 know, then I understand **Denny** on those terms on
15 why the motive wouldn't be relevant, wouldn't be
16 enough.

17 This is very different. We're not
18 seeking to offer a motive. What we're saying is
19 we have got the same evidence of motive,
20 opportunity, and direct connection to the crime
21 as to this group of people, as the State does as
22 to Steven Avery.

23 THE COURT: Well, and I agree with your
24 summary of the holding in **Denny**, it is different to
25 the extent that the defendant in that case wanted to

1 show evidence of motive. You are saying that's not
2 what -- that's not part of the defense argument.

3 ATTORNEY STRANG: Not here. I don't have
4 it any more than the State does.

5 THE COURT: Mr. Fallon.

6 ATTORNEY FALLON: Has he concluded his
7 remarks?

8 THE COURT: I suspect --

9 ATTORNEY STRANG: It's helpful just to --

10 THE COURT: -- neither one of you has
11 probably concluded your remarks --

12 ATTORNEY FALLON: That's what I meant to
13 say.

14 THE COURT: -- but you're next, so you go
15 ahead.

16 ATTORNEY FALLON: First of all, I take
17 issue with three assumptions, or statements of
18 counsel, one, that they are in exactly the same
19 position as we are with respect to motive,
20 opportunity, and direct connection to the crime.
21 One, I dispute that.

22 But with respect to motive, however, the
23 Court has ruled our evidence of motive
24 inadmissible. So on the theory of the law of the
25 case, apparently we do not have an explainable

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reason why the crime occurred.

However, opportunity clearly exists on this particular case. And more importantly, and most importantly, there is a direct connection, because the defendant's blood is the blood that is found in the SUV. It's the bullet fragment containing the victim's DNA found in the garage, the key is to the Toyota, is found in his residence. So there are direct connections unlike any of the others.

Secondly, I take issue with counsel's characterization of **Denny**. **Denny** is not simply just about a defendant wishing to introduce motive evidence; although, I acknowledge that's how the case got to the Supreme Court. The defense was denied the opportunity to introduce the motive of this third person, in particular the motives attributed to one Gary Peterson over a \$130 debt, or the fact that Bill Cudahy also had a motive because a shotgun was exchanged for drugs and then that shotgun was ultimately sold, apparently, to the annoyance of one of the parties, as a result of which this Christopher Mohr was killed.

That's what our facts there are. But if

1 the Court's attention can be directed to the
2 **Denny** decision, it's more than about motive.
3 Motive was the means, that's the -- as it were,
4 if the Court is a card player, that's the ante
5 that gets you in the game, that's jacks are
6 better, to borrow the metaphor.

7 But the point of **Denny** is that -- and
8 it's found on page 17, and I'm looking at the
9 Westlaw, the headnotes 9 and 10, second
10 paragraph, it says, in other words, there must be
11 a legitimate tendency that the third person could
12 have committed the crime. That's the whole idea
13 behind it, is there a legitimate tendency, in
14 which the legitimate tendency is the direct
15 connection.

16 The legitimate tendency is demonstrated
17 by motive. It's demonstrated by opportunity and
18 the whole connection to the crime. That's what
19 we're talking about here. And those are the
20 circumstances, that's the context of **Denny**.

21 Now, looking at the defendant's
22 statement on third party liability, what do we
23 have? Again, our complaint is that, one, **Denny**
24 clearly applies here. If they wish to introduce
25 these facts, in direct examination or in their

1 case-in-chief, and then argue the inference to
2 the jury that the police job was so bad, and by
3 the way, look at how bad it was, these guys could
4 have done it, then they have to comply with
5 **Denny**. That's just cut and dried. I'm
6 astonished that counsel would say that they don't
7 have to apply, that it's not controlling here.

8 The law requires the Court to look at
9 each person individually. So as the Court goes
10 through this, there are alternative **Denny** proffer
11 beginning at Page 9. They list two different
12 categories, customer or friends category, and I
13 think a family category. So I'm going to address
14 my comments specifically, because I think the law
15 requires the Court to address them specifically.

16 As to Scott Tadych, it's clear, and
17 counsel acknowledges, there is no motive
18 presented there. Opportunity, sure, he is on the
19 property, I will concede that. But there's no
20 connection. As a result of the no motive, and
21 most importantly, no connection to the crime, and
22 that's the key, it's not just the location, it's
23 not the property, there has to be a connection to
24 the crime. And that is the key here in analyzing
25 all of these, there is no direct connection for

1 Scott Tadych to the crime. Therefore, evidence,
2 cross-examined, case-in-chief, otherwise, should
3 be and must be excluded.

4 Next, you have Robert Fabian and Earl
5 Avery hunting rabbits. Counsel points out we
6 have a time discrepancy, well, that's hardly
7 unusual. If there was a situation, or a case, in
8 fact, I doubt whether counsel has ever had one
9 because I'm not sure I have, where witnesses say
10 the exact same thing at the same time and
11 everything lines up perfectly. Quite frankly,
12 when that happens, then I know something stinks.
13 I have yet to see it in my years of experience,
14 where everything lines up so perfectly.

15 There's no connection, no motive, no
16 connection to the crime, and just because he is
17 on the property for that one hour or two hour
18 period hunting rabbits, I suppose one could say
19 that he had the opportunity. So for purposes of
20 argument, we could concede that. But there again
21 there is no direct connection and no motive.

22 Similarly, with respect to Andres
23 Martinez, this one is rather interesting, because
24 I think Andres Martinez, again, there's no
25 motive, there's no opportunity, and there's no

1 connection. And, again, if they wish to offer
2 evidence of third party liability here, I think
3 Martinez is -- the potential admissibility of
4 Martinez is governed by **Scheidell** to a certain
5 extent, because it's another act. Although here,
6 we apparently know that -- who the other actor is
7 as opposed to, I think in **Scheidell** there was a
8 question as to, I think it was unknown third
9 parties and the adoption of this **Sullivan**
10 analysis.

11 Well, whether you use **Sullivan** analysis,
12 or whether you use a **Denny** analysis, under either
13 way, Martinez does not meet the requisite
14 admissibility standards. Under **Denny**, there is
15 no motive, there's no opportunity, and there's
16 nothing to directly connect. If you want to take
17 a **Sullivan** analysis then, one, is the evidence
18 offered for a proper purpose, sure, to suggest
19 that somebody else may have committed the crime,
20 okay, fine, that's a proper purpose.

21 However, on the next two steps of the
22 analysis the Andres Martinez evidence is
23 inadmissible. It does not meet the relevance
24 determination because, as the Court is aware,
25 relevance is a two-part determination. If I may

1 have a moment to elicit further, here it is.
2 Relevance has two facets. The first
3 consideration is whether the other acts evidence
4 relates to a fact or proposition that is of
5 consequence, and I think that's probably true in
6 this case.

7 However, the second consideration is
8 whether the other acts evidence has a tendency to
9 make a consequential fact more or less probable.
10 And given the nature of the assault and when that
11 assault occurred, it's one -- it's so
12 sufficiently dissimilar and unrelated to the
13 circumstances of the Halbach murder that it fails
14 on the relevancy prong.

15 And then, finally, even if it didn't
16 fail there, it would certainly fail on balancing
17 the probative value on the Andres Martinez
18 assault of his girlfriend, with its potential
19 prejudicial effect. In this case, confusion is
20 the primary concern here, delay, waste of time,
21 and a jury going down the wrong road, as opposed
22 to trying to determine whether or not Mr. Avery
23 is, in fact, the murderer.

24 So the fact that Andres Martinez
25 attacked his girlfriend with a hatchet does not

1 add anything of consequence to our analysis here.
2 I don't need to comment further on these many
3 inconsistencies to law enforcement.

4 THE COURT: Before we leave him, I don't
5 know if I missed it in the defense offer, what would
6 be the evidence connecting Mr. Martinez to the
7 location of the crime at the time of the crime?

8 ATTORNEY STRANG: That's fuzzy. He, I
9 think in the end denies having been there on October
10 31. And there's a receipt for his son's car having
11 been towed there on November 2, 2 days later. And
12 he, in the end, says, well, that's the day I most
13 recently went to the Avery's.

14 So it's -- Others -- others suggest that
15 he may have been there and indeed been at a
16 bonfire on October 31. But, you know, I can't --
17 I don't have any ironclad evidence to put him
18 there. Neither do I need to offer that.

19 What's -- One of the things that's so
20 striking about Mr. Martinez is his first talk
21 with the law enforcement officers, before he does
22 start changing his story considerably, on some
23 interesting details about his relationship with
24 Steven Avery. His first statement includes what
25 most experienced detectives would have recognized

1 as a confession to killing her, and sort of
2 explored this strange statement, well, I'm going
3 away for the rest of my life anyway, so I guess
4 if they say I did it I could take responsibility
5 for it. That's -- You know, that's exactly the
6 kind of statement that people sometimes initially
7 make in, ultimately, confessing a shameful crime.

8 Rather than sort of following that, or
9 going into the crack that Mr. Martinez offered,
10 what we have, these agents, according to their
11 reports, saying is, oh, you know, we're not going
12 to blame you for something you didn't do, and
13 that's just the end of the matter. Really, you
14 know, an interesting bit of tunnel vision there.

15 ATTORNEY FALLON: I guess I would dispute
16 that, because I'm under the impression discovery has
17 been provided and there's also, and I think counsel
18 acknowledges it, they may not find it greatest in
19 the world, but there is an alibi associated with
20 Mr. Martinez in terms of his location. I believe
21 there is evidence that he was out trick-or-treating
22 with his kids.

23 ATTORNEY STRANG: With a 16 year old boy,
24 who claims he skipped school, that's true. But, you
25 know, what we do have to avoid here is getting into

1 the very problem that *Holmes vs. South Carolina*
2 warns about. Now, *Holmes* approves, in general,
3 rules like *Denny*, and in fact cites *Denny*, as the
4 sort of rule that's, in general, permissible, but
5 says, look, you can't look in isolation at the
6 State's showing and say, boy, that looks strong
7 standing alone so, therefore, I'm not going to allow
8 competing defense evidence that standing alone
9 doesn't look as strong. That's what *Holmes* is
10 about. And particularly in arguing direct
11 connection, that's really what the State -- the
12 mistake the State is inviting the Court to make
13 here.

14 THE COURT: I understand what *Holmes* says,
15 but as long as you focus on the evidence, or lack of
16 evidence, supporting the third party involvement, I
17 think you steer clear of *Holmes*' problems. If you
18 say I'm not going to look at your third party
19 evidence because there was DNA evidence connecting
20 Mr. Avery to the crime and that's enough for me,
21 then you are into a *Holmes* problem.

22 ATTORNEY STRANG: Right, I agree.

23 THE COURT: But I don't understand the
24 State to be making that argument here.

25 ATTORNEY STRANG: Well, they are saying,

1 look, you know, the key's found in his trailer, and
2 a bullet with Teresa Halbach's DNA, or a fragment of
3 a bullet is found four months later in his garage.
4 Now, in fact, there will be plenty of evidence at
5 trial that Steven Avery did not have exclusive
6 access to the garage. Others went in the garage.
7 An issue why this bullet is found four months later,
8 after multiple searches of the garage.

9 I mean, the jury will have all kinds of
10 evidence to consider in assessing the weight, if
11 any, to give that bullet, including the fact that
12 the bullet has also got DNA from a State Crime
13 Lab analyst on it. I mean, that's -- that's
14 just where we have to be careful, because, taken
15 in isolation, finding a Toyota key in Mr. Avery's
16 bedroom sounds terrible when you look at how many
17 searches --

18 THE COURT: Okay. Wait a minute, I
19 interrupted Mr. Fallon just to ask about the
20 evidence of Mr. Martinez so, Mr. Fallon, you may
21 continue.

22 ATTORNEY FALLON: Thank you. After
23 Mr. Martinez, the defense then suggests that a
24 couple of adolescent school girls, K.S. and A. MCK,
25 that there was a group of people at a bonfire.

1 Again, those people, apparently Mr. Martinez has
2 mentioned a Dawn Hauschultz, German spelling,
3 H-a-u-s-c-h-u-l-t-z, Steven Avery and --

4 ATTORNEY STRANG: This is all part of the
5 Martinez discussions?

6 ATTORNEY FALLON: Right.

7 THE COURT: Yes.

8 ATTORNEY FALLON: So, again -- All right.
9 Then I will accept that. Apparently those aren't
10 being offered as viable suspects.

11 Next, you have James Kennedy, again,
12 opportunity solely because he happened to be on
13 the property at the time.

14 THE COURT: Just, before we leave that,
15 when was this bonfire, I don't know if I caught that
16 from the offer?

17 ATTORNEY FALLON: I believe that was
18 supposedly the night before.

19 THE COURT: October 30th.

20 ATTORNEY FALLON: Yes.

21 ATTORNEY STRANG: No.

22 ATTORNEY BUTING: No.

23 ATTORNEY FALLON: Well, there certainly was
24 a fire, and we're going to introduce evidence of a
25 fire on the night of the 31st, but there's evidence

1 of a bonfire before.

2 THE COURT: I'm looking at Page 13, and it
3 says a schoolgirl and her friend, that Martinez,
4 Dawn Hauschultz, Steven Avery, and another Steven
5 had been at a bonfire and party at the Avery
6 residence. A. MCK confirmed that she heard from
7 Dawn Hanes that Martinez and his friends, Roberto
8 Brooks, were at the Avery property on October 30th.
9 When I put those two together, I read it as being a
10 bonfire on October 30th.

11 ATTORNEY STRANG: There are two different
12 statements there and the one girl does place it as
13 Sunday night, October 30, the other doesn't.

14 ATTORNEY FALLON: I think it makes it all
15 the more speculative and full of conjecture when one
16 goes to analyze the admissibility or the possibility
17 of any of those people, particularly Mr. Martinez,
18 being involved.

19 ATTORNEY STRANG: That's a tough argument
20 for the State to make where its own witnesses are
21 going to be in conflict over whether there was any
22 fire on October 31st. It's certainly the State's
23 theory that there was. But it's going to present
24 people who say I didn't see a fire on October 31.
25 So, none of this is ideally crisp and clear.

1 THE COURT: All right. Mr. Fallon, you may
2 continue.

3 ATTORNEY FALLON: Thank you. Again, with
4 respect to Mr. James Kennedy, their **Denny** analysis,
5 no motive and no direct connection to the crime are
6 offered. So evidence regarding him should be
7 excluded.

8 With respect to the family members, you
9 have a -- Charles Avery is the first one
10 mentioned. Defense argues, well, apparently he
11 may have a motive, but his motive is no greater
12 than their client's because of the sex offender
13 charges and/or convictions associated with both
14 Charles and Earl Avery.

15 As I noted in my pleading, one of them
16 was actually convicted, the other was not. But
17 there's nothing to directly connect Charles Avery
18 or Earl Avery, for that matter, with the crime.
19 Yes, they are connected to the crime scene, when
20 one considers the salvage yard as the crime
21 scene, or the location, but there's not a direct
22 connection to the crime itself. And such
23 allegations need more before the jury is going to
24 have a finger pointed at one of the defendant's
25 brothers.

1 That gets us to the Dassey boys, which
2 there are four: Bobby, Blaine, Bryan, and
3 Brendan. We're excepting Brendan from the
4 discussion for the obvious reasons. That leaves
5 us the remaining three Dassey brothers.

6 Again, the motive, the opportunity, and
7 the connection are very, very thin. Motive,
8 absolutely none. Connection to the offense,
9 none. Opportunity, depending on which version of
10 the time frame, arguably that could be conceded.
11 But, again, certainly insufficient evidence
12 connecting them to the offense in question.

13 As a result, under a *Denny* analysis, for
14 the defense to suggest and point a finger that
15 one of the individuals mentioned in their
16 statement is a viable suspect, such that the jury
17 ought to consider that in evaluating the quality
18 of the investigation, is a reach. It's going to
19 lead to confusion. It's going to have the jury
20 going down who knows what path. And it doesn't
21 add anything to the possibility or reality of
22 what the jury's actual determination or job is in
23 this case, and that is to determine whether
24 Mr. Avery is, in fact, the one who killed her.

25 If they are going to suggest and imply,

1 or directly say in argument, that anyone of these
2 6, 8, 10 people listed in that statement could
3 have been the murderer, then they have got to
4 have more than what they have shown us. So that
5 evidence should be denied, Judge. Thank you.

6 THE COURT: Anything else on the *Denny*
7 motion?

8 ATTORNEY STRANG: I would be reiterating
9 the brief and I think, you know, I will stand on
10 that. I don't think I'm waiving a thing. But
11 the -- just to go back to the real basics here, I
12 think that *Denny* does not apply at all. If the
13 Court disagrees and finds that *Denny* does apply,
14 then the facts we have offered in the alternative,
15 we do wish to pursue on cross-examination,
16 conceivably in the defense case-in-chief.

17 And I understand what the 904.03
18 limitations might be on cumulative questioning or
19 other cumulative evidence. But the Court does
20 need to understand that some of the people we
21 discuss, and James Kennedy, for example, would be
22 a good example here, Dawn Hauschultz would be
23 another one, are there not because we view them
24 as suspects themselves, but because they are in a
25 position to offer testimony that bears on the

1 activities of others.

2 James Kennedy is there to say what he
3 sees about Charles Avery and how peculiar it is
4 that Charles Avery, at 3:00 on October 31, 2005,
5 isn't in or around the office, and has to be
6 hailed by shouting for five minutes or more and
7 comes from behind the building. And James
8 Kennedy is there to talk about the gray smoke
9 that he sees rising from the center of, not
10 Steven Avery's burn pit, but from the center of
11 the salvage yard pit, at 3:00 on October 31,
12 2005, or shortly after.

13 So, you know, this -- and if the writing
14 was inartful, I take the blame for that, it's my
15 writing. But on the alternative hypothesis that
16 **Denny** applies, I'm doing my level best here to
17 assemble, from what the State did and didn't do,
18 the evidence suggesting the least legitimate
19 tendency to believe that these people had no
20 lesser motive than Steve Avery, no lesser
21 opportunity, and no lesser connection to the
22 place of the offense.

23 I mean, let's take the Dassey boys just
24 to finish. There isn't any physical, direct
25 connection between Brendan Dassey and the death

1 of Teresa Halbach, but this 17 year old boy is
2 facing the rest of his life in prison on the
3 State's accusation, without any physical evidence
4 of a direct connection. Brendan Dassey, for all
5 that appears here, has the same encounter with
6 Teresa Halbach, or walks past her as he's getting
7 off the bus, that his brother, Blaine, does.

8 Their really isn't any difference here
9 in apparent motive, opportunity, or direct
10 connection. And when we have Teresa Halbach's
11 bones being found, not just in Steven Avery's
12 burn pit, which has gotten all the public
13 attention, but some of them being found in a burn
14 barrel immediately behind the Janda house, where
15 the four Dassey boys live, is this something that
16 a jury ought to be allowed to consider in
17 deciding whether the State has proven Steven
18 Avery's guilt, beyond a reasonable doubt? You
19 bet it is.

20 THE COURT: Let me ask this, let's say that
21 if, to the extent that **Denny** is not on all fours
22 because Denny sought to offer evidence of motive,
23 and you are saying the defense does not, then
24 what -- what does the defense contend are the rules
25 for determining whether third party liability can be

1 presented to the jury?

2 ATTORNEY STRANG: I'm sorry to be
3 quarrelsome, but I don't know that we're talking
4 about third party liability. We're talking about
5 evidence of the activities and presence of others
6 that has some tendency to make it less likely that
7 Steven Avery was the person who murdered Teresa
8 Halbach.

9 THE COURT: Well --

10 ATTORNEY STRANG: This is simply relevant
11 evidence.

12 THE COURT: The thing is, if you look at
13 **Denny, Denny** wasn't just saying that one specific
14 person -- other person did it, he is other persons.
15 He wanted to suggest multiple possibilities. It
16 seems to me that while the defense in this case is
17 not basing its claim on the allegation that others
18 had motive, that in other respects you are trying to
19 do essentially what **Denny** did. You are saying,
20 look, there were these other people, and I can name
21 them, who were in a position to commit this crime,
22 who could have committed this crime, who were at the
23 scene, had the opportunity. Isn't that what you are
24 doing?

25 What are the rules -- From the defense

1 perspective, what are the rules the Court is to
2 apply in determining whether or not the defense
3 will be allowed to elicit testimony that these
4 other person or persons could have committed the
5 crime?

6 ATTORNEY STRANG: Relevance, 901 -- 904.01
7 and 904.02, and the ordinary balancing under 904.03.
8 Indeed, I mean, let's not kid ourselves, the State
9 will name the people who were there. The State will
10 elicit testimony on direct examination, from at
11 least some of them, that they were there at the
12 right time. The State will elicit evidence about
13 the activities of some of them. The State will
14 elicit, I'm sure, testimony from law enforcement
15 officers about the persons with whom they spoke.

16 So when we explore bias, by showing that
17 law enforcement officers immediately narrowed
18 their focus, for practical purposes, to Steven
19 Avery, we necessarily have to do that by showing
20 what the broader focus would have included. It's
21 just practical stuff.

22 Again, you know, the rabbit hunt is one
23 example, but an example only. That -- This is a
24 dynamic scene, there are a number of people
25 there. And an unbiased investigation would have

1 pursued many of the facts that we have laid out
2 in the alternative proffer. And the
3 admissibility here is the same standard it is for
4 the State's evidence, circumstantial though it
5 is, that Steven Avery did it, which is, does it
6 have some tendency to make it more likely that he
7 committed the crime. This has some tendency to
8 make it less likely.

9 THE COURT: All right. Let me ask,
10 Mr. Fallon, with respect to **Denny**, at least one --
11 setting aside for the moment its significance, there
12 is at least one difference between **Denny** and what
13 the defense is attempting to do, and that is the
14 defense is saying, we're not offering a motive for
15 these alternative possible suspects. What's the
16 State's position on that issue?

17 ATTORNEY FALLON: As I indicated earlier,
18 the State's position on that is that Denny is more
19 than just offering evidence about motive. The case
20 stands for the proposition that if you are going to
21 point the finger at a third party, you have to
22 establish the legitimate tendency. You have to
23 establish, which is primarily in the construct of is
24 there a direct connection. I think that's the --
25 the operative fact here.

1 THE COURT: No, but -- Let me rephrase my
2 question. Is the State's position that, if a
3 defendant wants to offer evidence that a third party
4 or parties might be responsible for the crime, that
5 the only way they can do that is if they provide
6 motive plus opportunity and a direct connection to
7 the crime, or is the State's position that, well,
8 there's still this legitimate tendency test, but
9 they have to -- if they are not going to use motive,
10 they have to do -- show opportunity and direct
11 connection?

12 ATTORNEY FALLON: Under *Denny*, they have to
13 establish all three. Now, I want to address, if I
14 may, because I think this dovetails into the point
15 you are making --

16 THE COURT: Okay.

17 ATTORNEY FALLON: -- your request if *Denny*
18 doesn't apply, then what do we apply.

19 I think counsel is correct, 904.01, .02,
20 and .03 analysis is the analysis that would be
21 the fall back position to determine the
22 admissibility of this evidence. Then I would
23 invite the Court to look at the evidence under
24 that analytical framework as well.

25 Because, quite frankly, it's

1 inadmissible under that framework, and here's
2 why. Relevance, as I mentioned earlier, has two
3 facets. First is whether the evidence relates to
4 a fact or proposition that is of consequence, and
5 why that may be met here.

6 The second consideration for relevance
7 is what we all learned in law school years ago as
8 the materiality component of our relevant
9 statute. And that is whether the other act
10 evidence -- or not just other acts, excuse me,
11 whether the evidence has a tendency to make a
12 consequential fact more probable or less
13 probable.

14 The fact that, for instance, Robert
15 Fabian was on a rabbit hunt with a .22, the fact
16 that there was a golf cart that was found rather
17 interesting by one of the cadaver dogs, the fact
18 that there was smoke in the middle of the salvage
19 yard as opposed to the far corner up on the upper
20 right side, great.

21 But how does that really make a
22 consequence here, the consequence of fact more or
23 less probable. And even if you were to accept
24 the establishment of that second facet of
25 relevance, you still must then evaluate whether

1 the probity, the strength -- and this is where
2 counsel misreads *Holmes*, and I think the Court
3 happily noted that -- where you do consider the
4 strength of what's being discussed here.

5 So is the probative value substantially
6 outweighed by the prejudicial effect, by the
7 confusion of issues, the potential of the jury
8 being misled, undue time considerations, and
9 things of that sort. And even in a 904.03
10 balancing test, everyone of those individuals
11 mentioned in the statement on third party
12 liability fails to meet that standard, admittedly
13 a lower standard of admissibility as well.

14 Because they -- I strongly challenge
15 whether they meet that second facet of relevance,
16 the old materiality. And even if they did, the
17 probative value under all of the evidence known
18 here is substantially outweighed by the
19 prejudicial effect. Thank you.

20 THE COURT: All right. Let 's take a lunch
21 break and then we'll come back and I will hear
22 argument on the other issues. I'm in my office for
23 lunch, so I will defer to counsel; how much time do
24 you want?

25 ATTORNEY STRANG: Forty-five minutes to an

1 hour.

2 THE COURT: 1:15, does that work.

3 ATTORNEY FALLON: Sure.

4 THE COURT: See you at 1:15.

5 (Noon recess taken.)

6 THE COURT: At this time we are back on the
7 record. All counsel and the defendant are present
8 in the courtroom. When we left off before lunch the
9 Court finished hearing argument on the third party
10 evidence issue, that is, the *Denny* motion. Counsel,
11 I'm not sure whether, next, it pays to take up the
12 wrongful conviction issue or the planted blood issue
13 first.

14 ATTORNEY FALLON: We would prefer to take
15 the blood vial issue, the planted blood issue.

16 THE COURT: Any objection from the defense?

17 ATTORNEY BUTING: No.

18 THE COURT: Very well. I will hear from
19 the defense first then. Who will be presenting this
20 matter? Mr. Buting?

21 ATTORNEY BUTING: Yes.

22 THE COURT: Very well, you may proceed.

23 ATTORNEY BUTING: Like Mr. Strang said, we
24 have pretty thoroughly set this forth in the written
25 submission, so I don't want to repeat everything in

1 there, but I do want to point out a few things.

2 First, the *Richardson* case. I think we
3 need to recognize and distinguish it a little bit
4 from what we have here. And I understand I think
5 the -- why that case was decided the way it was.

6 There's a very big difference between
7 that case and this. That was a direct evidence
8 case. There was a victim, or alleged victim, at
9 the time, saying Mr. Richardson had sex with me,
10 or raped me. He denied it. But balance -- And
11 offered a convoluted argument of a frame-up that
12 was collateral in part because he was two steps
13 removed from the victim. Wasn't just the victim,
14 wasn't just the victim's mother, it was his
15 ex-wife who supposedly then got the victim's
16 mother and the victim to frame him.

17 What the Court noted as the frame-up
18 evidence, when it came to the question of
19 probative value, how it had little probative
20 value, they balanced it against the fact that he
21 says, I didn't have sex with her, period.

22 Yet his semen was there. Her
23 underclothes were found there. The injuries,
24 significant injuries, torn hymen and what not.
25 Which his frame-up evidence did not go to explain

1 any of. Wasn't like he was saying she, you know,
2 deliberately injured herself, tore her hymen, did
3 all this kind of stuff. His frame-up evidence
4 did not go to explain away any of that evidence.

5 Now, this case, on the other hand, is a
6 circumstantial case. There is no direct evidence
7 that Mr. Avery committed this crime. Here, the
8 proffered evidence does offer an explanation for
9 some of the circumstantial evidence, directly.
10 And I can just hear it right now, if this blood
11 evidence is not allowed in, the prosecution is
12 going to get up in their closing argument and
13 they are going to say, no matter what doubt the
14 defense may have raised about this, or that, or
15 these other pieces of evidence, the bottom line
16 is his blood was in her car. And that kills him.
17 He said he was never in her car, his blood was in
18 her car.

19 We will be standing there with our hands
20 completely tied behind our back, unable to defend
21 against the underlying accusation in this case,
22 without this evidence. That's why, in this case,
23 it goes directly to the heart of the right to
24 present -- the constitutional right to present a
25 defense.

1 If this is -- Frankly, if we are not
2 allowed to do this, I think this case is going to
3 be reversed. Because there is no other way that
4 Mr. Avery can adequately defend himself against
5 these allegations, allegations that he made from
6 the very beginning of this case. I think even
7 before he was arrested, or certainly -- must have
8 been before he was arrested, because he was
9 saying it to the television camera, if my blood
10 is in that car, or my DNA is in that car, it was
11 planted, because I didn't go in that car. That's
12 the first point I want to make.

13 Second point, I want to clear up
14 something here, because the State wants to link,
15 merge, *Denny* and *Richardson* in this case because
16 of the blood planting defense. And that's partly
17 because I think they wrongly assume that if the
18 police planted the blood, necessarily they also
19 murdered Teresa Halbach.

20 And that does not follow logically and
21 it does not necessarily follow with the defense
22 that can be offered. Mr. Avery has never said
23 that. He is entitled to let the jury consider
24 that some other unknown individual may have
25 committed this murder and that the police are

1 opportunistic and took the opportunity that was
2 presented to frame him, which thereby totally
3 destroyed his civil claim against them.

4 That's why, for instance, it's entirely
5 unnecessary, therefore, for us to show that one
6 or more police officers had a motive to kill
7 Teresa Halbach. Because they are separate, what
8 the pleadings demonstrate is a motive to frame
9 Mr. Avery, and an opportunity to do it as well.

10 So when they -- when they talk about --
11 Recognized, by the way, not being a civil case,
12 we don't have the opportunity to do depositions,
13 to question all of these officers ahead of time
14 and present, perhaps, as clear and thorough and
15 airtight an offer of proof as you would in a
16 civil case.

17 These are police officers that, if they
18 were involved, necessarily, have covered their
19 tracks in a way that we have not been able to
20 pierce yet. Some more may come out at trial and
21 should come out at trial.

22 But at this point we're limited by the
23 fact that how is any defendant going to ever
24 prove a direct connection saying that a witness
25 saw Lieutenant Lenk, or Sergeant Colborn, or

1 anyone else, take that vial of blood and put it.
2 You know, it's almost impossible to expect in any
3 case, a defendant being able to do that. The
4 police control the scene, they control the
5 evidence, they control the documentation of that
6 evidence, the written documents.

7 Despite all that, I think we have
8 already shown they slipped up and that there are
9 indications that a reasonable jury has a right to
10 hear, and look at, and consider when we're
11 talking about whether there's a reasonable doubt
12 that Mr. Avery committed this offense. And if
13 there's --

14 And logically, if he says there's no way
15 his blood could be in there, in that car, because
16 he was never in the car, and his blood is found
17 there, if he -- if evidence shows that there's an
18 explanation that someone else put it there, then
19 that also would tend to indicate at least a
20 reasonable doubt about whether he committed the
21 crime itself. Because it pulls the rug out from
22 under one of the major pillars of the State's
23 case and challenges the credibility and the
24 reliability of everything else that they have
25 brought up to try and point the finger against

1 Mr. Steven Avery.

2 The one thing that I want to say,
3 though, about *Holmes, South Carolina vs. Holmes*,
4 it's not that we're saying that *Holmes* overrules
5 *Denny*, or that *Holmes* even overrules *Richardson*.
6 But there is one aspect of *Richardson* though,
7 that may no longer survive, and that is, the
8 whole idea that -- that you can -- that you weigh
9 the strength of the State's case against the
10 proffered evidence from the defense.

11 And in that case -- That's why I'm
12 saying -- That case, by the way, has never been
13 cited, as far as I could tell, by any other case
14 authority in the country, since it was decided.
15 And I think it's because it's a narrow case on
16 those narrow facts.

17 But the analysis that they went through
18 and that I went through earlier here, about how,
19 yeah, he says he was framed by this girl, not by
20 the girl or her mother, but by his ex-wife
21 putting them all up to it, they didn't balance
22 that say, well, let's look at that, but besides
23 the fact there is semen, there's her bedclothes,
24 there's the injuries, and ultimately they said --
25 the analysis, as I see it, is that they said that

1 that outweighed the defense.

2 That's what I think *Holmes* says you can
3 not do. *Holmes* says you have to look at the
4 proffered defense evidence separate from the
5 State's evidence. And at page 10 of the slip
6 opinion, this really is the second to the last --
7 or third to the last paragraph of the whole
8 decision.

9 What they point out is, quote, just
10 because the prosecution evidence, if credited,
11 would provide strong support for a guilty
12 verdict, it does not follow that evidence of
13 third party guilt has only a weak, logical
14 connection to the central issues in the case.

15 And where the credibility of the
16 prosecution's witnesses or the reliability of its
17 evidence is not conceded, the strength of the
18 prosecution's case cannot be assessed without
19 making the sort of factual findings that have
20 traditionally been reserved for the trier of fact
21 and that South Carolina did not purport to make
22 in this case. I think we may fall into a similar
23 trap here if we start trying to balance too much
24 what the State's forensic evidence is versus
25 Mr. Avery's in this case.

1 But let me turn to some of the so-called
2 facts that the State has now presented in their
3 response. These facts, a number of them are
4 disputed and, therefore, the fact finder in
5 disputed facts should be the jury not the court,
6 because they go directly to Mr. Avery's right --
7 to the heart of his right to present a defense.

8 For instance, Paragraph 5, Page 2, of
9 the State's response says that, Lenk placed
10 himself on duty at approximately noon, and
11 approximately 2:00 p.m. he arrived on the scene.
12 Well, right away, that's directly contradicted by
13 sworn testimony from Lieutenant Lenk that he
14 arrived at the property at 6:30 or 7:00. Lenk
15 never filed a report of those, his activities or
16 whereabouts.

17 They have, as yet, produced no work
18 records of his. We did receive, however, some --
19 and by the way, some of the documents that we
20 have asked for in the **Brady** motion, should not be
21 implied to mean that -- that there isn't already
22 significant evidence that supports the arguments
23 we're making. We want to make sure there is
24 nothing else out there that would make it even
25 stronger.

1 But we do have reports that Deputy
2 Inspector Schetter made showing the hours that
3 every officer worked on that day and what their
4 duties were. And that's what we put in our
5 proffer here. Lenk says he works 10 hours. We
6 also have logs that show when officers signed in
7 and signed out.

8 And that goes to the Paragraph No. 6 in
9 Mr. Fallon's response, that a logbook is created
10 to account for the comings and goings of law
11 officers and others. Well, I would add, except
12 for Mr. Lenk. Because, according to the log
13 book, he never arrived at the scene of the Alvery
14 (sic) Salvage. And yet we know he was there
15 because they do show that he left.

16 A reasonable inference that a jury, and
17 only a jury, should make is that he somehow snuck
18 in unnoticed. He was able to bypass that. And
19 if he was able to bypass that perimeter, or
20 whatever it was, then what else could he have
21 been able to bypass without there being
22 documentation.

23 It doesn't necessarily require a huge
24 conspiracy of the entire police department. He
25 may have -- You know, the person who's the guard

1 who's checking people in in the logs, may or may
2 not have been involved in this at all. If he was
3 able to bypass that guard, he may well have been
4 able to get to the vehicle.

5 These are factual contradictions,
6 factual contradictions. They are not pure
7 speculation, as Mr. Fallon would argue. He was
8 there, but he never checked in. He said he
9 worked 10 hours, but the only record of his work
10 is, according to his testimony, four hours at
11 most, 6:30 to 7:00 is when he arrived, I think he
12 said under oath. And he left at 10:40.

13 Now, the State is perfectly free to
14 explain to the jury, if they can, these factual
15 contradictions away. But Mr. Avery is equally
16 free to argue these factual contradictions to the
17 jury in the way that he sees fit and that they
18 fit and support his theory of defense.

19 Another fact, so-called fact, mentioned
20 I believe in Paragraph 14, is that the DNA
21 profile obtained from the key to the SUV was not
22 blood, but another biological source. Well,
23 actually, I don't believe that's been ruled out,
24 according to the preliminary hearing testimony,
25 because there was never a presumptive test done

1 on the key.

2 Visually, she didn't see it, but she
3 swabbed it immediately for DNA. If all blood
4 could be seen visually, there would be no reason
5 for doing presumptive tests. So we don't know
6 whether the source of his DNA at that point, on
7 the key, could have been from the blood or not.

8 More importantly the blood is found in
9 his house, where they had four days to obtain
10 plenty of sources of his own DNA. It is not
11 unusual to find someone's own DNA in their own
12 house. It's all over the place. And on top of
13 that, they have specific DNA samples from him,
14 buccal swabs, in not just the Clerk's Office, but
15 in the Manitowoc County Sheriff's Department,
16 from prior DNA exoneration efforts. And that was
17 verified by their own investigation.

18 Paragraph No. 14 in the so-called facts
19 claims that this Marlene Kraitswood (sic)
20 testified, as she's the phlebotomist, and that
21 she drew the blood sample and that she was the
22 one that put the hole in the tube top. Well, we
23 have seen no such report. And his response
24 earlier was, we don't have to show all of our
25 cards. This is like in the nature of a rebuttal

1 witness is what I'm assuming, he has got the
2 report.

3 We have seen the interviews of everybody
4 else in the links of these, no pun intended -- of
5 this chain. But there's no report of this nurse.
6 Now, he may say they don't have to show all their
7 cards, but that's exactly what they are trying to
8 get the defense to do, number one.

9 And number two, he can't put these facts
10 in here and make averments to the Court that they
11 are facts, if he is not even going to turn over
12 any reports that support it, to the defense. And
13 we have seen nothing of that.

14 More importantly, the tube top was not
15 sealed. And we said that right in our papers, in
16 our moving papers, that the hole there is only
17 one of several ways that the blood could have
18 been taken. Whether the hole was put there, or
19 used -- an existing hole was used by inserting a
20 needle to withdraw it, or even more likely the
21 top is just pulled right off and blood, whatever
22 they need is taken out. Because it was unsecured
23 and there really would not even have been a need
24 to use a needle, you just pull the top right off.

25 Paragraph 17, and this is an example of

1 how all of these so-called facts are jury
2 questions that only a jury can decide. Moreover,
3 testimony would reveal that neither Lenk, nor
4 Sergeant Colborn, or anyone else associated with
5 the wrongful conviction lawsuit entered the SUV
6 on Saturday, November 5th.

7 Oh. Okay. So that's it. That's the
8 end of the question, huh? We're just supposed to
9 accept that and walk away and go home and say,
10 Lenk is now saying that, that's all we need.
11 Please, that is for a jury to decide. Lenk's
12 credibility is already in question because he's
13 been caught in inconsistencies under oath at
14 best, perjury at best, for the defense
15 perspective.

16 And the same that goes to their claim
17 later that Lenk did no more than just prepare
18 transmittal paper work. Again, that's what we're
19 supposed to believe and just accept as a given
20 fact instead of letting the jury know.

21 In essence, what they want us to do is
22 just assume that it's a mere coincidence that
23 Lenk is on these documents in 2002; that he's
24 deposed as a witness in a civil case three weeks
25 earlier; that he volunteers to search the

1 defendant's home, after his superiors have
2 already determined there is a conflict of
3 interest and with his department's involvement
4 because of that very same lawsuit.

5 He doesn't tell, neither does Colborn,
6 the new superior officers that he was a witness
7 and involved in that case. He finds this magic
8 key in plain view, when no else could, and he's
9 still involved in the case, five months later, in
10 March, after the Brendan Dassey so-called
11 confession, when the bullet is found.

12 Now, we don't know, and I don't want to
13 leave the Court with the impression that the only
14 explanation is that Mr. Lenk planted that bullet
15 there; we don't know that. There are other
16 explanations, including one that it wasn't even
17 her DNA on that bullet.

18 Because the evidence will also show that
19 the DNA analysis of that bullet was flawed in
20 that the control failed and included the
21 analyst's own DNA, which by protocol means the
22 test gets thrown out. But she applied for a
23 deviation from that protocol in order to make the
24 call.

25 And the evidence will also show that

1 that is the only time in her career she's ever
2 even asked to deviate from a protocol. Again,
3 those are questions that a jury is going to have
4 to decide and the jury will hear.

5 So, really, what it comes down to is, it
6 seems to me, the State is arguing that -- they
7 are conceding that it's material, and it's
8 relevant, that it's probative. But that really
9 what it comes down to is that this is a waste of
10 time, this is a confusion, there's unfair
11 prejudice.

12 The unfair prejudice thing, let me just
13 respond briefly to, since we are in closed
14 hearing, we can talk about these inmate
15 statements. They claim, well, the inmate -- the
16 Court has already ruled these inmate statements
17 to be inadmissible and that somehow they are
18 prejudiced by that.

19 When, in fact, if they think that that
20 is so critical to their case, that those
21 statements are so important, they have an appeal,
22 as of right, that they could have taken, or still
23 could, under 974.05, **State vs. Eichmann**, which
24 says that a -- an order that bars admission of
25 evidence that, quote, might normally be

1 determinative to the success of the prosecution,
2 gives them an automatic right to an appeal. And
3 they haven't done that.

4 And the case also says that it's -- they
5 give the State so much authority and discretion
6 that they are the one -- the prosecution is the
7 one to make the determination of whether the
8 evidence that is excluded is that important to
9 them or not.

10 So to argue that this somehow has
11 prejudiced them so much, when they have other
12 remedies, is really an auspicious argument. So
13 it comes down to the confusion and delay, which
14 is the last argument that they make, which is
15 really a 904.03 argument.

16 And they argue that so much time is
17 going to be taken up by the defense. Well, we
18 just saw a calendar here that shows -- I don't
19 remember how many days for the State's case, but
20 basically four weeks, but only -- I'm sorry --
21 with five days projected for the defense. As if
22 any evidence that goes -- that would tend to
23 indicate Mr. Avery is not guilty is somehow a
24 waste of time. That's absurd.

25 They claim there would be an endless

1 parade of witnesses. Well -- And that they would
2 be forced to present and hour by hour accounting
3 for Lieutenant Lenk and Colborn, or whatever.

4 First of all, the State, in particular
5 those Manitowoc officers, put themselves in that
6 position. They chose to remain involved in this
7 investigation when it was obvious to everybody
8 else that they shouldn't be; not only on that
9 day, but even five months later, when Lenk is at
10 the scene again, still involved. It's a conflict
11 of interest. It demonstrates their bias and bias
12 is not a collateral matter, particularly when
13 it's this critical to the defense, and it's never
14 a waste of time.

15 I disagree that every witness they
16 discuss in here has to testify and that that's
17 going to take forever. At some point they may --
18 We don't need to offer them, if they feel like
19 they need to, if they think that interviewing
20 witnesses 15 months later, when they could have
21 done it right away, that relying on 15 year old
22 -- 15 month old memories is probative, so be it.
23 It would be their choice to waste the jury's
24 time, not ours.

25 So, for all of those reasons, I think

1 the defense has presented a very strong case of
2 the importance, relevance, and, indeed, necessity
3 that this blood vial evidence be introduced or
4 presented in this case. So we oppose the State's
5 motion to exclude.

6 If the Court has questions about, again,
7 feel free to just throw them at me here if there
8 is some legal issues or questions.

9 THE COURT: What is the defense's version
10 of when the blood would have been taken from the
11 Clerk's Office? Is it between --

12 ATTORNEY STRANG: It's not two years like
13 the Court I think at one point -- or what Mr. Fallon
14 argues something about from September 2003. We're
15 not going to be offering that as, like, somehow
16 these officers took a sample of his blood two years
17 earlier and just hung on to it until the
18 opportunity. I can't completely rule that out, but
19 I think the most likely scenario is going to be that
20 it was after Teresa Halbach's disappearance,
21 probably after Teresa Halbach's disappearance was
22 reported, which narrows it even more. But again --

23 THE COURT: So sometime between 10/31 and
24 November, is it the 5th?

25 ATTORNEY BUTING: Yes, November 5th.

1 ATTORNEY FALLON: Actually, she's reported
2 missing on the 3rd.

3 THE COURT: Okay.

4 ATTORNEY FALLON: But last seen on the
5 31st.

6 THE COURT: Okay. So, November 3rd and
7 November 5th. And I think there was -- and this may
8 have been touched on this morning, the idea of who
9 would have committed the crime and whether or not
10 anyone from the Manitowoc County Sheriff's
11 Department would have been committed -- or would
12 have been involved in the commission of the
13 homicide. That is not a part of the State's -- or
14 the defense theory. Or I don't want to put words in
15 your mouth; what is the theory?

16 ATTORNEY BUTING: I think if we were going
17 to argue that -- Well, probably -- probably the only
18 ones that would fit that scenario would be Lenk and
19 Colborn, because we think there's motive. At least
20 there's bias. If that's strong enough motive to
21 also involve killing. This is not going to be a
22 primary defense that's offered.

23 I think that -- I can't rule out that a
24 jury could consider it, but they had opportunity
25 because -- well, we don't know if they had

1 opportunity. We haven't determined exactly what
2 they were doing on the 31st. That may be ruled
3 out simply by producing the documents that we
4 requested back on December 15th, I believe. They
5 may have alibis for the actual crime itself. And
6 so that may not even be an issue that the jury
7 could even speculate on. It's more likely,
8 frankly, that there are -- that these are
9 independent events.

10 THE COURT: All right. I mean, I -- to
11 leave even open the possibility that it would be
12 alleged that either Lenk or Colborn were involved,
13 the -- I mean, the argument would be that somehow
14 because they were employees of the Manitowoc County
15 Sheriff's Department, and the Manitowoc County
16 Sheriff's Department was being sued by Mr. Avery for
17 a claim that is, near as I understand it, was
18 covered by insurance, I don't know what the limits
19 on the policy might have been, but that either Lenk
20 or Colborn felt they had a sufficient stake in that
21 that that would have been a motive for them to kill
22 Teresa Halbach for the opportunity to frame Steven
23 Avery?

24 ATTORNEY BUTING: Probably not. Very, very
25 likely not. And my only hesitation in saying that

1 is, because I just don't know what they did or where
2 they were on October 31st, even though we asked for
3 it over a month ago. But unless we could show some
4 connection, I mean I think in that instant you would
5 have to satisfy **Denny**, and we don't have a
6 connection of them to the scene.

7 But in any event, I think the motive is
8 not a motive to kill. I think the motive is a
9 motive to frame. And that's why the defense is
10 coupled with not just the planting of the blood
11 theory of defense, but also the investigative
12 bias that ignored other likely suspects, to the
13 point where they were getting preferential
14 treatment in the case of Chuck Avery.

15 But also, the -- recognize that on
16 November 5th, before the body had been found,
17 when all they have is a vehicle with some blood
18 in it -- in fact, at that point they didn't even
19 have that, because nobody at the scene -- that's
20 another important thing, none of the cops who
21 originally arrived at the scene saw any blood in
22 it, inside the RAV. It was broad daylight on a
23 sunny -- maybe not sunny, but broad daylight on a
24 Saturday morning, 11 a.m.

25 They have got flashlights with them and

1 they are looking in the car as well. They are
2 able to see little pieces of paper with her name
3 on it. They are able to see all this stuff and
4 they don't see a piece -- a splotch of blood
5 right on the ignition, where they were looking
6 and shining around the whole dash area looking
7 for the VIN number. That's very questionable.

8 But even without seeing all of that,
9 when they go to apply for a warrant, search
10 warrant, they are swearing under oath that they
11 think there is probable cause to believe evidence
12 of a crime, including homicide, occurred. So for
13 whatever reason, whether they were involved in
14 it, or perhaps more likely they know how these
15 things turn out and they had enough at that point
16 to realize that's where this was going, in all
17 likelihood. I think that's the more likely
18 scenario, but.

19 THE COURT: The -- I indicated to counsel
20 when we were talking about setting up this hearing
21 today, in terms of scheduling, that one matter that
22 I -- concerned me was the question of whether bias
23 evidence had to be related to a particular witness,
24 or that whether or not there was some argument that
25 bias could be imputed to an entire, in this case,

1 Sheriff's Department. Anything from the defense on
2 that issue?

3 ATTORNEY BUTING: Mr. Strang is going to
4 take on that issue, your Honor.

5 ATTORNEY STRANG: Only because I'm the one
6 who took a look at that, your Honor, and to me the
7 bottom line is that evidence of bias adduced on
8 cross-examination, or conceivably extrinsic evidence
9 of bias, is related to an individual witness. You
10 know, it's the witness' bias that is relevant and
11 important to a jury in assessing the witness'
12 credibility at trial.

13 That said, one of the biases that we can
14 have as human beings is, of course, an
15 institutional bias. It's only one of the biases
16 that may drive us, that may tilt our behavior,
17 our words, in one way or another.

18 Now, I didn't find anything anywhere
19 that addressed, specifically, cross-examination
20 of an individual witness on the question of
21 institutional bias. But again, I wouldn't expect
22 to find that, because the issue is bias of the
23 individual, which may have institutional roots.
24 And there I did find, you know, some useful sort
25 of comment by courts, not directly on point, but

1 it helped me to think about the question of bias
2 as it relates to an individual witness.

3 When the U.S. Supreme Court has spoken
4 of institutional bias, when its used that term,
5 it's most often been in the context of a re -- a
6 re -- a conviction at trial, a reversal on
7 appeal, or a conviction after a guilty plea and
8 then a reversal on appeal, a remand, and then the
9 State upping the ante, or the court upping the
10 ante, either with additional charges on the
11 retrial, or with a longer sentence on the
12 retrial. And defendants then challenging that on
13 subsequent appeal as vindictive and a denial of
14 due process.

15 And I think the very first time the U.S.
16 Supreme Court spoke of institutional bias was in
17 acknowledging that its decisions putting due
18 process limits on higher sentences after remand,
19 or additional charges after remand. And here I'm
20 quoting the U.S. Supreme Court, "reflected
21 recognition by the court of the institutional
22 bias inherent in the judicial system against the
23 retrial of issues that already have been
24 decided", closed quote. And that's **United States**
25 **vs. Goodwin**, 457 U.S. 368, at page 376, decided

1 in 1982.

2 The other common setting, or the other
3 setting in which the Supreme Court has spoken of
4 institutional bias is considering forced
5 medication or competency assessments, competency
6 to refuse medication, for example. And the court
7 recognizing that often these are done at state
8 mental hospitals, or state institutions by
9 psychologists or psychiatrists employed by the
10 state with an interest in furthering treatment as
11 the doctors think is recommended. And there
12 could be an institutional bias there that may
13 color the testimony of such witnesses in favor of
14 forcing medication.

15 So, you know, what that says to me is,
16 of course, and I started thinking about it, I
17 mean, all of us, to the extent we work for an
18 institution or within an institution, may adopt
19 its interests as our own biases. This is why it
20 is not at all uncommon or improper for the State
21 to ask defense expert witnesses, how much are you
22 being paid, who is paying you.

23 In other words, you know, the old
24 biblical comment in the Gospels, His bread I eat,
25 His song I sing. Also fair with the defense with

1 State witnesses to establish they are employed by
2 the same sovereign who's prosecuting a defendant.

3 In civil cases, not at all uncommon or
4 improper for one side's expert to be asked
5 whether he or she has ever testified for the
6 other side in a civil conflict. A toxic tort
7 where an epidemiologist is called, for example
8 or, you know, whatever the example might be. A
9 medical malpractice case in which a particular
10 M.D. is simply known as a plaintiff's doctor or
11 as a defense doctor.

12 And again, that gets at the issue of
13 institutional bias. We don't enshrine that as
14 significant in and of itself, it is just an
15 aspect of the individual bias that one explores
16 with any witness, or may be entitled to explore
17 with any witness.

18 So, in its application here, the State
19 will call them. The State will call, I predict
20 at least in its case-in-chief, a number of
21 Manitowoc County Sheriff's Department employees.
22 Indeed, every significant piece of physical
23 evidence in this case against Steven Avery was
24 discovered first by, or had present at the time
25 of discovery, a Manitowoc County Sheriff's

1 Department employee.

2 So we're going to hear from these
3 people. And will it be appropriate to
4 cross-examine them, establish their employment,
5 establish their awareness of the lawsuit against
6 their department, establish that they take pride
7 in their work and that they take pride in the
8 reputation of their department, and that they
9 felt that pride imperiled by the allegations that
10 their own department had embarked on a course of
11 action that had led to a 32 year sentence for a
12 man who didn't convict -- commit the crime of
13 which he was convicted.

14 Yes, that is appropriate, because that
15 officer who wears that uniform is entitled to
16 take pride in his work, in his uniform, in his
17 department. And is entitled, I guess, in a
18 sense, he's human, to have his actions, words,
19 thoughts, affected subtly, perhaps even
20 subconsciously, by his own human biases. We all
21 have these. And that's why it's so important for
22 bias to be explored. It's not a dirty word in
23 the end, but it is essential for neutral fact
24 finders in weighing sometimes difficult nuances
25 of credibility.

1 Now, as to some Manitowoc County
2 Sheriff's Department employees, they had been
3 pulled in directly to the civil lawsuit. They
4 knew because the depositions were focused, in
5 main, on their actions in prolonging the
6 imprisonment of Steven Avery beyond 1995 or 1996.

7 They knew by virtue of the deposition
8 that their personal reputation was at stake, that
9 their personal actions were under scrutiny, and
10 that regardless of insurance coverage and what
11 insurer had what layer, or whether there was a
12 self-insured layer in there, or what the limits
13 of the top layer of policy coverage were;
14 regardless of all of that, do you think for a
15 moment that a Lieutenant Lenk or a Sergeant
16 Colborn wouldn't consider the fact that his
17 personal ambitions for promotion, or for
18 retaining his rank, or perhaps political
19 ambitions, and low and behold in the fall of
20 2006, Sergeant Colborn threw in his hat and ran
21 for sheriff in this county; do you think for a
22 moment they didn't consider the possibility that
23 their interests were affected by the actions of
24 their department at issue in that lawsuit and
25 potentially by their own personal actions being

1 called into question, regardless of how
2 defensible they may have thought their own
3 actions were?

4 Of course not. It is information that
5 bears on bias. Does it have institutional
6 aspects, sure. It also has highly individual
7 aspects to it. And so that that's why I sort of
8 abjure the idea of adjectives in front of the
9 word bias, in the sense that it's bias that we
10 would be exploring. And, yes, it is linked to an
11 individual witness.

12 We do not propose to come in and offer
13 evidence in the abstract simply to establish that
14 a department was biased and, therefore, every
15 member of it was biased. This is perhaps subtle,
16 but we may well, though, be entitled to explore
17 an individual witness' identification with his
18 department, identification with its reputation,
19 sense of his own reputation being at stake, or
20 his own actions being attacked, called into
21 question.

22 And it would not be conceivably out of
23 line here to recall, for the Court to recall,
24 that on the witness stand on July 5, 2006, the
25 former sheriff of Manitowoc County revealed

1 himself to be perhaps the last person in the
2 world, who's heard of Steven Avery, who's not yet
3 ready to accept that Mr. Avery was innocent of
4 the crime for which he was convicted, a rape for
5 which he was convicted of 1985. Page 7 of the
6 July 5, 2006 transcript -- and it sticks out with
7 me because I remember watching the Court's
8 reaction --

9 THE COURT: I recall the answer.

10 ATTORNEY STRANG: -- and my own at the
11 time. Would it be strange that a department headed
12 by a man who held that attitude might be affected by
13 that attitude in the hierarchy down the line? It
14 would not. Doesn't mean we get to go on at, you
15 know, to our heart's content, or forever, about
16 Sheriff Kenneth Peterson. I'm not suggesting that
17 necessarily comes in at all.

18 But I am suggesting that where we work,
19 and what we do, and the things we commit our life
20 to, create in us biases that might be described
21 in part as institutional biases, just as the
22 United States Supreme Court has, and that these
23 are the among the sources of bias, that it's
24 entirely appropriate for the defense to explore,
25 in a criminal case, and for the State to explore,

1 if the defendant elects to offer a defense
2 case-in-chief himself.

3 THE COURT: All right. Let me ask,
4 somewhat as a follow up to that, in terms of the
5 defense offer to get the blood vial evidence in and
6 the argument that the defense would make, do I
7 understand it to be that, in considering what the
8 defense feels is the bias of the witnesses and the
9 opportunity and everything else, that it's Lenk and
10 Colborn that are the subjects, if you will, of the
11 defense claim?

12 ATTORNEY STRANG: Yes, and they may -- Yes,
13 and we don't know that they necessarily would have
14 acted directly. What we do know is that at the
15 relevant time, James Lenk was not just a lieutenant,
16 but as I understand it, the head of the detective
17 bureau. So he's a person of brass, of rank in the
18 department. And Andrew Colborn, of course, was a
19 sergeant, albeit in the road patrol division, if I
20 recall it, in November of 2005.

21 Do I know whether they directly acted,
22 or whether by virtue of familiarity in rank
23 within the department they may have known where
24 to get a master key, or been able to ask someone
25 for a key, obtain one, I don't know that. But

1 the answer remains, I think, yes, that I believe
2 it would be Mr. Lenk or Mr. Colborn to whom,
3 alternately, we would have to ascribe a plan or
4 an exercise to plant blood.

5 Now, by his presence, Detective Remiker,
6 also is around and Mr. Lenk, Lieutenant Lenk, is
7 Detective Remiker's superior. However, Detective
8 Remiker was not deposed in the 1983 action in
9 federal court. And although I have not read all
10 the depositions, I am unaware of his conduct with
11 respect to the 1985 conviction of Mr. Avery ever
12 becoming an issue at all. It would surprise me
13 if it had, because I think he joins the
14 department even after the 1995 or 1996 telephone
15 call from a Brown County law enforcement agency
16 that is the connection of Sergeant Colborn and
17 Lieutenant Lenk to this civil action.

18 So Remiker is there. He's present. He
19 works for Lenk. But I'm not aware of any -- any
20 personal connection of Detective Remiker to the
21 lawsuit that Mr. Avery brought against Manitowoc
22 County. He has only the connection of working
23 for the Manitowoc County Sheriff's Department
24 under Lieutenant Lenk's supervision, in so far as
25 I know.

1 THE COURT: Who will be speaking for the
2 State? Mr. Fallon?

3 ATTORNEY FALLON: Yes, I will be addressing
4 the blood vial issue and Mr. Kratz will follow up
5 with the bias discussion on behalf of the State.

6 With respect to the blood vial evidence,
7 I will begin there. The only thing that I will
8 agree with by the defense is the fact that we
9 actually begin in the same place, with the
10 **Richardson** case. After that, I agree with very
11 little, if anything, represented by the defense.

12 **Richardson**, it does need to be
13 distinguished. And I think it is important for
14 the Court to consider exactly what **Richardson** was
15 about and what **Richardson** actually held.

16 Mr. Richardson was charged with a sexual
17 assault, five counts, and one count of false
18 imprisonment. His theory was that his estranged
19 wife was framing him. He based that on the fact
20 that, again, that his estranged wife was framing
21 him. He based it on the fact that she called his
22 divorce attorney and said that he, being
23 Richardson, had sex with a 14 year old girl, two
24 days prior to the charged event.

25 Richardson also alleged that the mother

1 of the victim talked to his estranged wife the
2 day of the assault, that his estranged wife gave
3 the victim's mother the phone number of the
4 divorce attorney. The victim's mom reported the
5 assault to the attorney. And she initially had
6 lied about making the call until she was
7 impeached with phone records. Those are the
8 facts.

9 The defendant is merging the theories of
10 **Richardson** and frame-up evidence with the **Denny**
11 case. Because of the nature in which the
12 frame-up defense, the planting of evidence --
13 because that is the frame -- the planting of
14 evidence by the police necessarily implies the
15 police were involved in the death, either
16 directly or in a cover up, of the death of Teresa
17 Halbach.

18 There's no other reasoned inference to
19 be drawn. As a result, I think they have to
20 comply with both **Denny** and **Richardson**.

21 Teresa Halbach was last seen alive on
22 October 31st. Presumably she had Tuesday and
23 Wednesday off, although I think she had an
24 appointment on Wednesday. But the important fact
25 is that she was not seen or heard from by any

1 member of her family, or anyone else, on Tuesday
2 and Wednesday, the 1st and 2nd of November.

3 She was reported missing on November 3rd
4 and a missing person's investigation was
5 commenced. At approximately 10:30 a.m. on
6 Saturday, November 5th, her car was found by
7 volunteer searchers on the Avery property,
8 secreted with brush and debris, in the corner of
9 the salvage yard farthest away from the
10 defendant's residence. The vehicle was locked.

11 Now, let's step back in time, the time
12 about 11 years ago. The defense requires us to
13 do that. Eleven years ago this month,
14 defendant's blood was drawn as part of a
15 post-conviction relief motion process. Blood was
16 drawn at Fox Lake Institution. Marlene Krintz,
17 M. Krintz, the name on the paperwork, drew the
18 blood.

19 It was sent out for analysis by Lab
20 Corp., analyzed and eventually returned to the
21 Clerk of Court's Office where, as far as anyone
22 knows, it sits until June 19th, 2002. On that
23 day the file is examined by the former District
24 Attorney, E. James FitzGerald, and Wendy Paul of
25 Project Innocence and two or three others,

1 presumably at the request, or order, of Judge
2 Hazlewood, the original trial judge.

3 The box was apparently resealed with
4 nothing more than scotch tape at the time. At
5 that time the blood was not sent with the
6 fingernail clipping and the one unknown pubic
7 hair, for analysis. It remained with the Clerk
8 of Court.

9 Moving forward in time, the defendant is
10 exonerated and released after serving an
11 additional 12 years in prison for a crime he did
12 not commit. His case generates significant
13 interest and publicity. Many people come and
14 look at his court file, freely. As counsel noted
15 the last time around either in person or in a
16 call, the public has a right to examine the facts
17 and circumstances. The public includes the media
18 and anyone else who had a interest in the case.

19 It's within that background that we were
20 asked to make two assumptions. And this is where
21 I think the defense proffer of proof fails, and
22 fails miserably. We are to assume that someone,
23 presumably a member of the Sheriff's Department,
24 gained access to the Clerk of Court's office, at
25 a time unknown.

1 Even today when the Court asks the
2 defense to narrow the time frame, they can't say
3 for sure that it was a 2 year window, a 26 month
4 window from September of '03 until the end of
5 October of '05. Could be, although they think
6 most likely between November 3rd, 4th and 5th.

7 But someone gained access to the Clerk's
8 Office, as I said, at a time unknown. Presumably
9 after he was free, could have been before. Or
10 was it after the lawsuit was filed, before this
11 alleged bias was supposedly created, this motive.
12 Apparently a motive and a bias to kill an
13 innocent 25 year old photographer, just so they
14 could get back at Mr. Avery for besmirching the
15 reputation and integrity of the Manitowoc Police
16 Department.

17 Presumably we are asked to speculate
18 that happened, because the two bailiffs have a
19 key from the Sheriff's department. Perhaps the
20 Sheriff has one for emergency situations as well.
21 But the assumption falls woefully short. The
22 speculation, the conjecture, falls short of
23 what's required for admissibility. There's no
24 evidence to suggest anywhere, known at this time,
25 that a member of the Sheriff's Department, past

1 or present, ever actually touched or handled that
2 vial of blood. Not one shred.

3 Part two, that someone planted some of
4 that blood in Halbach's vehicle, sometime between
5 October 31st and November 5th, or if you like,
6 between November 3rd and November 5th.

7 Presumably that someone is a Sheriff's officer,
8 because it would be mighty difficult for a member
9 of the public to wander into that property and
10 somehow gain access to a locked vehicle under
11 cover of debris and brush and the like and
12 managed to plant blood.

13 The suspects, as we now have clearly
14 revealed, are apparently Lieutenant James Lenk
15 and Sergeant Andy Colborn. I suggested in the
16 State's reply to their proffer, Sergeant Colborn
17 did not even get to the property until 5, 5,
18 5:30 that evening on November 5th. Although he
19 certainly was on the Avery property on the 4th
20 and 5th for the consent searches previously
21 discussed in motions.

22 But think about this, for them to have
23 planted the blood to frame the defendant, they
24 would have had to have known that she was dead.
25 How could they have known that? Steven Avery

1 could have told them. If that was the case, we
2 wouldn't be here. Brendan Dassey could have told
3 them. Well, that's true, but he didn't tell
4 anybody anything of noteworthiness until
5 March 1st.

6 Perhaps there was an anonymous tip. But
7 we're led to believe if the blood was removed
8 from the Clerk's Office on November 3rd or 4th,
9 or, look, presumably in the early morning hours
10 of the 5th, and then it somehow got from here --
11 somehow got from here out there, and then not
12 only did it somehow get from here to there but it
13 somehow got inside the locked vehicle, under a
14 guard.

15 A fact from the hearing is known and in
16 Detective Fassbender's testimony he was
17 responsible in his efforts to cover the vehicle.
18 Later in that afternoon the vehicle was finally
19 removed by Crime Lab personnel at 8:42 p.m.

20 Crime Lab personnel arrived at 4:00 p.m.
21 and were attending back and forth. They didn't
22 stay with the vehicle. I think the testimony was
23 they weren't constantly there. But the Crime Lab
24 people, the field response unit arrived around
25 4:00 and did a number of things. Chiefly among

1 them was to take care of this vehicle.

2 So presumably someone went in there and
3 planted the blood. You will recall the
4 testimony, I believe, and the information that's
5 been provided, that the vehicle was not opened
6 until the next day, at the Crime Lab, where it
7 was then processed in Madison, not in Manitowoc.

8 So assuming that someone could have
9 got -- Well, we're led to make two assumptions:
10 Law enforcement found that vehicle on the 3rd or
11 4th and got it into it then, or they got into it
12 on the 5th. How did they do that? And if they
13 got in on the 3rd or the 4th, or the morning of
14 the 5th, then it stands to reason that they would
15 have had to have known that she was dead.

16 Example, if that's the case, then is the
17 other evidence planted as well, the cell phone,
18 the palm pilot, the camera. Apparently we were
19 led to believe that Lieutenant Lenk planted the
20 key. And just because Lieutenant Lenk was
21 apparently on the property during the execution
22 of the March search warrant, he must have planted
23 the blood fragment too, the fragment with the
24 victim's DNA.

25 Well, I can assure you there's only one

1 way that could have happened. You don't have a
2 bullet fragment with Teresa Halbach's DNA on it
3 unless you killed her. The fact that this is
4 suggested is nothing short of preposterous and
5 outrageous. We're not a court of law. Were we
6 not dealing with pleadings regarding a man's
7 defense on a charge of murder, we'd be dealing
8 with a claim of slander and libel.

9 Teresa Halbach's remains were not
10 recovered until November 8th. And they were not
11 sure. They knew -- they had a pretty good idea
12 they were human bones on November 8th. And it's
13 probably a reasoned inference that it was Teresa
14 Halbach. But the identification that it was
15 Teresa Halbach was a couple of days after that.

16 So, it seems to me, if you are going to
17 blame somebody for a crime, then you better damn
18 well know a crime was committed. You can't frame
19 somebody for a crime unless you know the crime
20 was committed. And how do they know the crime
21 was committed on the 3rd, or 4th, or 5th unless
22 they did it, or unless they assisted in covering
23 it up.

24 Maybe they helped Brendan Dassey. But
25 that, necessarily, by implication, implies law

1 enforcement's involvement in her death. And if
2 that's the case, then **Denny** applies, because
3 that's third party liability, somebody else did
4 it. I want the evidence. Show me the evidence
5 that Lenk and Colborn were responsible for the
6 death of Teresa Halbach, before you got in here
7 and have the nerve, the unmitigated gall to get
8 up here and suggest that they were responsible
9 for her death, by implication.

10 That's the distinction between
11 Richardson and our case. Richardson did not
12 suggest -- Richardson's frame-up theory did not
13 imply that the victim's mother committed the
14 assault. It did not imply that his estranged
15 wife committed the assault. In fact, it doesn't
16 imply that any one necessarily committed the
17 assault. You can make a case; although counsel
18 alluded to some facts that I don't think were in
19 the Supreme Court opinion, probably were in the
20 appellate opinion, or Court of Appeals opinion.

21 But one reading of that defense, that
22 doesn't necessarily imply that the crime occurred
23 at all, or implied, to the contrary, that someone
24 else did it. And if that's the case, then the
25 analysis in **Richardson** is still a half a bubble

1 off plumb because they should have used **Scheidell**
2 if she has all these injuries indicative of a
3 sexual assault and yet you don't know who did it.

4 So then there was a merger of a frame-up
5 and a **Denny** argument -- or in **Scheidell** -- excuse
6 me -- in **Richardson**. I'm speculating because
7 that wasn't discussed, so we can't go down that
8 road.

9 In this case it's clear inference that
10 the Sheriff's Department in general, and now we
11 know Lieutenant Lenk and Sergeant Colborn in
12 particular, are involved, we are led to believe,
13 because of some misconceived ill-gotten theory of
14 bias of. Mr. Kratz will address this further.
15 But I have to mention it.

16 Even though they were not defendants in
17 the lawsuit, they had no personal liability, they
18 had nothing at stake. They weren't even
19 responsible for his original conviction in the
20 first place. They were deposed as witnesses, as
21 I understand it, because they failed to pass on
22 some information after the fact regarding
23 somebody else, presumably Mr. Allen, the actual
24 perpetrator of the crime against Penny Beerntsen.

25 But they weren't responsible for his

1 wrongful conviction. They had nothing to do with
2 it. They weren't defendants in the action.

3 You can't frame someone for murder
4 unless you know the murder occurred. Let's think
5 about it. I'm going to get in there and we'll
6 sprinkle some blood around. Have got to do this
7 quick, got to put some blood in the CDL
8 (phonetic), here put some on the ignition key.
9 We'll put a spot here, another spot there. We'll
10 do four spots. I have to open the car.

11 Depending on the location of where the
12 blood is, hope nobody will see me, or well, maybe
13 everyone did see me. So there must be more
14 involved. How else could you sprinkle the blood
15 in those locations.

16 And more importantly, unless they knew
17 Teresa Halbach was dead, how did they know that's
18 her blood in there. Seems to me you are taking
19 an awful chance of planting blood there, if you
20 don't know a crime has occurred, you don't know
21 it's her blood. Not an unreasonable inference
22 that it's her blood, but that's a pretty good
23 risk to take. Obstruction of justice, that's
24 felony behavior. Misconduct in office for a
25 police officer, tampering with evidence, the list

1 goes on and on. I'm going to risk my career over
2 that, I think not.

3 By implication, this frame-up theory is
4 entirely different than the frame-up theory
5 posited in **Richardson** and it necessarily implies
6 police involvement. Because how can you take the
7 chance of planting something unless you know the
8 crime occurred. And how would they know the
9 crime occurred, unless they were coconspirators.

10 Under that analysis **Denny** does apply.
11 And there is no motive. There's no opportunity.
12 And there's no connection for Remiker, Colborn,
13 Lenk, or any other member of the Manitowoc County
14 Sheriff's Department in this crime.

15 In the alternative, if you find that the
16 State's argument is not compelling enough, that
17 there's a merger of a frame-up theory with the
18 **Denny** theory, and you wish to analyze this
19 strictly under a 904.03 analysis under
20 **Richardson**, the State would submit that the
21 evidence is inadmissible under that theory as
22 well.

23 The evidence has to be relevant. And as
24 we have discussed the last time around, relevance
25 has two facets. It is again, in the second facet

1 of relevance, the materiality component, where
2 this falls short. It's not material.

3 And by the way, when you are evaluating
4 materiality of evidence, you have to look at the
5 evidence as a whole, you know. And this is where
6 the defense, again, continues to misread and
7 misinterpret the holding of ***Holmes vs. South***
8 ***Carolina***. You still consider all evidence. You
9 still evaluate it in determining materiality.
10 You still have to evaluate it in the calculus of
11 determining the probative value and whether the
12 probative value is substantially outweighed by
13 prejudicial effect, waste of time, confusion,
14 etcetera.

15 The defense fails on part two, the
16 materiality component, that facet of
17 demonstrating that there is a connection -- and
18 there's that word connection -- to the case at
19 hand, a tendency to make a consequential fact
20 more or less probable.

21 On the third step of the ***Richardson***
22 analysis, the balancing, there is unfair
23 prejudice with respect to the existence of that
24 vial of blood and its admissibility. Given the
25 time frame involved here, the Court's

1 determination that preservative testing, EDTA
2 testing, is not reliable enough, it certainly
3 undermines the State's ability to reply, at least
4 in a scientific mode, if not a practical mode --
5 and I will get to that in a moment -- as to the
6 probability, possibility, that this blood found
7 in the Clerk of Court's office, which we still
8 don't know how it would have gotten from here to
9 the crime scene, other than by speculation or
10 conjecture, was the same type of blood, was the
11 source of the blood at the scene.

12 With respect to the inmate statements,
13 I'll rely on the comments in my brief. But I
14 think they need to be reconsidered if this
15 evidence is admitted, and reconsidered because
16 their probative value is now increased as a
17 retort. Because it's evidence of a bias and a
18 motive and intent.

19 It's evidence of this crime, possessed
20 by the defendant, long before any supposed
21 motive, bias, or evidence existed on behalf of
22 Lieutenant Lenk, Sergeant Colborn, or any other
23 member of the Manitowoc County Sheriff's
24 Department.

25 In terms of the practical considerations

1 here, it seems to me there would be a great deal
2 of witnesses called, whether it's the
3 groundskeeper, whether it's members of the Clerk
4 of Court's Office. Anybody ever seen Lieutenant
5 Lenk in the Clerk of Court's office, when did you
6 see him, how long ago was that.

7 And I point out that there was no reason
8 for any of that questioning. No reason for that
9 investigative purpose until the existence of this
10 vial of blood was revealed. There's no reason to
11 test what was in the car for preservatives.

12 There's no reason to test what was in the car for
13 cellular degradation, or any other type of test
14 one may suggest, until the vial of blood
15 presented itself. And likewise, there was no
16 reason to interview every member of the Clerk's
17 Office or interview the bailiffs where now we're
18 supposed to.

19 I think the best example of this case
20 getting sidetracked and going down the road of
21 confusion and unrelated issues, is their demand
22 for disclosure of exculpatory information. It
23 reads, for all of the reasons stated in the
24 State's brief, we're going to be looking at work
25 schedules for Lieutenant Lenk, Sergeant Colborn,

1 and I'm not sure if Detective Remiker has now
2 been thrown in the mix or not.

3 We're going to be looking at
4 disciplinary records that apparently they want us
5 to track down. We're going to be looking at
6 access, who had keys, what were the codes to the
7 Clerk of Court's Office. There's a key to get in
8 the outside door and there's a code to get
9 behind. So, who got the codes, when they got the
10 codes, when were the codes changed.

11 Their disclosure form is an indictment
12 of the folly of this argument and supports the
13 State's theory that all we're going to do is go
14 down the wrong track, more confusion, more delay.
15 We're going to be spending time chasing down this
16 vial of blood.

17 How can they have got into the Clerk of
18 Court's Office. Could they get in on Thursday
19 morning, was it Friday do you think, or maybe it
20 was really early Saturday and then somebody got
21 that blood out there. Well, who had keys and how
22 did they get in.

23 It's still -- Their offer of proof fails
24 and it fails miserably because there's nothing
25 other than conjecture or speculation as to who

1 got into the Clerk of Court's Office, whether the
2 vial itself was taken and then later returned, or
3 a portion of the vial was taken and returned.

4 And just how did they do that? Did they
5 use a needle and syringe? Did they pop the cork?
6 Pour a little in their own beaker and secret
7 themselves away? In other words, they
8 burglarized the Clerk of Court, which
9 interestingly enough is another act. That's a
10 felony.

11 If it's a law enforcement officer, you
12 have got burglary. You have evidence tampering.
13 You have got misconduct in office. You have got
14 obstructing of justice. I'm sure when we're done
15 with this law school quiz, I could come up with a
16 few more charges.

17 Confusion and delay will necessarily
18 result by the admissibility of this evidence.
19 And as a result, this evidence must and should be
20 excluded. Thank you. Mr. Kratz will address
21 bias.

22 THE COURT: Okay.

23 ATTORNEY KRATZ: I did not know if you had
24 any other questions on the issue of the blood vial
25 itself. I think -- I think Mr. Fallon made it clear

1 that the State's position is that there is no
2 linkage. There is no connection between the vial of
3 blood and the blood that's in the SUV.

4 I agree with much of what Mr. Strang
5 said regarding bias, interestingly enough, in
6 that it is not a collateral matter. It is
7 something, when appropriately applied, that
8 witnesses can be impeached with.

9 And as long as we're talking about cops,
10 let me talk about bad cops, because that's what
11 Mr. Strang and Buting are alleging here, Judge.
12 Again, we're not talking about negligence, or
13 something along those lines. We're talking about
14 criminal behavior. We're talking about
15 malfeasance.

16 And as my memorandum to the Court
17 suggested, that when bias is involved, like the
18 blood vial evidence, but bias is so interrelated
19 here, when we're talking about criminal behavior
20 of cops, there had better be some proof. There
21 had better be something other than Mr. Buting
22 standing up, because apparently he can, and
23 saying, you know what, Lieutenant Lenk planted
24 evidence, or Sergeant Colborn planted evidence.

25 And this institutional bias, or at least

1 some version of that that Mr. Strang has
2 attempted to apply to Lieutenant Lenk and to
3 Sergeant Colborn, at least if their theory is to
4 be adopted, Judge, shouldn't stop there. What,
5 then, difference is it that Lieutenant Lenk was
6 embarrassed by Mr. Avery's lawsuit. Why not
7 Detective Remiker? Why not Deputy Jost? Why not
8 members of the Clerk of Court's Office, who may
9 have been, as county employees, embarrassed?

10 And so what **Williamson** and the other
11 bias cases do, is they don't allow that kind of
12 questioning unless there is evidence, evidence
13 that can be rationally related to that particular
14 witness.

15 I'm glad that Mr. Strang mentioned
16 Sheriff Peterson, because by at least example,
17 the differences between Sheriff Peterson and a
18 bias that he may hold, if he was ever in fact
19 going to be a witness in this case, may be
20 appropriate to go into this wrongful conviction,
21 or this bias against Mr. Avery.

22 But that doesn't apply to Lieutenant
23 Lenk, doesn't apply to Sergeant Colborn. And
24 there is no evidence that it does. Again, Lenk
25 and Colborn, not involved in the 1985 prior

1 conviction, not involved in the lawsuit.

2 Mr. Strang suggests that they are somehow pulled
3 into the lawsuit. The Court already knows to
4 what extent they are involved in this civil
5 lawsuit; that is, giving a very short deposition.

6 And so, the embarrassment as a member of
7 the Sheriff's Department, when dealing with
8 professional reputations, when dealing with a
9 slur of criminal misconduct, does not raise to
10 the level of rationally related to a particular
11 piece of evidence.

12 If this Court, however, is going to
13 allow some kind of evidence about the 1985
14 wrongful conviction, I have given suggestions on
15 the last page. There are facts that do not
16 include the lawsuit. There are facts of the
17 wrongful conviction itself that could be offered
18 as bias, but certainly should apply then to
19 Lieutenant Lenk and Sergeant Colborn and
20 everybody else.

21 And for those, and for that reason, the
22 State believes that when the Court looks at
23 **Williamson**, when the Court decides whether or not
24 it's rationally related to any of these specific
25 witnesses, although maybe not as impassioned as

1 Mr. Fallon, just as strenuously, Judge, I'm
2 asking the Court to reject this kind of evidence.

3 As they cannot, in fact I think the
4 defense may even agree that they cannot, connect
5 it directly to either of these two witnesses as
6 compared to the universe of other potential
7 witnesses from the Sheriff's Department and
8 shouldn't be allowed. That's all I have got,
9 Judge.

10 ATTORNEY FALLON: Your Honor, I forgot to
11 mention one other thing in response to the defense
12 and that is on their right to present a defense.
13 With respect to that, I think the Court is familiar
14 with ***South Carolina vs. Holmes*** in the pleadings. I
15 just wanted to make the Court and counsel aware of a
16 decision that was decided two days ago dealing with
17 the right to present a defense. I have a copy for
18 the Court, Section 5 of the ***Muckerheide***,
19 M-u-c-k-e-r-h-e-i-d-e, case.

20 Part 5 deals with a defense right to
21 present a defense. And interestingly enough
22 there's a discussion of ***Scheidell*** and other acts
23 evidence contained with it. So I would ask the
24 Court to review that as you consider counsel --
25 one of counsel's opening points, the right to

1 present a defense. Because, again, here's the
2 latest and the court acknowledging that that's
3 not a limitless right or -- and one must
4 introduce relevant and material evidence. So,
5 thank you.

6 THE COURT: Thank you.

7 ATTORNEY BUTING: If I could just address
8 the last point very briefly. I haven't thoroughly
9 read the *Muckerheide*, I think is the way you
10 pronounce it, *Muckerheide* or *Muckerheide* decision
11 that Mr. Fallon is referring to, but I did briefly
12 see it when it came down a couple days ago. That's
13 the one where the defense wanted to offer evidence
14 from, I believe the father, that -- it was a
15 homicide while intoxicated, the passenger was
16 killed. Mr. Muckerheide was the driver. He argued
17 the passenger grabbed the wheel, forced him to
18 crash.

19 And it was the affirmative defense for a
20 homicide while intoxicated. And he had evidence
21 that the victim's father was going to say that
22 the victim had also done that when he, the
23 father, was driving and so on and so forth.
24 Well, the one -- Very little of the case deals
25 with the constitutional right to present a

1 defense.

2 What it does say when it gets to that
3 point at the very end is it points out that
4 Muckerheide was, nevertheless, allowed to present
5 his entire defense and to make the argument that
6 on that occasion the defendant did in fact grab
7 the defendant's wheel. And the only evidence
8 they didn't hear was minimally probative evidence
9 that on a prior occasion, with a different
10 driver, under different circumstances, the victim
11 had gestured toward, or grabbed the steering
12 wheel. That's very different than what we have
13 here, where a complete explanation for very
14 otherwise damning circumstantial evidence would
15 be denied.

16 Mr. Fallon just kept pounding away like
17 there's no way this could be unless the officers
18 killed her. They couldn't have done this
19 planting unless they also were the ones that did
20 the crime. They had to have killed her. He must
21 have said that five or six different times in
22 their argument. And it's just plain wrong. It's
23 just simply wrong.

24 On November 5th, at approximately 2:00
25 p.m., which is around the same time, by the way,

1 in their new statement of facts, or first
2 averment of facts, they say Lenk put himself on
3 duty or -- I'm sorry -- arrived at the salvage
4 yard. Meanwhile, Mr. Kratz, and Wiegert, and
5 Remiker, and I believe also the D.A. Rohrer, were
6 all over, at the same time, at Judge Fox's home
7 in Two Rivers, I believe, presenting an affidavit
8 in which they swore, under oath, that they
9 believed they would find evidence of a homicide
10 if permitted to search the Avery property. Now,
11 we don't presume that that sworn testimony was
12 false, yet, nevertheless, they were investigating
13 this case as a homicide by the time Lenk
14 supposedly even shows up at the scene, as early
15 as 2:00 p.m.

16 It's not necessary to show murderous
17 intent on the part of officers. We're showing
18 opportunistic intent.

19 Mr. Fallon got -- made a very nice,
20 passionate closing argument here, which I'm not
21 going to repeat, or try and outdo at this point,
22 except to say that, fine, make that argument to
23 the jury. He is fully entitled to do that and
24 he's going to be required to do that because of
25 the conduct, not because as Mr. Kratz says, Jerry

1 Buting gets up here and just says it's so.

2 I'm not the one who put myself on duty
3 at a homicide investigation when I knew that my
4 boss had already recused the department,
5 supposedly, from having leadership involvement.
6 I'm not the one who volunteered to go search the
7 primary, in fact only suspect in the police's
8 eyes, his very residence. I'm not the one who
9 didn't tell the Calumet people that I was
10 subpoenaed and involved in the civil case.

11 The reason they have to do all of this
12 is because their people put it -- put themselves
13 in that position. And for whatever reason, if
14 it's purely coincidence, then a jury should
15 decide that. I don't think it is.

16 I think there's more than sufficient --
17 Remember **Richardson** says any tendency.
18 **Richardson** doesn't even require the legitimate
19 tendency to show this. It's any tendency. And
20 clearly this evidence has some -- any tendency to
21 make a consequential fact less probable here.
22 That is, the consequential fact of who killed
23 Teresa Halbach.

24 As I said before, if the blood isn't --
25 if somebody put the blood of Steven Avery into

1 that RAV 4, then it's more probable that he is
2 innocent of the crime that he's charged with.

3 He would impose an impossible burden. I
4 don't know what he expects, that we're supposed
5 to have a video tape, present a video tape of
6 here is the perpetrator sneaking into the Clerk's
7 Office. Here's what key he uses, we zoom in, you
8 can see, aha, this is the key with serial number
9 so and so which must have been taken from such
10 and such, and insert it into the door, and there
11 he is, he's grabbing the video -- the vial, and
12 here's how he's taking it out of the vial, and
13 here's where he goes.

14 That's ridiculous. It's impossible that
15 you could ever -- any court would expect that
16 kind of certainty, and everything else is pure
17 speculation. It's not speculation. There's a
18 series, a very careful series of steps that we
19 have laid out in our motion in great detail,
20 showing our cards, much more than they have.

21 Mr. Fallon and Mr. Kratz, from the
22 State's perspective, anything that doesn't go
23 down the track towards conviction is a waste of
24 time. And that is simply not the case. That's
25 why we have juries, that's why we have adversary

1 system in this country. And Mr. Avery is
2 entitled and, indeed, required to present this
3 defense of the blood vial evidence, this evidence
4 as part of his defense that he is not guilty of
5 this crime against Teresa Halbach. Thank you.

6 THE COURT: I know, Mr. Buting, that I
7 asked you to do this I think earlier, but just so
8 it's the last thing I hear before we conclude today;
9 I want to make sure as I'm sitting in my office this
10 weekend that I have a clear representation of what
11 the defense offer is. That is that, as I understand
12 it, and you can fill in the blanks or correct me
13 when I'm wrong, either Lenk or Colborn would have a
14 sufficient basis to be biased in this case, or a
15 motive for planting evidence, however you want to
16 put it, because of the fact that they have a
17 connection with the Sheriff's Department, they work
18 for the Sheriff's Department, they were deposed in
19 the civil case some three weeks earlier. And I'm
20 trying to remember is it one or both of them that
21 received a telephone call or something in 1995, that
22 they put in the file?

23 ATTORNEY STRANG: They were both questioned
24 about their own personal involvement in that
25 particular incident. One thing I forgot to add is,

1 they were not defendant's in the civil lawsuit yet,
2 at that time, but that is not to say that they
3 couldn't have been joined later as the discovery
4 proceeded and the plaintiff's uncovered more
5 wrongdoing or potential liability. Because from
6 that point forward Mr. Avery sat another eight years
7 in prison.

8 THE COURT: Okay. The theory being that
9 they were given some information that they should
10 have followed up on that might have led to his
11 exoneration sooner.

12 ATTORNEY BUTING: Yes, and the call
13 involved, frankly, Mr. Allen, the ultimate --

14 ATTORNEY STRANG: Maybe you remember this
15 past October -- I will take a stab at it -- I think
16 the testimony from the two depositions was
17 approximately this. That while he was working in
18 the jail, Sergeant Colborn took a call from a law
19 enforcement agency, the name of which he didn't
20 remember at the time of the deposition, he thought
21 maybe it was from Brown County.

22 Realized that it wasn't a call that
23 belonged in the jail, transferred the call to the
24 Detective Bureau in the Sheriff's Department.
25 And at that point, as I recall the deposition

1 testimony, it breaks down in that Detective Lenk,
2 who would have been in the Detective Bureau at
3 that time, doesn't remember whether he got the
4 call or doesn't remember what it was about.
5 There was a -- and now I'm not remembering the
6 deposition testimony well. But it's sort of --
7 there's confusion there, and then both of them
8 write a report about this phone call, for the
9 first time on September 12, 2003, at Sheriff
10 Peterson's request, which is the day after Avery
11 has been released from prison.

12 So they both write reports the day
13 after. And at that point they don't remember if
14 it's 1995 or 1996 when the phone call came in.
15 The gist of the phone call being from a law
16 enforcement agency saying we have someone here in
17 custody who says that he did a rape for which
18 someone else is in prison and it was in your
19 county.

20 THE COURT: Well, it sounds from what you
21 are telling me, if that's the way it was presented,
22 Colborn did what he should have done, he got the
23 call at the jail and referred it to the Detective
24 Bureau.

25 ATTORNEY BUTING: Well, but that was

1 challenged in the deposition and his failure to
2 write any report --

3 ATTORNEY STRANG: Maybe the sensible thing
4 to do is just submit the depositions in there.

5 ATTORNEY BUTING: The point being, at that
6 point this information was just coming out and was
7 being -- they were being challenged on a memo that
8 not only their own reports, but also a memo that a
9 investigator in the Manitowoc District Attorney's
10 Office had written, which he had spoken to the two
11 of them. It was inconsistent with what they had
12 been testifying about, so it was their -- their own
13 involvement in that incident was being challenged.

14 THE COURT: All right. At any rate, they
15 have these depositions three weeks earlier.
16 Sometime after November 3rd they, along with other
17 members of the Manitowoc County Sheriff's
18 Department, get the report that Teresa Halbach is
19 missing, right?

20 ATTORNEY BUTING: Actually, Sergeant
21 Colborn, fortuitously or whatever, gets the call
22 from Investigator Wiegert, I believe. Learns
23 that -- or Dederling, one of the two -- learns that
24 one of the last places she had been, or one of the
25 last places she had been that day, she was last

1 seen, was the Avery residence. And says, okay, I
2 will follow through. We'll get somebody out there
3 to talk to him. Hangs up.

4 And sometime shortly after that,
5 Investigator Wiegert gets an unsolicited call
6 from Lieutenant Lenk, which obviously means
7 Colborn told Lenk. Lenk is, aha, Avery, let's
8 find out more about this. And he then, on his
9 own, not being asked to, calls Wiegert and starts
10 asking and showing increased interest from that
11 point on, personal interest.

12 THE COURT: But that's on November 3rd.

13 ATTORNEY BUTING: Yes.

14 THE COURT: Then the vehicle is discovered
15 on the 5th. What, was Officer Colborn on the scene
16 on the Avery property on the 5th?

17 ATTORNEY BUTING: Yes.

18 THE COURT: I know Lenk was, you said.

19 ATTORNEY BUTING: Lenk was. Colborn, I
20 think the logs show him arriving around 5:00 p.m.
21 Don't know if he was there earlier, before the logs
22 began to be taken or not.

23 ATTORNEY FALLON: I can add, Jerry, we
24 asked about when that log started, and I think they
25 started the log about 2:25, ballpark, so for what

1 that's worth.

2 ATTORNEY BUTING: So it's about three and a
3 half hours after the vehicle was -- not discovered,
4 but three and a half hours after the police arrived.

5 ATTORNEY FALLON: Right.

6 ATTORNEY BUTING: And again, the law
7 enforcement people and the head prosecutors were
8 gone from the scene by 2:00 -- no, between, I think
9 1:00 and 3:00. Rohrer, Mr. Kratz, Wiegert, Remiker,
10 they all left.

11 THE COURT: What is the -- Does the defense
12 have a theory as to how either Mr. Colborn or
13 Mr. Lenk would have gotten into the vehicle to plant
14 the blood.

15 ATTORNEY BUTING: We have several theories.
16 I don't know that -- Again, here we have to show all
17 our cards, they don't have to show anything.

18 THE COURT: Well, here's the thing,
19 whatever the standard is, and I know the parties are
20 arguing what it is, but certainly there is some
21 burden that the defense has to meet.

22 ATTORNEY BUTING: I understand.

23 THE COURT: And if that's the one you are
24 asking.

25 ATTORNEY STRANG: Sure.

1 THE COURT: To give you a fair shake, I
2 want to make sure I'm evaluating your request --

3 ATTORNEY BUTING: Okay.

4 THE COURT: -- with whatever showing you
5 want to make. If you tell me, we have no idea, I
6 will accept that answer. I'm just saying, what do
7 you want the Court to consider.

8 ATTORNEY BUTING: Well, the Court can
9 consider what we have put in writing. And if you
10 look at it carefully, you will see that there are
11 some windows of opportunity in both in terms of time
12 and in terms of physical opportunity.

13 But by the way, the whole question of
14 whether the vehicle was truly locked at the scene
15 when first discovered is not as clear as the
16 State would have you believe. Because the
17 volunteer who discovered it said she thought that
18 they checked the doors and they were locked, at
19 the prelim this is her testimony; however, she
20 also said she thought it was only a two-door, not
21 a four-door.

22 So that's inconsistent with her having
23 checked all four doors, five doors, actually, if
24 you include the hatch. Even if it was, who do
25 you go to when you lock yourself out of the car?

1 Who do you call? The police.

2 We also have evidence they have seen the
3 report that, from a locksmith, that this
4 particular RAV 4 was very easily opened by these
5 jimmies that police officers have. Poses no
6 difficulties. And as is described in the written
7 pleadings, the vehicle was covered actually with
8 almost a ideal situation where it was obscured
9 from the view of other officers by gigantic tarps
10 creating a tent over it, hiding it from view of
11 anybody, but obviously leaving access in and out
12 at either end. So whether that's when it
13 happened, that's another possibility.

14 It was also getting dark by, probably
15 even before the Crime Lab arrived, because I
16 believe sunset was at 4:30 and the Crime Lab
17 didn't arrive until 4:00.

18 THE COURT: All right. Is there -- I will
19 definitely reread your memorandum again; is there
20 anything else you want to tell me this afternoon?

21 ATTORNEY BUTING: I don't think so. I
22 think that really I think we have covered almost all
23 the issues.

24 ATTORNEY FALLON: Your Honor, if you are
25 going to do that then I would ask the Court to

1 consider this one circumstantial or coincidental
2 fact. If the blood was planted in the vehicle, then
3 it must have been entirely fortuitous that Pam Sturm
4 happened upon that property of her own volition and
5 by the grace of God found the car, unless of course
6 she was told to go there, unless she's a
7 conspirator.

8 Because if you're going to plant blood
9 and then have it discovered, then how does that
10 happen? Just coincidence? Who had the jimmy,
11 that's a question. And, finally, I just ask the
12 Court to think back at Special Agent Fassbender's
13 testimony at the motion hearing. He said they
14 attempted to put a tarp on, attempted to do a
15 tent like thing, but were not successful because
16 the wind and the weather prevented that from
17 happening. So, and again, I certainly would
18 invite the Court to check Pam Sturm's testimony
19 at the prelim and the motion hearing, as you
20 evaluate the proffer. Thanks.

21 THE COURT: All right. I realize that
22 there's another motion related to these and that is
23 the -- what would come in with respect to wrongful
24 conviction evidence. I have the written proposals
25 of the parties, or the written arguments with

1 respect to this issue, and I think Mr. Kratz
2 addressed it somewhat in his comments as well.

3 ATTORNEY KRATZ: I did, Judge.

4 THE COURT: Is there anything else?

5 ATTORNEY KRATZ: No. No, I rely on my
6 brief comments today but, not only the standards,
7 but the number of facts that the Court will have to
8 decide. What, if anything, is properly admitted for
9 impeachment purposes, is laid out in my memo.
10 That's all.

11 THE COURT: Anything further from the
12 State?

13 ATTORNEY KRATZ: The defense.

14 THE COURT: The defense, I'm sorry.

15 ATTORNEY STRANG: We laid out a proffer
16 which is essentially everything we would like to
17 offer on the wrongful conviction on the lawsuit.
18 The State comes back saying none of it should come
19 in but, alternately, here is four things, if you are
20 going to let anything in. And the State omits
21 entirely the lawsuit from its proposal. Will allow
22 some very limited evidence as to the prior wrongful
23 conviction.

24 When you read the four things, someone
25 coming fresh to this would be left with the

1 impression that the State was on Steven Avery's
2 side in that effort to exonerate this poor
3 wrongfully convicted man. Because, why, it was
4 the State Crime Laboratory that tested the DNA
5 for him and found that it was good, that it was
6 not his. And it was the State of Wisconsin
7 joined in securing the defendant's release in
8 2003.

9 My guess is the Court comes down
10 somewhere in between the two poles that the
11 parties have offered. It's -- It's the general
12 impression that the State's limited presentation
13 would leave is that this was somehow a joint
14 effort to secure the release of a wrongfully
15 convicted man for the 18 years that it took and
16 decided that it was not as the docket sheet bears
17 out.

18 And, again, what we offered was
19 everything we would like to get in. I'm going to
20 leave this one to the Court, the issues of bias,
21 and impeachment, and credibility are pretty well
22 framed here and I think the Court can strike a
23 pretty good balance.

24 THE COURT: Anything else? If not, we are
25 adjourned for today.

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ATTORNEY BUTING: Do you think that we would know Monday on any or some of these?

THE COURT: Depends how far I get this weekend. As soon as I have got something for you, I will let you know. I realize that this issue is important to both parties so I'm going to take as long as I feel I need to make a decision.

ATTORNEY STRANG: Does the Court anticipate a written ruling on these issues?

THE COURT: I don't know that either yet.

ATTORNEY STRANG: Very well.

ATTORNEY FALLON: I'm sorry, I did not hear that.

ATTORNEY BUTING: I didn't hear.

THE COURT: I said I don't know that either yet.

ATTORNEY BUTING: Oh, okay.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
)ss
2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 29th day of January, 2007.

Diane Tesheneck, RPR
Official Court Reporter

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF,

MOTION HEARING
JUROR QUESTIONNAIRE
Case No. 05 CF 381

5 vs.

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** JANUARY 29, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
Special Prosecutor
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
Special Prosecutor
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
Special Prosecutor
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG
Attorney at Law
18 On behalf of the Defendant.

19 JEROME F. BUTING
Attorney at Law
20 On behalf of the Defendant.

21 STEVEN A. AVERY
Defendant
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery, Case No. 05 CF
3 381. Will the parties state their appearances for
4 the record, please.

5 ATTORNEY KRATZ: The State appears by
6 Calumet County District Attorney Ken Kratz,
7 Assistant Attorney General Tom Fallon, Assistant
8 District Attorney Norm Gahn, all appearing as
9 Special Prosecutors.

10 ATTORNEY STRANG: Good morning, Steven
11 Avery is here in person. He's represented by Jerome
12 Buting of Buting and Williams, and Dean Strang of
13 Hurley, Burish and Stanton.

14 THE COURT: Very well. We had proceedings
15 set today to begin at 8:30 for the purpose of
16 administering jury questionnaires. Late last week
17 there were a few motions filed which needed to be
18 addressed before we begin the process of
19 administering the jury questionnaires. Therefore,
20 the Court set this matter for a hearing this
21 morning.

22 The first item to take up is a motion
23 that was filed by the defense to dismiss the
24 sexual assault, kidnapping, and false
25 imprisonment charges. Mr. Strang, I believe you

1 will be heard with respect to that motion.

2 ATTORNEY STRANG: Thank you. In chambers,
3 the Court had reached an understanding with counsel
4 that the State, as I understand that, that agreement
5 we reached in chambers, the State would announce
6 it's intention to call Brendan Dassey in its
7 case-in-chief, or not, by the close of business on
8 January 22, 2007, a week ago.

9 When that day passed and the next,
10 without word from the State, I concluded that
11 silence had to be taken as an intention not to
12 call young Mr. Dassey in the State's
13 case-in-chief and considered, then, what to do
14 about that.

15 This is something that has been close in
16 mind for me since March 10, 2006, the filing of
17 the Amended Information and the substantial
18 disagreement that the parties had over the
19 requirement, if any, that Wisconsin law imposed
20 for the State to show, at least probable cause,
21 for the first degree sexual assault, kidnapping,
22 and false imprisonment charges that the Amended
23 Information added, apparently by timing and by
24 content of the Dassey Complaint, solely or almost
25 solely on the strength of Brendan Dassey's

1 statements inculpatng himself.

2 Now, with the benefit of about 10
3 months, since March 10, and a review of the
4 discovery, it appears to me, at least, that
5 absent Mr. Dassey's testimony in Steven Avery's
6 trial, there is no evidence, none, to support the
7 charges of first degree sexual assault and
8 kidnapping.

9 And while it is, I concede, a somewhat
10 closer call, I don't think the State can support
11 the charge of false imprisonment either, which
12 includes an essential element of confinement or
13 restraint. And because coercion is another
14 essential element of false imprisonment,
15 necessarily, means confinement or restraint
16 during someone's lifetime, in their
17 consciousness, or at least during their lifetime.

18 I think the State's evidence of that, if
19 not naught, is clearly insufficient to sustain
20 any reasonable fact finder in concluding that one
21 or both of those essential elements of false
22 imprisonment could be proven here.

23 I, therefore, on January 24, submitted
24 our motion to dismiss the three counts that the
25 Amended Information added. And, indeed, as I

1 understand the evidence the State has disclosed
2 to the defense to date, as of March 10, 2006, not
3 only did the State have no corroboration for the
4 essential details of the first degree sexual
5 assault, kidnapping, and false imprisonment
6 charges filed by Amended Information, no
7 corroboration beyond Brendan Dassey, the physical
8 evidence that was known, or surely should have
9 been known to the State, for months, on March 10,
10 2006, tended to disprove, conclusively, some of
11 Brendan Dassey's allegations.

12 So when Brendan Dassey said that I got
13 off that school bus, and as picking up the
14 narrative that the special prosecutor regaled a
15 live TV audience with, and went down to the
16 Steven Avery trailer, and claimed that he heard
17 screaming coming from inside, and that he knocked
18 on the door and there was no answer for awhile,
19 and eventually a sweaty Steven Avery came to the
20 door, and there in the back bedroom, manacled to
21 a bed, was Teresa Halbach.

22 When those claims were being made on
23 live television, the State knew that the school
24 bus driver, who had dropped Brendan Dassey off
25 that very time, and has no conceivable reason to

1 have lied, being a school bus driver, said that
2 when she dropped him off, she saw Teresa Halbach,
3 or a woman, out taking photographs of a van. I
4 guess she wasn't manacled to a bed in Steven
5 Avery's trailer if she was standing outside
6 taking photographs as Brendan Dassey got off that
7 bus.

8 And on March 10, when this Amended
9 Information was filed, following eight and nine
10 days after the successive live news conferences,
11 the State had physical evidence, in its
12 possession, making it impossible to believe that
13 someone had been stabbed and slashed repeatedly
14 on Steven Avery's bed. There was no blood in
15 that bedroom.

16 And when Brendan Dassey said that we cut
17 off some of her hair, or I did, at Mr. Avery's
18 request, with a large knife, the State knew, or
19 should have known, that not one strand of Teresa
20 Halbach's hair was found anywhere in Steven
21 Avery's trailer; indeed, not one detectable trace
22 of Teresa Halbach's DNA, hair, blood, anything
23 else, anywhere in his trailer. Not an iota of
24 physical evidence to support the proposition that
25 she was ever in the trailer, let alone raped

1 there, imprisoned falsely there, held there as
2 the victim of a kidnapping. None.

3 Is there any other evidence in the
4 massive discovery, that I commend opposing
5 counsel for providing to us, any other evidence
6 at all, to support a claim of first degree sexual
7 assault, if we set aside Brendan Dassey as a
8 witness in this case? To my eyes, the answer is
9 no. None. Zero.

10 In 20 minutes, we're going to have a
11 jury panel brought in here and they will need to
12 be told, if we are to understand sensibly their
13 answers, and if they are to answer sensibly, a 12
14 or 15 page questionnaire, whatever it is. They
15 will need to be told what charges are to be
16 tried, what charges are we to hear, what
17 allegations is the State making against the man
18 accused.

19 And where there's no evidence,
20 evidently, I will stand corrected if there is,
21 and I'm sure counsel will correct me if I'm
22 wrong. But where in my line of sight there is no
23 evidence to support a first degree sexual assault
24 charge, or a kidnapping charge and insufficient
25 evidence at best to support a false imprisonment

1 charge, this jury should not be told that those
2 charges exist and, indeed, they ought be
3 dismissed.

4 We can address, then, whether that's a
5 sufficient remedy. I think it's not. I think
6 some further action will have to be taken by this
7 Court to counteract the affect of allegations
8 made against one young man, Defendant A, in a
9 separate case, that were imported, although
10 inadmissible, imported in the public mind, to
11 impugn the presumed innocence of Defendant B, in
12 an entirely separate case.

13 But the issue, first, is dismissal and,
14 then, what more would be required.

15 THE COURT: Mr. Kratz.

16 ATTORNEY KRATZ: Thank you, Judge. After
17 the State files an Information, the Defense has an
18 opportunity, and in most instances an obligation, to
19 bring a motion to dismiss. Mr. Strang did that on
20 the 3rd of May, when he brought a motion to dismiss
21 those three additional counts in the Information.

22 And this Court, after finding probable
23 cause, believed that the six counts against
24 Mr. Avery were supported by evidence that, if a
25 jury was to hear, could be believed and could

1 sustain a conviction. Let me remind the Court,
2 let me remind Mr. Strang, that it is the State's
3 decision what charges go forward against a State
4 defendant, not the defense attorney's and with
5 all due respect, Judge, not the Court's.

6 The decision, however, on what to go to
7 trial with and when that decision has to be made,
8 is something that is ripe for discussion this
9 morning. And although not a decision for the
10 Court, and not a decision at the urging of the
11 defense, this Court has to consider what factors
12 the State must take into consideration when
13 determining what charges go forward.

14 Necessarily in this case, and quite
15 unfortunately in this case, we then have to talk
16 about Brendan Dassey. I say, unfortunately,
17 because under most circumstances, in fact, save
18 this circumstance, I can't think of a time when
19 it would be appropriate, in open court, on
20 television, to discuss the status and the nature
21 of plea negotiations in an ongoing case, in an
22 ongoing criminal prosecution. I'm talking about
23 Mr. Dassey's prosecution.

24 But Mr. Strang has made some of those
25 things public. And in the Dassey case, some of

1 those things have been made public. So I'm going
2 to limit my discussion of the plea negotiations
3 in Dassey's case, to that which has already been
4 public.

5 This Court already knows that in May of
6 last year, 2006, a plea agreement had all been
7 reached with Mr. Dassey, which included Mr.
8 Dassey's deal, decision, agreement, to testify
9 truthfully, in the Steven Avery case. When
10 Mr. Strang so eloquently stands up and says the
11 State has no proof, perhaps Mr. Strang forgets
12 those times, or back to the time when Mr. Dassey
13 had, in effect and in and through his lawyer,
14 agreed to enter a plea and to testify against
15 Mr. Avery.

16 It wasn't until Mr. Kachinsky, through a
17 whole different story, was stripped of his
18 ability to handle felony prosecutions by the
19 State Public Defender's Office which, by the way,
20 was almost instantaneously reinstated after
21 Mr. Kachinsky agreed to get off of the Dassey
22 case, that new lawyers were appointed in the case
23 and plea negotiations began anew with Mr. Dassey.

24 This Court knows that those plea
25 negotiations have been ongoing. And this Court

1 knows that the deadline for those plea
2 negotiations was the 22nd of January. I agree
3 with Mr. Strang that that was the time when the
4 State was to hear from Mr. Fremgen, who is
5 Mr. Dassey's new lawyer, as to whether or not,
6 first of all, Mr. Dassey was going to change his
7 plea; and, secondly, and perhaps more
8 importantly, that if called as a witness in the
9 Avery case, what posture, what position, would
10 Mr. Dassey take.

11 This Court knows, that on the 24th of
12 January, two days after the deadline, I received
13 notification from Mr. Fremgen. I alerted the
14 Court, I sent the Court and counsel a copy of
15 Mr. Fremgen's letter setting forth what
16 Mr. Dassey's position would be, if he was called.

17 Importantly, Judge, that letter
18 indicates that Mr. Dassey, although if called in
19 the Avery case would invoke his Fifth Amendment
20 right against self incrimination, if granted use
21 immunity by the Court, presumably upon a
22 direction by the State, that Mr. Dassey would
23 testify, would testify in the State's
24 case-in-chief, would testify on rebuttal, or
25 would testify when the State chooses to call him.

1 And, therefore, there is evidence as to the two
2 counts that Mr. Strang claims, again, so
3 ferverently, that there's no evidence for, that Mr.
4 Dassey would testify.

5 Now, that doesn't stop the analysis by
6 the State. The three attorneys at this table
7 have had long discussions about whether we should
8 proceed with all six counts, or whether we should
9 proceed with the four counts that don't require
10 Brendan Dassey's testimony. That, again, Judge,
11 is a decision solely within the province of the
12 State, solely in the province of this table, as a
13 matter of fact, as to whether or not we're going
14 to proceed.

15 That decision doesn't have to be made by
16 law until jeopardy attaches, until the jury is
17 instructed by the Court as to what the charges
18 are. Now, I understand that it is this Court's
19 preference to tell the jury, today, what those
20 charges are going to be, that within the context
21 of the supplemental jury questionnaire to alert
22 the jurors as to what those counts are going to
23 be.

24 And so that puts us in a dilemma, if you
25 will, in that the State wished to wait until

1 Friday, the 2nd, as we have told you in
2 correspondence, as to whether or not we intended
3 to call Brendan Dassey. If put to that question
4 today, our inclination would be not to call
5 Brendan Dassey, to either save Brendan Dassey for
6 our case-in-chief, upon a grant of use immunity,
7 or to save Brendan for rebuttal testimony, again,
8 upon a grant of use immunity.

9 Certainly, though, this Court would
10 agree that he is available to testify in the
11 Steven Avery case. And so, if we're going to
12 instruct the jury as to what the charges against
13 Mr. Avery are going to be, it is the safer
14 position to just name the four charges from which
15 we do not need Brendan Dassey. Again, our
16 preference, if I can reiterate, is to wait until
17 the 2nd, is to wait until Friday, when the State
18 can decide how to proceed.

19 Would, or is it possible that Brendan
20 Dassey would change his mind about a plea
21 agreement, between now and Friday, absolutely.
22 Given the ongoing nature of the agreements,
23 that's always possible. But, for practical
24 purposes, if the Court wishes to know, wishes an
25 inclination by the State, I'm happy to give that.

1 But the bottom line is, this Court does
2 not have the authority to dismiss those two
3 counts. The State still could, if it chose, call
4 Mr. Dassey. Mr. Dassey was named as a witness.
5 When it was time to name our lay witnesses,
6 Brendan Dassey was named. He's included on our
7 witness list and so there shouldn't be any
8 surprise as to whether we can proceed with
9 Mr. Dassey or not.

10 We may choose to call any of those
11 witnesses that we have named. We may choose to
12 only call a subset of those witnesses, and
13 Brendan Dassey is certainly one of those people
14 that's within that category.

15 But to suggest that the State has no
16 evidence, to suggest even further than that, that
17 there need be some, what the defense has called,
18 "strong curative instruction", the State believes
19 is absolutely absurd. Any time use immunity is
20 conferred in a case, when there is two
21 defendants, which isn't unusual, those of us that
22 have been practicing criminal law for a long time
23 know that happens once in awhile, especially when
24 one defendant has given an inculpatory statement,
25 which inculpates another, those are called

1 interlocking confessions. And when that happens,
2 it is not usual for use immunity to be conferred.

3 To suggest, though, that the jury has to
4 be somehow informed, even before they are
5 selected, as to the nuance of the use immunity
6 statute, as to whether the State chooses to call
7 a witness or not, and, specifically, in this
8 case, that there should be some negative
9 inference taken, by the fact that the State
10 chooses not to call somebody, or that the State
11 chooses not to proceed on two counts, is simply
12 not supported by law.

13 We're asking, then, that the Court
14 reject, first of all, the Defense motion to
15 dismiss. We're asking that the Court reject the
16 inclination to provide some curative instruction,
17 which certainly would prejudice the State; the
18 prejudice to the State, Judge, should be obvious.

19 If we have to start this case swimming
20 upstream, if you will, in the face of some
21 instruction given to the jury that they should be
22 taking some negative view of the State, then we
23 intend to proceed on all six counts. We will.
24 If that's what this Court's inclination is, we
25 will go forward on all six counts. We will ask

1 the Court to grant Mr. Dassey use immunity and we
2 will proceed on those six counts.

3 If, however, the State is not so
4 inclined -- excuse me -- if the Court is not so
5 inclined, if the Court, like every other case, is
6 going to proceed to jury selection without
7 providing this strong curative instruction, or
8 not further contaminating the potential jury
9 pool, which recent pre-trial publicity, the State
10 believes and the State's argued already has, then
11 it is our inclination to proceed on the four
12 counts. Again, those four counts that do not
13 require Brendan Dassey, allowing us, as is within
14 our province, to make a decision as the trial
15 proceeds whether we call Brendan in our
16 case-in-chief, whether we call him in rebuttal,
17 or whether we choose not to call him at all.
18 Thank you, Judge.

19 THE COURT: Before I turn it back to
20 Mr. Strang, within your argument is there a motion
21 to dismiss the sexual assault and kidnapping
22 charges, or not?

23 ATTORNEY KRATZ: Not until the Judge rules
24 on this motion. And -- And I don't mean to be cute
25 with the Court, and I think you understand, Judge,

1 that it's the curative instruction, your inclination
2 that causes the State the most concern. I am, and I
3 have, as you know, been candid with the Court, as a
4 matter of courtesy. I have told you all along what
5 our intention was going to be.

6 Without that curative instruction, the
7 State, I will tell the Court, as I have told you
8 candidly, intends to proceed on four counts,
9 rather than six. But, if the Court is going to
10 give a curative instruction, then we do have that
11 objection.

12 THE COURT: I understand. Mr. Strang,
13 briefly.

14 ATTORNEY STRANG: All due respect to
15 counsel, the State is supposed to start every
16 criminal case swimming upstream. And the strong
17 current against which the State is supposed to be
18 swimming is a presumption of innocence. That
19 presumption of innocence has been eroded, if not
20 eliminated, here, by the spectre of Brendan Dassey
21 offering admissible, as opposed to inadmissible
22 evidence.

23 It is too late to sit on the fence here.
24 We can't very well tell this jury that there are
25 four counts to be tried, and then tell them on

1 next Monday, oh, by the way, there is also a rape
2 and a kidnapping. You can't do it. Neither can
3 either side, as a practical matter, give an
4 opening statement in this case, without knowing
5 whether the alleged accomplice is testifying or
6 not.

7 Now, Mr. Kratz was candid enough to
8 concede, if one listened carefully, that
9 Mr. Dassey is available to him, legally. The
10 State can move for use immunity, the Court, then,
11 grants that immunity. The case law suggests that
12 the Defense has very little to say about that
13 State request.

14 It is just too late, now, 10 months
15 after these charges were filed, to say we'll tell
16 you later. Because the jury questionnaire
17 process is beginning and we can't rely on the
18 answers these jurors give to whether they can try
19 this case fairly, unless they know what it is
20 they are trying, in outline. It is just too
21 late.

22 And I agree, as an abstract matter, with
23 much of what Mr. Kratz says about the black
24 letter. The State decides what charges it will
25 push forward on and which it will not.

1 And I, also, let me be clear, if Brendan
2 Dassey takes the witness stand on a similar
3 chair, one county over, he has admissible
4 evidence to offer, once he's sworn under oath.
5 It may hurt Mr. Avery; it may help Mr. Avery; it
6 may do a little of both. But it is admissible
7 evidence, once he takes the stand. And until he
8 sits down in a chair like that, nothing he's got
9 to say is admissible on the State's offering, or
10 at the State's instance, or over Defense
11 objection.

12 So the State has all the information it
13 needs today, it's had it for months, to decide
14 whether it's calling Mr. Dassey, to prove the
15 three charges it added in the Amended
16 Information, or not. This Court has a right, in
17 managing this trial, and in selecting a jury, and
18 ideally having it not be a waste of time, to know
19 what charges it's trying, with the jury it's
20 picking. And counsel have a right to be able to
21 assess the answers these jurors give, on the
22 knowledge that the jurors were given accurate
23 information about something as basic as what the
24 allegations are.

25 THE COURT: All right.

1 ATTORNEY STRANG: It's time to decide.

2 THE COURT: First, a couple of comments
3 with respect to the procedure for jury selection in
4 this case. Because of the large number of jurors in
5 the panel, the parties have previously agreed that
6 we're going to be using a procedure in which, in
7 large part, the questionnaire is taking the place of
8 questions that would typically be asked on general
9 voir dire.

10 It's a little different in the sense
11 that the questionnaire is going to be filled out
12 by the parties, off the record. But there
13 certainly are similarities between the questions
14 that are on the questionnaire and what typically
15 is asked in general voir dire.

16 In order for the jurors to give accurate
17 answers, and for the parties to assess those
18 answers, I think it's necessary that the jurors
19 be aware of the charges that the State will be
20 pursuing against the defendant. That's why I
21 would not feel comfortable giving the jurors a
22 preliminary instruction, before they fill out the
23 questionnaire, without the jurors knowing what
24 the charges are going to be against the defendant
25 in this case. So I don't think we can post --

1 postpone the time within which the jurors are
2 going to know the charges.

3 With respect to the curative instruction
4 issue, I will make the following comments: At
5 this point it would be difficult for the Court to
6 consider giving some type of curative
7 instruction, based on the evidence or lack of
8 evidence that the State has available to it to
9 produce that relates to the charges.

10 To be sure, in the course of these
11 proceedings, the Court has gleaned some
12 information concerning evidence which each side
13 may choose to produce, but that's not been
14 fleshed out in any great detail. I understand
15 from the representations that have been made to
16 the Court that the State has, or has not, as time
17 has gone on, had an idea of what type of evidence
18 it might hope to gain from Mr. Dassey.

19 I don't -- I'm not aware of anything to
20 suggest that the State has been acting in bad
21 faith in any regard. And quite simply put, I do
22 not believe that the State has engaged in any
23 conduct to this point which would warrant the
24 giving of some type of instruction unfavorable to
25 the State, should the State decide at this point

1 to dismiss some of the charges that have been
2 filed. And so I'm not going to -- Whatever
3 action the Court takes this morning, I'm not
4 going to give some type of an extra instruction,
5 I just haven't heard anything that would warrant
6 it.

7 With that background --

8 ATTORNEY KRATZ: Judge, may I be heard then
9 before --

10 THE COURT: Yes.

11 ATTORNEY KRATZ: -- you rule further?

12 THE COURT: Yes.

13 ATTORNEY KRATZ: If I could just have one
14 more moment.

15 THE COURT: Go ahead.

16 ATTORNEY KRATZ: With those findings,
17 Judge, the State is, at this time, because we
18 believe it within the province of the State, moving
19 that Counts, I believe it's 4 and 5, that is, the
20 first degree sexual assault as a party to the crime,
21 and the kidnapping, Count No. 5, be dismissed.

22 The State intends to proceed, then, on
23 Counts 1, 2, 3, and 6. I will be happy to
24 provide a Court with what will be called a second
25 Amended Information, which will actually make

1 Count 6, Count 4, so that the jury isn't confused
2 as to the number of counts or why there may be a
3 gap in the -- those charges. Count 4 will be
4 false imprisonment.

5 And the State intends, then, to proceed
6 on those four counts rather than -- rather than
7 the six counts. And I believe then, that
8 relieves the Court of the obligation of having to
9 rule upon this motion.

10 THE COURT: Mr. Strang, from the defense's
11 standpoint I understand that you, based on your
12 motion, were requesting the administration of the
13 curative instruction as well, but I take it that the
14 defense has no objection, given the Court's ruling
15 on the instruction issue, to the dismissal of Counts
16 4 and 5.

17 ATTORNEY STRANG: Provided that's a
18 dismissal with prejudice, which is the Court's
19 prerogative, once the State has moved to dismiss,
20 not the State's; we don't object to a dismissal with
21 prejudice of Counts 4 and 5.

22 THE COURT: I have dealt with this issue
23 before. There's a, frankly, question as to how much
24 power the Court has in that regard when a dismissal
25 is granted at this stage in the trial.

1 At this point, my inclination would be
2 to -- simply to grant the State's motion to
3 dismiss those counts. I'm not going to rule at
4 this time, nor do we have time to address the
5 issue, as to whether or not they would be with or
6 without prejudice. The law is, that the
7 dismissal, absent some other finding by the
8 Court, I believe is without prejudice. And I'm
9 not prepared today to do any more than that.

10 ATTORNEY STRANG: Here's the problem, and
11 here's why the Court needs to take some further
12 curative action. Since March 10, up through the
13 WFRV report last night, for example, Steven Avery
14 has been presented as the man who allegedly raped,
15 mutilated and murdered Teresa Halbach.

16 Now, the first question, I guess in a
17 bigger scale, this raises, is how many times will
18 Steven Avery be charged in Manitowoc County with
19 rapes he didn't commit, this makes two. And the
20 public, for 10 months, has been led to believe
21 that he's a rapist, in addition to all else they
22 might think about him.

23 Where do we go, you know, forget getting
24 the 18 years back on the first one, where do we
25 go to get the last 10 months back? Where do we

1 go to get our presumption of innocence back, from
2 a public who believes and has heard time and
3 again that he is an alleged rapist, even before
4 murder?

5 THE COURT: Right. I'm not precluding you
6 from advancing that argument at some point in the
7 future; I'm just saying I'm not prepared to make
8 that ruling today.

9 ATTORNEY STRANG: And I want to be clear,
10 then, on the record, that we are heading into a
11 potential for mistrial by going forward on the false
12 imprisonment count, if the Court's ruling permits
13 the State to do that. And if the State believes
14 that it will avail itself of the dismissal without
15 prejudice, later to call Brendan Dassey, and to
16 argue that there is no surprise and, therefore,
17 under Wisconsin Statutes, an amendment of the
18 Information should be permitted, or argue that it
19 wants the Information to conform to the evidence it
20 plans to adduce by calling Mr. Dassey, there will be
21 a mistrial motion, and it will be a serious motion.

22 ATTORNEY KRATZ: If I may interrupt, Judge.

23 THE COURT: Yes.

24 ATTORNEY KRATZ: I will concede, just out
25 of fairness to Mr. Strang and to the defense team,

1 that during the course of this trial, the State will
2 not ask the Court reinstate those charges, will not
3 ask the Court add the additional counts, even if
4 Brendan Dassey is allowed to testify, that should at
5 least get us through this proceeding.

6 THE COURT: All right. And with respect to
7 the defense extra motion to dismiss the false
8 imprisonment charge, I previously ruled, that given
9 the law in the State of Wisconsin on preliminary
10 examinations and the Court's duty and the ability of
11 the State to add a charge that's factually related
12 to the bindover, that the State has the right to do
13 that. And I'm also not, obviously, at this point in
14 the proceedings, in a position to say that the --
15 there's no evidence that the State can produce to
16 sustain that charge.

17 So the Court is denying the defense
18 motion to dismiss the false imprisonment charge.
19 I will grant the State's motion to dismiss
20 Count's 4 and 5, the first degree sexual assault
21 charge and the kidnapping charge.

22 ATTORNEY STRANG: That said, the State's
23 proposal of a second Amended Information makes
24 sense, given the state of the record and the Court's
25 rulings.

1 THE COURT: All right. It was my
2 understanding Mr. Fallon also wished to be heard on
3 the jury selection process before we bring the
4 jurors in for the questionnaires.

5 ATTORNEY FALLON: Yes, thank you, Judge.
6 Just a couple of preliminary thoughts. And I
7 realize, at least I recollect from our phone
8 discussion on Friday, that I think the balance of
9 this will have to be addressed on Friday afternoon,
10 I believe.

11 But I just wanted to point out that the
12 Court's intent to limit the parties to 10 to 15
13 minutes of individual voir dire, to follow up on
14 the juror questionnaire, which is about to be
15 filled out by the jurors today, would arguably,
16 and I note counsel and I, I think, are in
17 agreement on this, that the 15 minute was
18 arguably sufficient; although, I think both of us
19 had serious concerns about that.

20 But when I replied to the defense
21 submission on January 5th, as I represented I
22 would and hearing no objection from the Defense
23 and no objection from the Court, I was surprised
24 that many of the submitted questions by the State
25 were deleted, many were accepted.

1 So my concern is that, at best case
2 scenario, 15 minute individual voir dire was
3 marginally sufficient given what I expected the
4 supplemental juror questionnaire to contain; and
5 that is, many of the suggestions or several of
6 the suggestions that I agreed with from the
7 Defense, as well as many of the State, the Court
8 on its own chose to disregard several of the
9 submissions of the State.

10 And, presumably, that's in the Court's
11 prerogative as I'm aware that jury selection,
12 there is a vast amount of discretion afforded to
13 the trial court. But, again, not hearing any
14 objection from either the Court or opposing
15 counsel, I expected to see a little more robust
16 supplemental juror questionnaire.

17 However, the Court has exercised that
18 discretion and determined otherwise. Our comment
19 is that I would like the Court to address the
20 follow up voir dire procedures on Friday
21 afternoon, because I'm not sure, quite frankly,
22 that 10 to 15 minutes will allow counsel adequate
23 time to explore other matters not included in the
24 general -- or in the supplemental juror
25 questionnaire.

1 As I indicated earlier on, although it's
2 unusual and not advisable to use the supplemental
3 juror questionnaire as a stand in for general
4 voir dire, it certainly is possible, but -- and I
5 understand the Court's desire to not create an
6 unwieldily document for the prospective jurors.
7 But I would ask the Court to reconsider it's idea
8 as to how the follow-up voir dire is going to
9 occur.

10 I'm very concerned, that at least from
11 the State's perspective, that we will not have
12 adequate time to pursue other matters in that
13 time frame.

14 THE COURT: All right. We'll address that
15 further at the final pre-trial on Friday.

16 At this time, I think I'm going to ask
17 the parties to remain here. I will go back and
18 have the clerk bring in the jurors, then I will
19 come back out on the bench and give the jurors
20 the preliminary information prior to their
21 completion of the questionnaire.

22 And I believe there is agreement that
23 after the Court completes that process, we'll
24 take a short break to clear the courtroom so that
25 members of the press and members of the public

1 will be excused, since during the time the jurors
2 will be completing the actual questionnaires,
3 court will not be in session, and neither the
4 parties nor I will be present.

5 So if you just sit tight, I will check
6 on the process of the jurors and we'll get
7 started. I think all of the seating in the
8 courtroom, except for whatever is left in the
9 back, will be needed for members of the jury
10 panel.

11 (Brief recess.)

12 THE COURT: Ladies and gentlemen, this
13 morning we are commencing the jury selection process
14 in the case of State of Wisconsin vs. Steven A.
15 Avery, Case No. 05 CF 381. This is a criminal case.
16 In a moment I will read to you the crimes charged in
17 the Information in this case.

18 The Information is nothing more than a
19 written, formal accusation against a defendant,
20 charging him with the commission of criminal
21 acts. You are not to consider the Information as
22 evidence against the defendant in any way. It
23 does not raise an inference of guilt.

24 The Information in this case charges the
25 defendant, Steven Avery, with being a party to

1 the crime of first degree intentional homicide of
2 Teresa Halbach. Mr. Avery is also charged with
3 party to the crime of mutilating her corpse,
4 false imprisonment, and felon in possession of a
5 firearm.

6 To each of the charges I have just read,
7 Mr. Avery has entered a plea of not guilty, which
8 means the State must prove every element of the
9 offenses charged, beyond a reasonable doubt. The
10 law presumes every person charged with the
11 commission of an offense to be innocent. This
12 presumption attends the defendant throughout the
13 trial, and prevails at its close, unless overcome
14 by evidence which satisfies the jury of his
15 guilt, beyond a reasonable doubt. The defendant
16 is not required to prove his innocence.

17 The burden of proving the defendant
18 guilty of every element of the crimes charged is
19 upon the State. Before you can return a verdict
20 of guilty on any count, the State must prove, to
21 your satisfaction, beyond a reasonable doubt,
22 that the defendant is guilty on that count.

23 The case is being prosecuted by Special
24 Prosecutor Kenneth Kratz. Mr. Kratz, if you can
25 please stand up.

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ATTORNEY KRATZ: Good morning.

THE COURT: Thomas Fallon.

ATTORNEY FALLON: Good morning.

THE COURT: And Norman Gahn.

ATTORNEY GAHN: Good morning.

THE COURT: The defendant in this case is Steven Avery.

THE DEFENDANT: Good morning, ladies and gentlemen.

THE COURT: And Mr. Avery is being defended by attorneys, Dean Strang.

ATTORNEY STRANG: Good morning.

THE COURT: And Jerome Buting.

ATTORNEY BUTING: Good morning.

THE COURT: The trial itself is expected to take approximately six weeks. Sixteen members of the jury panel will be selected to serve on the jury. While only 12 members of the jury will arrive at the final verdict, 4 additional jurors are being selected to hear the case in the event members of the jury should have to be excused before the jury retires to deliberate. Should there be more than 12 jurors remaining at the close of the evidence, the alternate jurors will be selected by lot.

The process we are about to engage in is

1 called voir dire. Its purpose is to assure that
2 the jury ultimately impaneled to hear this case
3 is comprised of people who are not biased or
4 prejudiced. The jurors must be citizens who can
5 fairly and impartially decide the facts of the
6 case, based solely upon the evidence presented in
7 court, and will then follow my instructions as to
8 the law applicable to those facts.

9 We are using the proceeding today to
10 have all prospective jurors complete a written
11 questionnaire. Some jurors will be called back
12 for further individual questioning beginning next
13 Monday, February 5th. Whether and in what order
14 you will be called back is determined by a random
15 computer selection process.

16 Should you be required to return, the
17 Clerk's Office will contact you by telephone with
18 a time and date to return. Some of you may be
19 excused without participating in individual voir
20 dire. The voir dire process is going to require
21 that you disclose publicly, a certain amount of
22 personal information about yourselves and your
23 families, that you may otherwise want to keep to
24 yourself. It is, unfortunately, necessary.

25 In special circumstances, exceptions may

1 sometimes be made to insure the privacy of your
2 answers. You will have to indicate on the
3 questionnaire if you think you have a valid
4 reason to ask for an exception.

5 This morning we will proceed as follows:
6 In a few minutes the Clerk will hand each of you
7 a written questionnaire which you are to complete
8 under oath. Please take your time and answer all
9 questions as completely and accurately as you
10 can. If you are uncertain about how to answer
11 any question, please note your uncertainty in
12 your written answer.

13 I will not be available to individually
14 answer any questions you may have as you complete
15 the questionnaire.

16 When you have completed and signed your
17 questionnaire, return it to the Clerk, who will
18 turn all the completed questionnaires over to me.

19 After you complete your questionnaire
20 this morning, you will be excused for the
21 remainder of the day.

22 After some prospective jurors have been
23 brought in and questioned individually, next
24 week, the lawyers and I will confer to decide if
25 any juror should be excused for cause, that is,

1 for any legally sufficient reason. If I rule
2 that any prospective juror is to be excused for
3 cause, that particular panel member will be told
4 and released from further service in this case.

5 After a sufficient number of prospective
6 number of jurors have been questioned
7 individually, the lawyers will be permitted to
8 exercise their peremptory challenges upon those
9 remaining on the panel. Once the peremptory
10 challenges have been exhausted, a jury of 16
11 persons will be seated to hear the trial.

12 The process of jury selection will take
13 some time, as you can see. I ask you to be
14 patient while we are concerned with matters that
15 don't involve you personally. I strongly suggest
16 that you bring something back to read while you
17 wait next week, should you be called back for
18 individual voir dire.

19 It is estimated by the lawyers that it
20 will take six weeks to try the case once the jury
21 has been selected. You should all have received
22 a letter asking you to request to be excused in
23 advance, if a case of that length would cause you
24 any extraordinary personal hardship.

25 Those who responded that it would, and

1 whose reasons were found to be sufficient, have
2 already been excused. The Court understands that
3 serving on a jury for six weeks presents a
4 significant inconvenience to most people. That
5 is an unfortunate but necessary price we pay for
6 the system of justice that we enjoy.

7 If any of you has a reason, now, to
8 believe that you would suffer some exceptional
9 hardship, other than the convenience (sic) jury
10 service causes everyone to sit on a case of this
11 duration, please give specific reasons in your
12 response to the pertinent question on the
13 questionnaire.

14 This case has received a substantial
15 amount of publicity in the newspapers, and on
16 radio and television. That you are aware of the
17 publicity does not, by itself, disqualify you.
18 If, however, that publicity has caused you to
19 form some opinions about the case already, and
20 you think you might be unable to put those
21 opinions aside and listen to the evidence with an
22 open mind, please be candid about it on your
23 answers to the relevant questions on the
24 questionnaire, and when you are questioned
25 individually.

1 After the trial starts, it is absolutely
2 essential that the jurors who are chosen for the
3 case learn nothing whatsoever about it from any
4 source, other than the evidence presented in the
5 courtroom. The jury will be obliged to that end
6 not to read, listen to, or watch any news
7 accounts of the trial, nor to talk or let anyone
8 else, including one another, talk to them, about
9 any aspect of the case, until it is over.

10 I also instruct you that, for so long as
11 we are engaged in the process of jury selection,
12 you are not to read, listen to, or watch any news
13 accounts of this case or of the proceedings, nor
14 talk to anyone or let anyone else talk to you
15 about any aspect of the case. That means not
16 listening to radio accounts about the case, not
17 reading any newspaper accounts, and not watching
18 television news coverage of this matter.

19 As we conduct the voir dire process, you
20 will naturally be meeting each other and talking
21 among yourselves. It is extremely important,
22 however, that you do not discuss this case,
23 including the voir dire questions, or your
24 answers to any of those questions.

25 Do not share anything that you may know,

1 or any opinions or impressions you may have,
2 about the case, with any other prospective juror.
3 Do not talk about your individual answers to the
4 questionnaire or any questions you are asked in
5 open court with anyone. Both the State and
6 Mr. Avery are entitled to have a completely fair,
7 openminded and impartial jury sit in judgment in
8 this case.

9 You will be asked many questions
10 intended to enable me and the lawyers to draw
11 some inferences about your attitudes. As you
12 answer the questions, I ask you to ask yourself,
13 do I have any reason to question my own
14 impartiality, to suspect that I might be
15 prejudiced for or against the State or the
16 defendant, for any reason.

17 In other words, are you aware of
18 anything which would prevent you from rendering a
19 fair and impartial verdict, based solely on the
20 evidence presented in this courtroom, and the
21 instructions I will give you at the end of the
22 trial so -- as to the law applicable to this
23 case. If so, please be truthful in making that
24 known to us.

25 Finally, I want you to know that the

1 Court recognizes that each of the jurors selected
2 to serve in this case is being asked to perform
3 an important civic duty at a significant personal
4 sacrifice of time and attention. While it's not
5 the same as serving in the military, for example,
6 in a sense the jurors are being drafted into
7 government service for six weeks.

8 Your service in this case imposes a
9 greater burden than we ask of most citizens. I
10 would ask you to keep in mind, however, the deep
11 personal satisfaction that you can receive from
12 knowing, should you be selected as a juror, that
13 you answered the call of your government and
14 served with honor by rendering a verdict based
15 not on any preconceived motions -- or notions,
16 but only on the evidence introduced at trial and
17 the instructions given to you by the Court.

18 At this time, before we break, I'm going
19 to ask the Clerk to swear the panel.

20 THE CLERK: Would all of the jurors please
21 rise and raise your right hand.

22 (Jury panel sworn.)

23 THE CLERK: Please be seated.

24 THE COURT: All right. Members of the jury
25 panel, in a minute you are going to be coming back

1 here to complete your questionnaires. Because of
2 the fact Court will not be in session during that
3 time, we're going to clear the courtroom of everyone
4 else before we ask you to do so.

5 So at this time the clerks and the
6 bailiffs will escort you back to the other
7 courtroom that you started in. You will be there
8 for few minutes. You can take a rest stop if you
9 need to, and then you will be brought back here
10 to complete your questionnaires. You may stand
11 at this time and be escorted out.

12 (Jury panel not present.)

13 THE COURT: All right. The prospective
14 jurors have now all left the courtroom. Counsel,
15 anything else further before we go off the record?

16 ATTORNEY STRANG: The Court's instructing
17 on publicity, it probably would be a good idea to
18 add the internet.

19 ATTORNEY FALLON: Right, that was the only
20 thought I had.

21 THE COURT: All right. Thank you. We will
22 adjourn at this time, and I will see you back at
23 10:30.

24 ATTORNEY STRANG: Thank you.

25 (Court in recess.)

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(Second half of jury panel present.)

THE COURT: Ladies and gentlemen, this morning we are commencing the jury selection process in the case of State of Wisconsin vs. Steven Avery, Case No. 05 CF 381. This is a criminal case. In a moment I will read to you the crimes charged in the Information in this case.

The Information is nothing more than a written formal accusation against a defendant, charging him with a commission of criminal acts. You are not to consider the Information as evidence against the defendant in any way. It does not raise an inference of guilt.

The Information in this case charges that the defendant, Steven Avery, or the Information charges the defendant, Steven Avery, with being a party to the crime of first degree intentional homicide of Teresa Halbach. Mr. Avery is also charged with party to the crime of mutilating her corpse, false imprisonment and felon in possession of a firearm.

To each of the charges I have just read, Mr. Avery has entered a plea of not guilty, which means the State must proof every element of the offenses charged, beyond a reasonable doubt. The

1 law presumes every person charged with the
2 commission of an offense to be innocent. This
3 presumption attends the defendant throughout the
4 trial and prevails at its close, unless overcome
5 by evidence which satisfies the jury of his
6 guilt, beyond a reasonable doubt. The defendant
7 is not required to prove his innocence.

8 The burden of proving the defendant
9 guilty of every element of the crimes charged is
10 upon the State. Before you can return a verdict
11 of guilty on any count, the State must prove, to
12 your satisfaction, beyond a reasonable doubt,
13 that the defendant is guilty of that count.

14 This case will be prosecuted by Special
15 Prosecutor Kenneth Kratz. Mr. Kratz.

16 ATTORNEY KRATZ: Good morning.

17 THE COURT: Attorney Thomas Fallon.

18 ATTORNEY FALLON: Good morning.

19 THE COURT: And Attorney Norman Gahn.

20 ATTORNEY GAHN: Good morning.

21 THE COURT: The defendant, Steven Avery, is
22 present in court today.

23 THE DEFENDANT: Good morning, ladies and
24 gentlemen.

25 THE COURT: Mr. Avery, will be represented

1 by Attorney Dean Strang.

2 ATTORNEY STRANG: Good morning.

3 THE COURT: And Attorney Jerome Buting.

4 ATTORNEY BUTING: Hello.

5 THE COURT: The trial itself is expected to
6 take approximately six weeks. Sixteen members of
7 the jury panel will be selected to serve on the
8 jury. While only 12 members of the jury will arrive
9 at the final verdict, 4 additional jurors are being
10 selected to hear the case in the event members of
11 the jury should have to be excused before the jury
12 retires to deliberate. Should there be more than 12
13 jurors remaining at the close of the evidence, the
14 remaining alternate jurors will be selected by lot.

15 The process we're about to engage in is
16 called voir dire. Its purpose is to assure that
17 the jury ultimately impaneled to hear this case
18 is comprised of people who are not biased or
19 prejudiced. The jurors must be citizens who can
20 fairly and impartially decide the facts of the
21 case, based solely on the evidence presented in
22 court, and who will then follow my instructions
23 as to the law applicable to those facts.

24 We are -- We are using the proceedings
25 today to have all prospective jurors complete a

1 written questionnaire. Some jurors will be
2 called back for further individual questioning
3 beginning next Monday, February 5. Whether and
4 in what order you will be called back is
5 determined by a random computer selection
6 process.

7 Should you be required to return, the
8 Clerk's Office will contact you by telephone with
9 a time and date to return. Some of you may be
10 excused without participating in individual voir
11 dire. The voir dire process is going to require
12 that you disclose publicly, a certain amount of
13 personal information about yourself and your
14 families, that you might otherwise want to keep
15 to yourself. It is, unfortunately, necessary.

16 In special circumstances, exceptions may
17 sometimes be made to insure the privacy of your
18 answers. You will have to indicate on the
19 questionnaire if you believe you have a valid
20 reason to ask for an exception.

21 We'll proceed as follows: In a few
22 minutes the Clerk will hand each of you a written
23 questionnaire which you are to complete under
24 oath. Please take your time and answer all
25 questions as completely and accurately as you

1 can. If you are uncertain about how to answer
2 any question, please note your uncertainty in
3 your written answer.

4 I will not be available to individually
5 answer any questions you may have.

6 When you have completed and signed your
7 questionnaire, return it to the Clerk, who will
8 turn all the completed questionnaires over to me.
9 After you complete your questionnaire, you will
10 be excused for the remainder of the day.

11 After some prospective jurors have been
12 brought in and questioned individually, next
13 week, the lawyers and I will confer to decide if
14 any should be excused for cause, that is, for any
15 legally sufficient reason. If I rule that any
16 prospective juror is to be excused for cause,
17 that particular panel member will be told and
18 released from further service in this case.

19 After a sufficient number of prospective
20 jurors have been questioned individually, the
21 lawyers will be permitted to exercise their
22 peremptory challenges upon those remaining on the
23 panel. Once the peremptory challenges have been
24 exhausted, a jury of 16 persons will be seated to
25 hear the case.

1 The process of jury selection will take
2 some time, as you can see. I ask you to be
3 patient while we are concerned with matters that
4 don't involve you personally. I strongly suggest
5 that you bring something back to read while you
6 wait, should you be called back for individual
7 voir dire next week.

8 It is estimated by the lawyers that it
9 will take six weeks to try the case once the jury
10 has been selected. You should all have received
11 a letter asking you to request to be excused in
12 advance if a case of that length would cause you
13 any extraordinary personal hardship.

14 Those who responded that it would, and
15 whose reasons were found to be sufficient, have
16 already been excused. The Court understands that
17 serving on a jury for six weeks presents a
18 significant inconvenience to most people. That
19 is an unfortunate but necessary price we pay for
20 the system of justice that we enjoy.

21 If any of you has a reason, now, to
22 believe that you would suffer some exceptional
23 hardship, other than the convenience (sic) jury
24 service causes everyone to sit on a case of this
25 duration, please give specific reasons in your

1 response to the pertinent question on the
2 questionnaire.

3 This case has received a substantial
4 amount of publicity in the newspapers, and on
5 radio and television. That you are aware of the
6 publicity does not, by itself, disqualify you.
7 If, however, that publicity has caused you to
8 form some opinions about the case already, and
9 you think you might be unable to put those
10 opinions aside and listen to the evidence with an
11 open mind, please be candid about it in your
12 answers to the relevant questions on the
13 questionnaire and when you are individually
14 questioned.

15 After the trial starts, it is absolutely
16 essential that the jurors who are chosen for the
17 case learn nothing whatsoever about it from any
18 source, other than the evidence presented in this
19 courtroom. The jury will be obliged to that end
20 not to read, listen to, or watch any news
21 accounts of the trial, nor to talk or let anyone
22 else, including one another, talk to them, about
23 any aspect of the case, until it is over.

24 I also instruct you that, for so long as
25 we are engaged in the process of jury selection,

1 you are not to read, listen to, or watch any news
2 accounts of the case or of the proceedings, nor
3 talk to anyone or let anyone else talk to you
4 about any aspect of the case. That means not
5 listening to the radio news accounts about the
6 case, not reading any newspaper accounts, not
7 watching television news coverage of this matter
8 and not searching the internet for information
9 about the case.

10 As we conduct the voir dire process, you
11 will naturally be meeting each other and talking
12 among yourselves. It is extremely important,
13 however, that you do not discuss this case,
14 including the voir dire questions, or your
15 answers to those questions.

16 Do not share anything you may know, or
17 any opinions or impressions you may have, about
18 the case, with any other prospective juror. Do
19 not talk about your individual answers to the
20 questionnaire or to any questions you are asked
21 in open court with anyone, including your fellow
22 jurors. Both the State and Mr. Avery are
23 entitled to have a completely fair, open-minded
24 and impartial jury sit in judgment upon this
25 case.

1 You will be asked many questions
2 intended to enable me and the lawyers to draw
3 some inferences about your attitudes. As you
4 answer the questions, I ask you to ask yourself,
5 do I have any reason to question my own
6 impartiality, to suspect that I might be
7 prejudiced for or against the State or the
8 defendant for any reason.

9 In other words, are you aware of
10 anything which would prevent you from rendering a
11 fair and impartial verdict, based solely on the
12 evidence to be presented in this courtroom, and
13 the instructions I will give you at the end of
14 trial as to the law applicable to the case. If
15 so, please be truthful in making that known to
16 us.

17 Finally, I want you to know that the
18 Court recognizes each of the jurors selected to
19 serve in this case are being asked to perform an
20 important civic duty at a significant personal
21 sacrifice of time and attention. While it is not
22 the same as serving in the military, in a sense
23 the jurors are being drafted into government
24 service for six weeks.

25 Your service in this case imposes a

1 greater burden than we ask of most citizens. I
2 would ask you to keep in mind, however, the deep
3 personal satisfaction you can receive from
4 knowing, should you be selected as a juror, that
5 you answered the call of your government and
6 serve with honor by rendering a verdict based not
7 on any preconceived notions, but only on the
8 evidence introduced at trial and the instructions
9 given you by the Court.

10 At this time I will ask the Clerk to
11 swear the members of the jury panel. Will you
12 all please stand.

13 THE CLERK: Please raise your right hand.

14 (Jury panel sworn.)

15 THE CLERK: Please be seated.

16 THE COURT: Members of the jury panel,
17 because you are going to be completing a
18 questionnaire while court is not in session, we're
19 going to take a few minutes to clear the courtroom.

20 At this point, I'm going to ask you all
21 to stand and be escorted by the bailiffs and
22 court personnel back to the other courtroom for a
23 few minutes. Once the courtroom here is cleared,
24 you will be brought back here and given your
25 questionnaires.

1 As indicated earlier, after your
2 questionnaires are completed, you can hand them
3 to the Clerk and you will be free to leave for
4 the day. You may rise and be escorted back to
5 the other courtroom at this time.

6 (Jury panel not present.)

7 THE COURT: You may be seated. The members
8 of the jury panel have now left for the other
9 courtroom and the courtroom is clear.

10 Counsel, I would ask, this is our last
11 time on the record for today, I would ask you to
12 stop back in chambers after we're done, just so
13 we can clarify the agenda for the pre-trial on
14 Friday.

15 ATTORNEY BUTING: Judge, can I make one
16 question here?

17 THE COURT: Yes.

18 ATTORNEY BUTING: It didn't occur to me
19 when you read it the first time and as I listened
20 this time; do the jurors know that they will not be
21 sequestered for the full six weeks?

22 THE COURT: Well, they haven't been told
23 that they would be sequestered. They haven't been
24 told that they have not been. I suppose we'll have
25 to address that in individual voir dire. I will

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notify them of that fact at the outset.

ATTORNEY BUTING: Okay. Might just be something to be aware of if we get questionnaires where people talk about hardships, that maybe they are thinking it would be a bigger burden than it really will be, since they will be able to go home. Probably should have discussed this earlier, but it just slipped my mind.

THE COURT: All right. Thank you, anything else?

ATTORNEY KRATZ: No.

THE COURT: Very well, we're off the record for today.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 9th day of August, 2007.

Diane Tesheneck, RPR
Official Court Reporter

0	51/25	answered [2] 39/13 50/5
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, PRE-TRIAL

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** FEBRUARY 2, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
12 Special Prosecutor
On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
14 Special Prosecutor
On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
16 Special Prosecutor
On behalf of the State of Wisconsin.

17 DEAN A. STRANG
18 Attorney at Law
On behalf of the Defendant.

19 JEROME F. BUTING
20 Attorney at Law
On behalf of the Defendant.

21 STEVEN A. AVERY
22 Defendant
Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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I N D E X

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1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery, Case No. 05 CF
3 381. We're here today for a final pre-trial
4 conference in this matter. Will the parties state
5 their appearances for the record, please.

6 ATTORNEY KRATZ: Your Honor, the State
7 appears by Calumet County District Attorney, Ken
8 Kratz appearing as Special Prosecutor. Also
9 appearing as Special Prosecutors include Tom Fallon
10 from the Department of Justice and Norm Gahn from
11 the Milwaukee District Attorney's Office.

12 ATTORNEY STRANG: Good afternoon. Steven
13 Avery appears in person. Jerome F. Buting of Buting
14 and Williams represents him, as does Dean Strang of
15 Hurley, Burish and Stanton.

16 ATTORNEY KRATZ: Judge, I'm sorry, before
17 we proceed with our agenda this afternoon, I had
18 alerted the Court that I was going to make a
19 technical change to the Information. That's been
20 done to a four count Information as represented on
21 Monday. I am prepared to file that original with
22 the Court. Mr. Strang has already received a copy.

23 THE COURT: Very well, you may give the
24 Clerk the original at this time.

25 There are a number of items for the

1 Court to address today. The first one I have on
2 the list is the State's motion for release of
3 blood vial evidence and blood spot cards for
4 scientific testing. Who's going to be speaking
5 on behalf of the State?

6 ATTORNEY GAHN: I will, your Honor.

7 ATTORNEY STRANG: Your Honor, if I may,
8 before we get to that, the defense acknowledges
9 receipt of the second Amended Information. Because
10 actual objections to a jurisdictional and otherwise
11 have been raised, I preserve those. We appear
12 specially, to that extent, not waiving objections to
13 the second Amended Information, but acknowledge
14 receipt of it and waive reading.

15 THE COURT: Thank you. Mr. Gahn.

16 ATTORNEY GAHN: Thank you, your Honor. In
17 our motion that we filed we are asking the Court to
18 release the vial of blood that is currently under
19 seal in the Clerk of Court's Office here in
20 Manitowoc County. The defense has filed a response
21 and that response levels allegations that we are
22 trying to try this case by ambush, or at the
23 minimum, trying to be cute --

24 THE COURT: All right. Let's stop right
25 there, because if the defense has filed a written

1 response, I don't have it. When did it come in?

2 ATTORNEY BUTING: Yesterday.

3 THE CLERK: I don't have it.

4 THE COURT: Check with Robbie. Was an
5 original filed with the Clerk?

6 ATTORNEY BUTING: Yes.

7 THE COURT: The clerk is indicating she
8 doesn't have it.

9 ATTORNEY BUTING: I have a copy, and with
10 the attached exhibits. We faxed that, it says it
11 was received.

12 THE COURT: All right. At any rate, I have
13 a copy at this time. And I trust, Mr. Gahn, from
14 your comments, that the State has a copy.

15 ATTORNEY GAHN: I'm sorry, please, your
16 Honor?

17 THE COURT: I trust from your comments,
18 since you made response to the defendant's response,
19 that you have a copy?

20 ATTORNEY GAHN: Yes, your Honor.

21 THE COURT: All right. I now have one, so
22 you may proceed.

23 ATTORNEY BUTING: Do you want to take a
24 moment, your Honor, and read it first before we
25 proceed.

1 THE COURT: Just a minute. All right. I
2 have a copy of this document, but I didn't
3 understand that this document referred to the blood
4 vial evidence.

5 ATTORNEY BUTING: Did I give you the wrong
6 one? I gave you the wrong one.

7 THE COURT: All right. Mr. Gahn, you may
8 proceed.

9 ATTORNEY GAHN: Thank you, your Honor. I
10 would like to just recap a little bit the chronology
11 of events and what brings us here today. On
12 December 6, we were notified that this vial of blood
13 existed in the Clerk of Court's Office. And on
14 January 3rd, we filed our motion to exclude blood
15 vial evidence, or in the alternative, would the
16 Court grant continuance for us, to allow us to test
17 that vial of blood.

18 By written decision and order on
19 January 9th, this Court denied our motion for the
20 continuance to test the vial and reserved ruling
21 on our motion to exclude the blood vial evidence.

22 The following day, on January 10th, I
23 was informed by law enforcement officers who were
24 involved in this case that they had received a
25 call from the U.S. Attorney's Office. And the

1 U.S. Attorney's Office had expressed concern over
2 the decision not allowing us time to test this
3 vial, and offered their services, shall we say
4 their pull, or whatever, to expedite testing that
5 we would like to see done with the resources
6 available to them, namely the Federal Bureau of
7 Investigation.

8 At that time, we made the decision that
9 we would like to see what your ruling was,
10 because we felt that we had a rather compelling
11 and powerful argument for the Court to rule that
12 the blood vial does not come in. And so we
13 waited for your decision on that, on that issue.

14 And we also felt that we were in a good
15 position and felt that that decision was likely
16 because the Court had granted a continue --
17 denied our motion for continuance. In any event,
18 the decision came down last Tuesday and the Court
19 has decided that the evidence of the blood vial
20 is going to come in in this trial.

21 The Court ruled that although we found
22 the probative value rather low for this evidence,
23 I think the Court based its decision upon the
24 Sixth Amendment right of the defendant to present
25 a defense, and we understand that. But the Court

1 also noted in its decision that the Court would
2 entertain any request, by the State, to test that
3 blood, should we wish to pursue that. And that
4 is precisely why we're here today. We're going
5 to ask you, your Honor, to unseal that blood and
6 we would like to send that off for chemical
7 testing, or what other test that we deem
8 appropriate.

9 Some of them, it's difficult to say how
10 we want to test it, because we don't know the
11 condition of the blood yet. And until that blood
12 is examined and just determine what shape it is
13 in, that will determine what test we will pursue.

14 But we will be able to pursue the
15 testing for EDTA, which we originally asked the
16 Court to give us the continuance. And we are
17 told that the FBI will have that testing
18 completed before the close of this trial. I
19 think that speaks to the vast difference in
20 influence that an Assistant District Attorney
21 from Milwaukee County has with the FBI Lab and
22 the U.S. Attorney. But we're told that that can
23 be accomplished.

24 I would ask the Court to reconsider the
25 thoughts that the Court put down in its decision

1 about the **Cooper** case. There are some vast
2 differences with the situation that we have and
3 that **Cooper** case. And I would ask the Court to
4 recall that in my argument I thought that I laid
5 out those differences well, I thought.

6 The **Cooper** decision was brought by the
7 defense. It was a post-conviction hearing. And
8 up until now, I don't know, I could not find a
9 decision where the State brought a request for
10 EDTA testing. It's generally brought by the
11 defense. And in that case, they simply had stain
12 samples. And the individual, the person, the lab
13 that tested those was claiming that just the mere
14 presence of EDTA in the sample, therefore,
15 indicates it came from a vial of blood with EDTA.

16 I agree that there were some stretches
17 made by the defense in the **Cooper** case. But this
18 case is different. We have standards to compare
19 to the EDTA levels, if there are any, in Teresa
20 Halbach's SUV. We have the vial itself and we
21 also have standards that are at Laboratory
22 Corporation of America.

23 And this makes this a vastly, vastly
24 different situation than what the **Cooper** case
25 presented. And I believe that the testing that

1 would be done in this case, we would clearly,
2 clearly meet the **Walstad** standard here and that
3 whatever issues the defense has would go to the
4 weight of the evidence and not to the
5 admissibility. Because even a reading of the
6 **Cooper** case, all the experts agree that the
7 underlying scientific principles, the ability to
8 test substances for the presence of various
9 chemicals, is well established and has been for
10 many, many years.

11 We believe that it is critical that we
12 be given the opportunity to test this vial of
13 blood and present those results at trial. I
14 believe that the testing that we will be able to
15 accomplish before the trial is over will clearly
16 show that the blood in Teresa Halbach's SUV did
17 not come from this vial of blood that is in
18 this -- in this building.

19 Now, the defense does not like the case
20 of **State v. Konkol**, but unfortunately for them,
21 it's the law. We have the right to meet their
22 defense in rebuttal and we really don't have to
23 tell them how we're going to do it, but we're
24 telling them today how we're going to do it. And
25 they take their chances, if they are going to go

1 down this planting defense, at their peril.

2 The defendant's response to our motion
3 for access to the blood vial evidence, in a way,
4 I think strongly supports our position, that we
5 be given the opportunity to conduct the
6 scientific testing. If the Court would look on
7 Page 6, Paragraph 4 of their response, the
8 defense intends to use the vial as an exhibit and
9 to bring it into the courtroom. And they state
10 that they want to have it as an exhibit in court
11 and display this and any alteration of the
12 condition of the vial.

13 They talk about the amount of liquid,
14 the condition of the top, in order to demonstrate
15 the viability of the defense that the vial was
16 tampered with by officers. And then they state
17 directly, or through agents -- What concerns me
18 here, is that this is flying right in the face of
19 your decision to allow the blood vial in. But
20 you did place limitations on how far they can go
21 with this planting frame-up defense.

22 Who are the agents of these officers
23 they are talking about? And it seems that we are
24 now back with bailiffs in this courtroom, clerks,
25 anyone who works in the Manitowoc County Clerk of

1 Court's Office, maintenance personnel, anyone who
2 had a key to that office, anyone who had the
3 combination to the door that you -- second door
4 that you get in. All of these people now seem to
5 be -- could they have been the agents of one of
6 these deputy sheriffs.

7 Furthermore, to bring this vial into
8 court and show it to the jury, to show the amount
9 of liquid, the condition of the top, you are now
10 again -- this seems to fly in the face of what
11 your court order was in your decision to place
12 limitations. Do we now have to call the North
13 Carolina people to see how they put the stopper
14 on; the nurse; the phlebotomist who pulled --
15 that took the blood out into this vial, into this
16 vacutainer; is that why the hole is in the purple
17 top.

18 The information and the exhibits to the
19 defendant's initial motion to seal this evidence
20 indicates that the box was crushed in transit.
21 Did that cause, perhaps, the stopper of the tube
22 to be dislodged ever so slightly? These are just
23 questions that we are going to be going off on,
24 that I believe was not the intent of the Court
25 when it rendered its decision.

1 But more importantly, if they are
2 allowed to bring this vial into the courtroom and
3 start discussing quantity, how much is in it,
4 whether the stopper tube has been tampered with,
5 or whether there's been a breach by a needle
6 through the top, you are getting into, now,
7 scientific matters.

8 And you are going to be looking at, the
9 jurors, the color that's there, the viscosity of
10 blood. There are so many, now we're getting into
11 areas that it cries out for chemical testing. If
12 this is what their intention to do, they are
13 basically bringing in science into the courtroom,
14 about that vial of blood, and that is not
15 correct. This can only be answered by testing
16 this vial of blood.

17 Giving us the opportunity to test it and
18 show the defense, and show the world, what this
19 defense is, that these officers would plant blood
20 in Teresa Halbach's car, we have to have that
21 opportunity. The minute they bring that vial in,
22 we have to have had been given the opportunity to
23 test it, your Honor.

24 I'm concerned for the Halbach family and
25 Teresa Halbach, that they get the trial that they

1 deserve. But also, just as importantly, I know
2 from 22 years experience as an Assistant District
3 Attorney, and 10 years in law enforcement with
4 the Criminal Investigation Division of the United
5 States Army, I always know that there is always a
6 sort of a -- can be a tension between the police
7 and the prosecutors.

8 But the relationship we have is embraced
9 by each other. And when two officers are accused
10 of what they are being accused of, for the last
11 week these two deputy sheriffs have been on the
12 broadcast news, and on the print media, and
13 painted as if they could do something like this.

14 And as a prosecutor, we have a
15 responsibility to do everything we can to also
16 restore their good names. These deputy sheriffs
17 have protected this community. They put their
18 lives on the line. They get into situations that
19 none of us want to deal with in life.

20 They are both good solid decent family
21 men. They are kind men. They are gentlemen.
22 I'm sure everyone in this room knows them. They
23 deserve to have their reputations protected. And
24 we can best do that by allowing us the
25 opportunity to test that vial of blood and

1 show -- and show the world that the blood that is
2 in Teresa Halbach's car did not come from this
3 vial of blood.

4 In the Wisconsin case of **State v.**
5 **Migliorino**, 489 NW 2nd, 678, they quote from the
6 United States Supreme Court. And they state
7 that, absent a constitutional provision statute
8 or evidentiary rule to the contrary, the law is
9 entitled to every person's evidence.

10 As former Chief Justice Warren Burger
11 emphasized, for a unanimous Supreme Court, the
12 need to develop all relevant facts in the
13 adversary system is both fundamental and
14 comprehensive. The ends of criminal justice
15 would be defeated if judgments were to be founded
16 on a partial or speculative presentation of the
17 facts.

18 The very integrity of the judicial
19 system and public confidence in the system depend
20 on full disclosure of all the facts within the
21 framework of the rules of evidence to ensure that
22 justice is done. It is imperative to the
23 function of courts that compulsory process be
24 available for the production of evidence needed
25 by either the prosecution or by the defense. And

1 that's in *United States v. Nixon*, 418 U.S., 683,
2 1974 decision.

3 And a few years later, in *United States*
4 *v. Robinson*, at 485 U.S. 25, 1988, the Supreme
5 Court stated, The central purpose of a criminal
6 trial is to decide the factual question of the
7 defendant's guilt or innocence. To this end, it
8 is important that both the defendant and the
9 prosecutor have the opportunity to meet, fairly,
10 the evidence and arguments of one another. And
11 for us to meet, fairly, the allegation that these
12 two deputy sheriffs, these sworn officers who
13 have taken an oath of office, would do something
14 so despicable, and so criminal, necessitates us
15 to have the opportunity to show how uncorrect,
16 and untrue, and vile that allegation is. That's
17 all I have, Judge, thank you.

18 THE COURT: Mr. Buting.

19 ATTORNEY BUTING: Well, Judge, it seems to
20 me we're having nothing more than a rehash of the
21 State's previous motion, which this Court considered
22 thoroughly and denied for good reason. We object to
23 any testing at this time, other than fingerprint
24 testing. We say that we have no objection to the
25 State bringing in some fingerprint analyst to

1 examine the vial, as it is, in the Clerk's Office.
2 But we do object, as I say in my response, at this
3 late 11th hour, to any opening of the vial and doing
4 tests on the vial of blood itself.

5 If this motion had been filed long a
6 ago, it may be different. But one thing that
7 Mr. Gahn left out of his chronology here, they
8 were notified, by the way, December 6th, that was
9 two months before trial, that this blood existed.
10 And no motion was forthcoming at that time. No
11 EDT motions forthcoming.

12 And I'm not usually in the habit of
13 reading people's emails in Court, but it wasn't
14 one sent to me, in any event. So I think the
15 Court needs to recognize, that in the Crime Lab
16 records is an email dated almost one year ago,
17 February 6th of 2006, to the Crime Lab analyst.

18 And at that time, a year ago, this email
19 demonstrates the State was aware of and
20 considering the possibility of EDTA tests. It
21 says, quote, "Norm agreed that the bloodstains
22 (or a couple anyway) should be tested for EDTA
23 preservative to deflect the absurd suggestion
24 that cops are carrying around vials of blood. I
25 know your lab doesn't or can't test for it, but

1 Norm suggests the Lab of Hygiene might. Do you
2 think that's a good idea, or should we go to a
3 private lab?

4 One year ago they knew about this
5 potential EDTA test. And I don't have the answer
6 to that particular email, but the answer is, that
7 they didn't do it. And they didn't test it
8 because they were afraid they would find EDTA in
9 the stains in the RAV-4, and that the defense
10 would have another argument that this was planted
11 evidence. That's what's going on here, Judge.

12 Just to make clear, Judge, this email I
13 am referring to was in discovery. So it wasn't
14 -- I received it legitimately. If the Court
15 wants to see that paragraph, or the whole email
16 is fine. But the point being here is that this
17 has been a strategy, a -- a game of sorts, that
18 the State has been playing, gambling that things
19 would turn out the way they want, rather than
20 doing the test.

21 Now that they have lost, they are trying
22 to come back and do something, again. They are
23 trying to reverse it. That's evident from
24 Mr. Gahn's own comments.

25 December 6 is when they were notified,

1 officially, that there was a blood vial in the
2 Clerk's office. No motion was made at that time.
3 They wait a month, to January 4th, before they
4 move to exclude it, or to continue the trial for
5 testing. Now, he's telling us, for the first
6 time, that when we were last discussing this, the
7 Court and counsel for the defense were told that
8 the FBI would take about three months, or four
9 months, or whatever it was going to be, to retool
10 and be able to do this test, because they do not
11 even do EDTA tests anymore.

12 They stopped doing them because they are
13 not reliable. They haven't done them since the
14 O.J. Simpson trial 10 years ago. They were going
15 to have to recalibrate their entire chemical lab
16 in order to be able to even do these tests for
17 this one case. Why? Because now the State is
18 desperate. So, now we hear, though, on
19 January 10th, that Mr. Gahn was told, oh, the
20 U.S. Attorney is involved. U.S. Attorney's
21 Office now says they are going to get the FBI to
22 be able to do it.

23 Well, did we have a motion on
24 January 10th? No. Did we have a motion on the
25 11th, the 12th, or any of the succeeding days?

1 No. Because they gambled, they took a gamble
2 that you were going to exclude the blood vial
3 evidence and they lost. They took a chance. It
4 was a strategic decision the State made. And
5 everyone has got to live with it.

6 At this point, we have got jurors who
7 have been on the verge of being selected. We
8 have got everything ready for trial to begin on
9 Monday. And this trial cannot begin on Monday if
10 there are going to be any tests. Because as I
11 point out, **State vs. Wold**, the Supreme Court
12 decision, in my motion, it is very clear that if
13 scientific tests are to be done, the other side
14 has a right to its own sequential tests,
15 surrebuttal tests.

16 On Page 4 of my motion, I quote from
17 **Wold**, W-o-l-d, The need for full and fair
18 disclosure is especially apparent with respect to
19 scientific proof and the testimony of experts.
20 This sort of evidence is practically impossible
21 for an adversary to test or rebut at trial,
22 without an advance opportunity to examine it
23 closely.

24 We have a -- We would have a surrebuttal
25 right to present our own evidence debunking

1 whatever the FBI comes up with here. Because as
2 Mr. Gahn points out, every single reported case
3 where EDTA has been tried -- has been offered as
4 evidence, has been the defense doing it. And the
5 State has presented witness after witness, expert
6 witnesses, to say that it is not reliable and it
7 should not even be admissible and they have
8 debunked it.

9 Now, all those witnesses we would have a
10 right to bring into this court and rebut whatever
11 they would come up with, but we can't do that
12 now. It's too late. Because they took a gamble
13 and lost.

14 As I understand it, this EDTA test is
15 the only thing they are asking for now. And the
16 Court has ruled on that. And there's no way at
17 this point the Court can reverse that without
18 postponing the trial, which we object to.

19 Mr. Avery is in custody. He has a right
20 to proceed. And he should not be punished or
21 prejudiced because of some strategy, failed
22 strategy, foolish strategy perhaps, in hindsight,
23 but certainly a presumptuous one, to presume that
24 this Court was going to rule in their favor and
25 exclude it in the first place.

1 Especially when we see now, that a full
2 year ago, they knew that this was going to be an
3 issue. They knew from the very beginning when he
4 said it was planted. They have had plenty of
5 time. This email proves that in February they
6 were talking about doing these tests a year ago,
7 and chose, deliberately chose, not to do that.

8 So if these officers have to sit through
9 a proceeding or news -- news reports that somehow
10 make them seem vile, I think was the term,
11 whatever, so be it. That's the strategy that the
12 State took. That's the path that they took.
13 That's where this trial is going.

14 And it's a jury who is going to decide
15 if they are good and decent people, solid decent
16 people, or not. The jury who hears the evidence
17 as to -- that shows what they did or didn't do in
18 this case, will make that decision.

19 They want to show the world that this
20 blood in the RAV did not come from the vial.
21 That's absurd. They call the defense absurd. If
22 they were able to do that, we would have been
23 hearing about this long before today.

24 Still, after two months, they have not
25 been able to present the Court with one single,

1 scientifically valid, reliable test that could be
2 done at this point, on the vial of blood, that
3 would somehow prove what they would love it to
4 prove. It doesn't -- There are no tests.

5 There will be EDTA in the stains in the
6 RAV. There will be EDTA in the blood tube.
7 There will be EDTA in the RAV because, according
8 to the State's experts in every other case, EDTA
9 is a common chemical that is found in the
10 environment, especially in cleaning products,
11 Armor All, automobile type products. It's there.

12 So there are no tests, that I have
13 heard, either before court or in court, or from
14 Mr. Gahn, there are no tests that are going to
15 prove what they want it to prove. That is,
16 somehow -- it's not like they are going to be
17 able to do some perfect fingerprint or DNA type
18 of test and say this came from the vial, this
19 couldn't have come from the vial.

20 For them now to wait. The **Konkol** case,
21 let me just talk about that for a minute. **Konkol**
22 says that the State can, in rebuttal, they can
23 use an expert. That case was an OWI case where
24 the State presented, in rebuttal, a blood alcohol
25 absorption expert, to rebut the defense that was

1 presented, which is, I couldn't have been a .12
2 because I only had one drink. And several other
3 witnesses were presented, said we saw him, he
4 only had one drink.

5 The defense objected when this witness
6 came in in rebuttal, saying this witness wasn't
7 on the witness list. **Konkol** examined the statute
8 that requires disclosure of witnesses. It's
9 971.23 (1)(d). That's all **Konkol** did. And that
10 does specifically say that there is an exception
11 for rebuttal or impeachment witnesses.

12 This is entirely different. This
13 request falls under (5) of 971.23, which would be
14 a motion for scientific testing. And as I think
15 the case law is clear, that motion could have
16 been made earlier and we would have had no reason
17 to object, or no right to object, because then
18 there would have been time for sequential
19 testing, for the defense to have a lab of its
20 choosing, probably to call one of the State's
21 former prosecution witnesses in many of these
22 other cases, to say, this EDTA stuff is voodoo
23 science, you can't prove anything. Yeah, we can
24 test for EDTA, but it doesn't tell us anything.
25 It can't prove one way or the other.

1 And now we can't do that if they are
2 allowed to start testing now and suddenly spring
3 it on us in the middle of a trial. It would
4 require -- I just point out to the Court, look at
5 that **Cooper** case. Look at how long, how many
6 hearings they had, how many evidentiary lengthy
7 hearings with experts and battles of experts that
8 court had on that one issue.

9 That's what we would be looking at here
10 if we go through this trial, suddenly they bring
11 up some test and they want to argue that it
12 somehow proves one thing, when other experts will
13 say, no, it doesn't. And we're going to have to
14 take a -- we're going to have to postpone the
15 trial, send the jurors home, and come back in a
16 few months. It's just -- it's impossible.

17 And I point out in 971.23 (5), unlike
18 the witness list statute, which does make an
19 exception for rebuttal or impeachment witnesses,
20 there is no such exception in (5). It doesn't
21 say that you can present these in rebuttal, or
22 you can hold off and put in tests in rebuttal,
23 you know, in the middle of a trial.

24 And, clearly, when you look at **Wold** and
25 you see, it's just common sense that the other

1 side has a right to respond. And when you are
2 talking about scientific tests you can't just
3 suddenly, after five weeks of trial, or six weeks
4 of trial, find an expert who is going to come in,
5 look at this, test it, and be available to rebut
6 it. It's just too late.

7 And not only is it too late, the State
8 has still, and this is very important, it's not
9 like something is being -- going to be kept from
10 the world, or something is going to be kept from
11 the jury that would otherwise answer this
12 question. There is no test that will prove
13 whether this -- If there was a test that would
14 prove it, I would have asked for it. Because
15 then I believe it would show that the blood in
16 the vial is the same blood that is in the RAV-4.

17 But I have done the research and
18 Mr. Gahn has done the research too. And there
19 are no tests that will prove that and that's why
20 we haven't heard of any yet. So we're not
21 holding anything back from the world or the jury
22 by not doing these tests.

23 Mr. Gahn points out **Migliorino** and talks
24 about how the law is entitled to every person's
25 evidence. And I think **Nixon, United States vs.**

1 **Nixon**, talks about that as well, but there are
2 limits, of course. If the law -- If either side
3 was allowed to present whatever evidence they
4 want, then we would be presenting evidence at the
5 trial of other suspects that could have committed
6 this crime. A number of them, we could have
7 presented evidence of.

8 Instead, we have to go to trial and we
9 can't answer -- or we can't answer the questions
10 of the jury, who did it if he didn't. We tried.
11 We offered a number of witnesses, but this Court
12 ruled, under the law, as it was entitled to, that
13 that evidence should not come in, similarly here.

14 Not every piece of evidence that either
15 side wants, gets to come in. There are limits on
16 it. And this Court has ruled on them already in
17 this case. To do otherwise, now, would
18 jeopardize a mistrial, having to retry this case
19 all over, and simply because the State took a
20 gamble and lost.

21 So, for all those reasons, I move to --
22 the Court to deny this motion, with one
23 exception, that we have no objection to being
24 able to present fingerprints -- a fingerprint
25 test to the jury, whatever. I'm assuming that

1 can be done in a way that won't alter the vial.
2 They have Super Glue type things, that are more
3 or less invisible, that won't detract from it.
4 But we have a right to present this blood vial to
5 the jury so that they can see it in the condition
6 that it is, and then draw whatever reasonable
7 inferences there are from that evidence. Thank
8 you.

9 THE COURT: Mr. Gahn.

10 ATTORNEY GAHN: Very briefly, your Honor.
11 I'm sorry, very briefly, your Honor. The timing was
12 perfect in this case by the defense. They knew
13 about this vial of blood at least in July, last
14 July. And, of course, Mr. Avery knew about it on
15 January 2nd of 1996, when the vial of blood was
16 drawn from his arm in the prison system. So I
17 suspect they have known about this from the very,
18 very beginning.

19 They waited until December 6 to put this
20 on us. It wasn't until the following week, I
21 believe the 14th, that we actually all went and
22 looked and actually determined that there was a
23 vial of blood in the Clerk of Court's Office.

24 And as I explained to the Court, too,
25 there's no games here. This is too serious of a

1 case. We don't play games here. To get the
2 answers -- get the answers to the questions that
3 I had, over that Christmas holiday period, was
4 difficult, the professors at the universities,
5 the science departments, the laboratories, and it
6 wasn't until when I brought the motion on January
7 3rd that we had the information that we felt was
8 important to us and that we felt comfortable and
9 confident that we would be able to present very
10 valid reliable scientific evidence to this court.

11 As far as the email goes and that we
12 knew about a year ago, yes, we did talk about it
13 but the decision was made, and the very
14 reasonable decision was made, as is shown in the
15 **Cooper** case. We didn't know there was a vial of
16 blood in existence. And to test the stains in
17 the SUV, we knew about how ubiquitous in nature
18 the EDTA is. And it probably wouldn't have been
19 helpful or wouldn't have told us anything. And
20 that's the difference between all the cases and
21 the facts we have here.

22 Yes, the FBI does not routinely do this
23 test, because it's rarely, if ever, asked for by
24 the State. This is a defense motion that they
25 want to bring in. But here we have standards to

1 compare it to. Certainly it isn't like a DNA
2 test, but in principle it is like DNA.

3 You can have the bloodstains in the car,
4 but it doesn't tell you anything unless you have
5 a standard to compare them to. And we have blood
6 stains in this car here and we have ED -- we have
7 a vial of blood that is a standard. In a North
8 Carolina, at the lab, there is a standard that
9 makes this just a vastly different case.

10 I don't understand why they are so
11 afraid of this testing. If their theory of
12 defense is correct, I would think that they would
13 also embrace this and welcome it. Don't they
14 want to know whether the blood in the car came
15 from the vial of blood.

16 Your Honor, I believe that this case is
17 so different that we will meet the *Walstad*
18 requirements in an admissibility hearing. The
19 Court has indicated, I believe all along, that
20 it's willing to release that evidence to parties
21 if they wish to test it. I think that the
22 decisions that we made are reasonable. They make
23 sense.

24 And now that we know that this testing
25 can be done and accomplished in the time frame

1 that I was told it could not be, but for the
2 assistance of the U.S. attorney, the problem is
3 that once that vial of blood is brought into the
4 courtroom, and jurors are being told questions,
5 or to look at the vial, and look at the color,
6 and look at the amount that's in there, that's
7 still in liquid form, look at the top, look at
8 the stopper; you are now getting into areas of
9 science and you are going to be -- and without
10 having answers and science, the jurors will be
11 forced to widely speculate.

12 How much was in there? How much was
13 used at Laboratory Corporation of America? How
14 much was there in the SUV? Is there more blood?
15 It just cries out for us to have that opportunity
16 to test it and to answer all these questions,
17 once and for all, put it to rest.

18 And, again, we will preserve one half of
19 that, whatever is in that tube. They can do
20 testing concurrently. And this belief that, oh,
21 they can't do anything about it now until they
22 see our results, is not true. They know the
23 exact same experts that were called in the *Cooper*
24 case.

25 And I think everyone, and the Court read

1 the case, all the scientists that were called
2 agreed on the underlying scientific
3 underpinnings, the instrumentation, and the
4 ability of the scientific chemistry labs,
5 toxicology labs, whatever they are, to test for a
6 particular substance using the instrumentation
7 that they have now.

8 The only question is, the interpretation
9 of the data. They know who those experts are
10 now. They can line someone up, the very second
11 that the data comes off to us from the FBI can be
12 shipped to them and they are ready to -- They can
13 move on this. They don't have to wait to see it
14 and then look for an expert. They can find one
15 right now. And if they want to do their own
16 testing, whatever that may be, they can also do
17 it right now.

18 So I would ask the Court, as I said, I
19 believe the Court has indicated all along its
20 willingness to allow this testing. And I think
21 that the most important thing here for the Court
22 to recognize is that once that vial is brought
23 into the courtroom and it's talked about in a
24 scientific fashion, we must, we must have the
25 opportunity to answer those scientific questions.

1 And, again, I just cannot, cannot emphasize too
2 much asking you to give us the chance to restore
3 the reputations of these fine deputy sheriffs.
4 That's all I have. Thank you so much.

5 THE COURT: All right.

6 ATTORNEY BUTING: Judge, I just have a --

7 THE COURT: Go ahead.

8 ATTORNEY BUTING: -- response to that. Not
9 a big response. We have still not heard from
10 anybody, any expert, that will say that such a test
11 exists that can restore the reputation of these
12 officers or whatever. This is -- Mr. Gahn is being
13 disingenuous if he is comparing this in any way to
14 DNA where you can look at one, look at the other,
15 and say, yes, there is a match.

16 There is no such test. If there was
17 such a test, we would have heard about it
18 already. We would have had something presented.
19 We would have an expert here today who would be
20 opining, yes, we can do that. But we haven't
21 heard anything. We're just hearing these wild
22 assumptions that maybe there might be such a
23 thing.

24 The -- They ask, don't we want to know,
25 wouldn't we like to know if there was? Well, we

1 already know from all the experts we have talked
2 to, that there is no such test that can do that
3 comparison. But if they want us to know so much,
4 then let Mr. Avery out on bail. He's the one who
5 is sitting in solitary confinement for 15 months
6 while they made a choice not to test earlier,
7 when they could have. It's too late to do that
8 now without postponing the whole trial.

9 The argument that we can do concurrent
10 tests is totally disingenuous because Mr. Gahn
11 knows, as the Court knows, there are no other
12 labs that do this that are reliable or -- other
13 than the one that was -- reputation has been
14 battered in two cases, including the **Cooper** case.

15 There, frankly, are no labs to do it at
16 all, not even the FBI, until right now, for this
17 one test. So how are we going to go find someone
18 else to do it. We would have to go outside the
19 country somewhere, assuming there is even anybody
20 else anywhere who does. We can't do that.

21 The Court indicated a willingness to
22 entertain some sort of testing. But I don't
23 think the Court entertained a willingness to
24 reconsider the whole issue of whether we should
25 allow an EDTA tests. If there was some sort of

1 easily done type of test, that wouldn't delay the
2 proceedings, that's what I understood the Court's
3 willingness to do. And that's what we would have
4 been willing to do two months ago, if there was
5 any such test.

6 I haven't found any. Mr. Gahn hasn't
7 found any. There are none. The answer is going
8 to have to be left up to the jury in this case,
9 as to whether it came -- whether the stains came
10 from the vial or not. And nothing that could be
11 done before, probably nothing even after, is
12 going to answer that question, one way or the
13 other. And I think that's all. Thank you.

14 THE COURT: All right. Well, based on the
15 developments as they have been presented to the
16 Court over the last few weeks, it's obvious that
17 both parties regard the blood vial evidence, as it's
18 been referred to, as important in this case. The
19 information provided to the Court, although there
20 hasn't been an evidentiary hearing on the matter, is
21 that the defense had some knowledge of the existence
22 of the blood vial in the Clerk's Office last July.
23 And the State indicates it was not notified of the
24 existence of the vial until early December.

25 Given the relatively late notice to the

1 State, first of all, I'm not aware of anything
2 that I would characterize as undue delay on the
3 part of the State. From all indications, they
4 were surprised to learn of the existence of the
5 vial, and EDTA testing is not something that is
6 as standardized even as DNA testing, to the
7 extent you can call DNA testing standardized.
8 That's also a development of recent years.

9 Ultimately, criminal trials are all
10 about a search for truth. And at this point in
11 the game, the Court is not being asked to
12 determine whether any test results from the blood
13 in the vial are admissible, but simply whether or
14 not the State should be given the opportunity to
15 attempt to test the blood in the vial in order to
16 determine if there is admissible evidence that
17 will assist the jury. I think that it's only
18 fair in this case to permit the State to be given
19 an opportunity to do that.

20 If there is probative evidence that can
21 be derived from testing the blood in the vial, I
22 think it's important to both parties that such
23 evidence be presented to the jury, regardless of
24 which party the evidence supports. So I am going
25 to grant the State's motion to have access to the

1 blood vial evidence for testing.

2 In the course of the arguments from the
3 parties, there were a couple of things that
4 became apparent to the Court. First of all, the
5 defense has a legitimate interest in determining
6 any -- the existence of any fingerprint evidence
7 on the vial. And the vial will have to be
8 secured in order to test for fingerprint
9 evidence, before any blood is withdrawn to do a
10 blood sample.

11 I also believe that the defense should
12 have the right to have the sample split, in the
13 event the defense finds a lab that can do EDTA
14 testing, or any other testing that the defense
15 may feel is meaningful in this case, so that they
16 have an opportunity to conduct that testing.

17 The Court, in it's previous ruling,
18 refusing to continue the trial, commented on the
19 difficulties expressed in the **Cooper** case with
20 determining the significance of levels of EDTA in
21 blood. But the **Cooper** case didn't address the
22 question of comparability. In this case, it's
23 alleged, as part of the defense, as I understand
24 it, that the blood in the victim's vehicle may
25 have come from the vial in the Clerk's Office.

1 And the Court is not prepared to say,
2 and has been presented with no evidence to
3 suggest that there may not be a meaningful
4 comparison of EDTA levels in the blood vial and
5 EDTA levels in the blood found in the victim's
6 vehicle. So I think at least the potential here
7 exists for admissible evidence.

8 And until testing is done, the Court
9 simply isn't in a position to rule on it's
10 eventual admissibility. The only thing the Court
11 knows for sure is that if I deny access to the
12 blood vial at this time the Court would never
13 have a chance to consider such evidence. So I'm
14 going to grant the State's motion on that basis.

15 ATTORNEY BUTING: Your Honor.

16 THE COURT: Yes.

17 ATTORNEY BUTING: If the Court is going to
18 do that, then the defense reluctantly moves to
19 postpone this trial, to continue it, because
20 otherwise we are being ambushed here. We will not
21 be able to respond to whatever the State comes up
22 with. It's just impossible, when you think about
23 the undertaking that we have to do between now and
24 the next four or five weeks, the number of
25 witnesses, we're going to be in court all day long.

1 We are not going to be able to respond to whatever
2 it is they come up with. That's what **Wold** talked
3 about.

4 In fairness to his constitutional right
5 to have a fair trial, there's no way that we can
6 possibly prepare to rebut whatever the State
7 comes up with. Now, it may be that what the
8 State comes up with is favorable to the defense.
9 But we don't know that at this time point, that's
10 the problem.

11 And the only remedy, if the State does
12 dig up some sort of evidence that they think is
13 helpful to them and hurtful to the defense, the
14 only remedy will be to adjourn the trial at that
15 point. And with this kind of a trial, we can't
16 do that. We will have taken a months worth of
17 testimony and then we will have -- we will be
18 back in front of the Court moving to adjourn.
19 And you will be risking a mistrial and reversal
20 of this case on appeal, because this man wouldn't
21 have a right to rebut whatever the State is
22 doing. It's that simple.

23 THE COURT: Response from the State.

24 ATTORNEY GAHN: Yes, your Honor. Again,
25 they made this tactical and strategic decision last

1 July not to tell us about it and wait until
2 December. This is what their decision was. And
3 this is what **Konkol** is all about, and what rebuttal
4 evidence and rebuttal testimony is all about.

5 I do take issue with their saying they
6 can't do anything about this. There's plenty
7 they can do. And this Court has read that **Cooper**
8 decision. We know who the experts are and we
9 know what the issues are. They can prepare right
10 now getting an expert lined up. I have talked to
11 experts who said you can -- once the data comes
12 off from the FBI, send the data. It's not going
13 to take long to look it over and say is this
14 valid or is it not valid. The issues here are
15 the interpretation of the data.

16 No one is going to come in and question
17 the underlying scientific principles here. They
18 can start working on this now, lining someone up,
19 lining up their arguments. And it will be the
20 same type of arguments that were in the **Cooper**
21 case, the ubiquitousness of this type of a
22 chemical in the community, and society, and the
23 environment. They can start working on that
24 right this moment.

25 And, again, they can take their sample.

1 There are other tests that I believe can be done,
2 that they could do if they wished not to do EDTA
3 testing. Just the fact of, you know, quantifying
4 it, how much is in that vacutainer? How much did
5 Meghan Clement use at Laboratory Corporation of
6 America. There are other things. What is the
7 breakdown? We are looking into things, even the
8 nature of is there an irreversible effect of
9 hemoglobin in the blood, at some point does it
10 turn a different color.

11 These are things that they also, I'm
12 sure, have been looking at and discussing among
13 themselves. So I don't think -- they are not
14 being caught off guard on this. We're giving
15 them an awful lot of information. And I,
16 obviously, will tell the Court the very moment we
17 get this information from the FBI. It will be
18 sent to them, immediately, and as soon as we
19 possibly can. And I will be checking with the
20 FBI on a regular basis and hoping, you know, can
21 we get it, to get it as soon as we possibly can.

22 THE COURT: All right. You know, I'm
23 hearing different things from the parties today. I
24 know in the defense's earlier argument, defense
25 counsel I believe indicated that no one, perhaps, is

1 capable of doing this testing, or no one at least
2 other than the FBI. So, if that would be true, the
3 question could be asked, what would be the benefit
4 of granting an adjournment after the FBI results
5 came in, if nobody else is capable of doing the
6 testing. And it's a little hard for me to accuse
7 the State of ambushing the defense, when the defense
8 knew of the existence of the vial of blood in July,
9 but didn't inform the State until December.

10 Those comments aside, at this point the
11 Court is not ruling on the admissibility of the
12 test results, the Court is simply being asked to
13 give the State an opportunity to do the testing.
14 And given the relatively late stage in the game
15 in which the State acquired knowledge of the
16 blood vial evidence, I believe it's fair to give
17 them a chance to do so and that's what I'm going
18 to do. Mr. Strang.

19 ATTORNEY STRANG: Well, the motion for
20 continuance reluctantly is offered because, in fact,
21 the Court is being asked to do more than give the
22 State an opportunity for testing. Tacitly, but
23 unavoidably, when the question is EDTA testing, the
24 Court also is being asked to deny the defense an
25 opportunity to do independent EDTA testing.

1 It is true, I suppose, that we could go
2 now, if we had -- didn't have a trial to start on
3 Monday, we could go and find experts who would
4 testify in general about the reliability of EDTA
5 testing. We could, in theory, do that, if we
6 weren't starting a trial on Monday.

7 But the Court well knows, and counsel
8 has acknowledged in the hearing in Chilton, to
9 the Court, that there are two labs, and two labs
10 only, in this country, that have ever done EDTA
11 testing. One of them thoroughly discredited in
12 North Carolina, the other the FBI, which
13 apparently is recalibrating and is willing to
14 undertake that now.

15 The only way, as we have discussed
16 before, and as I think this Court's decision
17 recognized, the only way that we could do
18 independent testing, as opposed to bringing in a
19 cat bird to criticize the FBI testing, would be
20 to obtain from the FBI, if it will yield its
21 protocols, obtain the FBI protocols and then try
22 to find a university lab with an analytic chemist
23 who is willing to try to follow the FBI protocol
24 and undertake independent testing, assuming that
25 that university was equipped with the same gas

1 chromatograph or infrared spectrometry machine,
2 or whatever the FBI uses.

3 I have no idea what the protocol is.
4 And, indeed, we were given to understand that the
5 FBI is recertifying and reexamining its own
6 protocol. So there is no way to do defense
7 testing here at a reputable lab, or with
8 reputable scientists, other than sequentially,
9 none.

10 And it is, therefore, a motion to deny
11 the defense a chance to meet, with independent
12 testing, the State's rebuttal offering. And I
13 understand the Court's ruling and the impulse to
14 say, eventually this is going to get tested, so
15 let's have it out, let's thrash it out, it's
16 admissible or it's not, it helps the defense or
17 it helps the State. I understand that.

18 And as I have said from the beginning,
19 if I didn't have a client in custody, I would
20 have joined the motion for adjournment. I'm
21 curious too, and I realize that as a practical
22 matter, some day the blood vial is going to be
23 tested for EDTA. Partitioning the sample is not
24 in itself prejudicial, we have acknowledged that.
25 The testing is going to be done some day.

1 But when it's done during trial, with
2 nothing more than a promise, heard today for the
3 first time that, no, it's not three to four
4 months, we can get the results from the FBI
5 before the end of trial, the necessity here on
6 this test, for sequential testing, means
7 necessarily that we are being denied the
8 opportunity to do independent testing.

9 That's a due process right and a fair
10 trial right that Mr. Avery has. And forced to
11 choose between sitting in jail for another six
12 months, or whatever it is, and a fair trial,
13 forced to that choice, I guess you will take the
14 fair trial and due process. And that's the
15 specific problem here.

16 I'm not worried about fingerprints or
17 viscosity. Once EDTA is the rebuttal point, then
18 the surrebuttal point also is EDTA, and that may
19 require independent testing. And independent
20 testing on these circumstances cannot be done
21 until we have the FBI protocol and an opportunity
22 to find somebody willing to get into that
23 business, who hasn't been discredited as a
24 charlatan and a fraud, as have the people in
25 North Carolina. So, yes, it is a reluctant

1 motion for a continuance, but we don't have a
2 realistic choice.

3 THE COURT: Anyone from the State wish to
4 be heard?

5 ATTORNEY GAHN: This would have been a
6 wonderful conversation to have last August. That's
7 all I have to say.

8 THE COURT: Well, the Court denied the
9 State's motion for a continuance in part because I
10 ruled that if the State had wanted to do EDTA
11 testing on the blood found in the victim's vehicle,
12 it could have been done so earlier. I think the
13 defense is somewhat in the same boat here. If they
14 wanted to do EDTA testing on the blood in the vial,
15 efforts for that could have been started earlier.

16 If it's possible, and I understand the
17 defense may be telling me that there is no other
18 lab, other than the FBI, that does such testing
19 now. And maybe there will be one that does some
20 some day. Maybe it will be one year, maybe it
21 will be two years, maybe it will be five years
22 from now. But I don't think the Court can simply
23 postpone the trial to some point indefinitely in
24 the hopes that some day there may be another lab
25 that can do EDTA testing to double check whatever

1 results the FBI comes up with, if the FBI comes
2 up with any results.

3 So, as I indicated, I'm not going to
4 preclude the State from taking a chance at
5 attempting to test the blood in the vial, simply
6 because of possibilities that may or may never
7 come about.

8 ATTORNEY STRANG: Your Honor, again, I
9 don't have access to the FBI lab. I couldn't get
10 going on EDTA testing earlier, couldn't if I wanted
11 to. The defense has no access to the FBI lab. And
12 the FBI is the only organization in this country --
13 and I don't think Mr. Gahn will disagree with
14 that -- that has a protocol for doing the testing he
15 wants to do.

16 And, you know, the insinuation that we
17 were late overlooks the fact we beat by nine days
18 our deadline for disclosing exactly this type of
19 information. And also overlooks the fact that
20 this was in a public record that anybody in the
21 world and apparently a bunch of different media
22 organizations walked in and looked at from 2003
23 on.

24 So, you know, we really are in a
25 position where we are being denied a fair trial

1 and due process opportunity to do independent
2 testing on the facts that this Court has in front
3 of it here. I don't have a choice but to ask for
4 a continuance and to object throughout here that
5 we haven't had a chance to meet the State's
6 proposed rebuttal.

7 THE COURT: I don't know if the State has
8 weighed in yet on the request for a continuance.
9 Let's do this, I'm going take a 10 minute break,
10 since I don't think that request was known to
11 anybody until now. And then I will hear from the
12 State, if the State wishes to be heard after coming
13 back.

14 ATTORNEY GAHN: Thank you, Judge.

15 (Recess taken.)

16 THE COURT: Does the State wish to be heard
17 on the defense motion for a continuance of the
18 trial?

19 ATTORNEY GAHN: Your Honor, I understand
20 what the defense is saying that, you know, at one
21 point we did ask for a continuance, and we did. But
22 at that time, we were under the impression that the
23 testing that we want done could not be completed in
24 time. And that is why we asked it, and now, with
25 the assistance of the United States Attorney, we are

1 able to get that testing done in sufficient time.

2 I truly believe, and if I felt that
3 there were anything unfair about this I would
4 tell the Court and be candid, but I feel
5 comfortable enough stating that I think they can
6 prepare for this, for this EDTA testing. They
7 know who the experts are. They know who, around
8 the country, where they can go to. I just think
9 that they can adequately prepare for these test
10 results.

11 I will tell the Court I will do
12 everything I can to get whatever materials I can
13 to them early on. I will start making my calls,
14 if not today on Monday. And I will try to get as
15 much material about the FBI and their protocol
16 and their operation and get it to them as soon as
17 I possibly can.

18 But we believe that we are ready for
19 trial. I believe that we owe it to the Halbach
20 family to get this trial going, under way, and
21 complete this trial. So we do not join in any
22 request for any continuance of this matter.

23 THE COURT: Mr. Strang.

24 ATTORNEY STRANG: Perhaps the Court would
25 be kind enough to put one very direct question to

1 Mr. Gahn, who's the acknowledged expert on
2 scientific testing, and EDTA testing in specific
3 here. And that question is this, is Mr. Gahn aware
4 of one credible laboratory that presently, today,
5 can do EDTA testing of the exact sort he proposes to
6 do, other than the FBI.

7 THE COURT: Mr. Gahn.

8 ATTORNEY GAHN: No, your Honor, but I will
9 say this much, they are making it sound like this is
10 something that is so unusual. The FBI doesn't
11 routinely and normally do this, nor does -- first of
12 all, because it's rarely asked for by the State.
13 Also, I suspect private laboratories do not engage
14 in it because there's probably no money in it,
15 because it is so rarely asked for on any occasion.

16 But that doesn't mean that a university
17 research facility, or any other laboratory that
18 has the machinery and instruments or gas
19 chromatograph and all the instruments wanted,
20 cannot ramp up for this test and tool -- retool
21 their equipment. That's my understanding.
22 Someone can. You can analyze any elemental
23 substance. Any chemical, basically, can be
24 analyzed with the instruments at any lab or
25 research facility that a university has. That's

1 my understanding.

2 You know, your Honor, you see cases in
3 the newspaper about someone suspects that someone
4 was poisoned by some unique poison, this one
5 recently in Britain or something. I'm sure that
6 some laboratory had to ramp up and retool or
7 something to test for this specific chemical.
8 This isn't something that's so bizarre or
9 unusual. This is normal, normal chemical
10 substance analysis by any laboratory.

11 ATTORNEY STRANG: So this is where the
12 Court finds itself on a continuance, as I understand
13 it. Until an hour ago, all of us were under the
14 understanding, that is the Court and the defense
15 table, were under the understanding, that even the
16 FBI, which has done EDTA quantitation testing in the
17 past, would need three or four months to do it.

18 Now, we're told that before the end of
19 this trial, so presumably sometime between now
20 and the middle of March, through the fortuitous
21 intervention of the United States Attorney in
22 Milwaukee, the FBI can speed up the earlier
23 timeline that all of us were given. I have no
24 statutory right to call on the FBI. Neither can
25 I expect the United States Attorney, or anyone

1 else, to help me find a new lab that has never
2 done this sort of testing, to do it in six weeks,
3 or five weeks, let alone the three to four months
4 that even the FBI initially was saying it needed.

5 There are exactly two lawyers
6 representing Mr. Avery. Both of them will be in
7 Chilton five days a week, beginning on Monday.
8 And the Court also will have to entertain, before
9 we can do any testing, a motion under **Ake**, A-k-e,
10 **vs. Oklahoma**, because I expect that it is likely,
11 it seems to me and I have not checked this, I
12 haven't gotten quotes, but where you are asking
13 somebody to spool up, from the start, to do
14 independent testing that they have not done
15 before, once they get FBI protocols, I suspect
16 that the cost of that will be well beyond the
17 cost that my firm can bear. Because this isn't
18 coming out of Mr. Avery's pocket, long ago were
19 his resources exhausted.

20 And so the Court will have that due
21 process consideration under **Ake vs. Oklahoma** to
22 consider as well. Although, the process of
23 getting quotations and casting about North
24 America for universities that might be willing to
25 get into this business, in theory, could begin,

1 were we not in trial.

2 So that that's where the Court finds
3 itself functionally. We are being denied here to
4 do independent testing on EDTA or its
5 quantitation. I object to that on constitutional
6 grounds, fair trial, and due process. A
7 continuance of some months would remedy that.

8 There's the issue of Mr. Avery's right
9 to a speedy trial and his custodial status.
10 Perhaps that could and should be revisited
11 because it was, after all, the Court's reliance
12 on the new charges in the Amended Information
13 that caused this Court, in large part, as I
14 recall, to raise the bail by \$250,000, last
15 spring.

16 And now, of course, the most serious of
17 those three new charges in the Amended
18 Information are no longer. And perhaps what goes
19 around comes around on that, but that's not for
20 today.

21 What is for today is a reluctant request
22 on due process and fair trial grounds, on the
23 record we have made, for a continuance and an
24 opportunity, realistic opportunity, to assess the
25 FBI results, to meet them, to have an evidentiary

1 hearing under **Walstad** on the admissibility of
2 those results, whether they are favorable or
3 unfavorable to the defense. And to do
4 independent testing as by our best lights, in the
5 defense of Mr. Avery, and in presenting his case,
6 as the Court has allowed it with the contours of
7 its rulings, to a jury, so that he will have a
8 fair trial the first time. And those are the
9 bases for my motion for continuance.

10 THE COURT: Anything else from the State?

11 ATTORNEY GAHN: No, your Honor.

12 THE COURT: Well, as I indicated earlier,
13 the Court feels it's getting conflicting messages
14 here about the extent to which anyone, other than
15 the FBI, can do the testing. If it can be done
16 within a matter of a few months, it seems to me the
17 State -- or the defense has known of the existence
18 of the blood vial since last July, and I'm not sure
19 I fully understand at this point why the testing
20 could not be done.

21 It appears that the defense is asking to
22 do the testing in response to whatever results
23 the FBI might come up with, but in any event, the
24 defense did not disclose to the State the
25 existence of the blood vial until early December.

1 With that timeline, the Court finds it unlikely
2 that the results of the FBI testing would have
3 come before today, or at least much before today,
4 soon enough before today to give the defendant an
5 opportunity to do other testing, if it's even
6 possible. And if it is possible, and if the
7 Court splits the samples today, each party would
8 have the same opportunity to have the same amount
9 of time to get test results in.

10 So I am not going to adjourn the trial.
11 I am going to grant the State's motion for access
12 to the blood vial. The one item that I did not
13 address originally, I indicated that the defense
14 could have a split sample of the blood in the
15 vial, that the vial would have to be tested for
16 fingerprints before any analysis of the blood was
17 done. I do not know if the defense at this point
18 has enough photos of the vial to -- for whatever
19 the defense may want to show with respect to the
20 vial as part of its case here.

21 ATTORNEY STRANG: We could use more photos
22 because, of course, the vial, when it's shown to the
23 jury, physically, will be missing, presumably, about
24 half the blood that's in it now. You know, the
25 State, in a cocaine delivery case, doesn't go

1 forward to a jury on photos, it brings in the
2 cocaine. And a felon in possession of a firearm
3 case, the State brings in the gun.

4 We're functionally allowed to bring in
5 only the altered vial to show this jury. We have
6 argued that in the motion -- or in the response
7 that Mr. Buting filed, which again goes to
8 fairness of the trial. The next best alternative
9 is to take good photos showing the current
10 quantity of the blood and video footage, or
11 moving footage, showing that the blood is in a
12 liquid form today.

13 So that would be our alternate request,
14 without abandoning any of the arguments that I
15 have just made, of course. And then there's also
16 the matter of the blood spot cards that the Court
17 has not yet addressed.

18 ATTORNEY BUTING: Judge, I just want to
19 clear up the record at one point, because you said
20 you have been getting conflicting messages. What I
21 want to make clear is, whenever we discovered that
22 there may have been a blood vial in the court file,
23 there were no labs, anywhere, that we could find
24 that would test this. So it's not like we made a
25 decision not to test it. Mr. Gahn will concur with

1 that.

2 Because other than this one Ballard Lab,
3 there was no -- which has been totally -- which
4 was considered disreputable by all the reported
5 courts, there were no other labs doing this test,
6 including the FBI. The FBI is only doing this
7 test now because of this case. So I just want to
8 make it clear that this wasn't some strategic
9 decision we made not to do the test, there was
10 nobody we could go to.

11 THE COURT: All right. How can the
12 photographing of the exhibit suggested by the
13 defense be accomplished and still allow the vial to
14 be made available for testing?

15 ATTORNEY GAHN: Well, I do know that they
16 took plenty of photos when we were all together down
17 in the Clerk's Office. Also had a film camera and
18 took moving pictures, also, of the vial and still
19 photographs.

20 Let me just back up a moment and make
21 this suggestion. I would ask the Court to rule
22 that the fingerprinting of the vial, and the
23 styrofoam box, and cardboard box be accomplished.
24 But I would ask the Court to leave that to the
25 discretion, of what order it would be done, with

1 the FBI analyst.

2 The reason is this, I don't want any
3 type of superglue, any type of fuming used that
4 perhaps may interfere with the chemical testing
5 that will be done. It may be prudent and the FBI
6 say, look, we would rather get the blood out of
7 the vial first and would do it all gloved and
8 then to do the fingerprinting, so as not to
9 interfere with the chemical analysis. I don't
10 know the answer to that, but I would ask that
11 your ruling be that fingerprinting be
12 accomplished and the order of it be left to the
13 scientists.

14 THE COURT: The FBI is going to do the
15 fingerprinting?

16 ATTORNEY GAHN: What I was thinking of
17 doing was that the FBI is going to be doing the
18 packaging of the vial for us. I was going to have
19 one of our officers involved in this to be present
20 and take custody, immediately, of the cardboard box
21 and the styrofoam box. And then the actual
22 fingerprinting of the vial, I would ask the FBI to
23 accomplish, you know, when they think it is the
24 better time to do that. And that's how I would like
25 to see the order be.

1 THE COURT: If the defense is allowed on
2 Monday to take whatever photos or video of the vial
3 it wants, you can have it on Monday; would that
4 work?

5 ATTORNEY STRANG: How do we do that?

6 ATTORNEY GAHN: Judge, we'll make it work.
7 We would prefer to take it -- I will tell you this,
8 I will ask the FBI, and I would hope and, I mean,
9 they have never denied other requests before, would
10 they have their photography unit make very, very
11 good still photographs of it for us, that I'm sure
12 would be better than any of us could do. I would
13 ask that be accomplished beforehand, once they get
14 the vial. I will ask that, I don't think they will
15 deny that. If they do, then we'll make other
16 arrangements.

17 THE COURT: Mr. Fallon.

18 ATTORNEY FALLON: If I may have a moment
19 with counsel?

20 THE COURT: Go ahead.

21 ATTORNEY GAHN: I have just been informed
22 that we have available video camera that we could
23 make available to them this afternoon and they could
24 take all the pictures they want of the blood vial,
25 this afternoon.

1 THE COURT: I know the defense has some
2 photos already.

3 ATTORNEY STRANG: Yes.

4 THE COURT: I'm not sure what else is --

5 ATTORNEY STRANG: We do have some photos
6 already, not intended at the time to be a
7 replacement for having the physical evidence at
8 trial. This is an exhibit in the custody of the
9 Court and it's now being handed over to a party and
10 the jury won't have it. So that's been the Court's
11 ruling and the next best alternative is to allow us
12 to photograph, with the idea of alternate evidence
13 being offered to the jury, video and still.

14 I object to fingerprint testing being
15 done after this vial has been handled for testing
16 and there's an obvious spoliation problem with
17 destroying or smudging fingerprints that
18 otherwise may be identifiable. But, again, a
19 Court exhibit is being turned over, over our
20 objection, to the other side. And now a course
21 of action is being proposed that presents the
22 real risk of spoliation of fingerprint evidence.

23 THE COURT: Well, what opportunity to
24 photograph or video the exhibit is the defense
25 requesting?

1 ATTORNEY STRANG: Before it goes, we need a
2 chance to photograph it still and videotape it. I'm
3 not sure what video equipment the State has. I'm
4 not opposed to using their video equipment. I know
5 we're in court this afternoon and we're starting a
6 trial on Monday morning so.

7 ATTORNEY GAHN: Is there access to this
8 building on Saturday or Sunday, that they could do
9 it?

10 THE COURT: I'm sure there could be.

11 ATTORNEY GAHN: Could we work that out?

12 ATTORNEY STRANG: Your Honor, look I'm
13 moving from Madison up to trial tomorrow and I'm
14 starting trial on Monday. I'm not anticipating, nor
15 do I have time, resources, or personnel to be
16 arranging for trips to Manitowoc the weekend before
17 a trial.

18 ATTORNEY GAHN: Your Honor, may I just have
19 another suggestion. How about this, how about
20 release it to our representatives here from Calumet
21 County Sheriff's Department and DCI will take it
22 back to Calumet County where they have an office set
23 up and where they will be this weekend and they can
24 do their photographing at the Sheriff's Office in
25 Calumet County this weekend.

1 We won't open it. We'll wait until they
2 are present and they can photograph it from
3 taking it out of the cardboard box and then
4 opening up the styrofoam box and photograph
5 there.

6 THE COURT: Who is going to be doing the
7 photography work for the defense?

8 ATTORNEY STRANG: I have no idea, probably
9 one of the two people here, unless we can get our
10 defense investigator, and I don't know his
11 availability for this tomorrow. I didn't expect
12 this.

13 ATTORNEY FALLON: Your Honor, we would note
14 that there was a extensive video shot on
15 December 14th, so this would be an adjunct or a
16 supplement to previous video and photographs.

17 THE COURT: Well, everybody is going to be
18 back here on Monday, it's perhaps unfair to the
19 defense, if they weren't planning on doing
20 photography today, which they may well not have been
21 doing, so I will give them until the end of Monday
22 to make arrangements to do whatever photographing or
23 videoing of the exhibit they wish and then I will
24 release it -- order it released to the State.

25 ATTORNEY GAHN: Your Honor, would you just,

1 to conform your decision with the written order,
2 that this also includes the spot cards that are in
3 North Carolina?

4 THE COURT: Actually, I haven't heard
5 anything about the spot cards. I don't know if
6 there's an objection to those. I, frankly, don't
7 know what they are because until your motion, I
8 didn't really hear them referred to.

9 ATTORNEY GAHN: When -- If the original
10 testing was done in 1996, my understanding is the
11 blood was drawn from Steven Avery on January 2nd.
12 And on January 4th of 1996, Laboratory Corporation
13 of America received the blood vial in question.
14 They did the initial Innocence Project DNA testing
15 and came up with inconclusive results.

16 As part of their testing protocol, upon
17 receipt of a vial of blood, they open up the
18 vial, and they put it on what are called spot
19 cards. Spot cards preserve the blood sample, as
20 best they can. And that is what they do their
21 testing from, these spot cards. My
22 understanding, there's a number of them.

23 When I talked to the FBI, they thought
24 those would be helpful in interpreting the EDTA
25 data, because here you have samples of that blood

1 vial, which were taken two days afterwards.
2 Presumably Laboratory Corporation of America has
3 maintained them, better than a liquid blood vial
4 sitting in the Clerk of Court's Office. These
5 were maintained in a different setting, and one
6 could see if there's any type of degradation to
7 them and they would be important.

8 THE COURT: So the blood from the cards
9 came from the vial that's downstairs in the Clerk's
10 Office?

11 ATTORNEY GAHN: Yes.

12 ATTORNEY BUTING: Judge, maybe, I'm
13 misunderstanding the theory here, but if the blood
14 that was in the vial is what was used to plant -- or
15 was planted in the vehicle, then the relevance will
16 be what was the -- what's the EDTA in the vial, not
17 what it was 11 years ago. I don't see how -- how
18 that's going to have any relevance to this test.

19 THE COURT: Well, at this point, given the
20 fact the Court is not an EDTA expert, frankly, I
21 don't know what relevance it has, but I'm not being
22 asked to rule on it's admissibility today, the Court
23 is just being asked to allow the defense to test it.

24 ATTORNEY STRANG: No, no, the State.

25 THE COURT: Or the State, to test it. And

1 I can't think of a reason not to allow that.

2 ATTORNEY STRANG: Well, if you want the
3 defense to be heard, Laboratory Corporation of
4 America was a defense hired consultant in 1996.
5 This was defense testing, done at the defense
6 request, not jointly with the State. So, what we're
7 being asked now is for the Court to order, on the
8 1985 file, that defense expert in North Carolina be
9 required to yield to the State of Wisconsin work
10 product that was done at the defense request and at
11 the defense expense at the time. So that the State
12 and the State alone can do EDTA testing here to the
13 exclusion of the defense.

14 It's probably not relevant given what's
15 been ordered so far. You know, I'm -- I'm not
16 inclined to stand in the way of the march of
17 knowledge but, again, this is -- this is just
18 sort of a power play and a grab for a chance to
19 do testing that we won't be able to repeat, or
20 meet, or consider doing independently. I think
21 the record, including on January 4, 2007 really
22 is very clear about the fact that there is
23 presently, today, no one in the business of doing
24 EDTA testing that the State apparently is
25 prevailing upon the FBI to do for it and it only.

1 To preserve, you know, our options,
2 whatever they may be, long after this trial is
3 over, I suppose, if the Court is going to order
4 the defense to give up work product of a defense
5 expert then -- and, you know, also order that
6 half of those spot cards be preserved inviolate,
7 in the hope that some day there will be money,
8 and time, and another lab to do defense testing,
9 and prove that the State's tests shouldn't have
10 been considered in isolation at this trial.

11 THE COURT: How many spot cards are there?

12 ATTORNEY GAHN: I don't know, your Honor.
13 I believe there are more than one. And I -- When I
14 read the laboratory notes -- and although the --
15 Mr. Strang is portraying this as a work product,
16 this was by order and by stipulation of the parties.
17 And as my understanding when I read it was --

18 ATTORNEY STRANG: No, the testing was not,
19 the withdrawal of the blood for the purpose of
20 defense testing was by court order of Judge
21 Hazlewood and by stipulation of the State of
22 Wisconsin, the testing was not joined. That's
23 simply the fact, as I understand it.

24 ATTORNEY GAHN: But, again, that case is
25 over with now, it's a public record. And I do

1 believe that we did prepare an order for Judge Fox
2 to ask him to relinquish whatever jurisdictional
3 control he may have over it. We're prepared to go
4 to that Court and ask him to sign that and that you
5 be given the authority to make decisions on the
6 blood evidence.

7 ATTORNEY STRANG: And to that, we don't
8 object, but the blood spot cards are not a public
9 record, never have been, it's defense work product.
10 We object to the whole road on which the State and
11 the Court have embarked today, this included.

12 THE COURT: Well, I would agree that the
13 spot cards, as they have been characterized for the
14 Court today, are different from the blood vial in
15 the sense that it's not part of the court record.
16 I'm not -- What I don't understand and what I'm not
17 sure the parties have addressed is the significance
18 of that. And when I say that, I say that I have not
19 ever been requested before to issue an order that
20 the contractor of the defense, if you will, turn
21 information over to the State. It's not the same as
22 simply ordering that something in a court file be
23 released.

24 ATTORNEY STRANG: But, you know, the
25 position we're in here, of course, is that if we

1 don't agree to it, and the State eventually
2 convinces this Court to allow the FBI's results,
3 with no opportunity for us to rebut them, then we
4 will also hear testimony that we tried to prevent
5 the FBI from having access to something that might
6 have been relevant to its testing, so --

7 THE COURT: I don't think the Court would
8 allow that if I didn't order the information
9 disclosed. I'm not sure -- I don't believe that
10 would be proper for a jury.

11 ATTORNEY GAHN: I guess I would quote,
12 again, from the *Migliorino* case that I cited before,
13 this is every man's evidence. And the State and
14 defense is entitled to it. This is going to be
15 important evidence.

16 THE COURT: I think, though, that the
17 defense is entitled -- and this is difficult without
18 knowing how many cards there are -- the defense
19 would be entitled to retain some, for their own
20 purposes, either at this point or some point in the
21 future. That doesn't seem an unreasonable request
22 to the Court.

23 ATTORNEY GAHN: I suspect that if there's
24 one spot card, I would request the -- her name is
25 Meghan Clement, who is in charge of the forensic

1 unit there, cut it in half. We'll preserve one
2 half. If there are two spot cards, we'll take one,
3 and save one for the defense.

4 THE COURT: I'm going to want to know more
5 information about the spot cards before I rule on
6 that part of the request. So I'm not going to rule
7 on that part today.

8 ATTORNEY GAHN: Okay.

9 THE COURT: I will just rule on the blood
10 vial.

11 ATTORNEY GAHN: So, are we waiting till
12 Monday that we can take the blood vial --

13 THE COURT: Yes.

14 ATTORNEY GAHN: -- Monday afternoon, or
15 upon their completion of whatever.

16 THE COURT: Yes.

17 ATTORNEY GAHN: Okay. Thank you, Judge, we
18 will prepare another order.

19 THE COURT: All right. The next item is
20 the defense motion to exclude computer generated
21 animations.

22 ATTORNEY STRANG: I'm sorry, before we go
23 to that, I think we need a ruling from the Court on
24 whether it's reconsidering its earlier order that
25 fingerprint testing had to be completed before the

1 State removes the blood vial for EDTA testing.

2 THE COURT: I'm going to allow the FBI to
3 make that decision for the reasons that I don't have
4 the scientific knowledge to know the significance of
5 one being done before the other. If the FBI acts in
6 some way that either the fingerprint evidence or the
7 blood evidence results are compromised, I assume
8 that the defense expert can address that.

9 We do have notice of defense experts
10 that will be testifying and criticizing, in some
11 respects, the methods that were used by the State
12 to produce test results. So I'm not going to
13 specify the order -- the order in which the tests
14 are conducted.

15 ATTORNEY GAHN: Your Honor, I must get back
16 to Milwaukee, may I have leave of the Court to go.

17 THE COURT: Yes.

18 ATTORNEY GAHN: Thank you, Judge.

19 THE COURT: All right. We'll move on,
20 then, to the defense motion to exclude computer
21 generated animations.

22 ATTORNEY KRATZ: Judge, from a timing
23 standpoint, I do recognize that we have six or seven
24 different matters to hear. We have witnesses -- or
25 a witness that is standing by from the State Patrol.

1 He's also been kind enough to prepare for the
2 defense and for the Court documents which sets forth
3 his methodology in the creation of demonstrative
4 evidence.

5 Those include the scene models that we
6 talked about, include the -- both interior models
7 of the defendant's trailer and garage, as well as
8 the exterior overviews of the Avery property. He
9 also deals in a second set of explanations for
10 the Court, some information regarding skeletal
11 models, and is prepared to provide testimony as
12 to animations.

13 I believe that Mr. Strang had expressed
14 at least the most serious objection -- and I'm
15 sure he will correct me if I'm wrong, but the
16 most serious objection to actual moving images.
17 But having made those prefatory comments, Judge,
18 since Mr. Austin's testimony is not only likely
19 to mirror that that I provided the Court now in
20 writing, although there maybe some additional
21 information, Mr. Strang and I, in correspondence
22 before this hearing, recognize that final
23 decisions on admissibility will need to come
24 closer in time to -- to the trial or during the
25 trial.

1 I'm wondering if the Court wishes to
2 review the written submissions. I can make for
3 the Court and Mr. Strang, copies of the DVD's,
4 that is the animations themselves. That will
5 give the Court a fair understanding of what we're
6 talking about. And perhaps in the interest of
7 getting through some of these other issues that,
8 frankly, need to be decided before Monday, it's
9 my recommendation that we do that.

10 Because this -- even with Mr. Strang's
11 opinion and, please, Mr. Strang, correct me if
12 you think I'm wrong, but this is something that
13 probably can wait until we get into trial or
14 closer to trial. And necessarily, in some
15 instances must, must wait for that. I will do it
16 now, Judge, and I'm happy to present this.

17 In all candor, this may take the better
18 part of an hour to present the offer of proof and
19 our explanation of these demonstrative exhibits.
20 And I'm, certainly, as I mentioned, happy to
21 proceed. But I do note on our agenda there are
22 things that, quite frankly, have to be decided
23 today before we move into the balance of jury
24 selection on Monday.

25 THE COURT: All right. Mr. Strang.

1 ATTORNEY STRANG: In the main, Mr. Kratz is
2 right, we can't conclude this issue today, even if
3 we start it, because the Court will need to take
4 some testimony from Trooper Austin while he is
5 physically here, present, and able to show things to
6 me, at least, and to the Court, at least the two of
7 us. He's probably shown these things to counsel for
8 the State before, so we could get started by
9 telephone, but couldn't finish.

10 I also note that in the three new
11 memoranda that Mr. Kratz just gave us, and I
12 think I gave the Court, dated -- each of the
13 three, dated January 29, 2007. The thinnest of
14 those memoranda is entitled new model renderings.
15 And this includes things that are altogether new,
16 that I haven't seen before, and didn't know were
17 coming.

18 The most -- Probably the most
19 significant being No. 3 on Page 1 of the
20 January 29, 2007 memorandum entitled new model
21 renderings. So, you know, if it would take an
22 hour of testimony for the State to do its direct
23 examination and its proffer, we're probably
24 talking about an hour of cross-examination, and
25 wouldn't finish the issue today, in any event.

1 So, I think I land where Mr. Kratz does, just
2 probably the better thing to do is to move to
3 other issues today and address this, I guess,
4 during trial or --

5 ATTORNEY KRATZ: What I could also do --
6 I'm sorry to interrupt Mr. Strang. What I could
7 also do, Judge, is perhaps show the Court and
8 counsel the animation that's been performed. That
9 is something that you don't have, and that's the
10 moving part, so that at least you can get an idea of
11 what we're going to be talking about.

12 I will be happy to make both the Court
13 and counsel copies of those finished products,
14 and would have anyway, before we seek to admit
15 them. That will only take probably five minutes,
16 or even less. And then my suggestion is to move
17 on to the next item on the agenda. I will call
18 Trooper Austin and apologize since he's been
19 waiting since 1:00, but that just seems practical
20 to me.

21 THE COURT: So you have a five minute
22 presentation?

23 ATTORNEY KRATZ: Even less, yeah.

24 THE COURT: All right. Well, it will -- I
25 have already looked at the looseleaf you gave me

1 before, on the computer screen, which I assume
2 duplicate the information in the looseleaf. I will
3 take a look at this now, and then we'll move on to
4 the next item.

5 ATTORNEY KRATZ: While the projector is
6 warming up, Judge, I will tell the Court that the
7 animation, as I told the Court previously, was
8 prepared by Trooper Austin. This animation, there's
9 two of them, the first is the scene model, that is,
10 a view of the Avery salvage property, and what the
11 State believes are important landmarks and items of
12 evidence. It also includes a skeletal animation for
13 which Mr. Strang expressed at least less objection,
14 but something that he may -- he may talk about.

15 The animation that I'm going to be
16 showing the Court here contains -- it's a
17 composite, if you will, of 4,000 or so individual
18 images, all computer generated, but put together
19 to create the animation. And Mr. Austin will
20 eventually talk about that. This animation is a
21 15 frame per second animation. The final version
22 would be, I believe it's 30 frames per second,
23 but would most likely look very much the same.

24 So the record should reflect then that
25 I'm showing the Court something called a scene

1 overview animation, which again is that -- the
2 composite of the computer generated animations.
3 Is there any way to turn down the lights at all,
4 or would you like not to do that? As we watch
5 this, Judge, if I may, Trooper Austin indicated
6 the 15 frame per second rather than the 30 frames
7 per second will have the most impact on things
8 like the gravel road, it won't be as sparkly. It
9 will be a smoother -- a smoother version.

10 Trooper Austin also indicated any of the
11 text that he's placed into this animation can
12 obviously be deleted, should that be necessary.
13 And as I mentioned to the Court, this was brought
14 in lieu of any jury view or scenes.

15 (Watching the animation).

16 ATTORNEY KRATZ: The record should then
17 reflect, your Honor, that the scene overview has
18 concluded. The Court has been instructed that the
19 anthropologist in this case will be testifying as
20 to -- excuse me -- as to some cranial defects which
21 she and the pathologist describe to the jury as
22 entrance wounds.

23 The location of those will be obviously
24 of interest from this animation that I'm showing,
25 although created by Mr. Austin, was under the

1 immediate direction of Anthropologist Leslie
2 Eisenberg. It's about 30 seconds long, Judge.
3 And, again, the theory of its admissibility and
4 underlying modeling technique will be described
5 for the Court, as mentioned, before beginning
6 this part of our presentation. I will be
7 providing the Court with copies therefrom, as
8 well as additional testimony from Mr. Austin at
9 the time of the submission of these trial
10 exhibits. With that, Judge, the State is happy
11 to move on to our next matter on the agenda.

12 THE COURT: Mr. Strang, is there anything
13 you wanted to add before we move on?

14 ATTORNEY STRANG: Only that I note two
15 things for the Court's consideration. One, as to
16 neither of these, apparently, do we still have the
17 final version, the version the State proposes to use
18 at trial. And two, as to the cranial defects
19 animation at least, this would also be true of the
20 other skeletal representations when one reads
21 Trooper Austin's report closely, these are, in fact,
22 reports of Leslie Eisenberg. And they are well past
23 untimely under the Court's October 19, 2006
24 scheduling order for disclosure of expert witness
25 reports.

1 THE COURT: All right. Anything else on
2 that today?

3 ATTORNEY KRATZ: Not for today, thank you,
4 Judge.

5 THE COURT: Next, we'll move on then to the
6 defendant's motion to preclude expert witness
7 testimony and compel disclosure of potentially
8 exculpatory evidence. Mr. Buting, is that yours?

9 ATTORNEY BUTING: Yes, Judge. Did the
10 Court get a copy of that one?

11 THE COURT: I do.

12 ATTORNEY BUTING: Unfortunately, I can't
13 find mine. Did I take it back?

14 THE COURT: You gave it to me earlier, but
15 I think I gave it back to you.

16 ATTORNEY BUTING: I have a copy.

17 THE COURT: Well, I take it back, I have
18 got the original here. I don't know if this is the
19 one that's supposed to go to the Clerk of Court's.
20 Do you have one?

21 THE CLERK: No.

22 ATTORNEY BUTING: Judge, I attached two
23 exhibits to it. The State has complained that
24 defense wasn't specific enough with their reports,
25 and I attached these two reports to show you, at

1 least with regard to these two FBI reports, these
2 are incredibly sketchy. There's two different ones.

3 The first one, Exhibit 1, is very
4 recent, dated January 12th. Actually, we just
5 received it, I believe, on the 29th of January.
6 Again, way past the expert witness disclosure
7 deadline, so two days ago we get this report.
8 And it talks about three different shipments of
9 specimens received. Are you at the right -- Are
10 you on Exhibit 1?

11 THE COURT: Yes.

12 ATTORNEY BUTING: November 8, 14th and
13 December 27th. It labels them as just -- gives them
14 two identification numbers, but there's nothing to
15 tell us what they are, other than bone fragments.
16 There's bone fragments -- there's 1, 2, 3, 4, and
17 then 31 in another shipment. They identify these as
18 Q-11, Q-12, and so on up to Q-45. But these reports
19 tell us nothing about what they are, where they came
20 from, whether they came from the burn pit, whether
21 they came from one or more burn barrels, whether
22 they came from a completely different location, a
23 quarry, or what, or whether even they are human.

24 So this report tells us nothing, really,
25 other than to say that we can't do any

1 mitochondrial DNA from it. So that's the first
2 concern.

3 Second concern is, the very last
4 paragraph says, if you turn to that second page,
5 it says that, the processed DNA generated from
6 these samples is being returned to the Crime Lab.
7 Well, if they processed these items for DNA, they
8 must have some results, and these results are not
9 being turned over. So we don't know whether they
10 are exculpatory or not at this point. But
11 obviously some testing was done, if it wasn't
12 mitochondrial, what was it, and where are those
13 results? Okay.

14 THE COURT: Okay.

15 ATTORNEY BUTING: All right. So those are
16 the two concerns with regard to that particular one.
17 And I also noted that attached is Exhibit 2, is
18 actually the earlier report from this particular DNA
19 Unit of the FBI. And you will see that it lists
20 item Q-1 as charred remains, but that's it. That's
21 all we received from this unit.

22 So there is a gap missing between items
23 Q-2 and Q-10, apparently another nine items have
24 been tested by the FBI, this unit, and we have
25 never received any results. Are they

1 exculpatory? Are they inconclusive? We don't
2 know, except it's obvious that they are done and
3 we haven't been -- those reports weren't turned
4 over along with the other reports of the experts.
5 So if this expert is going to testify then,
6 obviously, we would need to know the results of
7 all of his tests, not just selected ones.

8 So, again, if they have done tests on
9 the 35, whatever it is, bone fragments, most
10 recently, and gotten something that's not
11 exculpatory, then it's -- I'm sorry -- that's not
12 inculpatory, then it is exculpatory, by
13 definition, to us.

14 Same thing here, if those items Q-2 to
15 Q-10 were tested and nothing inculpatory was
16 found then, again, in this case, by definition,
17 they are exculpatory and should have been turned
18 over. And then, finally, on that particular
19 report, Exhibit 2, the only finding that's given
20 is that Teresa Halbach cannot be excluded -- this
21 is on the second page -- cannot be excluded as
22 the source of the Q-1 charred remains.

23 But then it goes on and it lists some
24 data base, but there is no opinion provided about
25 what that data base is, what the relevance is,

1 whether it matters. There's no further opinions,
2 or conclusions, or findings drawn from that. So
3 again, I mean both of these reports are very
4 cryptic, far more cryptic than anything we have
5 turned over that the Court found was not
6 sufficient compliance with the statutory
7 obligation of turning over findings, summary of
8 testimony, and what not of experts. So for that
9 reason, these should either be excluded or the
10 State should file amended ones that do satisfy
11 the statute and, further, they should turn over
12 immediately the potential exculpatory results.
13 Thank you.

14 THE COURT: All right. Mr. Fallon, are
15 you --

16 ATTORNEY FALLON: Thank you.

17 THE COURT: -- handling this?

18 ATTORNEY FALLON: Yes. Well, once again,
19 I'm here arguing to the Court that just because
20 counsel chooses to label something exculpatory,
21 doesn't make it so. I wish the world were as simple
22 as counsel would suggest, that if it's not
23 inculpatory it must be exculpatory, or vice versa.

24 With respect to the reports, let's take
25 Exhibit No. 1 first. Exhibit No. 1, I find

1 rather interesting because it is a report
2 prepared by FBI Analyst Douglas Hares or --
3 excuse me -- I'm taking them in reverse order,
4 Exhibit No. 2, a report by Douglas Hares.

5 The report is dated January 17th, 2006.
6 And only now is there apparently a question
7 regarding the sufficiency of that report. In
8 answer to that, I would offer this information to
9 the Court, and counsel is certainly aware of it.
10 Quite some time ago the entire protocol of the
11 FBI, with respect to this analysis, was provided
12 to the defense. A CD with the data generated,
13 during the course of the analysis, has been
14 provided, much like the genotype or geno scan
15 information which was turned over pursuant to the
16 Wisconsin Crime Laboratory's DNA analytical
17 procedures and protocols and data generated.

18 Finally, we have the report itself of
19 Mr. Hares. And I think, simply answered, it is
20 what it is, that Teresa Halbach cannot be
21 excluded. It uses the counting method, which is
22 pretty much accepted in all laboratories. And
23 it's rather interesting to hear a concern about
24 the counting method, which is usually offered by
25 the defense as a means to supposedly undermine,

1 for whatever reason in their minds, the
2 significance of the results or the findings
3 there.

4 The report has been provided. All of
5 the underlying data has been provided. And the
6 opinions that will be rendered by Mr. Hares are
7 contained in the exhibit. That's it. There --
8 As I say, there ain't no more. It is what it is.
9 Those are the only opinions, if in fact we even
10 have an opinion, offered by Mr. Hares with
11 respect to the statistical counting.

12 THE COURT: Let me stop you there. There's
13 a sentence in Mr. Buting's brief, on Page 4, that
14 says, Mr. Avery, this moves the Court to prevent any
15 testimony from the DNA analyst and Exhibit 2,
16 Douglas Hares, other than his opinion that Teresa
17 Halbach cannot be excluded as a source of the
18 charred remains. I take it that at least to the
19 extent Mr. Hares would testify about this report,
20 you are telling me that's exactly right.

21 ATTORNEY FALLON: His report is what it is.

22 THE COURT: Okay.

23 ATTORNEY BUTING: And that's all -- that's
24 the only opinion that would be rendered from this
25 report? See that's what's not clear. If that's all

1 this Douglas Hares is going to say, fine.

2 ATTORNEY FALLON: In my discussions with
3 co-counsel, Mr. Gahn, that's my understanding. I
4 mean, if that should somehow change in the next 24
5 hours, I would be happy to let Court and counsel
6 know. But as Mr. Gahn advised me, the opinions
7 expressed in the report are the opinions which are
8 going to be offered.

9 THE COURT: All right.

10 ATTORNEY FALLON: And as I said, they have
11 all the data. And here it is a year and two weeks
12 after the report was generated and it's probably 10
13 months since provided in discovery.

14 With respect to the other exhibit, this
15 one I can speak to with even greater detail and
16 surety. I have had discussions with the analyst
17 here, Mr. Les McCurdy, and I guess I would
18 preface my remarks here by indicating that
19 Mr. McCurdy's findings are already reflected in
20 Dr. Leslie Eisenberg's report, which has been
21 provided to the defense.

22 For whatever reason, the FBI was late in
23 providing their written report of the oral
24 findings that they already provided to
25 Dr. Eisenberg. But, nonetheless, I did ask

1 Mr. McCurdy about the language that counsel finds
2 so troubling. And I learned that the last
3 paragraph, which begins on Page two, the
4 submitted items will be returned under separate
5 cover etcetera, is language that is apparently
6 standard language in all FBI reports, regardless
7 of whether DNA is generated or not.

8 I would direct the Court's attention to
9 the preceding paragraph. It says, due to the
10 condition of the submitted bone fragments, no
11 mitochondrial DNA examinations were conducted. I
12 verified that with Mr. McCurdy on the phone, both
13 yesterday and this morning.

14 Knowing that counsel has had problems
15 and has been doubtful of representations that the
16 State made in the past, I asked him, would you
17 provide an amended report further explaining that
18 no DNA extractions were occurred. And he did, in
19 fact, provide us with an amended report, taking
20 care of that, and I provided two copies to the
21 defense.

22 No DNA was extracted from those bones,
23 because it wasn't possible. Their condition had
24 deteriorated as a result of the fire, to such a
25 degree that DNA could not be extracted.

1 And, finally, I'm troubled by, again,
2 the insinuation and representations that we must
3 be hiding things. So, for counsel's benefit,
4 because we don't have to do this, but in the
5 interest of providing the information and getting
6 this trial going, I will offer this information
7 to counsel.

8 The FBI uses the letter Q, capital Q,
9 designation for items submitted, and we have
10 items 1 through 45. Items 1 and 2, were Calumet
11 Sheriff's tag numbers 7926 and 7927. Q-3, which
12 counsel finds mysterious, and I would only
13 suggest that he review previous discovery, was
14 the Sure Shot Camera. Q designation 4 through 10
15 were the cell phone parts. Q-11 and 12 was Item
16 No. 9597, cranial pieces from the burn pit behind
17 the defendant's garage. And I believe -- and I'm
18 not sure of the circumstances, but it was
19 originally tagged 8318.

20 ATTORNEY BUTING: Which one was that, I'm
21 sorry?

22 ATTORNEY FALLON: Q-11 and 12. Q-13
23 through 38 were items in 7964, from Burn Barrel 2.
24 Items Q-39 through 45 were designated Items 8675.
25 And we believe that's referred to in many places in

1 the discovery as the Radandt debris pile. So I
2 think that clears up the information which is -- all
3 has been provided, and examined, and discussed at
4 length.

5 So I'm at a loss, quite frankly, to
6 explain further the purpose of this motion. I
7 think we have resolved, I think to all
8 satisfaction, what the circumstances here. So
9 without any further comment I will rest.

10 ATTORNEY BUTING: Judge, one last matter is
11 still not clear. On Page 3 of my motion, I point
12 out, it is not clear whether any of these items that
13 were sent to the FBI have been determined to be
14 human or not. Because there's many, many non-human
15 bones that were in these barrels, pits, and
16 everything else. So I don't know if counsel knows
17 that, but this report, one of my concerns is the
18 report doesn't say that. We don't know whether
19 these are human or not human, in fact, until he told
20 me today what these were, the report wouldn't tell
21 you that. So that's still an additional concern.

22 THE COURT: You are referring now to the --

23 ATTORNEY BUTING: Exhibit 1 that has items
24 Q-11 through Q-45.

25 THE COURT: Mr. Fallon, is that information

1 provided anywhere in submittals?

2 ATTORNEY FALLON: Can't be identified,
3 that's the whole idea. There was an attempt at
4 mitochondrial DNA, or any DNA for that matter. They
5 are still suspected possible.

6 THE COURT: Q-11, 12, 13, 14, through
7 Q-14.8 and Q-15 through 45, none of those were able
8 to be identified.

9 ATTORNEY FALLON: That wasn't the question
10 counsel asked. Counsel asked on items I believe 13
11 through 45. I believe the other items have been
12 identified.

13 THE COURT: Okay.

14 ATTORNEY BUTING: Well, the simple question
15 is, Q-11 and Q-12, if those have been identified as
16 the cranial; is that what you are saying?

17 ATTORNEY FALLON: Those are cranial pieces.

18 ATTORNEY BUTING: Okay. So those have been
19 identified as human. But as to the others, for
20 instance, Q-39 through 45, labeled as Radandt debris
21 pile, simple question is, were those human or were
22 they not?

23 ATTORNEY FALLON: You know what we know?

24 ATTORNEY BUTING: Well, what opinion will
25 be expressed by an expert?

1 ATTORNEY FALLON: Well, the opinions are
2 set forth in the laboratory reports from the FBI
3 analyst that mitochondrial DNA was not possible to
4 determine that. And Dr. Eisenberg has already
5 indicated in her reports, suspected or possible, and
6 the question is, is that even admissible. But
7 that's for another day.

8 ATTORNEY BUTING: That's fine. So these
9 experts will not render any opinion on that; is that
10 right?

11 ATTORNEY FALLON: As I understand it. I'm
12 confirming that with Dr. Eisenberg.

13 THE COURT: There was a reference on Page 5
14 of Mr. Buting's brief to other experts for whom he
15 indicates the defense has not received reports, Carl
16 Adrian, Eric Smith and Robin Cotton. Are those --
17 As I understand it, those are witnesses that the
18 State named, but no reports were provided?

19 ATTORNEY BUTING: Correct. Judge, I -- the
20 Carl Adrian one I believe is -- he is the one who
21 did a similar kind of recreate laser measurements of
22 the RAV 4, if I stand corrected. Am I right,
23 counsel?

24 ATTORNEY FALLON: Yes.

25 ATTORNEY BUTING: And as to that, we have

1 still not seen any reports. Eric Smith, I'm not
2 sure who he is, what his report is. Robin Cotton, I
3 know who she is and I have definitely not received
4 any report from her. She's in Boston, a former DNA
5 expert at Cellmark. So if they have gotten -- if
6 they are intending to put in another DNA expert,
7 there have been zero reports from her.

8 THE COURT: Mr. Fallon.

9 ATTORNEY FALLON: With respect to Robin
10 Cotton, I guess counsel should consider himself
11 fortunate that he has one potential rebuttal
12 witness. Mr. Gahn has not advised me as to whether
13 or not she will be appearing and/or whether she's
14 even written a report relative to this particular
15 case.

16 THE COURT: And Mr. Adrian and Mr. Smith?

17 ATTORNEY FALLON: Mr. Adrian is, as
18 represented, he's an analyst who put together a
19 computer generated animation of the SUV. I will let
20 Mr. Kratz speak to that. He's more familiar with
21 Mr. Adrian.

22 ATTORNEY KRATZ: I'm sorry, Judge, Mr.
23 Adrian -- the Court has already received the SUV
24 animation in anticipation of that. Defense counsel
25 received a disc of all the measurements that were

1 created from Mr. Adrian's work product. There is no
2 report, other than the item itself, that is, the
3 computer animation itself.

4 ATTORNEY FALLON: I would have to check,
5 that was the one thing that I ran out of time trying
6 to run down, but I believe the last gentleman, may
7 very well be simply one of the many agents from the
8 FBI who may have had a hand in the chain of
9 evidence.

10 Counsel has reminded me that Mr. Smith
11 is the tool mark analyst at the FBI. We're not
12 planning on calling him.

13 ATTORNEY BUTING: Are not?

14 ATTORNEY FALLON: Are not.

15 ATTORNEY BUTING: Well, as to Mr. Adrian
16 then, if he has no report, and I guess the summary
17 of his testimony would be the animation that is
18 being offered to -- as a substitute. Certainly,
19 there's nothing like that for Robin Cotton. So,
20 we're way past the deadline and I would move the
21 Court to exclude any testimony from Robin Cotton.

22 THE COURT: I understood the State to be
23 saying they would not be offering any testimony from
24 her in their case-in-chief.

25 ATTORNEY FALLON: That's my understanding.

1 THE COURT: I also understand the State to
2 be reserving the right to introduce her in rebuttal
3 under *Konkol*.

4 ATTORNEY FALLON: Correct.

5 ATTORNEY BUTING: So she will not be
6 allowed to testify in the State's case-in-chief.

7 THE COURT: In the case-in-chief, right.
8 Mr. Buting, does that address the concerns that you
9 have raised in that motion?

10 ATTORNEY BUTING: I believe so.

11 THE COURT: I'm not sure if you require an
12 order, but if you wish an order to -- reduced to
13 writing, the indications that the State made, you
14 may do so and submit it to Mr. Fallon for his
15 approval, and you can submit it to the Court for
16 signature.

17 All right. The next item is from the
18 defendant's motion to dismiss of last week. The
19 Court addressed the three counts. The State
20 moved to dismiss two of them. The Court denied
21 the defense motion to dismiss the third. But,
22 Mr. Strang, I believe there was another portion
23 of that motion which you wish to bring up again.

24 ATTORNEY STRANG: Right. This is -- This
25 is an issue that I have raised in several different

1 forms or settings since the spring of 2006. And at
2 its core, or germ, are the March 1 and March 2, 2006
3 news conferences that the State conducted laying out
4 on March 1 the purported statements of, at that
5 point, an unnamed relative of Steven Avery in a live
6 televised news conference format. The Court has the
7 DVD of that news conference and I think has viewed
8 it.

9 And then the following day, March 2, and
10 this is the news conference that was preceded by
11 the warning of its graphic content and urging
12 that young people under a certain age, and
13 friends and relatives of Ms Halbach not watch,
14 because of the graphic content. And in that news
15 conference the State identified Brendan Dassey
16 and gave a very gripping narrative, chilling and
17 horrifying narrative, of what the State imagined
18 to have occurred at the Avery property, based on
19 what was then Brendan Dassey's purported version
20 of events.

21 The March 10 Amended Information
22 followed directly from Mr. Dassey's version at
23 the time, and the version laid out on March 1 and
24 March 2, 2006. Mr. Dassey himself disavowed that
25 version in large part not later than May 13,

1 2006. The physical evidence disproved most of
2 the gory details that the State presented on
3 March 1 and March 2, in particular.

4 But in the public mind, we have had 10
5 months of seepage of those details. Ten months
6 of the public believing that Steven Avery is an
7 alleged rapist in this case, and alleged to have
8 kidnapped Teresa Halbach in addition to murdering
9 her.

10 And the fruit that that 10 months and
11 that those two press conferences have born, is
12 there for all to see in the 144, something fewer
13 than that, jury questionnaires, where time and
14 again jurors are telling us that their opinions,
15 many of them unalterable, according to the jurors
16 -- prospective jurors reports, are traceable, not
17 just to publicity, but many of these prospective
18 jurors say -- cite in particular Brendan Dassey's
19 supposed confession, and the power of it,
20 although inadmissible, the power of it in the lay
21 mind, as to Mr. Avery.

22 The questionnaires now are, of course,
23 are a part of the court record. Court, I assume,
24 has reviewed those, as have I. At least one
25 prospective juror specifically cites Mr. Kratz's

1 statements about Brendan Dassey's confession, as
2 the source of her opinions.

3 And, you know, I don't remember now what
4 language the juror used in response to question
5 43, or question 69, question 74, and just how
6 unalterable that opinion was. But that, again,
7 is now a matter in the Court's record that could
8 be reviewed if necessary.

9 There may have been more than one juror.
10 I read these questionnaires very quickly because
11 of the work that all of us have confronted this
12 week as we prepare for trial on Monday. The
13 presumption of innocence has been lost here. And
14 it happened -- that -- that dissipation happened,
15 I think, about March 1, March 2, or as a result
16 of those comments.

17 And now 10 months later, of course,
18 Mr. Avery is not facing a rape charge at all, not
19 facing a kidnapping charge, the State has elected
20 to go forward on a false imprisonment charge that
21 I think cannot make it to a jury, unless there's
22 evidence that the State has, of which I'm unaware
23 through the discovery process, and I have posed
24 that problem in my motion to dismiss the false
25 imprisonment count and the other two counts.

1 And I have expressed it here in court,
2 the risk we will run if the State, in fact, has
3 insufficient evidence of false imprisonment here,
4 in the context of the highly inflammatory, highly
5 prejudicial news conferences, together, running
6 on March 1 and March 2 alone, setting aside the
7 other six televised news conferences, just those
8 two together running to 56 minutes or more,
9 followed by the 10 months of the drumbeat in the
10 media on this case, reiterating the State's
11 allegations.

12 So dismissing those two counts isn't
13 enough. Dismissing the third, false imprisonment
14 count, isn't enough here to restore the
15 presumption of innocence to which Mr. Avery
16 constitutionally is entitled. The Court needs to
17 do something more. And the jury questionnaires
18 that we have now reviewed bear that out.

19 I will make a further record, I'm sure,
20 on Monday, in moving to strike for cause a number
21 of additional jurors -- I'm sorry -- prospective
22 jurors, people who filled out jury questionnaires,
23 on which the State and the defense did not agree
24 that there was cause to strike. I will move to
25 strike a number of additional jurors as having

1 unalterable opinions and, therefore, not being
2 fit for service as a juror in this case.

3 But I would like to see this Court take
4 some firm action to try to save at least 30
5 members of this panel, if they can be saved, as
6 appropriate, open-minded, potential jurors who
7 are willing to follow the Court's instructions
8 and, indeed, the constitutional rules of criminal
9 procedure in this country.

10 The Court is going to have to do
11 something to restore that presumption of
12 innocence. I suggested a curative instruction.
13 I laid it out. There is no particular magic to
14 my language, but it would have to be a strong
15 instruction, and more than once repeated, just as
16 the message about Brendan Dassey's accusation
17 against Steven Avery has been more than once
18 repeated. And the message about the first degree
19 sexual assault charge and the kidnapping charge
20 have been more than once repeated.

21 The Court faces -- I realize the Court
22 can't give a counteracting instruction as many
23 times or as powerfully as the initial message was
24 heard. But the Court has got to try, here, to
25 erase that prejudicial effect of the last 10

1 months, now confirmed in its unfairness by the
2 fact that the State did not commit to calling
3 Brendan Dassey by the deadline that we had agreed
4 and the Court had set, may not and is not going
5 forward on two of the charges that are brought,
6 on March 10, 2006.

7 Lest there be any question at all about
8 the power of those accusations, now dismissed,
9 and at their time, resting only on the
10 inadmissible claims of Brendan Dassey, lest there
11 be any question about the power of those at all,
12 this Court, an experienced judge, a skilled
13 lawyer for many years before that, this Court was
14 moved by those allegations to say that \$500,000
15 bail for this man is not enough, and that there
16 is a stronger case against him now, greater
17 incentive to flee, or to fear conviction, and
18 increased the bail, as I recall, by \$250,000 to
19 \$750,000 citing the new charges in the Amended
20 Information, that at the time I believed rested
21 only on the inadmissible claims of Brendan
22 Dassey, and the time now has confirmed the State
23 cannot corroborate and cannot advance to a jury
24 even in opening statement, unless it commits to
25 call Brendan Dassey. And that's why at least two

1 of those counts have been dismissed.

2 When those kinds of accusations and
3 those new charges, move a Court to raise by
4 50 percent an accused's bail, I have a pretty
5 good sense of what they do in the lay mind, among
6 this jury pool, in terms of persuading that jury
7 pool that the case looks much stronger against
8 Mr. Avery than, in fact, it turned out to be.

9 But that's what we're up against. And
10 I'm asking this Court to take strong curative
11 action, whether it's my instruction, or one of
12 the Court's own writing, or some other curative
13 step designed to restore to Mr. Avery the
14 presumption of innocence that due process and a
15 fair trial require.

16 THE COURT: Who will be addressing this
17 matter for the State?

18 ATTORNEY KRATZ: I will, Judge.

19 THE COURT: Mr. Kratz.

20 ATTORNEY KRATZ: I am quite certain that
21 Mr. Strang does not want to enter into a debate at
22 this time as to the relative strength of the State's
23 case. I would argue with Mr. Strang and his
24 conclusion that the State does not have as strong a
25 case now as it did on March 1st. Obviously, the

1 State believes it has a much stronger case now than
2 it did on March 1st, given the physical evidence
3 that's been detailed.

4 And we have become familiar with, that
5 not withstanding, Judge, that the jurors who have
6 been unable, for whatever reason, to presume
7 Mr. Avery innocent, or the jurors who have
8 indicated to this Court an unwillingness to
9 follow instructions, have already been stricken.
10 We'll be making a record of that on Monday.

11 But as far as the risk of jurors who
12 cannot follow instructions, or who have some
13 preconceived notion, that's already taken into
14 account in the jury process. And that's not
15 unique to the Avery case, that is a process that
16 this Court engages in each and every time we try
17 to pick a fair and impartial jury.

18 Mr. Strang's suggestion of some curative
19 instruction necessarily requires this Court to
20 place some blame upon the State; that is, that
21 there was some unfair publicity in this case. I
22 will remind the Court that that very motion was
23 brought by Mr. Strang many, many months ago.

24 This court made specific findings that
25 the State did not engage in any behavior that

1 violated Supreme Court Rule 20:3.6, that the
2 State, through its comments, that this Court, I
3 believe made findings, included invited response
4 and other reasons for those comments, did not
5 preclude, and do not preclude, the defendant of a
6 fair trial. And so, to suggest at this point,
7 that even after making those findings months and
8 months ago, that the defense is now somehow
9 entitled to some damning instruction, some
10 instruction that suggests that the State's
11 behavior, or the State's comments in this case
12 were improper, is just not warranted.

13 This Court has cautioned counsel, that
14 is, counsel for the State and counsel for the
15 defense, as to extra judicial comments. And to
16 my knowledge one party has abided by that; that
17 is the State, that since March 2nd, no extra
18 judicial statements of any significance have been
19 made in this case. I can't say that for
20 Mr. Buting or for the defense, but the State has
21 certainly abided by this Court's admonition.

22 Let me also suggest, Judge, that to
23 engage, or to go down this road of curative
24 instructions, would necessitate the Court
25 explaining the nuance of use immunity and the

1 reasons why a prosecutor may decide what charges
2 to go forward with, or what charges to not go
3 forward with. Mr. Dassey's inconsistent
4 statements, again, are hardly unique to a
5 criminal defendant like Mr. Dassey, but certainly
6 are not of the substance that some curative
7 instruction is made of.

8 Let me close, Judge, in saying that, as
9 I argued earlier this week, the State could have
10 proceeded on the rape and kidnapping charges.
11 The fact that we have chosen not to, the fact
12 that we have chosen to either save Mr. Dassey
13 for, if not case-in-chief, a rebuttal witness,
14 and the conference of use immunity is solely
15 within the province of the State, not something
16 that the Court or the defense has any say so in.
17 And with that having been said, any curative
18 instruction is improper, would prejudice the
19 State, would ask the Court reject that
20 possibility. Thank you, Judge.

21 THE COURT: Anything else, Mr. Strang?

22 ATTORNEY STRANG: Well, the notion that the
23 State ending its extra judicial comments after
24 March 2nd solves the problem is a little bit like
25 the away team in a baseball game saying, well, I had

1 my at bats in the top of the first, I hit a home
2 run, and now the remedy is not to allow the home
3 team to come to the plate in the bottom of the first
4 and not to play the rest of the innings.

5 We, in fact, haven't given a single news
6 conference, or called people to our office, or
7 set of up a bank of microphones, or given a
8 warning about graphic content, let alone given
9 eight news conferences. And, functionally, we
10 have been unable to reclaim the presumption of
11 innocence here. And the Court need only look at
12 the jury questionnaires we have to see just
13 exactly which side here has had its impact on
14 public opinion before this case gets tried.

15 THE COURT: All right. The parties will
16 have an opportunity in individual voir dire to
17 further explore what opinions the jurors have, what
18 they may have seen or heard, what they come into
19 this case with. The Court will listen to the
20 comments of the jurors during voir dire.

21 And if I feel a need to address anything
22 in the form of an instruction to the jury, the
23 Court generally at the start of the trial gives
24 the jurors some preliminary instructions,
25 including information on the substantive charges.

1 And I will make my ruling on the motion
2 explicitly, or implicitly, at that time, with the
3 instructions to the jurors.

4 The next item is a motion from the
5 defense regarding courtroom security. Mr.
6 Strang.

7 ATTORNEY STRANG: I think we were also
8 going to address the second motion in limine.

9 THE COURT: Oh, I'm sorry, you're right, I
10 passed over that one, that was the next one.

11 ATTORNEY STRANG: But that turns out, I
12 think, to be fairly easy. After some conversations
13 with Mr. Kratz, I'm satisfied that I now can
14 reconstruct the information I was seeking as to the
15 first part of that motion in limine.

16 And as the second part, concerning some
17 converted telephone calls, I will simply make a
18 record of what I think we discussed in chambers,
19 or my recollection of what we discussed in
20 chambers is that the State is working on some
21 conversions. I know what it means by conversion
22 now.

23 When it has those done, it will offer to
24 the defense the opportunity to see the closed
25 captioning, so to speak, for the realtime

1 transcription that it proposes to offer as to
2 some recordings. We'll have a chance, I assume,
3 to assure ourselves that the recordings
4 themselves were not altered or redacted in a way
5 that would make them less than complete, and that
6 the transcription is accurate.

7 And I also understand from our
8 discussion in chambers that I should not expect
9 any objection from the State, or any resistance
10 from the Court, to giving an appropriate jury
11 instruction on transcripts being aids to
12 understanding evidence, but not evidence in
13 themselves, that the recordings themselves are
14 the evidence.

15 So, if I understood our conversation
16 about part two of my second motion in limine
17 correctly, then at this point the Court simply
18 can hold the issue in abeyance.

19 THE COURT: All right. Maybe I missed it,
20 the *67 issue. Do I understand --

21 ATTORNEY STRANG: That's part one. And I
22 think we're squared away on that.

23 THE COURT: Okay. All right. At this time
24 the Court will move on then to the defendant's
25 motion concerning courtroom security. Mr. Strang.

1 ATTORNEY STRANG: Yes, your Honor, the
2 State hasn't responded, but I have been provided by
3 the Court, and I think counsel for the State have as
4 well, the January 28, 2007 letter from Sheriff Jerry
5 Pagel of Calumet County. And I guess the inference
6 I draw from Sheriff Pagel's letter is that he
7 believes that security measures at trial ought
8 include what I have called a stun belt. I guess
9 Sheriff Pagel uses the same term in his letter.

10 So, as I understand it here, it falls to
11 the Court to decide whether there's manifest
12 necessity for such a security measure. And the
13 case law is pretty thin in Wisconsin, although
14 there is some, not on this particular restraint,
15 there's a good deal of case law both in other
16 states and in federal courts around the country.

17 And I have provided the Court a
18 smattering of it, not -- I couldn't possibly
19 provide all of it. I have relied in particular
20 here on the neighboring state of Illinois, both
21 because of the recency of the Illinois Supreme
22 Court's decision on this type of restraint and
23 because its detail and usefulness of the factors
24 it suggests trial courts take into consideration.

25 But the burden either rests on the

1 Court, or on the State, to justify such a
2 restraint as necessary and consistent with the
3 defendant's Sixth and Fourteenth Amendment rights
4 to a fair trial, the assistance of counsel,
5 confrontation, and to testify in his own defense,
6 if he chooses. The burden, I'm sure, does not
7 rest on the defense here, and that's between the
8 Court and the State. I'm not sure exactly where
9 it does rest. But there would have to be an
10 evidentiary providing, I think, and some findings
11 by the Court, on necessity, if the Court is
12 considering deferring to Sheriff Pagel's apparent
13 wishes.

14 THE COURT: Anything further, Mr. Strang?

15 ATTORNEY STRANG: Not at the moment, I
16 guess.

17 THE COURT: Okay. This, as Mr. Strang
18 indicated, it's -- this issue is not necessarily a
19 prosecution versus defense type motion. It's a
20 matter for the Court to determine, based on
21 considerations for courtroom security, but does the
22 State wish to be heard?

23 ATTORNEY KRATZ: Yes, very briefly, Judge.
24 The State echos the Court's feeling that this is not
25 a prosecution issue. I do have a personal opinion

1 as the person who would be seated 5 feet from
2 Mr. Avery during this trial, as to whether some
3 security is necessary.

4 But from the prosecution's standpoint,
5 the only comment we have as to Mr. Strang's
6 suggestions that this raises to a due process
7 right, is how does the defendant wearing a stun
8 belt a fact -- affect, excuse me, his ability to
9 participate, how does it affect his ability to
10 speak with his attorney, or in any other way to
11 participate in the proceedings?

12 This is a security issue. I don't tell
13 the sheriff how to run his jail, or how to do
14 courtroom security, and we have got a deal that
15 he doesn't tell me how to run my office, at least
16 not very often. So, with that having been said,
17 Judge, we'll leave it to the Court and to Sheriff
18 Pagel as to a decision on the courtroom security
19 issues. Thank you.

20 THE COURT: All right. I have the letter
21 from Sheriff Pagel in front of me. I'm not sure,
22 Mr. Strang, if the defense is in agreement with the
23 Court making its decision based on the reasons given
24 by Sheriff Pagel for his request, or whether you
25 wish to question Sheriff Pagel.

1 ATTORNEY STRANG: I am not in agreement
2 with that. Because at a minimum some of these
3 issues would need elaboration. The letter's a
4 helpful starting point and, indeed, in my motion I
5 have conceded that these are serious crimes.
6 There's no gainsaying that. It is the most serious
7 crime with which one can be charged in the State of
8 Wisconsin, so that -- that -- you know, that factor
9 weighs in favor of restraint, standing by itself.
10 Some of these others, as I say, at a minimum would
11 need evidentiary development.

12 THE COURT: Do you wish to question Sheriff
13 Pagel?

14 ATTORNEY STRANG: Yes, by doing so I'm not
15 taking on a burden, I gather?

16 THE COURT: No, you are providing
17 information to the Court to assist the Court in
18 making its decision.

19 ATTORNEY STRANG: Very well, I'm happy to
20 do that.

21 THE COURT: All right. Sheriff Pagel.

22 **SHERIFF GERALD PAGEL**, called as a
23 witness herein, having been first duly sworn, was
24 examined and testified as follows:

25 THE CLERK: Please be seated. Please state

1 your name and spell your last name for the record.

2 THE WITNESS: Gerald Pagel, P-a-g-e-l.

3 **DIRECT EXAMINATION**

4 BY ATTORNEY STRANG:

5 Q. Just as a matter of background here, we all know
6 the answers to the questions I'm going to ask,
7 preliminarily, but someone else reading the
8 transcript later may not. Quickly, you have been
9 the Calumet County Sheriff for some time, and at
10 all times since November 5, 2005 through today?

11 A. That is correct.

12 Q. You are responsible both practically and
13 statutorily for administration of the Calumet
14 County Jail?

15 A. That's correct.

16 Q. Mr. Avery has been detained in the Calumet County
17 Jail since November 9, 2005?

18 A. That is correct.

19 Q. Continuously?

20 A. Yes.

21 Q. So you have been his keeper, in effect, here as a
22 pre-trial detainee?

23 A. Yes.

24 Q. He hasn't been serving any sentence or on any
25 probation or parole hold, during that time, to

1 your knowledge?

2 A. That is correct.

3 Q. You have overall operational responsibility for
4 the Calumet County Jail?

5 A. Yes.

6 Q. But as a practical matter you get information
7 from officers whose immediate job
8 responsibilities are the jail and the jail only?

9 A. That would be correct.

10 Q. And the person we might describe as most directly
11 or most immediately in charge of the jail over in
12 Chilton is -- Is it Captain or Lieutenant Byrnes?

13 A. Lieutenant Byrnes.

14 Q. Am I right about his direct responsibility?

15 A. That would be correct.

16 Q. Okay. And then there is a Sergeant Hemauer who
17 reports to Lieutenant Byrnes?

18 A. That is correct.

19 Q. Who has also got a good deal of direct
20 responsibility for the jail?

21 A. Yes.

22 Q. Does most of your information come through either
23 Lieutenant Byrnes or Sergeant Hemauer?

24 A. Would come from Lieutenant Byrnes as well as
25 other individuals working within the jail.

1 Q. Okay. This, as I understand the rules of
2 evidence, Sheriff Pagel, and for the Court's
3 benefit, I think this is one of these proceedings
4 to which the rules of evidence don't apply. So
5 what I'm telling you is that I'm going to ask you
6 for hearsay. I'm going to accept hearsay. We
7 don't have a problem with hearsay here as long as
8 it's reliable. It would be helpful if you could
9 tell me when you know something personally and
10 when you are relying on word from Lieutenant
11 Byrnes or someone else.

12 A. That will be done, yes.

13 Q. Okay. Did you have the good sense to bring your
14 January 28 letter with you?

15 A. Yes, I did.

16 Q. All right. We should probably mark that as an
17 exhibit. Is that an extra copy?

18 A. Yes, it's not signed, but it's a copy.

19 Q. That's fine.

20 (Exhibit 1 marked for identification.)

21 Q. All right. And we have marked this as Exhibit 1.
22 It is now stapled. But is that your January 28,
23 2007 letter to Judge Willis?

24 A. Yes, it is.

25 Q. I understand that's an unsigned copy, but the

1 substance of the letter is what you wrote?

2 A. That is correct.

3 Q. Let's go to Paragraph 1, if you would. To whom
4 has Mr. Avery made the statements that you
5 ascribe to him in Paragraph 1?

6 A. Those were statements that were heard being
7 discussed in phone conversations that Mr. Avery
8 had and was relayed to me by the investigators
9 working this case.

10 Q. Do you remember when those statements were made?

11 A. No, I do not know when they were made.

12 Q. Do you remember how many times Mr. Avery made
13 such statements?

14 A. No, I would have to defer that to the
15 investigators.

16 Q. Mark Wiegert or Tom Fassbender?

17 A. That would be correct.

18 Q. Okay. And did you -- You haven't set out here
19 the verbatim statements that you are describing
20 being told about, have you?

21 A. No, these were -- this was information that was
22 provided to me by the investigators who indicated
23 that they heard these conversations or heard
24 words mentioned by Mr. Avery during these
25 conversations.

1 Q. To this effect?

2 A. Yes.

3 Q. Okay. Do you remember about -- about when one or
4 the other of these investigators told you about
5 these conversations?

6 A. They had mentioned it to me prior; however, when
7 I was informed that there had been a motion
8 filed, I specifically went and spoke with them
9 and they, again, furnished me with the
10 information that is contained within this letter.

11 Q. Okay. When you say they told you about it prior,
12 can you give me a time frame how --

13 A. No, I cannot. It was just generally spoken to me
14 and comments were made to insure that I was made
15 aware of these comments, to ensure, again, that
16 action, or specific information, would be
17 provided to the staff running the jail, to ensure
18 their safety, and to ensure that he, meaning
19 Mr. Avery, would not do anything to try to
20 jeopardize their safety, or to escape from jail.

21 Q. Can you put a year on when you first heard about
22 this?

23 A. I would imagine it would have been last year.

24 Q. 2006?

25 A. Yes.

1 Q. Okay. Early in the year, late in the year?

2 A. I can't tell you. I don't know.

3 Q. Did you take any specific action in the jail?

4 A. I know -- I know that the jail staff was
5 informed. Lieutenant Byrnes was informed, just
6 to be made aware of.

7 Q. All right. And one way to take these is that
8 Mr. Avery might harm himself, correct?

9 A. Could be. Yeah, they could be taken that way.

10 Q. And, in fact, you are aware that Lieutenant
11 Byrnes has gently inquired of Mr. Avery, on a
12 number of occasions, whether he is inclined to
13 harm himself?

14 A. Yes, that's correct.

15 Q. And you have been assured that he is not inclined
16 to harm himself?

17 A. That is what I have been informed by Mr. Byrnes.

18 Q. Okay. Indeed, other than one brief period in
19 which I know Mr. Avery has not been confined in a
20 segregation cell or a cell you can watch someone
21 24 hours a day, correct, he's been in a regular
22 pod or cell?

23 A. Yeah, he's been in his cell block.

24 Q. Okay. As to comments that he needs to get out of
25 here, is that kind of thing all that uncommon for

1 people who are locked in a jail?

2 A. Well, you have to look at the seriousness of them
3 and you have to -- also you have to take them as
4 a general comment, but you have to be also
5 concerned about those type of comments.

6 Q. Sure. And I understand that. And if -- When you
7 think someone really may be planning a jail
8 break, an escape, there are some measures you can
9 take, correct, within the jail?

10 A. Yes, there would be.

11 Q. You could cut off all visitation, correct?

12 A. Yes.

13 Q. You have never done that with Mr. Avery?

14 A. No.

15 Q. You could frisk contact visitors, defense
16 lawyers, or probation agents, police officers for
17 that matter, just to make sure that they are not
18 passing anything, physically, to Mr. Avery,
19 correct?

20 A. That would be.

21 Q. You have never seen a need to do that?

22 A. No.

23 Q. You could put someone in segregation if you
24 suspected an escape attempt?

25 A. You could, but it might not always be the best

1 thing to do for that type of situation either.

2 Q. Okay. Have you had an experience, as sheriff,
3 when you were aware of an actual escape attempt
4 by any inmate of the jail, convicted, or
5 pretrial, anybody at all?

6 A. Prior to discovery of something, is that what you
7 are referring to?

8 Q. Right. Right.

9 A. Not that I'm aware of.

10 Q. Awareness of a plan to try to escape?

11 A. No, I can't say that since I have been sheriff I
12 have, no.

13 Q. Do you have contingency plans for that if it were
14 to happen?

15 A. There would be some plan put in place, yes.

16 Q. Okay. But no such plan has been implemented as
17 to Mr. Avery at any time?

18 A. No, there has not.

19 Q. As a routine matter, in the jail, even though he
20 is not convicted of anything, administratively
21 you folks, I don't want to say regularly, as if
22 it's a fixed cycle, but with some frequency
23 jailers come in and examine the entire cell
24 without the inmate in it?

25 A. Yes, they would do searches.

1 Q. And that's been done in Mr. Avery's case,
2 correct?

3 A. I would hope so.

4 Q. Okay. Do you know so or?

5 A. It's a general practice for them to do that and I
6 would assume that they have done that, yes.

7 Q. Right. You have no reason to think that the
8 habit of occasional cell checks hasn't been
9 followed with Mr. Avery?

10 A. That's correct.

11 Q. Has anybody told you that they, you know, found a
12 cake with a nail file in it or, you know, bed
13 sheets tied together, or anything that suggested
14 an escape?

15 A. No, I have not been told.

16 Q. And I don't mean to be cute about that, but
17 whatever it is that inmates might do suggesting
18 escape?

19 A. That has not been given to me, no. That has not
20 been provided to me.

21 (Attorney and witness talking over each other.)

22 Q. Nothing's been found in Mr. Avery's cell?

23 A. No, I'm not aware of anything like that, yes.

24 Q. Any homemade weapons been found in his cell at
25 any time?

1 A. No.

2 Q. Something that might be used to hurt a guard?

3 A. Nothing was found.

4 Q. Okay.

5 A. While he was in our custody.

6 Q. All right. Has he acted out violently at any

7 time while he's been in your jail?

8 A. Not that I'm aware of. I have not been told that

9 he has.

10 Q. Do you think you probably would have been told if

11 it had happened?

12 A. Yes.

13 Q. So he hasn't -- he hasn't been segregated for

14 behavior problems at any time?

15 A. No he has not.

16 Q. He has been kept alone, if you will, or without

17 cellmates or even pod mates for most of the time

18 there, correct?

19 A. Per your request, yes.

20 Q. And that's where I was going. I mean, part of

21 that was driven by my request, correct?

22 A. That is correct.

23 Q. And you have been kind enough to honor that with

24 a proviso that if you got real full, you might

25 have to move people in, correct?

1 A. That is correct, that was the agreement.

2 Q. Okay. So that wasn't -- that wasn't a measure
3 that was implemented because you were afraid
4 Mr. Avery might hurt a fellow inmate?

5 A. No.

6 Q. You did have some concern, as I recall, at some
7 point, that because of his notoriety and the
8 publicity attending his case, that another -- not
9 a specific inmate -- but some other inmate
10 conceivably might try to take a poke at him or
11 hurt him at some point?

12 A. That would be a correct statement, yes.

13 Q. Okay. Steven Avery is about 5 foot 6?

14 A. I would say 5 foot 5, 5 foot 6, yes.

15 Q. And he's put on a little weight, I think,
16 since -- sorry about that -- but -- but, I don't
17 know, 200 pounds or something, roughly, probably?

18 A. Yeah, I would say so.

19 Q. Okay. He doesn't have access to free weights or
20 exercise equipment in the jail, does he?

21 A. No, he does not.

22 Q. Could we go to Paragraph 2 in your letter.

23 A. Sure.

24 Q. You refer to several individuals who have been
25 interviewed; are you relying here, again, on

1 information from Mr. Wiegert, or Mr. Fassbender,
2 or other investigators?

3 A. That would be correct.

4 Q. Do you have any -- any -- I guess the specifics
5 are that these were all things included in
6 Mr. Kratz's other acts motion?

7 A. Part of it, yes, part of his motion.

8 Q. Okay. So the Court -- the Court already has
9 before it some more details about the information
10 you are describing in general in Paragraph 2?

11 A. That would be correct.

12 Q. Okay. Paragraph 3, in general, you are saying,
13 look, we have got information that witnesses are
14 concerned about testifying and have indicated
15 that they are fearful?

16 A. Yes, this has been given, again, to the lead
17 investigators, that they are fearful, concerned
18 for their safety, having to testify against
19 Mr. Avery in court.

20 Q. Okay. And what you have done is reassure those
21 people that their safety is an important
22 consideration to you?

23 A. Yes, that was done by, again, the lead
24 investigators when they spoke with them, that
25 their safety would be of utmost concern.

1 Q. Sure. And that's -- This was not the first time
2 that you, or people in your department, have had
3 citizens or potential witnesses express concern
4 about testifying in a criminal case?

5 A. That would be a correct statement, yes.

6 Q. In fact, it's not uncommon for that sort of
7 concern to be raised with you?

8 A. That would be true, yes.

9 Q. This is in the general nature of that experience
10 of yours as an officer?

11 A. Well, these individuals have expressed a sincere
12 concern to have to testify. It's not like, well,
13 I don't want to, or I wish I didn't have to.
14 They are concerned. They have expressed their
15 concern to be in court and to have to testify and
16 to be in the same courtroom with him. So they
17 have expressed a deep concern for their safety.

18 Q. Are these people who you know or have been told
19 have -- have an aversion, or a revulsion for
20 Mr. Avery, just as sort of a global matter, they
21 just don't like him?

22 A. I don't know if it's that, or the fact that they
23 know of his demeanor. I don't know how far you
24 want me to go with that but. They, you know,
25 again, it's a concern that they have expressed.

1 And that's why I placed that in the letter.

2 Q. Sure. And some of them may know him, or have had
3 some past experience with him?

4 A. Yes.

5 Q. Okay. You are not aware of any threat that he's
6 made to any witness, or potential witness?

7 A. Not that I'm aware of, no.

8 Q. Every -- every non-contact visit that Mr. Avery
9 has in the Calumet County Jail is tape recorded?

10 A. Every non?

11 Q. Non-contact visit?

12 A. Yes, as it is with other inmates.

13 Q. With everybody else?

14 A. Yes.

15 Q. Right. This isn't a special measure for
16 Mr. Avery?

17 A. No, it is not.

18 Q. Every telephone call that he makes out of the
19 jail is recorded just as every telephone call
20 that every inmate in the jail is recorded?

21 A. That is correct.

22 Q. In this case, if there's any difference at all,
23 the investigators on the case assiduously listen
24 to Mr. Avery's tapes, correct?

25 A. That is correct.

1 Q. So you would expect that if he had made threats
2 to specific witnesses, those would have been
3 reported to you in your capacity as sheriff?

4 A. They probably would have been. I would have been
5 informed of them, yes.

6 Q. Number -- Paragraph 4 --

7 A. Yes.

8 Q. -- refers to a specific conversation or
9 conversations, a telephone dialogue between
10 Mr. Avery and his father?

11 A. That is correct.

12 Q. All right. When did that happen?

13 A. Again, I can't give you a specific date; I know
14 it was, again, I believe in 2006.

15 Q. But whether it was the beginning of the year, the
16 middle, or the end, you don't know?

17 A. I would have to refer that to Investigator
18 Wiegert.

19 Q. All right. Do you know the nature of the
20 comments as to Mr. Fassbender and Mr. Wiegert?

21 A. Yes, I do.

22 Q. What is that?

23 THE WITNESS: You want me to elaborate,
24 your Honor?

25 THE COURT: Yes.

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THE WITNESS: Okay.

A. There was a conversation between Mr. Avery and his father in which they -- Special Agent Fassbender and Wiegert -- comment was made that they wanted to cut off his testicles or cut off their testicles and drag them behind, or Investigator Wiegert behind a pickup truck.

Q. Just Mr. Wiegert?

A. I believe it was Mr. Wiegert, yes.

Q. And was it Allen Avery who made that comment or Steven Avery?

A. I believe it was Al towards -- I believe, Mr. Allen Avery was making the comment, to which Steven laughed, heartily.

Q. Okay. So this was a statement not made by Steven Avery, but he laughed in response to his father's statement?

A. That is correct. That's the way I have been told.

Q. All right. Both Mr. Wiegert and Mr. Fassbender are law enforcement agents, obviously?

A. Yes, that's correct.

Q. Both of them would be armed, ordinarily?

A. Yes.

Q. While on duty?

1 A. Yes.

2 Q. Are law -- Are sworn law enforcement officers
3 allowed to carry their sidearm weapons in court
4 in Calumet County, if you know?

5 A. Yes, they are.

6 Q. Both of these men are in the prime of life, for
7 want of a better word?

8 A. Yes.

9 Q. I mean, they are young. I mean, they are in
10 their 30's, 40's, whatever it is they are?

11 A. Yes.

12 Q. Okay. And they, in fact, were also the two
13 officers who arrested Mr. Avery on November 9,
14 2005, weren't they?

15 A. Yes, they would have been involved, I'm sure, in
16 the arrest.

17 Q. It's probably been awhile, so I'm going to offer
18 you an exhibit, just to help refresh your
19 recollection.

20 (Exhibit No. 2 marked for identification.)

21 Q. I have marked this as Exhibit 2. And what it is
22 is a DCI report, looks like Special Agent
23 Fassbender is the author of this one. And it
24 details a meeting with Mr. Avery on November 9
25 2005, and his arrest pursuant to an arrest

1 warrant?

2 A. Okay.

3 Q. Yeah, and then, you know, continues from there.

4 My -- The copy I have given you sort of helpfully
5 has what we call a Bates Stamp Number on the
6 bottom right corner, begins State?

7 A. Okay.

8 Q. And the first page is State 0536?

9 A. Yes, okay.

10 Q. If you go to State 0546?

11 A. Okay.

12 Q. At the top, what we have is -- and I think this
13 is Mr. Fassbender authoring the report, yes.

14 Yeah, the reporting law enforcement officer on
15 the front is Thomas Fassbender. And what he is
16 doing starts at the bottom of the preceding page.
17 He is describing here Investigator Wiegert and
18 himself informing Steven Avery about 12:47 in the
19 afternoon that they had an arrest warrant for
20 him.

21 A. Okay.

22 Q. And they are out at Earl Avery's house, which is
23 where they found Mr. Avery that -- Steven Avery
24 that day. And as I read it, what Investigator
25 Wiegert told Steven, that in arresting him he

1 would not place him in handcuffs if Steven was
2 cooperative and did not cause any problems. And
3 Steven advised that he would not cause any
4 problems. Do you see that at the top of
5 Page 0546?

6 A. Okay. Yes. I see that, yes.

7 Q. Now, people like me wish that law enforcement
8 officers would show that sort of humanity and
9 judgment more often, but in point of fact, this
10 is unusual to take someone into custody and not
11 handcuff them, isn't it?

12 A. They are given discretion of whether or not they
13 wish to handcuff individuals.

14 Q. Right. And in your experience, more often than
15 not that discretion is exercised in favor of
16 handcuffing someone who's just being arrested
17 pursuant to an arrest warrant, correct?

18 A. Well, again, it's done for several different
19 reasons; if they feel that individual needs to be
20 handcuffed, they will.

21 Q. Right.

22 A. If they wish to possibly gain that individual's
23 cooperation or gain rapport with that individual,
24 they may not.

25 Q. Sure. And that's where the discretion comes in?

1 A. That is correct.

2 Q. Or maybe someone is very aged, or has bad
3 arthritis, or whatever it is?

4 A. Yes, there's a number of things that would be
5 taken into consideration --

6 Q. Sure.

7 A. -- or could be.

8 Q. Someone, an arrestee, might be well known to the
9 officer and, you know, the officer figures he
10 knows this person's character well enough to make
11 that judgment call, correct?

12 A. Yes, that would be something that they could, but
13 again, the whole situation has to be weighed.

14 Q. Right. And -- And whatever the considerations
15 were, what we know here is that Investigator
16 Wiegert and Mr. Fassbender felt comfortable
17 coming down on the side of not handcuffing Steven
18 Avery when they arrested him on this case?

19 A. According to this report, yes.

20 Q. Transporting him in a car, correct?

21 A. Yes.

22 Q. That was a DCI car, right?

23 A. I don't know.

24 Q. I think it says that. I'm sorry, and it's
25 further down that page, the middle paragraph that

1 says at 12:50 p.m.?

2 A. Okay.

3 Q. So they're -- They are driving Mr. Avery off to
4 get his DNA taken?

5 A. Okay. Well, yes, okay, would have been
6 Mr. Fassbender's vehicle, yes.

7 Q. You are familiar with that car, aren't you?

8 A. Yes, I am.

9 Q. It's not a cage car?

10 A. No, it's not.

11 Q. You haven't heard anything about Mr. Avery taking
12 that opportunity, when freshly put under arrest,
13 to try to hurt Mr. Wiegert, or try to hurt
14 Mr. Fassbender, have you?

15 A. No, I have not.

16 Q. Do you think you would have heard that?

17 A. I'm sure I would have.

18 Q. Finally, Paragraph 5, I think I have heard about
19 this person, but I want to make sure that I'm
20 thinking of the same one you are.

21 A. Okay.

22 Q. There's a woman who holds herself out as a
23 pastor, or a minister, who comes to visit
24 Mr. Avery, correct?

25 A. That is correct.

1 Q. All right. And she has a pastoral assistant, or
2 an assistant minister, or someone with her often,
3 correct?

4 A. That is correct.

5 Q. Also a woman?

6 A. Yes.

7 Q. Have you met both these women?

8 A. Yes, I have.

9 Q. These two ministers?

10 A. Mm-hmm.

11 Q. Without insulting anyone, are these two women
12 both at least 70 years old if they are a day?

13 A. They would be elderly, yes.

14 Q. Okay. And I'm not suggesting you know exactly
15 how old they are?

16 A. That is correct, I do not.

17 Q. Elderly women who are apparently ministers by
18 vocation?

19 A. Yes, that's what I have been informed.

20 Q. And they also minister to, or have played some
21 pastoral role, apparently, with Jodi Stachowski?

22 A. Okay. I'm not aware if --

23 Q. Oh, okay. Maybe -- Then let me go at it this
24 way.

25 A. Okay.

1 Q. Was Jodi Stachowski the first -- the third person
2 in the car on this incident?

3 A. Yes.

4 Q. All right. So there's these two elderly female
5 ministers and Jodi Stachowski in the car?

6 A. Yes.

7 Q. And as I understand, the car comes up alongside,
8 or stops at the same red light or something as a
9 Sheriff's Department van or car in which
10 Mr. Avery was being taken to court?

11 A. Yes, in Manitowoc. But they had noticed that
12 this vehicle had been following them from the
13 City of Chilton.

14 Q. Probably going to the same court appearance
15 Mr. Avery was going to, right?

16 A. Yes.

17 Q. Okay. And the best way from Chilton to Manitowoc
18 is Highway 151?

19 A. That would be correct.

20 Q. And I'm not going to get into your routes of
21 travel, but in any event, Mr. Avery was going to
22 Manitowoc, from Chilton, for a court appearance?

23 A. That is correct.

24 Q. Okay. Did these three women wave to Mr. Avery,
25 or what exactly did they do when their car was

1 nearby?

2 A. I know they made contact, but again, I know that
3 the officers felt uncomfortable with this vehicle
4 following them and also felt very uncomfortable
5 when the vehicle pulled up beside them and they
6 realized who it was.

7 Q. All right. When you say contact, there was no
8 physical contact made?

9 A. No. Visual.

10 Q. Visual contact. Okay. So Mr. Avery is in the
11 Sheriff's car and the three women are in one of
12 their cars?

13 A. Right.

14 Q. All right. You are not aware of Mr. Avery saying
15 anything at all in your custody to try to arrange
16 this encounter, are you?

17 A. We haven't been able to determine how the
18 arrangement was made. All we were informed of is
19 that they waited for the vehicle to pass while
20 they were parked at the Kwik Trip in Chilton and
21 then proceeded to follow the vehicle from that
22 location to Manitowoc.

23 Q. All right. If there were arrangements, and if
24 Mr. Avery had been a party to them, you would
25 have a recording of that, wouldn't you?

1 A. I would hope so, yes.

2 Q. All right. And those have been listened to and
3 there's been no evidence that Mr. Avery was part
4 of any arrangements there may have been, right?

5 A. That I'm aware of, yes.

6 Q. Okay. Did Mr. Avery try to escape when he saw
7 these two elderly women and Jodi Stachowski in
8 the car?

9 A. No, he did not.

10 Q. Did he do anything inappropriate at all?

11 A. Not that I'm aware of.

12 Q. Do you think someone would have told you if he
13 had?

14 A. Yes.

15 Q. Did the two elderly ministers brandish weapons,
16 or try to run the car off the road, or do
17 anything overt?

18 A. No. No.

19 Q. Okay. Was just --

20 A. But we -- they were --

21 Q. A feeling of discomfort.

22 A. Yes. They were informed that we did not look
23 favorably upon that, and that it would not happen
24 again or action would be taken.

25 Q. And they were informed of that later, but not

1 much later, correct?

2 A. Not much later, no.

3 Q. Right.

4 A. It was within a day or so.

5 Q. Somebody spoke to the minister or the minister's
6 assistant, said huh-uh, that -- you are not going
7 to be coming up and waving at Mr. Avery, right?

8 A. Yes. Lieutenant Byrnes took care of that, yes.

9 Q. Okay. That didn't result in an arrest or
10 anything like that, just a warning?

11 A. A warning, yes.

12 Q. All right. Mr. Avery didn't have to be warned
13 about the incident because he didn't do anything,
14 right?

15 A. He was in custody and he was not warned, no. I
16 can't say that he wasn't told that we didn't
17 appreciate that. He may have, and I'm not aware
18 if he was.

19 Q. Oh, sure, I understand, but I mean, he didn't
20 take any action that required any sort of
21 discipline or warning of him?

22 A. That is correct.

23 Q. Um, do you understand -- Just so that we're on
24 the same page, you understand that nothing in my
25 motion is intended to have any impact at all on

1 your jail, correct?

2 A. That is correct.

3 Q. Or on transport of Mr. Avery anywhere?

4 A. That is correct.

5 Q. Okay. You understand that my motion is talking
6 only about things that happened in the courtroom?

7 A. Yeah, I understand that.

8 Q. Okay. Thank you.

9 ATTORNEY STRANG: That's all I have, your
10 Honor.

11 THE COURT: Mr. Kratz, do you have any
12 questions?

13 ATTORNEY KRATZ: Just two points of
14 clarification.

15 **CROSS-EXAMINATION**

16 BY ATTORNEY KRATZ:

17 Q. As I understand, Sheriff, you have brought
18 somebody with you here today who can describe in
19 better terms than you the use of the stun belt,
20 and if there's any questions of the Court as to
21 how that might, not only in theory but in
22 practice, work in this case?

23 A. That is correct. The deputy that I have brought
24 with me has been trained by the company in the
25 use of the stun belt. And he in turn is a

1 trainer of other -- other jailers at the Calumet
2 County Sheriff's Department.

3 Q. Lastly, for point of clarification, since I'm not
4 really asking questions to make a record, the
5 arrest on the 9th of November of Mr. Avery, was
6 that for what's called a status offense; that is,
7 having been a convicted felon who had possessed a
8 firearm, not an arrest for homicide or any
9 related charges; is that right?

10 A. That is accurate.

11 ATTORNEY KRATZ: That's all I've got,
12 Judge, thank you.

13 THE COURT: You may be seated.

14 THE WITNESS: Okay.

15 THE COURT: Mr. Strang, are there any other
16 witnesses you wish to question?

17 ATTORNEY STRANG: I don't need to question
18 anybody else. I will be happy to argue the point,
19 and I would move the admission of Exhibits 1 and 2.

20 THE COURT: Any objection to the exhibits?
21 Very well, they are admitted. Mr. Strang.

22 ATTORNEY STRANG: Well, first of all,
23 within the broad limits that the constitution or
24 state law may require, I'm fully in agreement with
25 the proposition that sheriffs should run jails and

1 sheriffs should have a good deal of latitude in
2 being responsible in deciding how to handle prisoner
3 or detainee movement.

4 The motion really goes no further than
5 proceedings in a court and, indeed, it's a little
6 bit narrower than that, proceedings in a
7 courtroom when the jury is present, or potential
8 jurors may be present. So I'm not asking this
9 Court to superintend security arrangements or the
10 handling of Mr. Avery or anyone else in custody,
11 beyond proceedings for which the Court itself,
12 not the sheriff, is directly responsible.

13 And I -- I have come to know a little
14 casually, a little bit, Sheriff Pagel, in the
15 last year, and have been impressed with his
16 thoughtfulness, and his candor, and the way he's
17 treated defense counsel.

18 That said, I don't think that the record
19 here rises anywhere near the level that would be
20 necessary to justify a stun belt or any similar
21 restraint being used, in this case, in a
22 courtroom in which jurors, or potential jurors,
23 are present. The Illinois Supreme Court's list
24 of considerations, I'm sure not intended to be
25 exhaustive, and not adopted at all by any

1 Wisconsin court so far as I know, nevertheless,
2 are pretty useful and cover a lot of things that
3 a court reasonably might consider here.

4 The seriousness of the present charge is
5 given. It's a serious charge. The defendant's
6 temperament and character, we have heard some
7 general stuff about, nothing that suggests any
8 specific risk in this case, or to any person in
9 this case. And the Court itself has had an
10 opportunity to observe Mr. Avery directly when he
11 is in court.

12 Now, since November, 2005, and we have
13 been here a number of times, and I'm certainly
14 aware of nothing menacing, or inappropriate, or
15 ill-behaved, that he's ever done in court. So I
16 think that's a positive factor here on balance,
17 or at very worst a neutral. The defendant's age
18 and physical characteristics, he is not
19 particularly young. He is not highly muscular,
20 or sculpted, or physically huge, someone who's a
21 great deal larger than the average law
22 enforcement officer, or the average human being
23 for that matter.

24 His past record, he has a past record.
25 It's less lengthy than many people the Court sees

1 parade through here, or sit at counsel table,
2 including many who are not restrained in a stun
3 belt. There's no record of past escapes or
4 attempted escapes by Mr. Avery. And, indeed,
5 Sheriff Pagel was candid enough to tell us that
6 since November 9, 2005, there doesn't seem to
7 have been any planning, or any effort by him
8 suggesting an intention to escape.

9 Any threats by the defendant to harm
10 others or create a disturbance, there's nothing
11 as to creating a disturbance. And the only
12 threats we have, it turns out now, I guess, were
13 made by the defendant's father, not by Steven
14 Avery, and his response was to laugh.

15 That's hard to gauge as between father
16 and son. We have all been -- or at least the men
17 in the room have been in the position of being a
18 son at some point in their lives. And for
19 myself, I know I have -- during his lifetime I
20 laughed at some of the things my father said
21 rather than get into an argument or a
22 confrontation.

23 So it's hard to put much weight on that
24 conversation, particularly where the threat, if
25 it, you know, if the threat it was meant to be,

1 as opposed to venting, or hyperbole, or just
2 inappropriate show of support and anger on behalf
3 of one's son. It's hard to put any real weight
4 on that, particularly where the question is not
5 whether Allen Avery should be in a stun belt, but
6 whether Steven Avery ought be in a stun belt.

7 We don't have any evidence of
8 self-destructive tendencies of the defendant.
9 There doesn't seem to be any risk of mob violence
10 or attempted revenge by others. And it's worth
11 noting here that the Halbach family and their
12 friends and supporters have been, at all times,
13 while I've been around, entirely well-mannered,
14 dignified.

15 Absolutely nothing coming from the
16 Halbach family that would suggest that they have
17 any intention, other than respecting the dignity
18 of the Court, respecting the human dignity of the
19 people in the courtroom, Mr. Avery included, and
20 conducting themselves honorably as they have
21 every minute they have been here, in these
22 proceedings. And I would extend that to anybody
23 I have seen sitting on their side of the
24 courtroom, so to speak, whether those are
25 friends, or friends of Teresa's, more distant

1 relatives.

2 I don't know who they are, but I haven't
3 seen anybody in this courtroom, on either side,
4 honestly, who has caused any problem, or behaved
5 inappropriately in any way that I know. And I
6 have been in past murder prosecutions and I'm, as
7 this Court probably is aware, when that kind of
8 tension is in the air, it just hasn't been here
9 in this case.

10 There's nothing to suggest a possibility
11 of rescue attempts by other offenders still at
12 large. The only person the State contends to be
13 another offender is himself in custody. The
14 State has been pretty clear that at least as to
15 third party actors, there's one and one only that
16 they think there even would be appropriate
17 evidence about, and as I say, he is in -- he is
18 in custody.

19 I understand, I'm putting myself in the
20 shoes of a law enforcement officer, I can
21 understand why one might be uncomfortable about a
22 car appearing to follow on the way to court. And
23 in pulling alongside at the red light, or
24 whatever it was.

25 But, you know, the reality is here, this

1 turns out to be the right Reverend Granny
2 Clampett, and her septuagenarian sidekick, and
3 Mr. Avery's girlfriend. And nobody does
4 anything, apparently, other than wave or look at
5 Mr. Avery, and he does nothing at all.

6 So, again, even if this were a showing
7 sufficient to put Granny Clampett in the stun
8 belt, it doesn't warrant putting Steven Avery in
9 one. And it's worth noting there that, you know,
10 Mr. Avery's every word is listened to. And as
11 the Court knows from a prior motion, he is not
12 having contact visits with either of these two
13 ministers. These are through the glass and they
14 are tape recorded. So the Calumet County
15 Sheriff's Department or some investigator on this
16 case would know if Mr. Avery had participated in
17 some planning for this, you know, car incident on
18 the way to court.

19 Size and mood of the audience, again, I
20 already covered. It doesn't suggest restraining
21 Mr. Avery. The nature and physical security of
22 the courtroom is actually very good in Calumet
23 County. The jail is right down the secured
24 hallway. I expect there will be deputies in the
25 courtroom. Spectators are going through a

1 magnetometer, so no one is going to pass a weapon
2 to Mr. Avery, or use a weapon against him, not
3 that a stun belt on him would help allay that
4 concern in any event.

5 So I think, in the end, the adequacy and
6 availability of the usual alternate remedies,
7 which is to have bailiffs, and we have two case
8 agents here rather than just one, both of whom I
9 expect may well be armed during this trial,
10 really more than suffices here.

11 And without going into the gruesome
12 details of the cases, I include enough in my
13 motion to make clear, I think, that what we're
14 talking about with an 8 second, 50,000-volt jolt
15 to the kidneys is electrocuting someone. It's
16 not intended to be lethal, but similar devices
17 have been.

18 The law review I cited collects some of
19 that information. And it is almost common sense
20 to understand that cardiac arrhythmia or other
21 problems could be caused by this. People
22 defecate involuntarily, not infrequently, when
23 these things are activated. They urinate on
24 themselves involuntarily. And they are
25 incapacitated, not just for the time of the jolt,

1 but for a long time after.

2 You have a mistrial is what happens, I
3 think, when these things go off, or at least you
4 have a serious mistrial issue, which the Ohio
5 Supreme Court had to deal with, and ultimately
6 affirmed the trial court's decision not to grant
7 a mistrial, but it was -- it was a serious issue.

8 And the manufacturer of the react device
9 at least advertises it as something that gives
10 law enforcement total psychological control over
11 the person wearing the belt. Well, when he is on
12 trial, facing life in prison, and trying to
13 decide whether to testify, trying to assist
14 counsel, trying to confront, in the
15 constitutional sense, the witnesses against him,
16 an accused has the right not to be under the
17 total psychological control of his adversaries,
18 and sitting their fearing that if he says
19 something wrong, or does something that a
20 sheriff's deputy doesn't like, or just by
21 accident, since accidental activation of these
22 devices are well reported in the cases, that this
23 device will go off and incapacitate him.

24 So we're talking about a very serious
25 device here and something that is intended and

1 only can be expected to have a very strong
2 psychological impact on the person wearing them.
3 Has a psychological impact on me wondering
4 whether, if I happen to have my arm around him
5 when this thing goes off whether I, too, will be
6 knocked to the floor and lose control of my
7 bowels.

8 I just don't think there's a record here
9 that warrants it in a courtroom. And a courtroom
10 is the only thing we're talking about.

11 THE COURT: All right. Anything from the
12 State?

13 ATTORNEY KRATZ: Very briefly, Judge,
14 Mr. Pagel reminds me that the kind of belt that
15 Mr. Strang is alluding to is not the kind used by
16 the Calumet County Sheriff's Department and can be
17 inquired further should the Court need to do that.

18 I would ask the Court take judicial
19 notice not only of Mr. Avery's criminal history,
20 but the pleadings in this case, including our
21 other acts motion, would note that not all
22 factors that Mr. Strang has alluded to are of
23 equal importance when considering this security
24 issue. Obviously, the seriousness of the
25 offense, the facts alleged in the Complaint, his

1 history of violence, all, the State believes, are
2 more important than whether a 70 year old woman
3 waved at Mr. Avery at some point in the past.

4 And, finally, would point the Court to
5 the appellate decision of **State vs. Russ**,
6 R-u-s-s, decided in 2005. And I know that's a
7 shackle case not a stun belt case, but does, when
8 at least complaining about some due process
9 violations, place upon the defense a burden -- a
10 burden of proof that there be some actual
11 prevention of communicating with their clients in
12 order to establish that there's been some
13 deprivation on a constitutional or due process
14 level. That's all the comments I have. And once
15 again, Judge, we'll defer to the Court as to the
16 court security issue. Thank you.

17 ATTORNEY STRANG: And I certainly have no
18 objection to the Court taking judicial notice of the
19 files in this case, or for that matter, of
20 Mr. Avery's prior record.

21 THE COURT: All right. I'm going to take a
22 minute -- I'm not going to take it today -- but I'm
23 going to go back and look at the other acts motion.
24 It's been a while since I looked at that, and I will
25 give the parties a decision next week.

1 I think that wraps up our agenda for
2 today, does it not, counsel?

3 ATTORNEY FALLON: If it does, I did want to
4 clarify one point. I'm sitting here thinking, and I
5 don't remember how the final answer came out in our
6 discussion with Mr. Buting on the bones. And I
7 don't know if he's going to prepare an order or not,
8 but just so it's clear that any opinions regarding
9 what's human or what's not human, or whatever, the
10 only opinion on that is going to come from
11 Dr. Eisenberg. And that the only thing that the FBI
12 mitochondrial report says, that we weren't able to
13 determine any mitochondrial identification as that
14 may pertain to the issue of human or non-human, or
15 animal, or what have you.

16 So, I mean, those are the only two
17 entities that could offer any evidence,
18 vis-a-vis, that particular question or issue.
19 And so it's whatever the reports say. I mean --
20 So I just wanted to be sure. I can't remember
21 how we left it, but I didn't want to leave
22 anybody with a misunderstanding of what may or
23 may not come down the road, it's all in
24 Dr. Eisenberg's report.

25 THE COURT: That's my understanding or my

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recollection, Mr. Buting; does that square with yours?

ATTORNEY BUTING: Yes.

THE COURT: All right. We're adjourned for today. Mr. Kratz.

ATTORNEY KRATZ: What time did you want us here on Monday, I had forgotten?

THE COURT: We're going to start at 8:30. So try and get here around 8:20. We'll start with bringing a juror in at 8:30.

ATTORNEY STRANG: Where is here?

THE COURT: Here is going to be this courtroom. We're adjourned for today.

ATTORNEY KRATZ: Thank you, your Honor.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
)ss
2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 19th day of February, 2007.

Diane Tesheneck, RPR
Official Court Reporter

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINIFF, JURY TRIAL
5 vs. VOIR DIRE - DAY 1
Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8
9 **DATE:** FEBRUARY 5, 2007

10 **BEFORE:** Hon. Patrick L. Willis
Circuit Court Judge

11 **APPEARANCES :**

12 KENNETH R. KRATZ
13 Special Prosecutor
On behalf of the State of Wisconsin.

14 THOMAS J. FALLON
15 Special Prosecutor
On behalf of the State of Wisconsin.

16 DEAN A. STRANG
17 Attorney at Law
On behalf of the Defendant.

18 JEROME F. BUTING
19 Attorney at Law
On behalf of the Defendant.

20 STEVEN A. AVERY
21 Defendant
Appeared in person.

22
23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery. It's Case No.
3 05 CF 381. This proceeding is scheduled this
4 morning for the beginning of individual voir dire of
5 the jury panel members. Will the parties state
6 their appearances for the record, please.

7 ATTORNEY KRATZ: State appears by Calumet
8 County District Attorney Ken Kratz and Assistant
9 Attorney General Tom Fallon, both appearing as
10 Special Prosecutors.

11 ATTORNEY BUTING: Buting and Williams by
12 Attorney Jerome Buting appearing on behalf of
13 Mr. Avery, who's present. Also Dean Strang.

14 THE COURT: Very well, I will note at the
15 outset that no members of the jury panel are present
16 in the courtroom at this time. The jurors are
17 present -- or the jurors who will be questioned this
18 morning are present and assembled in the jury room.

19 They will be brought into the courtroom
20 one by one for individual voir dire. I would
21 also note, before we commence individual voir
22 dire, that the parties in this case have agreed
23 to a jury selection process in which the
24 questions normally asked by the Court on general
25 voir dire have been, in large part, replaced by a

1 lengthy jury questionnaire completed by the
2 members of the jury panel last week.

3 The Court in that questionnaire
4 incorporated many, though not all, of the
5 questions proposed by the parties for inclusion
6 in the questionnaire. To assure that adequate
7 instructions concerning the questions on the
8 questionnaire were given to the jurors and that
9 all questionnaires were completed, the
10 administration of the questionnaires took place
11 in the courtroom last week.

12 The Court was not actually in session
13 while the questionnaires themselves were being
14 completed. However, the Court was in session to
15 give the jurors instructions before the
16 questionnaires were completed. At this time I
17 wish to confirm on the record that that process
18 is acceptable to both of the parties in this
19 case. Mr. Fallon.

20 ATTORNEY FALLON: Yes, your Honor, that is
21 acceptable. I don't know if this is the point but
22 we did have some questions regarding the time
23 limits, but other than that that process seems fine.

24 THE COURT: Very well. Mr. Buting or
25 Mr. Strang.

1 ATTORNEY STRANG: As I recall the part of
2 this process that was acceptable to the defense is
3 the special jury questionnaire substituting for the
4 Court's general voir dire questions. We were not
5 happy with the lawyer's part of general voir dire
6 being eliminated entirely by the questionnaire
7 process.

8 But we have no objection to the manner
9 in which the administration of the questionnaire
10 was handled, the distribution of it and the
11 jurors filling it out, outside of Mr. Avery's
12 presence or counsel's presence. And we too will
13 have the same objections to the Court's proposed
14 limit on individual voir dire.

15 THE COURT: I understand you may have been
16 unhappy, but I didn't understand that there was an
17 objection made to the process as it's gone thus far.

18 ATTORNEY STRANG: I don't know that we have
19 ever been on the record about this, have we? And I
20 don't mean to be saying anything different.

21 THE COURT: I don't know if we have been on
22 the record of it, I know it's been discussed. I was
23 not under the impression that either party was going
24 to make an objection to the procedure as it's gone
25 this far. Although, I did understand that the

1 parties both were concerned about any time limits
2 that the Court placed on individual voir dire
3 questions.

4 ATTORNEY STRANG: Okay.

5 THE COURT: And I also understand that the
6 party -- each of the parties, as I mentioned
7 earlier, submitted questions that the Court did not
8 include on the questionnaire, which I assume the
9 parties, if they wish, will follow up on in
10 individual voir dire.

11 ATTORNEY STRANG: Right. And again, I
12 don't mean to be saying anything different than we
13 have discussed off the record. I don't have any
14 objection to the procedure as the Court just
15 described it. I do think I recall saying, and I
16 thought Mr. Fallon was of the same mind, we were
17 concerned about the lawyers not having any
18 general -- or maybe it was Mr. Gahn who joined in on
19 this -- any opportunity to address the panel as a
20 whole. And that's all I meant to be saying just a
21 moment ago.

22 But I have no objection, again, to the
23 Court's portion of general voir dire having been
24 committed to the questionnaire and I understand
25 that the Court used some of our questions and not

1 others of our questions and I'm not objecting to
2 that. So, if there's been some miscommunication,
3 I don't mean to be saying anything different than
4 I have said off the record.

5 THE COURT: Well, I think it's important to
6 know for the record whether or not there's any
7 objections to the jury selection procedures that's
8 taken place thus far. I thought, actually, the
9 parties submitted written correspondence agreeing to
10 this, but I don't have it committed to memory.

11 ATTORNEY STRANG: And I don't, you know, so
12 much of this has been done off the record, I don't
13 have all of it committed to memory either. As a
14 practical matter, provided we get adequate time for
15 individual voir dire of jurors, there's not going to
16 be any great harm to Mr. Avery in not having had an
17 opportunity to talk to the panel as a whole.

18 And I understand that voir dire is a
19 process committed largely to the Court's
20 discretion. So, I mean, I'm just trying to make
21 a record of what I thought some months of
22 conversations were. And I will stand corrected
23 if it's my memory that has failed or I have not
24 understood clearly.

25 THE COURT: All right. Well, the Court has

1 been on the record, at least before the
2 administration of the questionnaires, with the
3 explanation of the procedure at that time. I'm not
4 sure if the defendant is making an objection at this
5 time to the use of the questionnaires to replace
6 general voir dire or not, but at least I certainly,
7 until this time, did not understand that there was
8 an objection to any portion of the jury selection
9 procedures to this point. Though I do understand
10 that the -- both parties wish to be heard today on
11 the limit that the Court has set for individual voir
12 dire; that is, I wanted to limit each party to 15
13 minutes of individual voir dire with respect to each
14 individual juror.

15 As I have indicated to the parties
16 earlier, the parties can request additional time
17 if they feel it's necessary, depending on the
18 answers given by any of the individual jurors to
19 questions that are asked on individual voir dire.
20 However, I would note that the information on the
21 questionnaires themselves is far in excess of the
22 information which is normally gleaned from
23 general voir dire proceedings.

24 Because of the size of the panel in this
25 case, I question the efficacy of the normal

1 process of general voir dire where you ask jurors
2 to raise their hands. Not only that, in many
3 cases, when jurors don't raise their hands, the
4 Court doesn't know if they are just thinking
5 about an answer or, because of social pressure,
6 don't want to be the only ones to raise their
7 hands, whereas when we give them a jury
8 questionnaire, they have to answer every
9 question.

10 So I did feel in this case that the use
11 of an extensive questionnaire was the most
12 effective way to glean the information that the
13 Court would normally glean in the course of
14 general voir dire. And at least to this point, I
15 haven't understood that either party objected to
16 that procedure.

17 ATTORNEY STRANG: Why don't I take a moment
18 with counsel for the State, off the record, just to
19 see whether I'm the outlier in terms of, you know,
20 my recollection.

21 THE COURT: All right. We'll take a short
22 break, go off the record.

23 (Brief recess taken.)

24 THE COURT: All right. We're back on the
25 record.

1 ATTORNEY STRANG: That was helpful, thank
2 you for the indulgence, your Honor. With
3 Mr. Fallon's help, I remember now two conversations
4 bearing on this, one of which I can place as
5 happening in the jury room, off the record, and the
6 other I can't place at all; although, Mr. Fallon
7 specifically recalls it being one of our Friday
8 afternoon off the record telephonic conferences in
9 which he raised a concern about normally a
10 supplemental jury questionnaire is exactly that, it
11 supplements general voir dire, and I joined that
12 concern.

13 And then in the jury room, I think it
14 was Mr. Gahn who inquired of the Court, oh, does
15 this mean we are not going to have a chance to
16 talk to the panel as a group and to get some
17 interaction how one reacts to another's answer or
18 experience. And I chimed in on that or I may --
19 I don't know if I started that conversation or
20 Mr. Gahn chimed in, but he and I, I think, both
21 spoke.

22 And that led to a further discussion
23 apparently about individual voir dire perhaps
24 being a good solution to avoid losing a large
25 panel if there was an inadvertent answer by one

1 juror that would have presented a problem for the
2 whole panel. And I think at that point some
3 consensus developed that we could pursue the
4 individual voir dire route and maybe accomplish
5 most of what we need to. This was before the
6 Court had suggested a 10 or 15 minute time limit
7 per side on individual voir dire.

8 So I think the issues get linked. I
9 mean, we're in a discretionary area where, you
10 know, the Court has the discretion to deny the
11 lawyers questioning on general voir dire of the
12 whole panel, and to implement an individual voir
13 dire procedure. But that procedure will have to
14 be sufficient in the end to allow the parties two
15 opportunities, one, to ascertain if there is a
16 basis to move to strike a juror for cause;
17 objective bias, subjective bias, or some other
18 cause.

19 And two, to allow the parties to
20 exercise their peremptory strikes intelligently.
21 And certainly, as to the accused at least, that's
22 a right with constitutional footing under both
23 Wisconsin and the federal constitutions,
24 Article 1, Section 7 and 8 of the Wisconsin
25 Constitution and the Fourteenth Amendment of the

1 United States Constitution.

2 So the two issues do become linked.
3 There isn't any harm to Mr. Avery in the loss of
4 general voir dire by the lawyers, provided that
5 individual voir dire adequately makes up for the
6 loss of general and allows those two critical
7 purposes of voir dire to be accomplished in the
8 end.

9 THE COURT: So does -- Do I take that to
10 mean that the defendant has no objections to the
11 conduct of the voir dire procedure to this point,
12 but the defendant still is concerned about the
13 length of time the Court is allowing for individual
14 voir dire and may object if the defense doesn't feel
15 that time is enough?

16 ATTORNEY STRANG: Yes.

17 THE COURT: Okay. Anything else from
18 either of the parties on the voir dire procedure as
19 it's been conducted to date?

20 ATTORNEY FALLON: Other than previously
21 discussed, no.

22 THE COURT: All right. Now, do any
23 party -- either of the parties wish to make comment
24 at this time about the Court's proposed procedure
25 from this point forward? And just to reiterate for

1 the record, as we discussed scheduling in this
2 matter in the past, I indicated that because of
3 the -- well, the need both to get sufficient
4 information on voir dire to allow the parties to
5 intelligently exercise their peremptory strikes and
6 evaluate the jury panel, on the one hand, and on the
7 other hand, to have voir dire conducted within a
8 reasonable period of time, I did indicate to the
9 parties previously that I thought that 15 minutes
10 per juror on voir dire, from each party, that 15
11 minutes worth of questions on individual voir dire
12 for each party should be sufficient to enable each
13 of the parties to consider the information gleaned
14 on individual voir dire, in addition to the
15 information on the jury questionnaires, to
16 intelligently evaluate the jurors for their
17 objectivity.

18 As counsel has indicated in their
19 comments, I believe both parties have concerns
20 they wish to place on the record with respect to
21 that ruling. Mr. Fallon, I will hear from you
22 first.

23 ATTORNEY FALLON: Thank you, your Honor.
24 The State would take issue with a 15 minute time
25 limit with respect to questioning the individual

1 jurors. We realize it's been the Court's
2 prerogative to determine the procedure and the
3 manner in which jury selection is conducted. But
4 when the State submitted it's proposed supplemental
5 jury questionnaire on December 1st, the State was
6 still, I believe, laboring under the impression
7 that, first of all, that it would be a supplement to
8 the general juror questionnaire which every juror
9 fills out and is in abbreviated form.

10 I think we were unsure as to how much
11 general voir dire, if any, would occur in the
12 case. I agree with counsel's rendition, we did
13 have a conference in chambers, I think it was in
14 November, where this issue was brought up. And
15 at that time there was a discussion regarding
16 general voir dire, as counsel represented. And I
17 think it might have been myself who said, well,
18 there are some advantages to an individual voir
19 dire to lessen the likelihood of any
20 contamination of the panel as a whole by
21 responses obtained from certain members,
22 especially on questions regarding subjective
23 bias.

24 And I think the parties at that time
25 were under the impression, and that I think

1 argument carried the day, but at that time there
2 was no time limit, we were not laboring under the
3 impression that there would be any time limit to
4 the individual voir dire.

5 My second comment is that when the State
6 submitted it's questionnaire on December 1st and
7 then did not hear any significant objection from
8 the defense or the Court, the State was under the
9 impression that just about all the questions in
10 its questionnaire would be asked or be part of
11 the general questionnaire here. And not having
12 any communications or any objections from the
13 Court, or even concerns expressed by the Court,
14 and no objections from the defense, we were under
15 the impression that those questions would be
16 asked.

17 And that, again, would I think have
18 expedited, at least from the State's perspective,
19 the follow-up time on individual voir dire.
20 After all, that's the purpose of voir dire after
21 the use of a supplemental juror questionnaire, is
22 to follow up on the answers. And since several
23 questions were omitted, I may very well have 10
24 to -- well, depending on the juror -- 5 to 12
25 minutes per juror just asking the questions that

1 were not included. And then I may have anywhere
2 from no questions to five or six or seven
3 questions to follow up on the answers which are
4 included.

5 So, from that perspective, I am
6 concerned that a time limit of 15 minutes per
7 juror would be inadequate for us to flush out the
8 potential of subjective or objective bias. I
9 would state for the record, in my review, that I
10 don't see any issues of statutory bias
11 confronting us.

12 But in terms of subjective bias and of
13 seven or eight possible objective bias cases, it
14 seems to me that the 15 minute time limit seems
15 unreasonable, in all fairness to the Court, and
16 doesn't provide an ample opportunity to explore
17 those two issues. So as a result of which, we
18 would ask leave of the Court to be relieved from
19 15 minutes.

20 Now, having said that, I fully
21 acknowledge that there are several jurors here
22 that I may have very few questions for, other
23 than the ones I originally submitted in the jury
24 questionnaire, which were not included. In which
25 case, 15 minutes may very well do the trick.

1 There may be others that will take longer.

2 So, from the State's perspective, we
3 would ask the Court be a little more patient with
4 the parties. It's not like I foresee an hour per
5 juror here like that. It's nothing -- I don't
6 see that happening in the case, but it just seems
7 to me that 15 minutes would not allow us adequate
8 time to explore these potential bias issues. So
9 we would ask the Court's indulgence to be more
10 patient with the parties and provide a little
11 more time to explore those issues. Thank you.

12 THE COURT: Mr. Strang.

13 ATTORNEY STRANG: Thank you, your Honor.
14 Perhaps for the first time in this case, and I hope
15 not for the last, I find myself entirely in
16 agreement with Mr. Fallon's comments. All of it, I
17 adopt it. And that's the defense position as well.
18 I will amplify, to this extent, that I expect too
19 that there may be some jurors as to which a 15
20 minute block of time would be adequate for the
21 defense table to conduct individual voir dire, just
22 as he is guessing that perhaps there are some for
23 which 15 minutes would suffice for the State's
24 questions.

25 But it won't come as any surprise to the

1 Court that it also seems to me probable that when
2 the State has fewer than 15 minutes of
3 questioning, we may well have more for any given
4 juror, and vice versa. So I think the time
5 limits are not sufficient to permit at least -- I
6 will speak only for Mr. Avery here -- both to
7 ascertain accurately any -- any reason to strike
8 the juror for cause and intelligently to exercise
9 his peremptory strikes, which you are limited to
10 seven.

11 They are not -- Wisconsin doesn't
12 sprinkle peremptory strikes generously, even in
13 the most serious felony cases. So these have to
14 be used wisely. And I don't think that the time
15 limits the Court proposes will allow that as to
16 either of those two essential aspects of voir
17 dire.

18 THE COURT: All right. I'm going to, at
19 this point, use the 15 minutes as a guide. I'm not
20 going to gong the attorneys if they get past that
21 point and I will monitor it. Obviously, since we
22 haven't had individual voir dire with any juror yet,
23 the Court cannot determine for certain whether or
24 not 15 minutes is sufficient for the parties.

25 I would like to confirm before we start,

1 for the record, that both of the parties were
2 given access to all the juror questionnaires that
3 were completed by the jury panel last week and
4 the parties have provided to the Court the
5 identification of a number of jurors that they
6 jointly are recommending be excused for cause.

7 The Court has not formally ruled on
8 those requests at this time but I have used the
9 parties recommendations in establishing the order
10 in which jurors are called in for individual
11 questioning this morning; that is, passing over
12 the jurors that the parties indicate they are
13 individually recommending be stricken for cause.
14 So that will affect the order in which the jurors
15 are called in today.

16 The Court will make further rulings on
17 the motions of the parties at a later time unless
18 either party has any objection.

19 ATTORNEY STRANG: No, and I certainly can
20 confirm that the juror questionnaires were copied
21 timely and completely by the Clerk's Office. And we
22 had those late Monday afternoon, January 29, just as
23 promised.

24 THE COURT: Anything else from the State?

25 ATTORNEY FALLON: Nothing else, your Honor.

1 ATTORNEY STRANG: Should we -- Should we
2 note the sequence numbers of the jurors who were
3 joint recommendation for excuse for cause.

4 THE COURT: I think that would be
5 appropriate on the record. Actually, I have the
6 email in front of me so I can read it at this time.
7 To save time I will just use the numbers rather than
8 the names. It's jurors numbered, 1, 2, 9, 15, 16,
9 22, 29, 31, 40, 42, 43, 46, 48, 58, 62, 64, 80, 83,
10 84, 85, 88, 92, 94, 95, 99, 104, 108, 112, 116, 117,
11 124, 130, 141, 142, and 143. And I think the
12 parties notified the Court before we began today
13 that they would indicate the general reasons for the
14 joint recommendations. Mr. Fallon, were you going
15 to address that?

16 ATTORNEY FALLON: Yes, your Honor. Counsel
17 and I, Mr. Strang and I, conversed by telephone late
18 Thursday afternoon, after our initial review of the
19 proposed panels. It basically comes down to this,
20 the vast majority of those excused are excused for
21 cause based on our assessment of subjective bias
22 under the statute.

23 There were other jurors excused for
24 economic hardship reasons, primarily they were
25 the sole breadwinners in their home and the

1 potential of six weeks without adequate income
2 would be an unfair hardship upon them.

3 And, finally, there was a smaller group
4 of individuals who were excused for cause based
5 on either physical or mental health reasons.

6 And a fourth group included those who
7 were a mix of subjective bias and either mental
8 health or economic hardship.

9 Those are the ones that we have agreed
10 to on Thursday evening. There probably will be a
11 few more during the course of the day as both
12 counsel have reviewed the case law regarding
13 objective and subjective bias. So there may be a
14 few more sprinkled throughout the day that we
15 would come to agreement upon, but that's the
16 status as of now.

17 THE COURT: Thank you. Mr. Strang.

18 ATTORNEY STRANG: The Court read the list
19 of sequence numbers of excused jurors correctly.
20 And, again, I agree with Mr. Fallon's comments. The
21 Court certainly is welcome to include the email,
22 from which it just read, in the record.

23 And the format of that was that
24 Mr. Fallon and I agreed, after our Thursday
25 afternoon telephone call, that I would draft the

1 proposed email to your Honor, but send it only to
2 Mr. Fallon. He would look at it to make sure
3 that I hadn't loused it up. And if he was
4 satisfied that I had done it correctly, he simply
5 would forward it to the Court. And that's what
6 he did the following morning, Friday, February 2.

7 THE COURT: All right. I will print a
8 clean copy of the email for the record since I
9 marked up the one I had. Is there anything else
10 either party wishes to address before we bring in
11 the first juror?

12 ATTORNEY STRANG: One thing that I wish to
13 address, came up in chambers just this morning.
14 Greg Conway of the Green Bay law firm of Liebmann,
15 Conway, Olejniczak, & Jerry wrote to the Court by
16 fax on Friday, copied me, but I haven't seen that
17 yet because I haven't been in my office, I moved up
18 to this neck of the woods, concerning two WFRV
19 reporters and a letter they each received from --
20 bearing my signature stamp. And the short of it is
21 is that Mr. Conway is exactly right. When I had my
22 secretary send out a merged letter to all of the
23 people on the defense witness list, I didn't
24 distinguish those very few who, in fact, were
25 excepted from the exclusion order that the Court

1 entered.

2 And both Angenette Levy and Olga
3 Halaburda, and for that matter, every other
4 member of the media are excepted from,
5 e-x-c-e-p-t-e-d, the exclusion. And they are
6 free to sit in and watch the trial proceedings.
7 And the mistake was simply that I sent the same
8 letter to all defense witnesses in fact, you
9 know, again, it was just my signature stamp and
10 then it enclosed a copy of the Court's exclusion
11 order. So the mistake is mine. And members of
12 the media are not excluded or otherwise covered
13 by the sequestration order.

14 THE COURT: Very well. Anything else?

15 ATTORNEY FALLON: We would agree with that.
16 We don't have any problem with exempting them from
17 the order.

18 THE COURT: All right. At this time we'll
19 have the first juror brought in. That will be
20 Daniel Slaby, Juror No. 3. Mr. Slaby, before we
21 begin, the Clerk will administer an oath to you.

22 THE CLERK: If you would please stand and
23 raise your right hand.

24 (Juror sworn.)

25 THE CLERK: Please be seated.

1 THE COURT: Mr. Slaby, like all the other
2 members of the jury panel, you have already
3 completed a jury questionnaire in this case. The
4 next step in voir dire proceedings is to give the
5 opportunities for the -- to give the opportunity to
6 the attorneys for the parties to ask you some
7 additional questions in order to make sure that you
8 can be a fair and impartial juror.

9 There are a couple of other pieces of
10 information I wanted to pass on to you. Although
11 I did not indicate it last week, while the trial
12 in this case is expected to last approximately
13 six weeks, the jurors will not be sequestered.
14 That means the jurors will be permitted to return
15 home after court proceedings every day.

16 This decision is made possible by an
17 assurance that the jurors will not read any news
18 media accounts of the trial or talk to anyone
19 else about it during the trial. So that will
20 remain very important should you be selected as a
21 juror.

22 I also wanted you to know that although
23 these proceedings are open, no cameras are
24 permitted in the courtroom during voir dire
25 proceedings. And the news media is not allowed

1 to identify individual jurors by name in news
2 reports. And in addition, jurors who are
3 selected to serve in the trial will not be on
4 camera during the trial itself.

5 If you are not stricken for cause
6 following the proceedings this morning, you will
7 receive further written instructions as to when
8 to return to court. With that background,
9 Mr. Fallon, you may begin your voir dire.

10 **VOIR DIRE EXAMINATION**

11 BY ATTORNEY FALLON:

12 Q. Good morning, Mr. Slaby.

13 A. Good morning.

14 Q. I just have a few questions for you. Hopefully
15 they will be easy enough for you. We're not
16 looking to embarrass anyone. We're just looking
17 for some information to help us in selecting a
18 jury.

19 So, first of all, do you have any close
20 friends or relatives who work in the media
21 business; newspapers, television, radio internet?

22 A. No, I don't.

23 Q. You do not, okay. Are you an individual when you
24 see a news story or you find something
25 interesting in the news, do you use other sources

1 to investigate the information behind the story,
2 like for instance some people go to libraries and
3 check out books and read up on things, or
4 magazines. Today the most common item is the
5 internet. Do you have a tendency to search out
6 for the story behind the story as it were?

7 A. No, not usually.

8 Q. Okay. There's a possibility in this particular
9 case that there may be some testimony from a
10 co-defendant. Do you have any opinions as to the
11 appropriateness of someone who's accused of a
12 crime testifying against the other co-defendant
13 in a case?

14 A. No.

15 Q. In your day-to-day affairs, talking with people,
16 in your work, or even in your personal
17 relationships, if you find that someone has
18 not -- has not been correct in providing you some
19 information, in so far as it's inconsistent with
20 something they previously said to you or is
21 inconsistent with something that someone else
22 said, do you have a tendency to disregard that
23 opinion on its face or do you look further?

24 A. Probably just disregard.

25 Q. All right. And so, if you have a tendency to

1 disregard, would you disregard everything that
2 person told you or just that particular opinion
3 or viewpoint?

4 A. Probably depends on the person.

5 Q. All right. And what are some of the things that
6 you would look at in determining -- in making
7 that determination?

8 A. I don't really -- I don't know what you're
9 asking.

10 Q. Okay. Well, if -- What do you do for a living
11 again?

12 A. I'm a maintenance worker.

13 Q. All right. And if there's a snafu at the job,
14 say one of your workers didn't conduct or perform
15 a task up to appropriate standards, and they had
16 told you that they did, and someone else, or a
17 few from your own knowledge, realized that they
18 had not, do you have a tendency to disregard
19 everything that person tells you, or everything
20 they do, or do you look at other factors in
21 determining that person's credibility?

22 A. Probably just disregard.

23 Q. Okay. Have you or anyone close to you ever been
24 in charge of writing any safety guideline for
25 setting up or enforcing safety standards in your

1 work?

2 A. No.

3 Q. Okay. In your line of work or in any previous
4 job, have you ever been required to conduct any
5 internal investigations or follow up on any
6 behavior or activities of fellow employees?

7 A. No.

8 Q. Okay. How long have you been a resident of
9 Manitowoc County?

10 A. My whole life.

11 Q. All right. In general, how would you rate the
12 job that the Sheriff's Department is doing in
13 dealing with crime as well as the public at
14 large; would you say they are doing an excellent
15 job, a good job, a fair job, or a lousy job?

16 A. I would say fair, fair job.

17 Q. Okay. And what causes you to say they have been
18 doing a fair job?

19 A. I have nothing to suggest that they are doing a
20 poor job.

21 Q. All right. You are just a tough grader?

22 A. Just -- I don't really have a positive or a
23 negative opinion on it.

24 Q. Okay. In terms of your general impression, when
25 a police officer testifies in court, in your mind

1 how likely is it that he or she would lie under
2 oath; very likely, somewhat likely, not very
3 likely or not very likely at all?

4 A. Not very likely.

5 Q. Okay. And why would you say that?

6 A. Just that he is under oath and probably doing his
7 or her job.

8 Q. Okay. In your mind, how likely is it that a law
9 enforcement agency would conspire to convict an
10 innocent person; very likely, somewhat likely,
11 not very likely, not at all likely?

12 A. Not very likely.

13 Q. And why would you say that?

14 A. I really don't know what they would gain from it.

15 Q. Okay. In your mind, how likely is it that a law
16 enforcement agency would plant or tamper with
17 evidence to secure an arrest and/or a conviction;
18 very likely, somewhat likely, not very likely,
19 not at all likely.

20 A. Not very likely.

21 Q. Okay. Again, any particular reason why you have
22 that general opinion?

23 A. Same reason.

24 Q. All right. In your job as a maintenance
25 professional, do you use industrial solvents or

1 cleaning products such as bleach and things of
2 that sort to help you perform your job?

3 A. Very few. Very few chemicals.

4 Q. Okay. What kind of work, maintenance work,
5 exactly do you do?

6 A. Well, we -- building maintenance, plant
7 maintenance. We do some cleaning. Just a wide
8 variety. Something different every day.

9 Q. Okay. So you don't actually -- actually have to
10 do real cleaning or anything. You are kind of
11 the handy man fixer up?

12 A. Right.

13 Q. Okay. All right. I notice you brought a couple
14 of books in; do you like to read?

15 A. I usually don't have time to read.

16 Q. In your spare time, do you like to work on
17 puzzles or do you just hate doing puzzles?

18 A. I'm not a puzzle person. Not a puzzle person.

19 Q. Okay. Generally, what kind of books do you like
20 to read?

21 A. Outdoor adventure maybe.

22 Q. Okay. Have you ever seen the movie, "A Thin Blue
23 Line"?

24 A. No, I haven't.

25 Q. Okay. Would you consider yourself a -- more of a

1 detail oriented person, or are you a big picture
2 guy?

3 A. Probably a big picture person.

4 Q. Okay. Have you ever used a magazine publication
5 such as Auto Trader, or anything like that, to
6 sell a vehicle or purchase a vehicle or anything
7 like that?

8 A. No.

9 Q. Never used the internet to buy or sell, ever try
10 that?

11 A. I probably looked on the internet when I was
12 looking to buy a vehicle.

13 Q. Okay. All right. Have you ever read or heard
14 anything regarding Project Innocence here in
15 Wisconsin?

16 A. I probably never read anything about it.

17 Q. All right. Have you heard anything about it?

18 A. Probably with this story is the only time I have
19 ever heard of it.

20 Q. Okay. Any opinions on the project, or the idea
21 behind it, or anything like that? Good idea, bad
22 idea?

23 A. It's probably a good idea.

24 Q. Okay. Generally, do you think the criminal
25 justice system is either too lenient or too harsh

1 when it deals with those accused of a crime? Do
2 you have any opinion? Too harsh, too lenient,
3 just right?

4 A. I think it's fair.

5 Q. Okay. Now, I note from your questionnaire, on
6 one of the questions you were asked, have you
7 ever known anyone who was killed accidentally or
8 otherwise, you indicated your wife's cousin was
9 killed in a fire. Apparently relatively
10 recently.

11 A. Yes, it was in the fall.

12 Q. In the fall, okay. Can you tell us a little bit
13 about that. Was it an accidental fire or was the
14 fire intentionally set?

15 A. It was an accidental fire.

16 Q. Okay. So there hasn't been any litigation or any
17 investigation regarding that fire?

18 A. No. No.

19 Q. Okay. You also indicated in your questionnaire
20 that you have some prior jury experience.

21 Overall, was that a good experience?

22 A. Yes.

23 Q. Was there anything about that experience that
24 makes you wonder whether you could sit through
25 the process as a juror again and evaluate facts,

1 and deliberate, and anything about it?

2 A. I don't think it would be a problem.

3 Q. Okay. That's all I have.

4 THE COURT: All right. Mr. Strang.

5 ATTORNEY STRANG: Sure. Thanks.

6 **VOIR DIRE EXAMINATION**

7 BY ATTORNEY STRANG:

8 Q. This is really an awkward way to talk to someone,
9 but try to let me feel awkward and you not. All
10 right. How do I pronounce your name?

11 A. Slaby.

12 Q. Okay. That's how you pronounce your name.

13 A. Right. I hear it different ways but.

14 Q. Okay. I'm going to try to do it the way you do.

15 A. We hear it different ways, but Slaby is how.

16 Q. Slaby.

17 A. Right.

18 Q. Mm-hmm. So how long have you worked at Manitowoc
19 Ice?

20 A. A little over four years.

21 Q. And at Red Arrow -- I have your questionnaire, at
22 Red Arrow and Mirro, were those longer periods of
23 time?

24 A. I -- Red Arrow was brief, but I worked at Mirro
25 for 12 years.

1 Q. Same kind of stuff?

2 A. Maintenance, yes.

3 Q. And so how does -- how does a big picture guy,
4 you know, who is not really a detailed guy, how
5 do you get drawn into maintenance?

6 A. Well, it was just something that always
7 interested me, fixing things, building things,
8 since I was a kid so.

9 Q. That makes sense. Cars too or?

10 A. I worked on cars when I was younger.

11 Q. Mm-hmm. See part of what -- part of what I'm
12 interested in is you are not a TV watcher, or not
13 much I'm gathering, so what do you do when you
14 have spare time?

15 A. I remodel my home. For the last three years
16 that's what I have been doing.

17 Q. You guys own your home?

18 A. Yes, I just -- The TV watchers -- I work second
19 shift, so I don't --

20 Q. So like four to midnight?

21 A. I don't -- Yeah, I work like 2:30 to midnight so.

22 Q. Yeah.

23 A. I don't.

24 Q. Yeah.

25 A. I'm busy all day so.

1 Q. Right. That sort of explains that.

2 A. Right.

3 Q. When do you see the daughters?

4 A. I see them in the morning before they go to

5 school.

6 Q. Mm-hmm. Sort of design your sleep schedule

7 around --

8 A. Right.

9 Q. -- being able to do that?

10 A. Right.

11 Q. Are you a Monday to Friday guy, or do you wind up

12 weekends too?

13 A. I work a lot of Saturdays too.

14 Q. Just 'cause that's the schedule at Manitowoc Ice?

15 A. I just -- It's overtime, voluntary overtime. I

16 work quite a bit of overtime too.

17 Q. It sounds like -- like your wife also has a

18 full-time job that's -- you didn't say that, but

19 that's what I read into your description of her

20 job.

21 A. Yes, she works full-time.

22 Q. So what you told us was that the radio maybe was

23 the most common way you have gotten some news

24 about this case?

25 A. I would think the radio, that's what -- I will

1 have the local radio on in the morning.

2 Q. To and from work, or while you guys are --

3 A. Usually --

4 Q. -- having breakfast?

5 A. -- on my way to take my daughters to school.

6 Q. So you pick up snatches of this because it's--

7 A. Right.

8 Q. -- local news? Do you read the paper?

9 A. No, I don't.

10 Q. Do you guys get the paper?

11 A. No, we don't get the paper.

12 Q. Yeah. Okay. So what do you know about Brendan

13 Dassey?

14 A. Well, I know that he's the nephew and he is also

15 charged in the case.

16 Q. Yeah. Actually, not right in this -- in front of

17 this judge --

18 A. Right.

19 Q. -- but he's charged here in the same county.

20 A. Yes.

21 Q. Have you followed at all, you know, what's gone

22 on in his case?

23 A. Not recently.

24 Q. When -- sort of when did you last track that or

25 hear about it?

1 A. It's probably been two months, three months
2 maybe.

3 Q. What was it, I mean what do you --

4 A. I can't even recall the last time I heard a thing
5 about him.

6 Q. The nephew. Okay.

7 A. Right.

8 Q. Do you remember what it was you heard?

9 A. No, probably just the name came up.

10 Q. Mm-hmm. How many -- how many guys do you work
11 with, you know, like side by side at work or are
12 you off on your own for most of your time at
13 work?

14 A. It's myself and two other mechanics.

15 Q. And do you guys tend to be teamed up or --

16 A. We're usually on our own.

17 Q. Mm-hmm. Okay. So how much sort of, you know,
18 gas-bagging at work, or yakking about this case
19 have you overheard?

20 A. I don't know how to -- I couldn't really put a
21 time on it.

22 Q. Well, no, and I'm not really asking you to do
23 that, nobody could do that. But has this case
24 been a source of, or subject of some chitty chat
25 at work or, you know, do you guys -- are you guys

1 talking about ice fishing, or the Packers, or
2 something else?

3 A. Well, we talk about a lot of things, so I'm sure
4 the case has come up, we talked about it.

5 Q. What do you know about the statements that
6 Brendan Dassey supposedly made?

7 A. I think I did see the news conference when it
8 first came out. I did watch that.

9 Q. The one that Mr. Kratz --

10 A. Yes.

11 Q. I mean -- Okay.

12 A. Yes.

13 Q. Do you remember one, two -- it's been a while,
14 but do you remember anything about that news
15 conference?

16 A. I can remember most of it probably. I couldn't
17 repeat it, but I remember the --

18 Q. Sort of gist of it?

19 A. Yeah, if you want to call it that.

20 Q. Did it curl your hair? That news was pretty
21 shocking stuff.

22 A. It was pretty graphic, yes.

23 Q. So, how does somebody with a 17 year old daughter
24 react to that.

25 A. Well, it -- it -- like you said, it made my hair

1 curl. Disturbing is what it was.

2 Q. Yeah, so here I'm representing the guy who didn't
3 make all those statements, the guy the news
4 conference wasn't directly about but, you know,
5 did this get linked to Steve Avery in your head
6 or, I mean, did you see this -- that press
7 conference as being about more than Brendan
8 Dassey? Can you just tell me about that.

9 A. Sure, it did. Because I believe they were
10 talking about Steven Avery in the story too, both
11 names were mentioned.

12 Q. Mm-hmm. Okay. Of course, at that time, you are
13 not sitting there thinking, gee, I may be a
14 possible juror some day.

15 A. No.

16 Q. But, I mean, you have had college. I mean, you
17 not only graduated from high school, it looks
18 like you had --

19 A. Technical college, Yes.

20 Q. Yeah, I mean you have gone to school beyond high
21 school?

22 A. Yes.

23 Q. So you know -- You know that in our country
24 someone is presumed innocent unless and until the
25 State can prove them guilty beyond a reasonable

1 doubt?

2 A. Yes.

3 Q. And that's stuff you have heard, I assume?

4 A. Yes.

5 Q. Do you buy into that? Do you take that to heart?

6 A. Yes, I do.

7 Q. So, how -- You know, if you were sitting in
8 Steven Avery's chair, knowing that you are
9 possibly going to be judging you, you know, if
10 you're sitting in this chair, you had seen this
11 news conference and it's about both Brendan and
12 Steven; would you -- would you want you as a
13 juror, would you view you as someone who can say,
14 yeah, I can put that aside, I assume they got the
15 wrong guy here?

16 ATTORNEY FALLON: Your Honor, I'm sorry, I
17 have to object to that. Asking the juror to put
18 themselves in the shoes of the defendant, I think is
19 improper question.

20 THE COURT: Why don't you try and rephrase
21 the question Mr. Strang.

22 Q. Do you think -- I mean, as you sit here today, do
23 you presume that they got the wrong guy?

24 A. I believe that --

25 ATTORNEY FALLON: I'm going to have to

1 object, that's not the standard.

2 THE COURT: I'm going to sustain the
3 objection.

4 ATTORNEY STRANG: Okay. I mean, I think it
5 is. I'm trying to get at, do you presume him
6 innocent, which would mean he didn't do it.

7 ATTORNEY FALLON: No, I have to object.

8 THE COURT: I'm going to sustain the
9 objection again.

10 Q. Does the news conference make you tend to think
11 that maybe he is guilty?

12 A. I -- I believe that he's innocent until proven
13 guilty in the court. That's what I believe.

14 Q. And, again, look, you are under oath, obviously
15 you are doing your best, there really are no
16 wrong answers here, I mean, there really aren't,
17 as long as they are truthful. I'm just trying to
18 get at, you know, whether this is something you
19 can do. And you have told me you believe he's
20 innocent, unless these folks can prove him
21 guilty.

22 A. Yes, that's what I believe.

23 Q. And I -- What I'm trying to get at, is that -- do
24 you believe that in your gut, or is that
25 something that you know, you know, that's the way

1 our system works, this is a great country, it's
2 one of the freedoms we have, or the protections
3 we have as citizens. Sort of at what level do
4 you believe that? In other words, is that a big
5 picture belief, or is that a detailed belief as
6 to this case?

7 A. I'm just going to say that I believe that he is
8 innocent until proven guilty.

9 Q. The two other cases on which you were a juror,
10 you actually sat on both those, you were one of
11 the 12?

12 A. Yes.

13 Q. Okay. Have you been called for jury duty any
14 other times?

15 A. No, this is my third time --

16 Q. Third time.

17 A. -- being called as juror.

18 Q. And were the -- The other two cases, were they
19 both here in Manitowoc County, or was one of them
20 federal?

21 A. They were both here.

22 Q. In this courthouse?

23 A. Yes.

24 Q. So, actually, you have never been kicked off, or
25 not selected as a juror?

1 A. One of the times I was kicked off on one of the
2 trials, but I sat -- I was called the two times
3 previous and I did sit on trials both times.

4 Q. Yeah. Okay. And kicked off is, you know what I
5 mean, I mean you were one of the big group, but
6 not one of the 12?

7 A. I did get, yes.

8 Q. One time. Okay. And you weren't -- You were not
9 the foreperson either time, right?

10 A. What do you mean?

11 Q. You weren't the foreman of the jury?

12 A. No.

13 Q. Either time?

14 A. No, I wasn't.

15 Q. Do you remember anything about the criminal case
16 you were on?

17 A. Yes.

18 Q. What the guy was charged with?

19 A. He was charged with driving without a license.

20 Q. Okay. And you all found him guilty?

21 A. Yes, we did.

22 Q. Did you go into that one saying, hey, I presume
23 this guy is innocent and I'm going to wait and
24 see whether they can prove to me, beyond a
25 reasonable doubt, that he did it?

1 A. Yes.

2 Q. And was your experience pretty good with the rest
3 of the jurors doing that?

4 A. Yes.

5 Q. You didn't have to say, hey, wait a minute, you
6 know, we've got some instructions here, you guys
7 ought to follow these?

8 A. No.

9 Q. Did the guy who was on trial that time for
10 operating; was it without a license or --

11 A. Right.

12 Q. -- after suspension or something? Did he
13 testify?

14 A. Yes, he did.

15 Q. Should somebody do that if they are on trial?

16 A. He was acting as his own lawyer.

17 Q. Therefore had a fool for a client.

18 A. Right.

19 Q. But, I mean, do you think someone ought to do
20 that whether they are representing themselves or
21 they have a lawyer, if they are accused of a
22 crime and you didn't do it? What's your view
23 about whether they should or shouldn't testify?

24 A. I would think that it would help the case if he
25 did testify.

1 Q. Tell me about that.

2 A. I believe that it gives you a chance to prove
3 your innocence.

4 Q. Because you have the right to testify?

5 A. Right.

6 Q. And you say it helps. Did it help you as a
7 jury -- a juror, to hear that?

8 A. Yes.

9 Q. I mean, a lot of us, fair-minded people, often
10 say, I want to hear both sides of the story. I
11 don't want to make up my mind until I hear both
12 sides. Is that something --

13 A. Right.

14 Q. -- the way you approach the world too?

15 A. Right.

16 Q. So, what if I don't call Mr. Avery as a witness?
17 I don't know if I will or won't, but what if I
18 don't; how does that affect the way you look at
19 the case?

20 A. I -- I don't really know what that would do.

21 Q. You are going to hear in this case -- If you wind
22 up on the jury, you are going to hear that he was
23 convicted once before, in Manitowoc County, of a
24 crime it turned out he really didn't commit; have
25 you heard anything about that?

1 A. Yes.

2 Q. The Innocence Project stuff?

3 A. Yes.

4 Q. And, first of all, I mean, do you have any
5 questions about whether he did or didn't commit
6 that 198 -- it was in 1985 -- the 1985 charges?

7 A. No, I don't have any questions.

8 Q. That is, you know, when the State Crime Lab did
9 new DNA testing and said it wasn't him, it was
10 another guy, you haven't had any reservations
11 about that, or have you?

12 A. Well, I believe it was a shame that it happened.

13 Q. Right. But I mean, you haven't said, I bet he's
14 guilty anyway?

15 A. No.

16 Q. And, I mean, you find out that he did testify in
17 that case, in his own behalf, and got convicted
18 anyway. And I mean, do you understand why that
19 experience might make him, in particular, a
20 little bit reluctant about testifying in his own
21 behalf again?

22 ATTORNEY FALLON: I'm going to -- Well, I
23 will let it go.

24 A. Yes.

25 Q. Why else might someone who is not guilty decide

1 not to testify in his own behalf?

2 A. He might not want to speak in front of people,
3 like me.

4 Q. I was going to say, why does that one come to
5 mind first. Well, yeah, that's -- absolutely.
6 The guy you had on your prior criminal jury
7 didn't have a lawyer, would lawyers enter into
8 that, I mean our advise or our views?

9 A. Sure.

10 Q. As to what he might do?

11 A. Yes.

12 Q. What other reasons might somebody just decide,
13 no, I'm going to rely on my presumption of
14 innocence. I'm not going to take the witness
15 stand?

16 A. That's also his right.

17 Q. That's true. And I take it you don't have any
18 beef with the law in that respect?

19 A. No.

20 Q. Okay. We have asked you, both of us have asked
21 you a little bit about -- Mr. Fallon called him
22 the co-defendant, I'm calling him by his name --
23 Brendan Dassey, and his statements, or at least
24 the news conference that you heard. Have you
25 ever had an experience, or read about something,

1 had this touch you, where somebody admitted doing
2 something he actually did not do, or she actually
3 did not do? I mean, one of your kids ever done
4 that, for example, when they were little, fessed
5 up to something they hadn't done?

6 A. Usually the other way around.

7 Q. Yes, it is usually the other way around. But I'm
8 just, do you think it's possible that people can,
9 under the right or wrong circumstances, admit
10 doing something they really didn't do?

11 A. I guess it's possible.

12 Q. I know I can't give you names or anything, but
13 I'm aware of an occasional circumstance where
14 maybe there is a high publicity crime and
15 somebody who is "a couple bubbles off plumb"
16 comes forward to the police and says he did it,
17 for the attention, sort of an attention seeking,
18 weird motive; have you heard of that sort of
19 thing?

20 A. Yes.

21 Q. But when you hear -- when you hear a prosecutor
22 or a witness, police officer, somebody saying
23 somebody confessed or admitted their involvement;
24 what's your -- what's your first reaction to the
25 power of that?

1 A. I guess I would want to believe it.

2 Q. Why?

3 A. Because of who it's coming from, meaning the
4 police officer, or whoever is telling us.

5 Q. Right, yeah. And they might well believe it. I
6 mean, you would assume that they believed it.
7 But what about the actual person who supposedly
8 made this statement himself; do you think -- What
9 I'm getting at is, are you saying, well, you
10 know, if he admitted it, game over, nobody would
11 admit killing someone if they hadn't really done
12 it? Or are you somebody who says, geez, does
13 that make sense, I wonder if he really did do
14 what he's claiming he did?

15 A. It didn't make sense at the time I heard it.

16 Q. Okay. You -- On your questionnaire, there was
17 this question that asks you -- I don't expect you
18 to remember this and I can't remember the exact
19 language of it either, but there's a question
20 that says, look, you are going to be told, in
21 deciding which witnesses to believe, that a law
22 enforcement officer is just like every other
23 witness, got to consider the same things in
24 deciding how much weight to give his or her
25 testimony just like you would any other witness

1 under the sun. And you answered, yes, you could
2 follow that sort of instruction.

3 A. Yes.

4 Q. You could live with that. And then, Mr. Fallon
5 followed up a little on that and asked you to
6 rank or rate how likely it was that a law
7 enforcement officer would not tell the truth on
8 the stand. And I want -- I want to pick up from
9 there with you. How likely is it that anyone,
10 any witness who's sworn under oath, would lie on
11 the witness stand?

12 A. Not very likely.

13 Q. In other -- I mean, and I don't want to put words
14 in your mouth, but the way you look at the world,
15 you say, you know for most people an oath means
16 something.

17 A. Yes, I believe that.

18 Q. And I, you know, I mean, do you agree that there
19 are probably some people out there who just don't
20 care about an oath and would lie in spite of
21 having sworn?

22 A. Yes, I'm sure that happens.

23 Q. But you are saying most people at least, the oath
24 matters to them?

25 A. Yes.

1 Q. Is there any reason that the oath should matter
2 more to a police officer as opposed to, you know,
3 a truck driver, a school bus driver, you know, a
4 homemaker, or anybody else?

5 A. It shouldn't matter.

6 Q. What the job is you mean?

7 A. Right.

8 Q. Going back now, I'm just sort of going through
9 the questionnaire a little bit, but going back to
10 the jury service, and you were asked after you
11 told us about what juries, and when, and what
12 kind of case, you were asked how you felt about
13 that service. And you wrote, I had no negative
14 feelings about serving as a juror.

15 I'm curious about that, about why
16 because, I mean, I know it's inconvenient at
17 best, and sometimes it costs people money, in
18 terms of lost income; how come you had no
19 negative feelings about serving as a juror?

20 A. I thought it was an interesting process and I
21 thought it was fair.

22 Q. Fair to whom?

23 A. Fair to the suspect.

24 Q. Yeah, but how about fair to you, I mean, is what
25 I'm wondering?

1 A. It was fair to me. I didn't have any objections
2 to serving.

3 Q. And I didn't ask you how long the civil case
4 went; do you remember about how long a trial that
5 was?

6 A. I think that was like a week, five days,
7 something like that.

8 Q. And the guy represented himself, and the
9 operating without a license case had to be one,
10 two days at the most?

11 A. That was a one day.

12 Q. So, if we -- if you wind up on this jury, and you
13 wind up having to come and go, come and go, you
14 know, to Chilton, for six weeks; how is that
15 going to affect you at work or -- I mean, I'm not
16 trying to pry into your home finances, but how is
17 that going to affect you with all the hats you
18 wear, dad, employee, husband, member of your
19 union, member of your church? How is that going
20 to affect you?

21 A. It won't affect me at work.

22 Q. They will be cool about it?

23 A. Well, I will be paid for jury service.

24 Q. Okay. And other stuff, I mean, can you fit this
25 into your life?

1 A. It's an inconvenience, but I can fit it in.

2 Q. Have I asked anything, or for that matter, did
3 Mr. Fallon ask anything that, you know, caused
4 you to think of some other issue you should bring
5 up with us, or something the Court, or both sides
6 should know about, you know, your getting into
7 this six week project, if you do?

8 A. No.

9 ATTORNEY STRANG: Okay. Thanks. I'm good.

10 THE COURT: All right. Thank you,
11 Mr. Slaby. Linda will now escort you out from the
12 courtroom.

13 Counsel, does either party have any
14 motion with respect to this juror?

15 ATTORNEY FALLON: There's no motion from
16 the State.

17 THE COURT: Mr. Strang?

18 ATTORNEY STRANG: No, no motion here.

19 THE COURT: Very well. That juror will be
20 considered on the panel. At this time we're going
21 to take a -- let's make it a seven minute break.
22 We'll come back at 10:30 and resume with the next
23 juror.

24 (Brief recess taken.)

25 THE COURT: At this time we're back on the

1 record and juror, Diane Free, is in the courtroom;
2 is that correct?

3 MS FREE: Yes.

4 THE COURT: Ms Free, you have already
5 completed a jury questionnaire in this case. At
6 this point, we're moving on to the next step in the
7 voir dire proceedings which gives the attorneys for
8 each of the parties a chance to ask you some
9 questions in order to determine whether you can be a
10 fair and impartial juror in this case.

11 There's a few pieces of information I
12 didn't provide to you last week that I wish to
13 now, that is, to assure you that the jurors in
14 this case are not going to be sequestered,
15 meaning that you will be able to, during the time
16 of the trial, come home every evening before
17 reporting back the next day.

18 And we're doing that because of the
19 assurance from the jurors that the jurors will
20 not listen to any news media accounts of this
21 trial, or talk to anyone about it. As long as we
22 can be assured of that it won't be necessary to
23 sequester the jury.

24 I also want you to know that, although
25 the voir dire proceedings today are held in open

1 court, no cameras are permitted in the courtroom
2 during voir dire proceedings. The press is not
3 allowed to identify you by name as a juror in
4 this case. And should you be selected to serve
5 on the jury, television cameras are not permitted
6 to photograph the jury, nor are there any still
7 photos of the jury during the trial.

8 Finally, I will let you know that,
9 unless you are stricken for cause today, you will
10 be asked to come back to court in a few days for
11 final jury selection. And you will get
12 instructions by telephone further about that
13 later.

14 Very well. At this point, then, we'll
15 proceed to individual voir dire. Mr. Fallon.

16 THE CLERK: Judge, do you want her sworn.

17 THE COURT: Oh, I'm sorry, yes, we'll have
18 the Clerk swear you in at this time.

19 THE CLERK: Will you please stand and raise
20 your right hand.

21 (Juror sworn.)

22 THE CLERK: Please be seated.

23 THE COURT: Mr. Fallon.

24 **VOIR DIRE EXAMINATION**

25 BY ATTORNEY FALLON:

1 Q. Good morning, Ms Free.

2 A. Good morning.

3 Q. I'm Tom Fallon. I'm an Assistant Attorney
4 General with the Wisconsin Department of Justice.
5 To my left is Mr. Ken Kratz. He is also a
6 Special Prosecutor. He's the District Attorney
7 in Calumet County. There will be one other
8 prosecutor assisting us, Mr. Norm Gahn, from
9 Milwaukee. But we wanted to welcome you and say
10 good morning.

11 We have reviewed your questionnaire and
12 just have a few questions about that, and some
13 general questions as well. If you could tell us
14 a little bit about what you do with the City of
15 Manitowoc Library.

16 A. When someone requests a book, I'm the one that
17 goes and pulls it off the shelf. I don't work
18 for the library, in effect. I work for the
19 library system. The library system has five --
20 five employees. That means I work also for Two
21 Rivers, Brillion, Chilton, Kiel, New Holstein. I
22 deliver books. If you request a book in Chilton
23 from our library, I bring it out there.

24 Q. Would it be fair to say that you are a book
25 lover?

1 A. I love books, yes.

2 Q. What kind of books do you like to read?

3 A. Everything.

4 Q. Do you?

5 A. I like biographies, the most.

6 Q. Fiction, non-fiction, both?

7 A. Both.

8 Q. Yeah. All right. Do you like historical novels
9 as well?

10 A. I'm not much on romance.

11 Q. All right.

12 A. But anything else.

13 Q. How long have you worked with the library system?

14 A. Either 15 and a half or 16 and a half years; I'm
15 not quite sure.

16 Q. Okay. All right. I also noted from your
17 questionnaire, you are currently president of
18 your union?

19 A. Yes.

20 Q. The AFSCME local chapter.

21 A. Yes.

22 Q. How do you like that? How do you like to be the
23 prez?

24 A. It's okay. I'm doing it because no one else
25 will.

1 Q. All right. What kind of duties do you have as
2 the local union president?

3 A. I call the meeting to order. I make sure all the
4 agenda is followed, that if we have new members
5 they are sworn in. Mainly just following the
6 procedure, that we get reports from each
7 committee.

8 Q. How long have you held that position?

9 A. I think about four years.

10 Q. Okay. Do you enjoy it?

11 A. It depends on the weather.

12 Q. Okay.

13 A. If it's cold out on that Tuesday night, no.

14 Other than that, it's a chance to get together
15 and talk to people.

16 Q. Do you involve yourself in any of the
17 negotiations, labor negotiations?

18 A. No, none at all.

19 Q. You are not on the bargaining team or anything
20 like that?

21 A. No.

22 Q. Okay. Would you say your local union is active?
23 Is there a lot of work, a lot of volunteer time
24 you have tied up in this?

25 A. I think the local itself is active. My

1 participation is that one night a month. I
2 don't --

3 Q. Okay.

4 A. -- hand out leaflets, or go pounding on doors,
5 or.

6 Q. So, if you were selected as a juror in this case,
7 that wouldn't interfere too much with your
8 responsibilities?

9 A. Oh, no. No.

10 Q. Okay. Where would you say you get most of your
11 information from the media, your news?

12 A. Mostly the radio. Like I said, I drive three
13 afternoons a week so I'm in the van. I don't
14 subscribe to the paper. Occasionally I will go
15 on line and look at the paper. I only listen to
16 the news until the obituaries are over, then I
17 turn to a music station.

18 Q. Okay. All right. As someone who's a book lover,
19 would I be correct in surmising that you are an
20 individual who likes to receive and process
21 information?

22 A. Yes.

23 Q. Okay. If you see something of interest on the
24 news, or you hear something of interest on the
25 radio, are you the type of person who might stop

1 at the library, or better yet, use your computer
2 at home, to look for the story, or the story
3 behind the story, or any other information
4 associated with that?

5 A. I'm trying to recall if I have ever done that.
6 Occasionally, if I hear of an author, an author I
7 read, who has a new book, or I check up on the
8 authors, the author's websites to see if they are
9 coming out with a new book, like the new Harry
10 Potter book. I know when that's going to come
11 out. I check my author's list.

12 Q. My daughter would like to know the answer to
13 that; when is it coming out?

14 A. June 21st.

15 Q. All right. I will mention that to her. Have you
16 done any -- Well, let me ask this question first.
17 Have you paid much attention to any of the media
18 accounts of this particular case, Mr. Avery's
19 situation?

20 A. I have heard of it. You would have to live in a
21 cave not to. I don't think an undue amount, but
22 I am aware of it.

23 Q. Have you done any looking behind the scenes, as
24 it were, or followed up on anything of interest
25 in any of the stories?

1 A. No.

2 Q. Okay. And as I note from your report, you don't
3 really have any opinions regarding the
4 circumstances facing Mr. Avery, his guilt, or his
5 innocence, or any of that?

6 A. No, I believe the media has found him guilty.

7 Q. Okay.

8 A. I believe they can make you believe whatever they
9 want.

10 Q. All right. But have you been swayed by them?

11 A. No.

12 Q. Okay. Any particular reason why you haven't been
13 swayed?

14 A. They are not going to tell me what to think.

15 Q. That's a good reason. All right. Speaking of
16 the media, do you have any friends or relatives,
17 family members, who actually work for the media?

18 A. No.

19 Q. Okay. Now, I note from the questionnaire, you
20 don't have any prior jury experience?

21 A. No.

22 Q. As you sit and think about the prospect of being
23 a possible juror in this case, is there any
24 particular philosophical belief, or religious
25 tenet that you adhere to that you think might

1 present a problem for you being a juror?

2 A. I don't believe so.

3 Q. All right. Do you think you would be able to
4 follow the instructions as provided on the law,
5 by Judge Willis, if he told you what the law is,
6 and this is your job, you would be able to follow
7 those?

8 A. Yes.

9 Q. Have you, or anyone ever close to you, ever been
10 in charge of writing any safety guidelines or
11 setting up or enforcing safety standards?

12 A. No.

13 Q. Okay. What did you do before you got into the
14 library business?

15 A. I was a homemaker.

16 Q. Okay.

17 A. I was lucky to be a stay at home mom.

18 Q. How long have you been a resident of Manitowoc
19 County?

20 A. I was born here.

21 Q. You were born here. All right. In terms of your
22 familiarity with the Sheriff's Department, being
23 a lifelong resident; do you feel they are doing a
24 good job in dealing with crime and dealing with
25 the public, or a poor job, or how would you rate

1 their performance?

2 A. I don't really know that much about it. I have
3 never had to report a crime, so I have never --

4 Q. Okay.

5 A. -- had them knocking on my door for anything.

6 Q. In your -- Well, do you have any opinions as to
7 the situation when a police officer, or law
8 enforcement officer, is testifying in a court of
9 law, whether it's likely or unlikely that they
10 would lie under oath?

11 A. I don't think they would be more likely or
12 unlikely than anyone else, they are just --

13 Q. They are just people?

14 A. Yeah, they are no different than you or I.

15 Q. All right. How about in your thinking, are they
16 any more likely, or less likely than anyone else
17 to conspire to convict an innocent person?

18 A. I don't really know, I'm not --

19 Q. All right. Do you have any opinion, or how
20 likely it is a law enforcement agency would plant
21 or tamper with evidence to secure an arrest? I
22 mean, do you think they would be that concerned
23 about crime that they would go that far? Do you
24 think that's likely, or unlikely, or not likely
25 at all?

1 A. I think they would be more likely to want to get
2 the guilty party rather than anyone.

3 Q. And not convict anyone innocent?

4 A. Right.

5 Q. Are you a puzzle person?

6 A. Yes.

7 Q. Do you like to work on puzzles?

8 A. Yes.

9 Q. What kind of puzzles do you like to work on?

10 A. Jigsaw, crossword puzzles.

11 Q. All right. Do you like word puzzles as well?

12 A. That's a crossword puzzle.

13 Q. Okay. Yeah. All right. Would you consider
14 yourself more of a detail oriented person, or are
15 you more of a big picture person?

16 A. Detail.

17 Q. Okay. Why would you say that?

18 A. I'm a list maker. I like to cross things off my
19 list, one thing at a time.

20 Q. Okay. So I would take it you would consider
21 yourself pretty organized?

22 A. Yes, very much so.

23 Q. Would that be how you got into the library
24 system?

25 A. No, that's because I liked books.

1 Q. Okay.

2 A. As I get older, I want things in a certain way,
3 my way.

4 Q. Right. I think we all do. Since you work in the
5 library system, I will ask, are you familiar with
6 a trade publication called Auto Trader, a
7 magazine to sell automobiles?

8 A. No.

9 Q. Have you heard, read, or seen anything regarding
10 the Project Innocence that is a program here in
11 Wisconsin?

12 A. I have heard of it. I believe it's students from
13 Madison. And the reason I actually paid
14 attention to it is one of my sons attended UW
15 Madison. So that's what caught my eye -- or my
16 ear about it.

17 Q. All right. The son who attended Madison, did he
18 go on to law school?

19 A. No.

20 Q. Or just on to graduate experience?

21 A. Just accounting.

22 Q. Now, the project has as its primary goal to free
23 those who were wrongfully convicted. Do you have
24 any particular problem with that, or do you think
25 that's a good idea, good program, bad program?

1 A. I think it's a very good program.

2 Q. Okay. Do you follow the media accounts of --

3 well, the day-to-day activities of the criminal

4 courts here in Manitowoc County? Do you know

5 what people have been accused of and who's being

6 convicted of what?

7 A. No.

8 Q. Do you follow much of that?

9 A. No.

10 Q. Do you have any opinion as to whether the court

11 system here in Manitowoc, for instance, is too

12 harsh or too lenient?

13 A. I have no opinion.

14 Q. No opinion. Okay. Would you like to serve on

15 this jury?

16 A. Actually, I would.

17 Q. Okay.

18 A. I'm finding the whole process very interesting,

19 very enlightening.

20 Q. Tell us about that.

21 A. I have never had any contact with it before. I

22 mean, I have been through a divorce, that's about

23 my big --

24 Q. Right.

25 A. It's different than being in a divorce. It's

1 very precise, very organized.

2 Q. Okay.

3 A. It's very interesting.

4 Q. All right. Have you ever been even called for
5 jury duty before?

6 A. No.

7 Q. This is your first call?

8 A. Yes.

9 Q. Is there any chance that if you were selected as
10 a jury -- as a juror in this case, that six weeks
11 of jury service would be -- is there any hardship
12 for you that would be associated with that?

13 A. No, I mean, outside of my days being tied up, but
14 financially or health wise, no.

15 ATTORNEY FALLON: That's all we have.

16 THE COURT: Thank you, Mr. Fallon. Mr.
17 Strang.

18 ATTORNEY STRANG: Thank you.

19 **VOIR DIRE EXAMINATION**

20 BY ATTORNEY STRANG:

21 Q. I did not catch this at the beginning, but do you
22 prefer Mrs. Free, or Ms Free.

23 A. I prefer Diane.

24 Q. Okay. I'm probably -- I prefer Dean, but I'm
25 probably not allowed to do that.

1 A. Doesn't matter, I have earned both of them. It
2 doesn't matter.

3 Q. All right. I will be formal, to a certain
4 extent. Your husband, is he a union guy too?

5 A. Yes.

6 Q. Same one, AFSCME?

7 A. Yes.

8 Q. Same local?

9 A. Yes.

10 Q. And I'm curious, you -- it sounded to me, or read
11 to me, in reading your questionnaire, as if you
12 had picked up most of the information you have
13 about this case from the radio.

14 A. Yes.

15 Q. What radio station do you listen to?

16 A. WOMT. WOMT.

17 Q. Okay. Which is?

18 A. It's the city.

19 Q. Right. It's local?

20 A. Local, yeah.

21 Q. Is that 1240?

22 A. Yes.

23 Q. AM. Do you ever call in?

24 A. No.

25 Q. No.

1 A. No.

2 Q. Why not?

3 A. I would feel like they -- people would know who
4 it was. No, I prefer to be anonymous.

5 Q. While we're on anonymity, I'm curious whether in
6 your 15 and a half or 16 and a half years,
7 whatever it is, in the library system here, in
8 the last five years or so, have you gotten pulled
9 in at all to the issue about the federal
10 government coming and asking libraries to say
11 what people are looking at on the internet or
12 what books --

13 A. Right to privacy, I know about it because it
14 happens in the libraries. It is not my job, so
15 I'm not really -- I'm not the person that checks
16 out. I'm not the person that you would talk to
17 about what your child is reading. All I do is
18 pull the books off the shelf and deliver them to
19 the appropriate library. I don't deal with the
20 public at all.

21 Q. Okay. But as a union president have you been
22 pulled into a discussion about that --

23 A. No.

24 Q. -- sort of policy or a change in our world? Any
25 opinions about it?

1 A. I guess I have opinions both ways. I shouldn't
2 be entitled to know what my children are reading.
3 At the same time, there has to be a cut off for
4 that. If they are 15 and they are reading about
5 homosexuality, they are okay, that's -- you know,
6 there is a personal choice, there is a time for
7 that.

8 Q. Okay. So, back to the radio -- Okay. Do you
9 read the Herald Times Reporter?

10 A. Very, very seldom. I don't subscribe to it. If
11 I do, I usually look at the obituaries and the
12 births.

13 Q. Okay. I was going to repeat an old George Burns
14 line about looking at the obituaries, but I
15 won't. Do you have a newspaper you would prefer
16 to the Herald Times if it's a matter of, hey, I
17 have an hour to sit down with the newspaper?

18 A. No, I will read my book. I will read a book.

19 Q. So, on this case, what do you know about Brendan
20 Dassey?

21 A. I know that he's Steven Avery's nephew, that he
22 confessed and recanted his confession. That's
23 about it.

24 Q. How did you pick that up?

25 A. I believe it was on the radio. I think so.

1 Q. So, if someone confesses and then recants the
2 confession, I guess one of the two times he is
3 lying, right?

4 A. Yes.

5 Q. Do you know of any reason someone might confess
6 falsely to something they didn't do?

7 A. I can imagine, he's 16 years old, or what was at
8 the time. He's under pressure. He's -- I have
9 never been questioned by the police, but I think
10 at 16 he is very impressionable, he would want to
11 please whoever he is talking to.

12 Q. And in your mind, you know, whether the
13 confession is true or the recantation is true,
14 what, in your mind, does this have to do with
15 Steven Avery?

16 A. Nothing, actually. It's a he said, she said type
17 of thing, prove it.

18 Q. And on proving it, or the he said, she said, you
19 probably know enough civics to know that -- and
20 you actually got this from the questionnaire --
21 that in this country a person accused of a crime
22 can -- he can testify on his own behalf.

23 A. Yes.

24 Q. Gets to be treated just like any other witness?

25 A. Yes.

1 Q. Is that -- Is that acceptable to you? Is that,
2 you know, a good rule of law.

3 A. Yes, it's his right.

4 Q. And he also has the flip side, he also can
5 decline to testify and rely on --

6 A. He doesn't have to prove his innocence.

7 Q. Why not?

8 A. The prosecution has to prove his guilt. He's
9 presumed innocent. We all are.

10 Q. Right. But my question is, why are you happy to
11 live with a system, if you're happy to live with
12 a system, where the guy with the most at stake
13 doesn't have to say a word?

14 A. That's just -- I don't know. That's the way I
15 was brought up. You are presumed innocent. He
16 is. I am. It's my right.

17 Q. If you -- If you wind up on this jury, would --
18 and I decide -- Jerry Buting and I decide not to
19 call Steven Avery as a witness, is there going to
20 be a voice in your head, back when you are
21 deliberating a verdict saying, I don't know, I
22 needed to hear from Mr. Avery himself?

23 A. I don't believe so. He also has the right not to
24 testify.

25 Q. And in the end, he will do one or the other.

1 A. But he does not have to prove that he's innocent.
2 He is innocent until -- until it's proven that he
3 is not.

4 Q. And I -- And that's -- that is good big picture
5 abstraction stuff but, you know, you are a
6 details person and --

7 A. He's already said he didn't do it.

8 Q. Okay. And nothing -- nothing that you have heard
9 on the radio, or seen in the paper, or caught a
10 glimpse of on TV, has that shaken you off that at
11 all; can you hang onto that?

12 A. I believe I can. They said he was guilty years
13 ago and he wasn't.

14 Q. He testified then, you will learn.

15 A. I did not know that.

16 ATTORNEY FALLON: Your Honor, I'm going to
17 impose an objection to the phrasing of that
18 question. Are we not introducing facts or --

19 THE COURT: Your objection is sustained.

20 Q. What do you find in Star Magazine that tickles
21 your fancy?

22 A. The crossword puzzle. That's the first thing I
23 do. They actually have three little crossword
24 puzzles in there.

25 Q. Any of them acrostics or are they all straight

1 crossword puzzles?

2 A. One is a word search, one is like a celebrity, if
3 you know the celebrity's name, one is just a
4 regular crossword puzzle.

5 Q. Do you do them all?

6 A. Yes.

7 Q. Time yourself?

8 A. No, I don't even finish them all.

9 Q. Ever listen to NPR on the weekends, National
10 Public Radio.

11 A. No.

12 Q. Or Will Shorts, the puzzle master?

13 A. No.

14 Q. Okay. You know, as you are -- if you are on the
15 jury, and the time, you know, you will be told
16 you can't talk about the case or decide it until
17 the very end. And when the time comes to try to
18 reach a verdict with 11 other jurors, and you are
19 working through did the State prove these
20 charges, beyond a reasonable doubt; do you feel
21 well equipped or not? How well equipped do you
22 feel to get in and wrestle with scientific
23 evidence?

24 A. I'm not a professional, but I feel I am not
25 unintelligent. I'm of average. I feel equipped

1 to do it.

2 Q. Do you think that scientific evidence in and of
3 itself is entitled to more weight or less weight
4 than other types of evidence?

5 A. I'm not quite sure what you mean by scientific
6 evidence.

7 Q. Yeah. Well, here is where I'm going with that.
8 You like to make lists. You like the feeling of
9 checking things off your lists. You are oriented
10 toward detail. And that's, you know, if we get
11 into DNA evidence, for example, or collecting
12 minute pieces of things, looking for trace
13 evidence of things, preserving evidence, that can
14 get very detailed. And then when you hear people
15 from the Crime Lab, they will talk about
16 procedures or protocols they have. They are also
17 essentially lists that they go down on doing
18 things.

19 And that's where I'm going is, whether
20 that's likely to resonate with you more or less,
21 how it's likely to compare to, you know, maybe
22 just some fellow off the street who happened to
23 see something, or is testifying to something he
24 saw or heard?

25 A. I think you have to give it all equal weight. It

1 is a puzzle, put the pieces together.

2 Q. That works. I'm just asking for your answer.

3 And that's all I have got unless there's

4 something that has come out of this that has

5 caused you to say, boy, I probably should tell

6 these -- tell the Court about X or Y or Z.

7 A. No, I can't think of anything.

8 ATTORNEY STRANG: Thanks much.

9 THE COURT: All right. Ms Free, you can
10 stand up and Linda will escort you from the
11 courtroom.

12 Either party have a motion with respect
13 to Juror 3?

14 ATTORNEY FALLON: No.

15 ATTORNEY STRANG: No.

16 THE COURT: Very well. The Court will
17 consider her on the list. We'll bring in Jason
18 Rezash.

19 Mr. Rezash, please remain standing, the
20 Clerk will administer an oath.

21 THE CLERK: Raise your right hand.

22 (Juror sworn.)

23 THE CLERK: Please be seated.

24 THE COURT: Mr. Rezash, you have already
25 completed a jury questionnaire in this case. This

1 morning we're moving on to the next phase of jury
2 selection which is the chance for the attorneys to
3 ask questions of you relating to your qualifications
4 as a juror.

5 Before we begin, I wanted to pass on a
6 few items of information that I did not mention
7 last week. First of all, the jurors who are
8 selected to hear this case will not be
9 sequestered. That means the jurors will be able
10 to come back and forth to their homes each day at
11 the conclusion of the trial. We're doing that
12 after receiving the assurance of the jurors that
13 they will not listen to any accounts of this
14 matter in the news media, or watch anything on
15 television, or discuss the case with anyone else.

16 Also, I want you to know that although
17 these proceedings are in open court, no cameras
18 are allowed in the courtroom during the voir dire
19 proceedings. And the press is not allowed to
20 identify individual jurors by names in any news
21 reporting of this matter. Finally, the jurors
22 who are selected to serve on the jury in this
23 case will not be on camera at any time during the
24 trial.

25 If you are not stricken for cause after

1 the proceedings today, you will get instructions
2 to return to court in the next few days for the
3 next step in the juror selection process.

4 Mr. Fallon, at this point you may begin.

5 ATTORNEY FALLON: Thank you.

6 **VOIR DIRE EXAMINATION**

7 BY ATTORNEY FALLON:

8 Q. Good morning. And if you could help me out and
9 pronounce your last name for me.

10 A. Rezash.

11 Q. Rezash. Very good. My name is Tom Fallon, Mr.
12 Rezash. I'm an Assistant Attorney General
13 assisting in the prosecution of this case. Lead
14 counsel is to my left, Mr. Ken Kratz, District
15 Attorney for Calumet County. Thank you for
16 coming this morning.

17 I note from your questionnaire that you
18 work at the Point Beach Nuclear Plant as a
19 security officer?

20 A. Correct.

21 Q. How long have you been there?

22 A. Almost five years.

23 Q. Have you always been in the security component at
24 the plant, or did you have other duties before
25 that?

1 A. No, always security.

2 Q. Tell me a little bit about the security duty that
3 you have at the plant.

4 A. It's kind of like regulating what comes in and
5 protecting the plant I guess. Making sure no
6 firearms, or explosives, or anything would enter
7 the plant to harm the employees and general
8 public.

9 Q. Okay. Do you work then at the gate, or are you
10 inside the building making rounds, or exactly how
11 do you perform that function?

12 A. It depends where you are scheduled for the day.
13 Sometimes you are inside, rotating through, and
14 other times you are at the gate for incoming
15 traffic, personnel and vehicles.

16 Q. As a security officer, are you licensed or
17 permitted to carry weapons with you?

18 A. Yes, I have two permits, permit for a firearm and
19 private security permit through the State of
20 Wisconsin.

21 Q. And how long have you held those permits?

22 A. Private security permit, probably, well, the
23 extent that I have been there, almost five years.
24 And the firearm permit, probably about four.

25 Q. Okay. In your capacity as security officer, have

1 you ever had to use a show of force, or use any
2 weapon that you have been trained to use?

3 A. No, not outside of training.

4 Q. And do you periodically receive update trainings?

5 A. Yes, throughout the year.

6 Q. I also note you put down formal education, you
7 said seven years, I'm assuming that's -- is that
8 high school and college, or is that college and
9 after college.

10 A. No, that's just college.

11 Q. Okay. Any particular specialty that you took at
12 the technical college?

13 A. I was started out in engineering and then kind of
14 got sick of math, so I switched to elementary
15 education.

16 Q. All right. Engineering, to elementary education,
17 to security; how did that come about?

18 A. I took a break from school and needed a full-time
19 job, so I got a job out at the plant. And I'm
20 capable of doing my homework at work, so I kind
21 of went back part time.

22 Q. All right. Do you enjoy the job that you have?

23 A. No.

24 Q. Okay. Any particular reason?

25 A. It's too boring. I need to keep busy.

1 THE COURT: Counsel, I'm going to interrupt
2 you briefly, could you approach the bench, please.

3 ATTORNEY FALLON: Sure.

4 (Side bar taken).

5 Q. Couple more questions, Mr. Rezash, really
6 quickly. You indicated you had some chemistry
7 and DNA training in Lakeland.

8 A. No, that wasn't through Lakeland, that was
9 through UW school system. I have had chemistry
10 classes, so. I don't know nothing pertaining to
11 DNA, just chemistry.

12 Q. Okay. Now, on one particular question on the
13 questionnaire has some concern for us, and it was
14 one question you left blank. So I would like to
15 talk to you a little bit about that. The
16 question was, based on the information from any
17 source that you have received, do you have an
18 opinion as to Mr. Avery's guilt or innocence.
19 And you answered yes, and then you said, from
20 seeing and reading the news, and discussing the
21 case with others, I believe he is guilty as
22 charged. But the reason he's going to trial is
23 because that's the law.

24 And the follow-up question which you
25 didn't answer was, should you be selected to

1 serve as a juror, could you set those opinions
2 aside and base your decision only on the evidence
3 presented in court and the instructions that
4 Judge Willis gives you. So I want to talk just a
5 little bit briefly about that.

6 You said, but the reason this is going
7 to trial is because that's the law; what did you
8 mean by that?

9 A. That's our -- Well, that's the law. That's the
10 way the ground work was set. I mean, you are
11 entitled to a trial. That's what I meant by it.

12 Q. All right. So, if you think that he is guilty
13 from the media accounts, is there any way that
14 you can set those opinions aside and decide this
15 case strictly on what the evidence is that's
16 presented in the courtroom, as opposed to what
17 you hear outside?

18 A. Honestly, probably not.

19 Q. Why is that?

20 A. That's just my belief. I don't know, based on
21 all accounts that I have read, I don't know.
22 That's kind of the opinion I have already formed.

23 Q. So even if the judge were to tell you that
24 Mr. Avery is presumed innocent unless and until
25 Mr. Kratz and I can prove him guilty, you would

1 not follow that instruction and listen to the
2 evidence?

3 A. Probably not.

4 ATTORNEY FALLON: I have no further
5 questions for this witness.

6 THE COURT: Any questions from the defense?

7 ATTORNEY BUTING: No, Judge, no questions
8 at all.

9 THE COURT: All right. Mr. Rezash, if you
10 follow the Clerk, she'll lead you to the next stop.
11 Does either party have a motion or do the parties
12 have a joint motion to make?

13 ATTORNEY FALLON: We'll move to strike the
14 juror.

15 ATTORNEY BUTING: We join.

16 THE COURT: All right. I believe based on
17 the answers given by the juror in court today and
18 the answers on the questionnaire, that Mr. Rezash
19 could not set his opinions aside and be a fair and
20 impartial juror here. So the Court will order that
21 he be stricken for cause. And we'll move on to the
22 next juror.

23 Ms Temme, I'm going to ask you to stand
24 for a minute, first, while the Clerk swears you
25 in.

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THE CLERK: Raise your right hand.

(Juror sworn.)

THE CLERK: Please be seated.

THE COURT: Ms Temme, you have already filled out a questionnaire at court proceedings last week, today we're moving on to the next phase of jury selection which is individual voir dire. The attorneys for each of the parties have a chance to ask you some questions.

Before we begin those questions, I wanted to add some information to what I provided you last week, that is, to notify you that the jurors selected in this case will not be sequestered during the trial, meaning the jurors will be able to come home every evening after the proceedings and stay at home. We made that decision assuming the commitment of the jurors to not listen to any news media accounts about this case, or see anything on television or the internet, or discuss the case with anyone else.

I also want you to know that although these proceedings are in open court, no cameras are permitted in the courtroom during voir dire proceedings and the media is not allowed to identify any of the individual jurors by name.

1 In addition, should you be selected to serve in
2 this case, the jurors are not permitted to be
3 photographed during the trial or appear in any
4 television accounts of the trial.

5 I note that you did request in your
6 questionnaire permission to provide some answers
7 should the question be raised in private. I have
8 asked the attorneys to notify me before asking
9 you any such questions. And if you believe they
10 ask you any such questions before I get notified,
11 let me know and I will take your request up at
12 that time.

13 Finally, if you are not stricken for
14 cause after today's proceedings, you will receive
15 a telephone notice within the next few days as to
16 when to return for the next step.

17 Mr. Fallon, at this time you may begin.

18 **VOIR DIRE EXAMINATION**

19 BY ATTORNEY FALLON:

20 Q. Good morning.

21 A. Good morning.

22 Q. My name is Tom Fallon. I'm an Assistant Attorney
23 General with the Department of Justice here in
24 Wisconsin and I'm assisting in the prosecution of
25 this case. To my left is Ken Mr. Kratz, the

1 Special Prosecutor, and he's from Calumet County.
2 He's the District Attorney. Thanks for coming in
3 this morning. We have a few questions to help us
4 in selecting a jury.

5 I would like to begin with a little bit
6 about your work; you work at Manitowoc Ice?

7 A. Mm-hmm. Yes.

8 Q. And how long have you worked for them?

9 A. Ten years. It will be eleven in April.

10 Q. And what kind of work do you do, specifically,
11 for them?

12 A. Inside customer service for our international
13 market.

14 Q. Okay. And are you in marketing, sales,
15 distribution; how would you characterize what you
16 do?

17 A. Customer service.

18 Q. Customer service.

19 A. Order entry and just taking care of the
20 customer's --

21 Q. Okay.

22 A. -- requests, maintaining their orders, shipping.

23 Q. Any employment before your time with Manitowoc
24 Ice?

25 A. I worked for Kaysun Corporation.

1 Q. What did you do for them?

2 A. Also customer service.

3 Q. Okay. I'm not from the area, so forgive me; what
4 does Kaysun Corporation, what do they do?

5 A. Custom injection molding company.

6 Q. Okay. I also see from your questionnaire you
7 have an associate degree for a legal assistant.

8 A. Mm-hmm.

9 Q. All right. Did you pursue any employment in the
10 legal field?

11 A. I was an intern at a local law firm, but it
12 didn't last long, no.

13 Q. I have to ask, since I'm still in the legal
14 field; was there anything -- the pursuit of law
15 not interest you?

16 A. Pretty much the pay.

17 Q. Okay.

18 A. And no benefits, yeah.

19 Q. Have you had any occasion at all to use any of
20 the legal training that you had?

21 A. No.

22 Q. No. Okay. Now, I also note from your
23 questionnaire, there were several individuals
24 that you indicated that you were at least
25 familiar with on some level. And one of them is

1 Mr. Curt Drumm, how do you know Mr. Drumm?

2 A. I think he was like a year older than me in high
3 school, so we kind of new each other just in
4 school.

5 Q. All right.

6 A. Not really that familiar, just he's kind of a
7 personality in town too. Does some fundraisers
8 so he is known for that.

9 Q. Okay. So he is kind of well known?

10 A. Yes.

11 Q. All right. And you went to school with him,
12 that's four familiarity, okay. How about Ms
13 Debbie Knox?

14 A. She was the vice principal at Wilson Jr. High
15 School when my daughter was attending that
16 school.

17 Q. Do you know her well?

18 A. No.

19 Q. Would you -- I forgot to ask, would you say you
20 are friends, or acquaintance, or just know
21 Mr. Drumm?

22 A. I know him, but I guess if I would see him on the
23 street, we would probably say hi and maybe have a
24 short conversation.

25 Q. Okay. You also indicated that you were familiar

1 with the District Attorney here in Manitowoc,
2 Mark Rohrer; how do you know Mr. Rohrer?

3 A. He was a neighbor about a year ago. Not like a
4 neighbor in our neighborhood, I guess the
5 neighborhood I lived in about a year ago. And we
6 maybe in -- I might have known him from being in
7 some community theatre activities.

8 Q. Would you consider yourself close friends, or
9 close acquaintances, or just someone that you
10 know?

11 A. Someone I know that I would probably say hi to
12 and have a small conversation with.

13 Q. All right. A couple other questions from your
14 questionnaire -- Oh, by the way, you also know
15 the Clerk of Court's, Lynn Zigmunt?

16 A. She was an employee at the law office that I was
17 shortly employed at.

18 Q. Okay. Did you develop any friendship or strong
19 acquaintance from working with her at that time?

20 A. No.

21 Q. In other words, just someone that you worked with
22 very briefly at this point in the past?

23 A. Right. And if we would see each other, I would
24 probably say hi and have a short conversation,
25 just basic.

1 Q. You also expressed an opinion that Mr. Avery,
2 when asked if you had an opinion on his guilt or
3 innocence, you indicated you did. And you said,
4 he seems to be involved in the disappearance of
5 Teresa Halbach. Why do you say that?

6 A. Just because of what I have heard on the news and
7 the newspapers, prior.

8 Q. Okay. And where do you get most of your news
9 about this particular case that kind of led you
10 to that opinion; was that television, radio,
11 newspaper, internet?

12 A. I think it was mostly the radio.

13 Q. Mostly radio. Okay. Now, you followed that up
14 with an answer to the question, if you were
15 selected to serve as a juror, could you set those
16 opinions aside and base your decision only on the
17 evidence presented in court, and you answered
18 yes; are you confident in your ability to do
19 that?

20 A. Yes.

21 Q. Any particular reason why you have that opinion?

22 A. I just think I could -- I would be able to listen
23 to both sides and give an honest answer.

24 Q. Okay. Now, you -- On one question you were
25 asked, if you served on a jury, how do you think

1 you would feel about that service. And you said
2 you would find it very interesting. Any
3 particular reason about that? Was that from
4 perhaps your legal training?

5 A. It's -- The legal system is very interesting, how
6 it works, so I think it would be real
7 interesting.

8 Q. Okay. And any particular reason why you find it
9 interesting?

10 A. Just that, you know, things need to be proven. I
11 mean, if you do something, it's not just cut and
12 dry as to what someone might say on one side or
13 the other, it has to be -- the whole thing has to
14 be presented and then decided by a jury, I guess,
15 so it's interesting.

16 Q. So you like the give and take, and the arguments,
17 and the evidence, and you find that interesting?

18 A. Yes.

19 Q. You wouldn't find that tedious or boring?

20 A. No.

21 Q. Now, one of the other questions in your
22 questionnaire that might be of some concern to us
23 is you thought that it might be, perhaps, a
24 hardship if you are selected as a juror?

25 A. My employer asked me to say that it was a

1 hardship for him. I think they would manage.

2 Q. So it's more of a hardship for your employer than
3 it is for you?

4 A. I think they would manage.

5 Q. Okay. Well, is that -- But I think in fairness
6 to you, we should ask, are you concerned with
7 that, I mean, if you were selected as a jury
8 (sic) that this might have an adverse impact on
9 the job or anything?

10 A. No, I don't think it would.

11 Q. Okay. So they were just kind of teasing you,
12 half kidding, have serious, we would rather have
13 you here than there?

14 A. Yeah.

15 ATTORNEY FALLON: I will defer my last set
16 of questions for the end.

17 THE COURT: Mr. Strang or Mr. Buting.

18 ATTORNEY BUTING: I will do this, Judge.

19 **VOIR DIRE EXAMINATION**

20 BY ATTORNEY BUTING:

21 Q. Is it Temme, is that how you --

22 A. Terri Temme, yes.

23 Q. Okay. My name is Jerome Buting. This is Dean
24 Strang. And you understand that we represent
25 Steven Avery, right?

1 A. Yes.

2 Q. I'm going to focus in a little bit on, there's
3 been a lot of publicity in this case, right, you
4 are aware of that?

5 A. Mm-hmm.

6 Q. You know, I would like to really get down to --
7 to why you think he -- it seems he's involved and
8 what you have learned about the case over -- I
9 understand you read the newspaper, the Herald
10 Times, right?

11 A. Mm-hmm.

12 Q. Do you read that regularly?

13 A. I get it every day. Yeah, I get the paper.

14 Q. And have you followed the news articles about the
15 Steven Avery case?

16 A. To tell you the truth, after probably the last,
17 over the summer and up till now, not really, no.

18 Q. Kind of got tired of it after awhile, it was all
19 -- in the spring it seemed to be there all the
20 time?

21 A. I was busy traveling with work also, out of the
22 country and stuff, so it was, yeah, not important
23 to me.

24 Q. You had work out of the country?

25 A. Mm-hmm.

1 Q. Where did you go?

2 A. I went to Leon, France in July, and to Hangzhou,
3 China in October.

4 Q. Oh, okay. And that's to help service customers
5 over there?

6 A. Our sister companies are transferring over to
7 the -- we're all going on to the same computer
8 system, so I was a mentor for both areas.

9 Q. Okay. I see. That was probably pretty
10 interesting, I imagine, right?

11 A. It was very interesting.

12 Q. You also listen to the radio; what station would
13 that be?

14 A. Well --

15 Q. For news, I'm talking about.

16 A. I listen to public radio in the morning, before I
17 go to work. And I can't really get too many
18 radio stations at my job. I don't know why, it's
19 just because. So I think it's Cub radio that I
20 listen to.

21 Q. So do you listen to 1240 WMOT (sic) much, or
22 1360?

23 A. I can't get those stations.

24 Q. You don't listen to them?

25 A. I can't get them and, no, and I don't listen to

1 them.

2 Q. Driving to work or anything like that, you stick
3 with public radio?

4 A. Mm-hmm.

5 Q. You heard some publicity, I assume, about Brendan
6 Dassey?

7 A. Mm-hmm. Yes.

8 Q. Tell me what you have learned about that, about
9 him.

10 A. That he is also somehow involved in this, in the
11 disappearance of Teresa Halbach. Somehow he's
12 involved in that.

13 Q. Do you know the details of what he supposedly
14 said?

15 A. I don't really know the details of what he said.
16 I just know that it seems that he was in the
17 vicinity and was there at some time.

18 Q. Did you happen to hear on the radio, or see on
19 TV, any press conferences about Brendan Dassey?

20 A. I don't recall. I mean, I don't remember paying
21 much attention to that at all.

22 Q. Have you read anything about how he has --
23 subsequently recanted his confession, that is,
24 taken it back?

25 A. No. It's my understanding that he confessed and

1 then he's been held ever since then.

2 Q. Okay. So you haven't heard anything about
3 whether or not he's later withdrawn that
4 confession?

5 A. No, I don't know.

6 Q. Or anything about that. Okay. Did the story,
7 did it bother you when you heard it?

8 A. Initially, when -- about Mr. Avery and -- yes,
9 mm-hmm.

10 Q. Which part are you talking about? Are you
11 talking about when Mr. Avery was first arrested
12 and they were looking for Teresa and all of that,
13 or later, the Brendan Dassey part of it.

14 A. Oh, um, the before part, when they were looking
15 for her.

16 Q. So, did you see on the news when she was still
17 missing and they were looking for her, and they
18 hadn't found her vehicle or anything like that?

19 A. Yes.

20 Q. Did you -- Did you volunteer to go help search
21 for her?

22 A. No.

23 Q. You have a daughter who is 21 and single, right?

24 A. Mm-hmm, yes.

25 Q. I mean, does that bother you, in particular did

1 you -- were you thinking about how this might
2 have happened to your own daughter and how
3 horrible something like that would be?

4 A. Actually no, I didn't.

5 Q. No. Why not?

6 A. Because it seems that I feel she's safe. I don't
7 know. I guess I didn't really think about that.

8 Q. So it's not something that you were ever
9 concerned could happen to your daughter?

10 A. Of course, I worry about her. As a mother I
11 worry about her, but I never imagined something,
12 you know, terrible happening or.

13 Q. Sure. Now, when you say that you -- It seems
14 from what you have read and heard on the radio, I
15 guess, it seems that he's -- Mr. Avery is
16 involved in some way. How do you think you can
17 set that aside now and -- if you were selected as
18 a juror?

19 A. I consider myself a very fair and honest person
20 and I think I would be able to objectively listen
21 to both sides of information and make an honest,
22 objective decision.

23 Q. Do you think that sometimes people in the media,
24 the way it's portrayed, they may seem guilty, or
25 that it's a cut and dried case, but in reality

1 things might be very different?

2 A. Right.

3 Q. And you think you could look at this case that
4 way?

5 A. I could look at it very objectively. Like, I
6 guess I have learned not to always believe what
7 the media says.

8 Q. You are familiar with the concept of the
9 presumption of innocence, I assume?

10 A. Maybe.

11 Q. Well, do you know that defendants are presumed
12 innocent?

13 A. Presumed innocent, mm-hmm.

14 Q. And in Mr. Avery's case, can you tell us today
15 that you presume him to be innocent, even with
16 everything you have heard or read? Be honest.

17 A. I'm going to say, yes, mm-hmm.

18 Q. You kind of struggled with that for a little bit,
19 you just really wanted to be sure; is that what
20 you're --

21 A. Yes, I wanted to be sure.

22 Q. Searching to make sure that you really believe
23 that, right?

24 THE WITNESS: Mm-hmm. Yes. Sorry.

25 Q. Now, there's another -- This is something that

1 defense attorneys always have to sort of struggle
2 with, is the whole idea of whether or not to call
3 the defendant as a witness at the trial. Some
4 people think that, you know, if a defendant
5 testifies, well, you know, why should we believe
6 him. He's got everything at stake here, right,
7 he's just trying to save his skin?

8 A. Mm-hmm.

9 Q. Some people think why didn't he take the stand,
10 he is hiding something; how do you come down on
11 that? Let me ask you it this way, do you think
12 that Mr. Avery should testify and tell his side
13 of the story? As a juror, is that what you want
14 to hear?

15 A. I don't think it would make any difference to me
16 if he did or did not take the stand, or it
17 wouldn't make me feel either way that because he
18 did take the stand, like, what you said, like
19 people think that some people who take the stand
20 will be --

21 Q. Can you think of any reasons why someone would
22 choose not to testify if they were accused of
23 some serious crime like this?

24 A. Because they have people like you, lawyers, to do
25 the speaking for them?

1 Q. Okay. Or maybe they are not good with public
2 speaking?

3 A. Mm-hmm.

4 Q. Things of that nature.

5 A. Mm-hmm.

6 Q. So, if -- But if Mr. Avery did testify, would you
7 be able to set aside those feelings you have had,
8 things you have read in the newspaper, or heard,
9 and really judge him like any other witness?

10 A. Yes, I think I could.

11 Q. You really think you could?

12 A. Mm-hmm.

13 Q. Okay. I appreciate that. There are some
14 questions about, you know, what kind of
15 television shows you watch, CSI, and all those
16 Law and Order kinds of things. And you said you
17 don't watch those shows at all?

18 A. No.

19 Q. Do you -- Have you ever watched any police movies
20 or stories, Law and Order crime kind of things?

21 A. I watch 48 hour Mystery, that's about the only
22 type of show like that I watch. Okay.

23 Q. Do you think that there's -- the police are more
24 or less likely to lie under oath than any other
25 witness?

1 A. I would think they are less likely to lie under
2 oath.

3 Q. Okay. And why is that?

4 A. Because they are part of the community. I don't
5 know. They are held up as an upstanding, you
6 know, citizen, protecting us. So I think they
7 would be honest in their answers.

8 Q. Okay. Do you think that they would be -- Can you
9 think of any circumstance where maybe officers
10 wouldn't tell the truth under oath?

11 A. No, I can't.

12 Q. So, if a police officer were to testify, there
13 would be no doubt in your mind that that officer
14 would always be telling the truth?

15 A. Yes, I would think that he was always telling the
16 truth.

17 Q. Now, if the judge instructed you that you are to
18 judge police officers just like any other
19 witness, determine their credibility, weigh what
20 they say against the other evidence, how they
21 act, their demeanor, all of that; would you be
22 able to do that, or do you think that you would
23 just listen to the police officers and say, boy,
24 if -- you know, if they are up there, they have
25 got to be telling the truth.

1 A. I think I could be objective. I think I could
2 listen to what they have to say and base what
3 they say objectively. I'm not sure how to say
4 that.

5 Q. Do you think that sometimes police officers can
6 get personally involved in their investigations,
7 really care about what they are doing?

8 A. Yes, I believe that.

9 Q. Do you think that they can -- maybe sometimes
10 that they become convinced of someone's guilt and
11 focus on that one person?

12 A. I guess that's possible, yes.

13 Q. Do you think that it's possible that they could
14 be wrong about that, though?

15 A. I do. Yup, yes.

16 Q. Do you think sometimes that if a police officer
17 is so involved, so convinced of his case that
18 sometimes they might be tempted to cross the line
19 a little bit?

20 A. Yes, I guess, you know, being a human being,
21 we're all tempted in some way. You know, could
22 be, yes.

23 Q. Maybe even cross the line to maybe shade their
24 report a little bit to make it look a little bit
25 different, or change a few words about what

1 someone says; is that possible?

2 A. I guess it's possible, yes, because human error
3 can happen, or.

4 Q. But then if they would come into court and
5 testify about that, perhaps they wouldn't really
6 be telling the truth then. How would you judge
7 whether they are telling the truth or not if you
8 have a situation like that?

9 A. Have to just listen to everything that's being
10 said, I guess.

11 Q. Now, do you understand that the -- You understand
12 that the State has the burden of proof, right?

13 A. Yes.

14 Q. And that Mr. Avery, like any defendant, doesn't
15 have to prove his innocence, correct?

16 A. Correct.

17 Q. Do you think that's a good idea?

18 A. As far as having the burden of proof on the State
19 or?

20 Q. Yes.

21 A. Yes.

22 Q. Do you think it's fair that they have this very
23 high burden of proof, beyond a reasonable doubt?

24 A. Yes.

25 Q. And that the defense can just sit here and do

1 nothing?

2 A. Well --

3 Q. We better not.

4 A. I would expect -- Yeah, I would expect that the
5 defense would do something. But that's part of
6 our judicial, I guess, because if an innocent --
7 that's the way we, I guess, find, you know,
8 innocence and guilt, is through this process.

9 Q. Sure. But do you think that if the defense
10 decides to put on a defense, if we decide to put
11 on witnesses; are you going to make us prove that
12 Mr. Avery is not innocent -- I'm sorry, is
13 innocent, not guilty, just because we decide to
14 put on some witnesses and put on a case?

15 A. Can you say that --

16 ATTORNEY FALLON: I was going to object to
17 the phrasing of that question because I'm not sure
18 it accurately deals with the standard that's to be
19 expected of the juror.

20 THE COURT: Mr. Buting, why don't you try
21 rephrasing it.

22 ATTORNEY BUTING: Sure. I'll rephrase it.

23 Q. I guess what I'm trying to ask here is, are you
24 going to be able to really hold the State to the
25 burden of proof and not make Mr. Avery have to

1 prove he's innocent of this charge, even if he
2 decides to put on some witnesses -- or we decide
3 to put on some witnesses on his behalf?

4 A. Yes, that's how I understood it would be, that
5 the State has to prove innocence.

6 Q. Okay.

7 A. I'm sorry. Whatever.

8 Q. That's fine.

9 A. I think I got mixed up, but I think -- do you
10 understand what I meant by that?

11 Q. I believe so, yeah. Okay. Do you not watch any
12 of the shows that have any kind of -- actually 48
13 Hours sometimes deals with forensic science
14 things of that nature, doesn't it?

15 A. I think so, I don't -- it probably does.

16 Q. Do you have any particular view on forensic
17 science, that it's -- do you think it's entitled
18 to greater weight, is more believable than
19 perhaps other types of evidence?

20 A. Yes, it seems to be -- has been helpful in the --
21 recently for, you know, things that have happened
22 in the past for people that have been proven
23 innocent.

24 Q. Okay. So DNA in particular, right?

25 A. Mm-hmm.

1 Q. And that it can, in some instances actually prove
2 someone is innocent, right?

3 A. Mm-hmm.

4 Q. Like Mr. Avery, right?

5 A. Yes.

6 Q. You are aware of what happened to him, right?
7 The 1985 conviction he was later exonerated from?

8 A. Yes.

9 Q. Did you have any questions or lingering doubt
10 about that and think, oh, maybe he just really is
11 guilty and got off somehow?

12 A. No.

13 Q. You are convinced he really was wrongly convicted
14 in that case?

15 A. Yes.

16 Q. Do you think, though, that not talking about DNA
17 here in particular here, but other types of
18 science, do you think that science is just
19 infallible and that people don't make mistakes,
20 or do you think that it's really a question of
21 are you going to look at what it's based on, and
22 what kind of research is behind it, and what sort
23 of tests are being done?

24 A. I think people can make mistakes in science. And
25 it's -- I'm not sure if I answered that

1 correctly, or the way you --

2 Q. Probably not well phrased. But are you going to
3 be -- There will be some scientific evidence in
4 this case and at times it may get sort of dry;
5 are you going to be interested in following that,
6 though?

7 A. Yes, of course.

8 Q. Looking at all of it, not just the end result,
9 but just what went into it as well?

10 A. Yes.

11 Q. One thing, I thought was kind of interesting, you
12 are involved in community theatre you said?

13 A. Yes.

14 Q. What do you do with that? Do you act?

15 A. Mm-hmm. I sing and act and dance. It's just a
16 hobby.

17 Q. How long have you been doing that?

18 A. Hmm, maybe 15 or 20 years.

19 Q. Okay. What's the group that you -- What's the
20 name of the community theatre?

21 A. I do a Heart-A-Rama fundraiser in the spring,
22 that's for the Heart Association. And then maybe
23 once or twice a year I do a show out at the UW
24 Center for a fundraiser for the theatre groups,
25 kids for theatre. So maybe now it's once every

1 other year.

2 Q. That's something you really enjoy though?

3 A. It's a hobby, yeah. People say I'm good, but I
4 should keep my day job.

5 Q. All right. And Mr. Rohrer is involved in that
6 too?

7 A. He used to be a long time ago. I don't recall
8 ever being in a same show with him. But he was
9 involved in Masquers, I believe, yeah.

10 ATTORNEY BUTING: Okay. That's all I have
11 for out here, Judge.

12 THE COURT: All right. Just a second.

13 ATTORNEY BUTING: Thank you very much.

14 **VOIR DIRE EXAMINATION**

15 BY THE COURT:

16 Q. Ms Temme, I have a few questions for you, just to
17 follow up on the questions about police officers,
18 that Mr. Buting was asking you about. There may
19 be, during the course of the trial, questions
20 raised about the credibility of some of the
21 police officers.

22 I understood from your answer that you
23 believed they should be more credible because of
24 the nature of their job. But I also believe you
25 indicated you understood that, as humans, they

1 are just like others and may not tell the truth
2 sometimes; is that correct?

3 A. Yes.

4 Q. Notwithstanding your belief about the fact that
5 by the virtue of their job they should always
6 tell the truth, if you're selected as a juror,
7 will you be able to assess their credibility just
8 like any other witness?

9 A. Yes.

10 THE COURT: All right. Thank you.
11 Counsel, do I take it from your comments that at
12 this point you wish to follow up with a couple
13 questions that, for which confidentiality was
14 requested.

15 ATTORNEY FALLON: Yes.

16 ATTORNEY BUTING: Yes.

17 THE COURT: I'm going to indicate at this
18 time, the law on this subject, first of all,
19 presumes that voir dire proceedings are open. But
20 in specific narrow situations, they can be closed to
21 address specific personal matters involving
22 sensitive questions.

23 I did have the jurors who filled out the
24 questionnaires indicate specifically if they felt
25 that their answers to any questions fell into

1 that category. And in this case, there was a yes
2 answer to that. I have reviewed this jurors
3 questionnaire and determined that the answers she
4 referred to and the nature of those answers, do
5 fall into the area of deeply personal matters
6 which are to be kept out of the public domain.
7 And that she made an affirmative request to have
8 such matters be kept confidential.

9 Therefore, at this time, the Court is
10 going to allow the counsel to address those
11 matters, and those matters alone, in camera.
12 That is, I will briefly clear the courtroom at
13 this time of all parties except court personnel.
14 If you wait just outside the door, we'll have the
15 bailiff notify you as soon as that portion of the
16 questioning has been completed and invite
17 everybody back into the courtroom.

18 I should also notice that I did receive
19 an inquiry from counsel for WFRV, their counsel
20 in New York, last week, asking if any further
21 court proceedings in this matter would be
22 conducted outside the presence of the public. I
23 notified that attorney and sent, by email, a copy
24 of that letter to all of the other news media on
25 the Court's emailing list, that with this narrow

1 exception that we're dealing with here, the Court
2 did not anticipate that further proceedings would
3 be closed in any fashion.

4 I also indicated that if that attorney
5 or any others wished to be present to be heard
6 before the proceedings were closed, to please let
7 me know ahead of time so I could recognize the
8 attorney and give the attorney a chance to be
9 heard. So before we close these proceedings, are
10 there any attorneys here representing any news
11 media that wish to be heard before we briefly
12 close these proceedings? I do not see any, so at
13 this time, then, we'll clear the courtroom for a
14 few minutes. If you wait nearby in the hall, I
15 will have the bailiff notify you immediately as
16 soon as you can come back in.

17 (Proceedings closed.)

18 (Following portion sealed.)

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(Open court.)

THE COURT: All right. At this time the Court is back open. I will have the Clerk escort Ms Temme outside the courtroom. Counsel, does either party have a motion to make?

ATTORNEY FALLON: No motion from the State.

THE COURT: Mr. Buting?

ATTORNEY BUTING: No motion, Judge.

THE COURT: Very well. The Court will include Ms Temme in the panel. Counsel, I think to move along I'm just going to take a half hour for lunch. I don't know if you want to take it now or after the next juror. What's your feeling? All

1 right. Let's take a break now and let's report back
2 at 12:35.

3 I will also indicate that because of the
4 rate at which we're going, I told them this
5 afternoon to bring in eight jurors rather than
6 the 15 that we had discussed. But I also want to
7 let you know, we may go late this afternoon if we
8 need to make some headway. All right. I'll see
9 you in a half hour.

10 (Noon recess taken.)

11 THE COURT: At this time we're back on the
12 record. I believe it's Jacqueline Ungrodt, the next
13 juror, correct?

14 JURY BAILIFF: Yes.

15 THE COURT: All right. You can bring her
16 in at this time. Ms Ungrodt, if you will please
17 raise your right hand, we'll have the Clerk swear
18 you.

19 (Juror sworn.)

20 THE CLERK: Please be seated. Ms Ungrodt,
21 you have already filled out a juror questionnaire
22 last week. Today we're moving on to the next step
23 in the juror selection process, which is the chance
24 for the attorneys for each side to individually ask
25 questions to make sure that the juror meets the

1 qualifications.

2 I have a few pieces of information that
3 I didn't pass on last week. First of all, the
4 jurors selected to hear this case will not be
5 sequestered for the length of the trial. We're
6 doing that because of the fact the jurors are
7 being instructed not to view any news media
8 accounts of the case, or talk with anyone else
9 about it. If the jurors can do that, there will
10 not be a need to sequester the jury.

11 Also you should know, although these
12 proceedings today are open, no cameras are
13 permitted in the courtroom during the voir dire
14 process and the news media is not allowed to
15 identify individual jurors by name in news
16 reports. In addition, the jurors who are
17 selected to serve in this matter will not be on
18 camera, in any television proceedings or news
19 accounts during the course of the trial itself.

20 If after today's proceeding you are
21 still a member of the panel, you will receive
22 telephone instructions in a few days as to when
23 to report back to court. At this time then we'll
24 permit the attorneys to ask their questions.
25 Mr. Fallon, are you going to be taking things for

1 the State?

2 VOIR DIRE EXAMINATION

3 BY ATTORNEY FALLON:

4 Q. Good afternoon.

5 A. Good afternoon.

6 Q. My name is Tom Fallon. I'm an Assistant Attorney
7 General working for the Wisconsin Department of
8 Justice. And I'm one of the prosecutors in this
9 case. Norm Gahn is the other, and to my left is
10 Mr. Kratz, who I understand you are at least
11 somewhat familiar with.

12 A. Yes.

13 Q. Okay. I guess we should probably start there.
14 Your husband is an attorney?

15 A. Yes.

16 Q. Forgive me, but I'm not from this area, so what
17 kind of law does your husband practice?

18 A. General practice, estate planning, just that kind
19 of thing.

20 Q. All right. Does he do any criminal defense work?

21 A. No.

22 Q. Has he done any municipal prosecution or special
23 prosecution work in his career?

24 A. Yes, he has.

25 Q. What can you tell us about that experience, that

1 you recall?

2 A. I know he was Corporation Counsel for Calumet
3 County for many years. I can't be more specific
4 than that.

5 Q. You also indicated that you are familiar with Tim
6 Halbach?

7 A. I met Attorney Halbach once. I have not had a
8 conversation with him. It was a social event.

9 Q. All right. Since that time you have not had any
10 contact or any encounters with Mr. Halbach?

11 A. Correct.

12 Q. How long ago was it that you first met him at
13 this social occasion?

14 A. It was either August or September of last year.

15 Q. All right. So during the pendency of these
16 proceedings?

17 A. Yes.

18 Q. All right. During that introduction as it were,
19 did the matter of his sister's case come to
20 light, or any --

21 A. No.

22 Q. -- part of your discussion?

23 A. No.

24 Q. You -- The fact that you have now met the brother
25 of the victim in this particular case, does that

1 cause any question in your mind as to whether you
2 could be fair and impartial if selected as a
3 juror in this case?

4 A. No.

5 Q. All right. You sound pretty comfortable with
6 that, so let me ask you a follow-up. How do you
7 know Mr. Kratz?

8 A. Socially, through the Calumet County Bar
9 Association dinners.

10 Q. All right. Would you consider yourself a friend,
11 acquaintance, or Mr. Kratz is someone that you
12 know from the bar encounters?

13 A. Acquaintance, we have had a couple of
14 conversations, I guess I could say that.

15 Q. When was the last time that you and Mr. Kratz had
16 any conversation?

17 A. That would have been the last dinner, which would
18 have been August or September of last year.

19 Q. During the course of your conversation, did that
20 involve any discussion of the case at all?

21 A. Specifically, I will try to remember. I know I
22 mentioned to him, we were sitting across from
23 each other at dinner, that I had been summoned
24 for jury duty. And I don't remember exactly what
25 I said. I probably made some smart remark about

1 being my luck I would get the big trial. And I
2 think I probably told him I thought from what I
3 had read at that point that Mr. Avery was guilty.

4 Q. All right. That's just based on the media
5 accounts?

6 A. Yes, it would have been.

7 Q. All right. Now, in the questionnaire, you
8 likewise used the phrase probably guilty. And
9 that's fine that you have that opinion. But let
10 me ask -- And that I assume is based strictly on
11 what you read in the media, not from any other
12 conversations with anyone else?

13 A. Correct.

14 Q. Okay. You likewise indicated that you would be
15 able to set those opinions aside and base your
16 decision, if you are selected as a juror, solely
17 on the evidence presented in the court, and the
18 instructions you receive from Judge Willis; is
19 that correct?

20 A. Yes, it is.

21 Q. How is it, or why you feel that you could set
22 aside, you know, the probable guilt opinion
23 formed from the media coverage and decide this
24 case on what's presented in court?

25 A. Well -- excuse me. Media coverage is probably

1 not too reliable with factual things. Maybe so,
2 but I don't put much faith in that and I think
3 I'm able to hear evidence and make a decision on
4 that.

5 Q. All right. Now that the Court has advised you
6 that sequestration is not likely here, assuming
7 all the jurors are willing to abide by Judge
8 Willis' instructions; is there any other
9 particular impediment in your mind to the
10 possibility of serving as a juror?

11 A. No.

12 Q. You also indicated in your questionnaire, if I
13 change topics just a bit here, that you had some
14 prior jury experience, you were on a civil case
15 some years ago?

16 A. Yes.

17 Q. How did you find that experience?

18 A. It was interesting. I was taking classes, legal
19 classes with the paralegal program at LTC at the
20 time.

21 Q. All right.

22 A. So it was very interesting.

23 Q. I'm going to digress since you have given me that
24 opportunity there. Did you pursue paralegal or
25 legal assistant training?

1 A. I completed the legal classes for the paralegal.

2 Q. Okay. Did you ever engage in that practice?

3 A. I was working for my husband at the time. If he
4 would let me, I would.

5 Q. Okay. That's fair enough. How long did you work
6 in that capacity?

7 A. It was around 10 years. Some of that part time.
8 Didn't work in the summers when our children were
9 home from school.

10 Q. All right. Okay. Well, returning again to my
11 original question about the prior jury
12 experience. I take it that was just a personal
13 injury case as you note here, a tavern owner was
14 found not negligent for some -- can you tell us a
15 little bit about the nature of the case?

16 A. If I remember correctly, it was a long time ago,
17 I think it was a gentleman was escorted out of
18 the tavern by the owner and there were steps
19 leading down and the gentleman fell and, of
20 course, sued the owner of the tavern.

21 Q. Do I read correctly between the lines that the
22 gentleman probably deserved to be escorted from
23 the tavern?

24 A. I would think so.

25 Q. Okay. Why did you find the experience

1 interesting?

2 A. I think the process itself is very interesting.

3 And with our legal system, it's -- to see that

4 part of it, you see how it works.

5 Q. All right. To see it from the other side.

6 A. The other side.

7 Q. All right. In that case that you were a juror,

8 were you a foreperson?

9 A. No.

10 Q. Anything about the deliberation process and

11 working with your fellow jurors that raises any

12 question in your mind about your ability to

13 fulfill that role again if you were selected?

14 A. No.

15 Q. Okay. Do you currently have any close friends or

16 relatives who are currently or have recently

17 worked in the news industry in any capacity?

18 A. No.

19 Q. Are you one of those individuals, if they find

20 something interesting in the news might very well

21 get on the internet and do a little background

22 homework to see if there's more information about

23 the story, or some more facts that might help you

24 form a more informed opinion?

25 A. No.

1 Q. Okay. Pretty much take the news coverage for
2 what it is?

3 A. Yes.

4 Q. Have you, or maybe even your husband, given the
5 nature of his work or at least as a former
6 Corporation Counsel, ever been in charge of
7 writing any kind of safety guidelines or setting
8 up any safety standards for any type of business
9 or industry, or anything like that?

10 A. I can't speak for him, because I don't know, but
11 I have not.

12 Q. You have not. Okay.

13 A. Yes.

14 Q. Okay. Are you a lifelong resident of this area?

15 A. No.

16 Q. How long have you been in Manitowoc County? How
17 long have you been here?

18 A. About 35 years.

19 Q. In that time frame, do you have any opinion as to
20 how the Manitowoc Sheriff's Department is doing
21 their job, in terms of dealing with crime and
22 representing the public; do you feel they are
23 doing a good job, bad job, excellent, poor, no
24 opinion?

25 A. As far as I know they are doing a good job.

1 Q. In your questionnaire, you indicated that you
2 would be able to weigh the testimony of a law
3 enforcement officer the same way you would any
4 other witness. In other words, you wouldn't give
5 their testimony anymore credibility than any
6 other witnesses. Why do you feel that way?

7 A. Sounds a lot different when you say that and then
8 what I wrote. I guess maybe I meant that I
9 wouldn't give necessarily more credibility
10 because -- I'm sorry. I didn't do a good job of
11 answering that one.

12 Q. Well, it's probably not you, it's probably me.
13 You know, we lawyers aren't always as artful with
14 our language as we should be.

15 A. That's misleading. I really don't know how to
16 correct what I was saying there. I would
17 certainly -- somebody in an official capacity in
18 their job and reporting things, I would give more
19 reliability to their testimony.

20 Q. Let me rephrase the question here or read the
21 question, excuse me, exactly as it's written and
22 then we'll talk about it and that way I will dig
23 myself out of the hole I just created.

24 The law requires jurors to evaluate
25 their credibility just as that of any other

1 witness; that is, jurors are prohibited from
2 giving more or less credibility to the testimony
3 of a law officer simply because the witness is a
4 law officer. And if selected as a juror, would
5 you be able to assess the credibility of law
6 officers on this basis, and you indicated yes; is
7 that accurate?

8 A. Yes, I guess I can't argue with that. I'm sorry.

9 Q. Well, we just want to make sure you are clear on
10 that. There is not any confusion in your mind,
11 you would be able to judge their credibility like
12 you would anyone else?

13 A. Yes. I did not remember the way the question
14 was.

15 Q. That's my fault for in the way the question was
16 asked. All right. Do you like to work on
17 puzzles? Are you a puzzle person?

18 A. Occasionally, it's not a passion.

19 Q. All right. what kind of puzzles would you work
20 on? Word puzzles, jigsaw puzzles?

21 A. Crossword puzzles.

22 Q. Crosswords. Okay. Would you consider yourself a
23 detail oriented person or are you kind of a big
24 picture type of approach to problem solving?

25 A. Probably more detailed.

1 Q. All right. And why did you think so, or what
2 tells you -- what suggests that answer to you?

3 A. I guess because that's what I usually take care
4 of in the things that I'm involved with, the
5 details.

6 Q. So you run the show at home, keep the family
7 business, as it goes, on task, I take it?

8 A. Well, partially, and plus other things that I'm
9 involved with.

10 Q. Okay. What are some of those other things you
11 are involved with, some hobbies or other outside
12 things?

13 A. Things I mentioned, boards I'm on and that.

14 Q. All right. I see that you serve on the County
15 Library Board?

16 A. Yes.

17 Q. Any chance that you are familiar with --

18 ATTORNEY STRANG: Diane Free.

19 Q. -- Diane Free? Do you know a Diane Free? She
20 works for the County Library System.

21 A. I don't know the employees, it's just the board.
22 I'm with the board.

23 Q. So you're just with the board. I see. Okay.

24 A. Right.

25 Q. All right. I see that you are also a secretary

1 of the board and you are also a president -- is
2 that the Kiel Board of Appeals?

3 A. Yes.

4 Q. Tell me about that Kiel Board of Appeals
5 chairperson; what's that's all about?

6 A. That's if someone disputes a building inspector's
7 granting a permit for building and wants to
8 dispute that, then they come to the Board of
9 Appeals to appeal that.

10 Q. All right. And you are the chairperson on that?

11 A. Yes.

12 Q. In that capacity, do you then listen to the
13 presentation more or less of both sides and then
14 do you like cast a vote in -- in your capacity as
15 chairperson, or is that determined by others, or
16 how does that work?

17 A. We usually have the information before the
18 meeting.

19 Q. All right.

20 A. It has to be published and we do listen to anyone
21 that wants to speak. It's just our side and
22 their's, in essence. But, yes, we do make a
23 motion and vote on that part, the whole board
24 does.

25 Q. All right. So in that capacity, as a board

1 chairperson, you are working with the Village or
2 Town of Kiel?

3 A. City of Kiel, mm-hmm.

4 Q. City. Okay. Very good. All right. Do you
5 enjoy that?

6 A. Yes, I do.

7 Q. What is it about that job that you enjoy?

8 A. It's just interesting. I just enjoy it, that's
9 all.

10 Q. Fair enough.

11 ATTORNEY FALLON: That's all I have, Judge.

12 THE COURT: Mr. Strang.

13 **VOIR DIRE EXAMINATION**

14 BY ATTORNEY STRANG:

15 Q. Do you prefer Mrs. Ungrodt or Ms. Ungrodt or?

16 A. Whatever you wish is fine.

17 Q. First of all, am I pronouncing the last name
18 right?

19 A. Ungrodt, but you're close.

20 Q. I want to be better than close if I can. I'm
21 just going to pick up right where Mr. Fallon left
22 off for a couple minutes. The Kiel Board of
23 Appeals, how many folks sit on that board?

24 A. Right now, there are seven -- I'm sorry, five,
25 that sit on it.

1 Q. And the City Clerk is assigned to take minutes or
2 something?

3 A. Correct.

4 Q. Okay.

5 A. Correct.

6 Q. And this -- this would be variance disputes,
7 zoning disputes, that kind of thing?

8 A. Well, yes, variance. Generally it's a variance.

9 Q. Okay. And is it typically the kind of thing by
10 the time it gets to the board that you chair that
11 someone is going to go away happy and someone is
12 going to go away unhappy?

13 A. As in most things, probably so, yes.

14 Q. I'm not trying to be cute about that.

15 A. No. Right. They either are granted the variance
16 or they are not granted it.

17 Q. And are the disputes the kind that people tend to
18 invest a lot of emotion, or are they not?

19 A. Sometimes they are, yes.

20 Q. So there can be pitched feelings about these at
21 times at least?

22 A. Yes.

23 Q. Okay.

24 A. Not often, but sometimes.

25 Q. And the hearing process, of course, you get

1 written submissions before probably a night time
2 hearing or an evening hearing that you have
3 occasionally?

4 A. Yes, mm-hmm.

5 Q. But that's all published?

6 A. Yes.

7 Q. The public is free to come and be heard?

8 A. Yes.

9 Q. Sort of municipal government?

10 A. Correct.

11 Q. And as a decision making style or process, are
12 you more comfortable about something where you
13 expect to hear from both sides?

14 A. I'm sorry, I don't understand.

15 Q. In a criminal case, you may not hear as much from
16 the defense as you do from the prosecution. Do
17 you know why?

18 A. No, I don't.

19 Q. Okay. Are you familiar with the presumption of
20 innocence?

21 A. Yes.

22 Q. Are you familiar with the concept in this country
23 that the prosecution, the state, the government,
24 whoever the sovereign is, bears the burden of
25 proof, beyond a reasonable doubt?

1 A. Yes.

2 Q. And that the defense has no burden of proof?

3 A. Yes.

4 Q. So -- And that's where I'm going, Mrs. Ungrodt.

5 Would you -- You come into this telling us,
6 commendably, I mean with commendable candor, that
7 you think Steve Avery is probably guilty?

8 A. Yes.

9 Q. I'm getting the sense that you are a person that
10 chooses your words carefully?

11 A. I have learned that over the years, yes.

12 Q. So probably was a considered choice when you said
13 probably?

14 A. Yes.

15 Q. And as you come into this thinking Steve Avery is
16 probably guilty, what am I going to have to do or
17 what is he going to have to do to persuade you
18 otherwise?

19 A. I think you just told me he doesn't have to do
20 anything.

21 Q. Yeah, but I'm interested in what you are going to
22 tell me about you as a decision maker. I'm not
23 so interested in the broad platitudes of the law
24 here.

25 A. Okay.

1 Q. I'm interested in learning a little bit about how
2 you will live with that, or whether you can live
3 with that, if you are selected to serve on this
4 jury?

5 A. Live with making a decision, is that what you are
6 asking?

7 Q. Right. Would you expect to hear from Mr. Avery
8 in this case if you sat?

9 A. I don't know if he would or not.

10 Q. All right. And I guess, you know, wouldn't an
11 innocent man testify?

12 A. Not necessarily.

13 Q. Why not?

14 A. As you said, he doesn't have to prove his own
15 innocence.

16 Q. Right. And that, I'm confident that Judge Willis
17 will instruct you in words close to that. But
18 again, let's get into the details as you say.
19 Why wouldn't an innocent man testify and say I
20 didn't do it?

21 A. Well, I don't know a reason that wouldn't happen.

22 Q. If Mr. Buting and I, with Mr. Avery, decide not
23 to call him as a witness; is that something that
24 will weigh on you particularly here, as you sit
25 here saying I think he's probably guilty?

1 A. I don't think so. I don't know for sure. I
2 would have to, you know, have that happen and see
3 how I felt. I can't always predict how I'm going
4 to feel about something.

5 Q. And I want you to expand on that a little bit.
6 It's a perfectly fair answer. In fact, it's a
7 terrific answer saying I don't know as you just
8 did. But what's the tug? What's the conflict
9 you feel?

10 A. I don't know if -- perhaps if it appeared that
11 the prosecution had -- or needed to affirm a
12 matter of innocence. I really don't know. I'm
13 sorry, I don't know how to answer that, other
14 than that.

15 Q. You know, one of the things that -- the way --
16 sort of the delicate ways in which our system
17 works is that a judge turns over fact finding to
18 12 people from the community. I suppose even
19 though a judge might think he is just as good a
20 fact finder as anyone else. And at the same time
21 the 12 people on the jury turn over law finding
22 or instruction on the law to the judge, even
23 though we all come with ideas about what the law
24 is or should be.

25 And you strike me has a fairly strong

1 personality. Can you, and will you, take
2 instruction on the law from the Judge even if you
3 don't necessarily agree with it or wouldn't write
4 it the same way yourself?

5 A. Absolutely.

6 Q. Why?

7 A. Because I am a firm believer in our laws and
8 abiding by them and try to, I think.

9 Q. You came to this area of the state about 35 years
10 ago --

11 A. Yes.

12 Q. -- you said. Were the first years before that
13 spent in Madison, or in that area?

14 A. Was in Madison prior to that, yes. And then
15 Oshkosh after for three years before we moved
16 here.

17 Q. Was your husband from this area?

18 A. No, he is from northern Wisconsin.

19 Q. In any event, really, Manitowoc County, Kiel is I
20 think where you have done -- you raised your
21 children in the main and have lived your life for
22 35 years. But I also see a lot of connections to
23 Calumet County in your questionnaire; how did
24 that come about?

25 A. Well, part of Kiel lies in Calumet County.

1 Q. Oh, is that right?

2 A. Yes. So it's -- Yes.

3 Q. Okay. It's one of these cities that split?

4 A. A small part of the city is in Calumet County.

5 Q. Okay. And is the library board joint between

6 Calumet and Manitowoc County?

7 A. No. No, we're Manitowoc County.

8 Q. But you are also on the Calumet County Library

9 Board, if I understand?

10 A. Not -- Well, I'm on the Manitowoc County/Calumet

11 County. I'm on the system library board. They

12 have a library system which is two counties,

13 Calumet and Manitowoc.

14 Q. Is combined?

15 A. Right, as a system, yes.

16 Q. I'm sorry, we were going past each other.

17 A. Perhaps I misunderstood.

18 Q. That's what I was asking, so it's a two county

19 system?

20 A. Yes.

21 Q. And Mr. Ungrodt was, for a number of years, the

22 Corporation Counsel of Calumet County?

23 A. Yes.

24 Q. You told us, and it's not a surprise, that you

25 don't remember exactly how many years, but this

1 was more than 10 or something probably?

2 A. Oh, yes, more than 10 years ago, yes. Or more
3 than 10 years --

4 Q. In total?

5 A. -- in Corporation Counsel.

6 Q. Yes.

7 A. I would say at least 10 years that he was.

8 Q. Sure.

9 A. I could be wrong.

10 Q. You anticipated my next question which is, you
11 know, do you know remember about how long ago he
12 stopped serving as the Corporation Counsel for
13 Calumet County?

14 A. It's been a long time. I would say perhaps
15 between 15, or 15 years or more.

16 Q. But he still enjoys the annual, I assume, bench
17 bar dinner, or something, in Chilton?

18 A. Yes, he does a lot of work in Calumet County
19 also, so, yes. Belongs to both county bar
20 associations.

21 Q. And there is an annual dinner in Calumet County,
22 bar association?

23 A. Yes.

24 Q. Which is a relatively small bar association I
25 think?

1 A. Yes.

2 Q. I only say that because I have seen a picture on
3 the wall in the Calumet County Courthouse. So
4 these gatherings, if you include spouses, do
5 these tend to be 25 or 30 people?

6 A. I would say 30 at least, but perhaps more. It
7 depends.

8 Q. Something in that 30, 30 plus range?

9 A. Yes, I believe so.

10 Q. Okay. And Mr. Kratz has been a distinguished
11 member of that bar association for probably 20,
12 22 years. Is this an annual sort of thing where
13 you would bump into Ken Kratz yearly, about, at
14 the bar dinner?

15 A. Well, with a small number of people you do. See,
16 I don't know that we've -- Well, of course we
17 knew who we were, or each other was and --

18 Q. No.

19 A. And it was just as a social gathering.

20 Q. I understand that. And I'm sure, you know, with
21 even if there's 35 people, you talk to some
22 people one year and other people the next, I
23 assume. But, really, you have seen him annually,
24 at least, for a number of years?

25 A. Yes.

1 Q. And this past late summer, early fall, the two of
2 you were seated at the same table?

3 A. Correct.

4 Q. Was that by choice or was seating assigned?

5 A. Happenstance, just the way people sat down I
6 think.

7 Q. Okay. Just where they plopped down. And I'm not
8 -- It's clear you can't remember the details and
9 there's no reason you should. But you were
10 guessing that maybe you said, I have been
11 summoned for jury duty and with my luck, you
12 know, I'll wind up --

13 A. Oh, yes. I'm sure I said that, something like
14 that.

15 Q. And you think you probably made a comment to
16 Mr. Kratz that this guy was probably guilty?

17 A. I probably did, yes.

18 Q. That was certainly an opinion you held at the
19 time?

20 A. Yes.

21 Q. Now, I guess I'm curious about what, if any,
22 follow-up there was from Mr. Kratz to this bit of
23 conversation?

24 A. I don't -- excuse me -- I don't recall that he
25 specifically said anything. Probably just looked

1 at me like -- didn't say anything. I don't think
2 you offered any -- I don't remember if he did.

3 Q. Okay. Nothing that stands out, in any event?

4 A. Correct.

5 Q. When did you -- if you could put your finger on
6 it approximately, when did you come to the
7 opinion that Mr. Avery is probably guilty?

8 A. I don't really know exactly when it was. It had
9 been almost a year by the time, last fall, and
10 against my better judgment, I guess I did make a
11 decision based on what I heard through the media.

12 Q. Mm-hmm. But you can't now tell me whether that
13 was back in November of 2005, or March of 2006,
14 or some other time?

15 A. No, I'm sorry, I can't.

16 Q. And your husband still is in the active practice
17 of law?

18 A. Yes, he is.

19 Q. You -- I think you said maybe it was 10 years
20 that you worked for him as his --

21 A. Off and on, yes.

22 Q. I guess that's right, when the kids were home for
23 the summer.

24 A. That's when we first moved to the area. So it's
25 been a long, long time ago?

1 Q. If you were to end up on this jury knowing, as
2 the Judge just told you, that you would not be
3 sequestered, or at least presumptively here, the
4 jury would not be sequestered during the trial;
5 how would you go six weeks with a husband who is
6 a lawyer in this area for a long time, and not
7 talk about the case with him?

8 A. He doesn't talk to me about anything that goes on
9 in his office. We have never done that with
10 that. And I'm sure that would not be a problem.
11 He knows I wouldn't do it, too.

12 Q. Of course. This isn't in his office so he
13 doesn't have that ethical responsibility. I mean
14 this is a matter of public comment, to put it
15 mildly.

16 A. He has as much respect for the system as I do and
17 I don't think he would ask me anything. He knows
18 I wouldn't say anything.

19 Q. You -- Mr. Fallon asked you a question or two
20 about working puzzles?

21 A. Yes.

22 Q. And you allowed as how they are not a passion of
23 yours, but you might occasionally do that?

24 A. Yes.

25 Q. What is a passion of yours? How do you -- What

1 engages you as a way to spend your time?

2 A. As I probably put in my questionnaire I love to
3 read and I love to garden, I guess those, and my
4 family.

5 Q. What drew you to the library board? You are
6 really on two, because you are on the Kiel City
7 Library Board.

8 A. Correct. And the county one.

9 Q. What drew you to that work?

10 A. Well, it was I -- because I do read a lot and I
11 take a lot of library books out and was asked
12 many years ago by our local librarian if I would
13 consider being on the county board, which I was
14 first. And then after that, was on the -- was
15 appointed by the mayor at that time to be on the
16 city board.

17 Q. Mm-hmm. What do you read?

18 A. Just about everything except romance novels and
19 science fiction.

20 Q. Okay. You met Tim Halbach at the most recent bar
21 dinner that you described, the 2006.

22 A. Yes.

23 Q. Did you know by name, immediately, who he was?

24 A. No, I think my husband told me who he was before
25 that time.

1 Q. That he was a brother of Teresa Halbach.

2 A. Yes, that's correct.

3 Q. And that rang a bell with you?

4 A. Well, I knew who he was when I met him. And I

5 was told who he was before I met him.

6 Q. Before you were introduced?

7 A. Because I did not know the family.

8 Q. Okay. So once you were introduced, you knew the

9 connection?

10 A. Yes, mm-hmm.

11 Q. Was this just a passing introduction?

12 A. Yes. Yes.

13 Q. Nothing more than that?

14 A. No conversation, just hello, nice to meet you

15 type thing, yes.

16 Q. He -- I mean, I have met him too and he's a nice

17 young lawyer; would you agree?

18 A. Yes, I guess so. He seemed a nice person.

19 Q. I mean, is there a degree of sympathy you feel

20 for him?

21 A. I think I would have sympathy for any family

22 member who has had a tragic thing happen within

23 their family.

24 Q. You mentioned, just sort of briefly in your

25 questionnaire, a minor sort of chronic health

1 problem. Is that something you are comfortable
2 talking about publicly?

3 A. Sure. It's just sinus -- sinus problems. You
4 can tell I'm so stuffy now, and it's just, yeah.
5 Just, yes.

6 Q. And I guess I'm here to tell you that a six week
7 trial is a bit of a grueling experience, or it
8 can be, for everyone involved. What -- If
9 there's anyway you can give us a sense, what's
10 the likelihood we lose you to an infection or you
11 really get seriously under the weather during a
12 six week stretch of the winter?

13 A. I can't answer that. I never know. It just
14 happens. I get up in the morning and it's there.

15 Q. It's not seasonal?

16 A. It's more in the winter time.

17 Q. Okay. And when it's there, is it incapacitating?

18 A. Pretty much so if I don't have antibiotics to
19 take right away. The first couple days are
20 always the worse, yeah, for that.

21 Q. Does getting run down, or being stressed, or
22 exceptionally busy, get tied to this chronic
23 problem?

24 A. Not that I'm aware of, but it's possible.

25 Q. But that's all I'm asking is you never noticed,

1 boy, I've been burning the candle at both ends
2 and now I have got myself a bad sinus infection?

3 A. I have not noticed any correlation between the
4 two.

5 Q. Okay. Let's say you sit on this jury, in the
6 end. And just -- Let's just suppose that you
7 come to the conclusion, after thinking very
8 carefully about all the evidence at the end, that
9 the State just hasn't proven one or more charges
10 against Mr. Avery and that you are duty bound to
11 vote not guilty on one or more charges, okay?

12 A. Mm-hmm.

13 Q. Let's just hypothetically assume that. How do
14 you think the community, in which you have lived
15 for 35 years, would take your not guilty verdict?

16 ATTORNEY FALLON: Objection, relevance,
17 appropriate of that question.

18 THE COURT: As it's phrased, I'm going to
19 sustain the objection.

20 Q. What I'm trying to get at, Mrs. Ungrodt, is
21 jurors can get some unwanted attention no matter
22 what verdict they return. Some of them may want
23 attention but, you know, jurors in general can
24 get unwanted attention. And you know, it's no
25 secret, this case has been highly public, right?

1 A. Yes.

2 Q. Do you think you could handle the social stigma,
3 or the reaction of people in a relatively small
4 city, in which you have lived for 35 years?

5 A. Yes.

6 ATTORNEY FALLON: I still object. The
7 question is, can she follow the requirements of the
8 law, notwithstanding these other factors. Not
9 whether -- Not the question as phrased. I object to
10 the manner in which the question is posed.

11 THE COURT: Well, it's closer to an
12 acceptable question than the last form was and I
13 think the juror understood it and gave her answer.
14 So I'm going to allow it.

15 ATTORNEY FALLON: All right.

16 Q. I'm sorry your answer was?

17 A. I answered yes to your question.

18 Q. Why? Why would you be able to follow the law and
19 your juror's duty in spite of all that?

20 A. Just the way I am. I would do it. If I feel I
21 have done something right, then I won't back down
22 from it.

23 Q. Thank you.

24 A. Yes.

25 VOIR DIRE EXAMINATION

1 BY THE COURT:

2 Q. I have a few follow-up questions. I think they
3 are largely clarification. In answer to a couple
4 of questions on the questionnaire you indicated,
5 I believe, as I read your answers, that based on
6 the news reports that you had heard, you thought
7 that the defendant was probably guilty --

8 A. Yes.

9 Q. -- is that correct?

10 A. Yes, your Honor.

11 Q. And you also answered yes to the question whether
12 you would be able to set aside those opinions and
13 base your decision only on the evidence presented
14 in court?

15 A. Yes.

16 Q. So you understand that at trial, the defendant
17 starts off with a clean slate and, in fact, that
18 you couldn't find him guilty unless you concluded
19 the State proved it, beyond a reasonable doubt.

20 A. Yes, mm-hmm.

21 Q. So you believe you could set aside the opinion --
22 The opinion that you had is just based on what
23 you have heard, but you would not let that affect
24 your judgment as a juror?

25 A. That's correct.

1 Q. And with respect to Mr. Kratz, do I understand
2 that your testimony was, or your answers were
3 that you see him approximately once a year at
4 this bar dinner?

5 A. I believe that is correct, your Honor, yes.

6 Q. And other than a casual hello plus the exchange
7 you described to us, that's the extent of your
8 communication with him?

9 A. Yes.

10 Q. If -- To take off on one of Mr. Strang's
11 questions, if at the end of trial, based on the
12 evidence you thought that a not guilty plea -- or
13 not guilty verdict was warranted, and you voted
14 not guilty; would you have any problems facing
15 Mr. Kratz after that, based on whatever your
16 acquaintance is with him?

17 A. No.

18 THE COURT: All right.

19 ATTORNEY STRANG: I have just a brief
20 follow up, your Honor.

21 THE COURT: Go ahead.

22 **VOIR DIRE EXAMINATION**

23 BY ATTORNEY STRANG:

24 Q. What have you heard either from the media or your
25 husband about this case in the last week?

1 A. Nothing, I have avoided everything, just as I was
2 instructed to do so.

3 ATTORNEY STRANG: One question, just like I
4 said.

5 THE COURT: The Clerk will escort you out
6 of the courtroom at this time.

7 Counsel, any motion from either party?

8 ATTORNEY FALLON: No motion from the State.

9 ATTORNEY STRANG: I do. I'm going to move
10 to strike Ms Ungrodt for cause, your Honor, both
11 subject of an objective bias, I guess in the
12 framework that the Wisconsin Supreme Court lately
13 has given us in the last 10 years or so. I didn't
14 like -- Well, they were honest, but I thought the
15 answers to the questions about having an opinion as
16 she comes into this case were a problem.

17 She comes in thinking him probably
18 guilty, rather than presumably innocent. And
19 having learned a little bit more about her
20 contact with Mr. Kratz, which of course has been
21 perfectly appropriate, although it's a casual
22 acquaintance, it's one that's renewed annually,
23 or nearly, from the sound of it. And during the
24 pendency of this case involved sharing a dinner
25 table and raising the topic of this case, at

1 least briefly, coupled with now having been
2 introduced to Tim Halbach.

3 I think we're just, you know, we're at a
4 point here where discretion suggests excusing her
5 for cause, given the size of the panel we have
6 drawn and the compositive issues that her
7 questionnaire and this individual voir dire
8 process raised. You know, I don't know what to
9 make of the chronic sinus problem. But I had
10 some concern about that, too. And I will simply
11 leave that as it is. The Court heard the same
12 thing I did, but I would -- I think on balance
13 this is a juror better off excused.

14 THE COURT: Mr. Fallon.

15 ATTORNEY FALLON: Thank you, Judge. While
16 I'm sensitive to counsel and the Supreme Court
17 suggestion regarding the bias issue, I just don't
18 really feel, based on the answers by Mrs. Ungrodt,
19 that we need to excuse here. Taking them I guess in
20 reverse order, starting with subjective bias, she
21 indicated that from the media accounts he is
22 probably guilty. I think that was the answer to
23 question No. 40.

24 Then with respect to question 42, she
25 repeated that same comment. But I think it's

1 significant to point out that from the media
2 coverage, two things. One, we did have a
3 judicial determination that he was probably
4 guilty, and that was clearly reported in the
5 media. And she, as counsel aptly noted,
6 carefully chose her words and didn't say he is
7 guilty, that he was probably guilty. Well, quite
8 frankly, that's an accurate action statement of
9 what the procedural posture of the case is.

10 Secondly, but more importantly, with
11 respect to question 43, and I did ask about it,
12 perhaps clumsily the first time, but did repeat
13 it and the Court did repeat it, that she does
14 strike me as a woman with great respect for the
15 law and the system, being married to someone who
16 has chosen this honorable profession for work to
17 be done. She did participate in the profession
18 herself, and she said, yes, I can set that
19 opinion aside and listen to the evidence. As it
20 were, it was only a probable opinion.

21 So, you know, given her very clear
22 answers and her respect for the system, I think
23 we should take the juror at her word when she
24 says, yeah, I can set that aside, and form my
25 opinion based on what I hear in court.

1 With respect to the objective bias
2 question, I likewise think there's been, you
3 know, an insufficient showing, even giving
4 deference, as it were, to the concerns of the
5 defense regarding the objective bias argument,
6 based on the fact that she, once a year, runs
7 into Mr. Kratz. As indicated -- As I listened to
8 her, she had no problem voicing her opinions as
9 to, well, if the case called for a not guilty
10 verdict, or a count called for not guilty
11 verdict, I could do it.

12 And in response the Court's question and
13 counsel's question, I don't think she strikes me
14 as a woman who's beholding to anyone, her
15 husband, or Mr. Kratz, or Mr. Halbach. Mr. Kratz
16 and Mr. Halbach are individuals that she
17 occasionally runs into once a year, twice a year
18 at best.

19 So I don't think the objective bias
20 argument is appropriate. The objective bias, I
21 believe the test is whether or not a reasonable
22 or prospective juror's state of mind, whether a
23 reasonable juror would be considered biased under
24 those circumstances, and based on what we know,
25 because the Court is entitled to look at all the

1 facts and circumstances surrounding the
2 encounter.

3 And I believe the recent objective bias
4 case out of Milwaukee County is certainly ample
5 proof of that fact. The case -- and if I can
6 find it in a moment -- in which an employee of
7 the Milwaukee County District Attorney's Office
8 who works out at juvenile court was -- she was an
9 administrative assistant, was called to serve on
10 a criminal jury downtown on a felony matter and
11 was found not to be objectively biased even
12 though she worked for the same person as the
13 prosecutor. And that's E. Michael McCann,
14 District Attorney for Milwaukee County. That's a
15 Supreme Court opinion in ***State vs. Dale Smith***.

16 So when you consider all the facts and
17 circumstances, acknowledging that it is a mixed
18 question of law and fact, I don't think there's a
19 sufficient basis for a determination of objective
20 bias. Thank you.

21 ATTORNEY STRANG: I will add only to that,
22 that I think the objective bias question doesn't
23 stop where counsel has explained it. She worked in
24 her husband's law office during the time he was
25 Corporation Counsel for Calumet County. One of his

1 clients there, presumably then, as a matter of
2 statute in this state, would have been the Calumet
3 County Sheriff's Office so. And I'm not suggesting
4 that's a subjective bias issue in this instance, but
5 I think it, as well, has a bearing on objective
6 bias.

7 THE COURT: Well, there have been a number
8 of answers given by this juror, or a number of
9 subject matter areas that the defense has raised.
10 Referring to the last one first, I think she said it
11 was -- she thought it was more than 15 years ago
12 that her husband was Corporation Counsel for Calumet
13 County. And I'm not sure, given that long passage
14 of time, whether one could say that objectively a
15 person in her position couldn't put that aside and
16 be impartial.

17 I'm not sure that the defense is arguing
18 objective bias in that particular issue, but I
19 don't believe -- I believe, number one,
20 objectively, someone could and, subjectively, I
21 believe she indicated she could. And I see no
22 reason not to believe her on that point.

23 I asked a few follow-up questions of my
24 own with respect to her connection to Mr. Kratz.
25 It appears to be of the most casual nature;

1 namely, once a year at a bar gathering. She
2 indicated today that she passed on to Mr. Kratz,
3 some months ago, essentially, what she told us
4 today, which is that she had been summoned to
5 jury duty. She was worried it might be this
6 case. And she said she may well have told him
7 she thought that the defendant was probably
8 guilty, which is consistent with the answers
9 given on her plea questionnaire.

10 She indicated that either Mr. Kratz said
11 nothing in return, or if he did, she doesn't
12 remember what it is. I don't find that there was
13 any meaningful conversation with the two about
14 the case. I don't find that there was any
15 conversation between the two, other than what she
16 related. And I don't believe that very limited
17 contact would either make her subjectively or
18 objectively biased.

19 And she indicated specifically, in
20 answer to my question, that she would not feel
21 any inclination to be worried about facing
22 Mr. Kratz if she should find that the evidence
23 introduced by the State was insufficient to prove
24 guilt of Mr. Avery in this case; that is, she
25 could render a not guilty verdict and not feel

1 for any reason that she could not face Mr. Kratz.

2 Her encounter with Tim Halbach was even
3 briefer than that, apparently. I believe she
4 said she just met him once. There was no
5 discussion about this case or the facts involving
6 the disappearance of Mr. Halbach's sister.

7 Finally, with respect to the answers in
8 her questionnaire about believing at the time,
9 based on news reports, that she felt based on
10 those reports the defendant was probably guilty,
11 but she also indicated she could set aside that
12 belief if selected as a juror in this case.

13 I think probably the most helpful
14 discussion that I could find in Wisconsin case
15 law that applies here is in the case of *Hammill*
16 *vs. State*, reported at 89 Wis. 2d, 404. It's a
17 1979 case and understandably precedes the current
18 subject -- or statutory bias, subjective bias,
19 objective bias, differentiation used by the
20 courts now. But I think the rules as they apply
21 to the effect on pre-trial publicity and a
22 juror's ability to be impartial are the same.

23 In that case, the Court quoted from a
24 United States Supreme Court case in relevant part
25 as follows: It is not required, however, that

1 jurors be totally ignorant of the facts and
2 issues involved. To hold that the mere existence
3 of any preconceived notion as to the guilt or
4 innocence of an accused without more is
5 sufficient to rebut the presumption of a
6 prospective juror's impartiality, would be to
7 establish an impossible standard.

8 I think if a juror gives any inclination
9 that they have qualms, hesitations, or wouldn't
10 be able to set aside the effects of pre-trial
11 publicity, that would be one thing. But this is
12 a juror whose husband is an attorney. She
13 indicated in her answers that she clearly
14 understands the presumption of innocence, the
15 need to follow the Judge's instructions.

16 She indicates she takes that obligation
17 very seriously and would be able to follow it.
18 And I'm satisfied, based on all her answers, that
19 she is neither subjectively or objectively
20 biased. Therefore, the Court is going to deny
21 the request to excuse her for cause.

22 THE COURT: The next juror is I believe
23 Cherri Haskell, correct? Ms Haskell, if you will
24 remain standing, please, we'll have the Clerk
25 administer the oath.

1 THE CLERK: Please raise your right hand.

2 (Juror sworn.)

3 THE CLERK: Please be seated.

4 THE COURT: Ms Haskell, you have already
5 completed a jury questionnaire in this case. Today
6 we're going to proceed to the next step of jury
7 selection which is individual voir dire. Each of
8 the attorneys will be given an opportunity to ask
9 you some questions in order to determine whether you
10 are qualified to sit as a juror in this case.

11 I have a couple of pieces of information
12 to pass on to you which were not addressed last
13 week. First of all, I want to make sure the
14 jurors understand that the jury in this case is
15 not going to be sequestered, which means that
16 although the trial is expected to go on for six
17 weeks, you will be able to come home at the end
18 of the session each day and then come back the
19 following morning.

20 Our ability to not sequester the jurors
21 is based on the agreement of the jurors that they
22 will not listen to any news media accounts of
23 this case, not read anything, see anything on
24 television, or look up anything on the internet,
25 or discuss the case with anyone else either in

1 your family or otherwise.

2 I also want to assure you that although
3 the proceedings are open, we are not allowing
4 cameras in the courtroom during the voir dire
5 process. The members of the news media are not
6 allowed to identify individual jurors in this
7 case. And should you be selected to serve as a
8 juror, there will not be any cameras that are
9 allowed to show the members of the jury during
10 the course of the trial itself.

11 If you remain on the jury panel after
12 questioning today, you will get a telephone call
13 in the next couple of days letting you know when
14 you are to return to court again. At this point
15 then, we'll have the attorneys ask their
16 questions. Mr. Fallon.

17 **VOIR DIRE EXAMINATION**

18 BY ATTORNEY FALLON:

19 Q. Good afternoon, Ms Haskell. My name is Tom
20 Fallon. I'm an Assistant Attorney General with
21 the Department of Justice, one of the prosecutors
22 in the case. To my immediate left is Mr. Ken
23 Kratz, the Calumet County District Attorney and
24 Special Prosecutor as well. Thank you for coming
25 this afternoon.

1 I have a few questions to follow up on
2 the information that you provided last week, so
3 bear with me. You indicate that you work for
4 your husband at Lakeshore Industrial. I'm not
5 from the area, so if you could tell me a little
6 bit about what Lakeshore Industrial is and what
7 your role as office manager, what kind of things
8 do you do?

9 A. It's just me and my husband. And we build
10 lifting cages.

11 Q. I'm sorry?

12 A. We build lifting cages that hang from cranes.

13 Q. Oh, sure. All right.

14 A. I run the office. I do the -- It's just me and
15 him so I do all the sales and everything and
16 bookkeeping and he builds the cages.

17 Q. All right. So it's clearly a family run business
18 and you are the only two employees?

19 A. Yes.

20 Q. Okay. All right. Well, how long have you been
21 engaged in that business?

22 A. Seven years.

23 Q. Okay. And through the entire seven years, has it
24 just been you and your husband running the
25 business?

1 A. Yes.

2 Q. And sole employees of the business?

3 A. Yes.

4 Q. Okay. I note from the questionnaire that you did
5 not answer yes or no, and based on the
6 information that you have just given me, I'm
7 going to reask one of the questions. If this
8 case does in fact go six weeks, the question is,
9 is there any reason that has not previously been
10 ruled on by the Court or why you would suffer any
11 exceptional personal hardship if you are selected
12 to serve as a juror in this case?

13 In other words, if there are just the
14 two of you, is this going to be a problem for you
15 and your husband if you get selected as a juror
16 for six weeks?

17 A. It will be tough on him.

18 Q. Well, tell us a little bit about that. Because
19 if it's going to be a problem, we would probably
20 like to know that. So is there anyone else who
21 can pinch hit for you?

22 A. We may be able to find somebody to help out,
23 yeah.

24 Q. How much of a hardship on the business would it
25 be if you were selected as a juror?

1 A. Well, he would be taking all the sales calls
2 while he's trying to do the manufacturing. So he
3 has to stop what he's doing.

4 Q. So he would be doing the service as well as the
5 production?

6 A. Yes.

7 Q. Have you contemplated plans for someone to pinch
8 hit for you, if in fact you are selected?

9 A. Yes, we have asked somebody.

10 Q. Do you have assurances that you will be covered
11 as best as --

12 A. Not yet.

13 Q. Oh, not yet.

14 A. We thought we would wait and see.

15 Q. All right. Good prospect?

16 A. Hopefully.

17 Q. All right. Thank you. One of the other things
18 that was somewhat noteworthy about the
19 information you provided is that you indicated
20 that you apparently have not been following this
21 case in the media?

22 A. At first I did and I just haven't lately.

23 Q. All right.

24 A. I'm not much of a news person.

25 Q. How much -- How long ago did you stop paying

1 attention, as it were; are we talking months?

2 A. Yeah.

3 Q. Last summer or even before that?

4 A. Probably at least six months.

5 Q. At least six months. All right. You indicated
6 you are not much of a news person. Where, or
7 primarily, do you get your news sources? Are you
8 radio, television, T.V., newspaper, if you do get
9 something?

10 A. I read Sunday's paper.

11 Q. Sunday paper. All right. Do you listen to the
12 radio at all in your car or at work?

13 A. Yes.

14 Q. Any media coverage of this case that you gleaned
15 from the radio, that stands out?

16 A. No.

17 Q. All right. In terms of law enforcement, you
18 answered one question, you have a brother-in-law
19 that is a sheriff?

20 A. Yes.

21 Q. And where is that?

22 A. In Georgia.

23 Q. Macon, Georgia?

24 A. Yes.

25 Q. Is he the sheriff or is he a deputy?

1 A. He actually does the training for -- for the
2 sheriffs. He does --

3 ATTORNEY STRANG: I'm having difficulty
4 hearing the juror with the noise in the back.

5 THE COURT: I'm having the bailiff quiet
6 the jurors down a bit.

7 A. I will speak up. He's in charge of the training.

8 Q. All right. He's a training officer for the Macon
9 County Sheriff's Department?

10 A. Yes.

11 Q. All right. Do you consider yourself more of a
12 detail oriented person or a big picture type of
13 person?

14 A. Detail.

15 Q. You are a detail person. All right. Would you
16 consider yourself someone who enjoys working on
17 puzzles, or not?

18 A. No.

19 Q. Not a puzzle person. No word puzzles, no jigsaw,
20 no crossword, no nothing?

21 A. (Shakes head. No verbal response.)

22 Q. Okay. Fair enough. Next some, just general
23 questions. Are you familiar with a project
24 that's here in Wisconsin called Project
25 Innocence?

1 A. No.

2 Q. All right. Let me ask, how much of Mr. Avery's
3 background do you know?

4 A. None.

5 Q. None. You have not followed his --

6 A. Just from what I heard in the beginning.

7 Q. Okay. And do you recall what you may have heard
8 in the beginning?

9 A. That he was arrested before and then found
10 guilt -- innocent, I'm sorry.

11 Q. He was found guilty and then he was --

12 A. Yeah.

13 Q. -- exonerated.

14 A. Yes.

15 Q. So you are familiar with that?

16 A. Yes.

17 Q. But you haven't really followed his situation or
18 his plight other than that?

19 A. No.

20 Q. Okay. Have either you or your husband ever used
21 a publication such as Auto Trader to sell a car,
22 or buy a car, or anything like that?

23 A. No.

24 Q. Do you like movies?

25 A. Yes.

1 Q. Have you ever seen the movie "The Thin Blue
2 Line"?

3 A. No.

4 Q. Okay. How long have you been a resident of
5 Manitowoc County?

6 A. Eight years.

7 Q. And where did you live before that?

8 A. Florida.

9 Q. Florida. In your eight years here in the
10 Manitowoc area, have you ever had any encounters
11 with the Sheriff's Department, either in your
12 business capacity or personal capacity, or
13 anything like that?

14 A. No.

15 Q. Do you have an opinion now as to whether you
16 think the Sheriff's Department is doing a good
17 job with dealing with crime and the public, or
18 just a fair job, or no opinion?

19 A. I think they do pretty good.

20 Q. Any particular reason that leads you to that
21 conclusion?

22 A. Compared to living in Florida, they do a real
23 good job.

24 Q. All right. Where in Florida did you live?

25 A. Orlando.

1 Q. Based on your previous answers, I suspect the
2 answer to this question is no, but I'll ask
3 anyways. Do you have any -- you or your husband
4 have any close friends or relatives who have
5 worked for or are currently working for the news
6 industry, working in the media at all?

7 A. No.

8 Q. Before the business -- Well, were you and your
9 husband engaged in this same business in Florida
10 or is this something you started once you came to
11 Manitowoc?

12 A. Just started it when we moved here.

13 Q. What did you do before that, when you were in
14 Florida?

15 A. He worked for a crane company, welding.

16 Q. And yourself?

17 A. I was in insurance.

18 Q. Insurance agent?

19 A. Not an agent, just clerical.

20 ATTORNEY FALLON: That's all I have.

21 THE COURT: Mr. Strang.

22 **VOIR DIRE EXAMINATION**

23 BY ATTORNEY STRANG:

24 Q. Thank you. Hi. I'm going to pick up on a couple
25 of questions that you have already been asked,

1 then we'll see where we go from there. You and
2 your husband have talked about finding somebody
3 to cover for you if you land on this jury. Would
4 you guys have to pay that person?

5 A. Yes.

6 Q. Okay. So, I'm not trying to pry into finances,
7 but is that going to turn out to be a significant
8 financial difference than the way things are now
9 for the household or no?

10 A. No.

11 Q. Something you can do without a huge problem?

12 A. Yes.

13 Q. You told us a little bit about Florida and,
14 specifically, that compared to the Sheriff's
15 Department around Orlando, the folks here do a
16 terrific job, or something close to that. What
17 was your beef, if you will, with law enforcement
18 down in the Orlando area?

19 A. I didn't have a problem with the law enforcement,
20 but there was a lot of crime.

21 Q. Oh, in the area in which you lived?

22 A. Yes.

23 Q. Okay. Is that part of the reason why you moved
24 back up here?

25 A. Yes. We had children, so we wanted to raise them

1 somewhere safe.

2 Q. Mm-hmm. Okay. You're originally from the U.P.;
3 is that --

4 A. Michigan. Not the U.P., but Michigan.

5 Q. Oh. Okay. I thought it was the Upper Peninsula.
6 I stand corrected. What do you -- sort of get
7 back to the publicity that you absorbed or saw
8 about this case back before you sort of unplugged
9 or tuned out; what do you remember about Brendan
10 Dassey?

11 A. I didn't hear much about that.

12 Q. The name ring a bell?

13 A. That he was arrested.

14 Q. Okay. Is he related to Steven Avery?

15 A. Yes, I know that.

16 Q. Do you know how?

17 A. Nephew.

18 Q. And when he got arrested, was that still while
19 you were sort of following this case a little
20 bit?

21 A. Yeah.

22 Q. You stopped following it after that. A long time
23 after or right after or?

24 A. Probably a few months after.

25 Q. And what do you know about -- I mean, other than

1 that he was arrested? What you have you heard or
2 read about him?

3 A. Well, I just heard that he was involved with it.

4 Q. And how does that -- In your mind, does that have
5 a bearing on Steve Avery?

6 A. No, I have no opinion on it.

7 Q. Well, but I mean, I think you correctly
8 identified Brendan as Steve Avery's --

9 A. Yeah.

10 Q. -- nephew.

11 A. Yeah.

12 Q. So does the one case have a bearing on the other?

13 A. No.

14 Q. Why not?

15 A. Well, they are together, but I mean, I don't know
16 the facts about it.

17 Q. Okay. So do you remember being told Brendan --
18 or hearing, reading, that Brendan made some
19 statements, you know, confessions, whatever you
20 want to call it?

21 ATTORNEY FALLON: I'm going to object to
22 the phrasing of the question.

23 THE COURT: I will sustain the objection.

24 Q. What do you remember hearing about any statements
25 Brendan Dassey may have made?

1 A. He just said that he was -- that he did do it,
2 and he was involved in it, and that Steven
3 threatened him, I guess.

4 Q. And what does that make you think about Steven
5 Avery?

6 A. No comment on it. I don't have a comment. I
7 can't base my fact -- I don't know.

8 Q. When you say you don't have a comment, are you
9 thinking something but you don't want to tell me,
10 or you are not thinking?

11 A. I don't really know.

12 Q. Okay. The Judge will, I think, eventually
13 instruct whoever is on the jury here that in
14 America a person accused of a crime is presumed
15 innocent; is that something you have heard
16 before?

17 A. Yes.

18 Q. Okay. Does that make sense to you?

19 A. Yes.

20 Q. Do you agree with that?

21 A. Yes.

22 Q. You know, given that you have heard at least, or
23 read something about this case, why would you
24 presume Mr. Avery innocent?

25 A. I'm not saying that he is.

1 Q. Okay. What do you think?

2 A. I really don't know.

3 Q. But if you were told you had to presume him
4 innocent, why would you do that?

5 A. I can't say if he's innocent or guilty, I really
6 don't know.

7 Q. Could you follow an instruction that told you to
8 presume him innocent?

9 A. I don't understand what you mean.

10 Q. An instruction, that's a lawyer word. If Judge
11 Willis eventually looks at the jury and says, I,
12 the Judge, am instructing you that Mr. Avery,
13 like any criminal defendant in this country, is
14 presumed to be innocent, is that an instruction
15 you think you could honor and follow?

16 A. Yes.

17 Q. If the Judge further told you, here in our
18 country, the State bears the burden of proving
19 someone accused of a crime, guilty beyond a
20 reasonable doubt; is that a concept you have
21 heard before?

22 A. Yes.

23 Q. Is that a rule you could follow?

24 A. Yes.

25 Q. Not just in general, but in this case?

1 A. Yes.

2 Q. And when I say -- You know, you are a detailed
3 person, let me give you a specific setting. If
4 the Judge instructed you that Mr. Avery is
5 presumed innocent and the State bears the burden
6 of proving him guilty, beyond a reasonable doubt,
7 if it can and, you know, some juror said, on the
8 second day of the trial, boy, this guy is guilty
9 as the day is long; is that something you could
10 correct the juror, or bring that to the Judge's
11 attention?

12 ATTORNEY FALLON: Objection.

13 THE COURT: Sustained.

14 A. That I could --

15 Q. Could you honor that -- No --

16 THE COURT: Just a minute, I sustained the
17 objection.

18 ATTORNEY STRANG: Right.

19 Q. You can't answer that question, so I'm going to
20 move on.

21 A. I'm sorry.

22 Q. That's okay. It's my fault, not yours. What I'm
23 trying to get at is whether this is a rule that
24 you can take to heart, you personally?

25 A. Yes.

1 Q. Do you think that a person charged with a crime
2 should testify in his own behalf?

3 A. Yes.

4 Q. Why?

5 A. To get their side.

6 Q. Okay. And if the rules turn out to be that the
7 person can testify if he or she wants to, has a
8 perfect right to do that, but also does not have
9 to testify, and if the person chooses not to
10 testify, the jury is told they can't consider
11 that; is that a rule you can follow?

12 A. Yes.

13 Q. And I guess why, since we're starting with you
14 thinking, yeah, he should testify so I get to
15 hear that side of the story too?

16 A. I didn't understand the question.

17 Q. Why then could you follow a rule that says, nope,
18 if you only get to hear one side of the story,
19 the burden of proof still rests with the State
20 and you can't consider the fact that the
21 defendant did not testify?

22 A. Then I would have to follow that rule.

23 Q. But if I understood you, your first inclination
24 would be to want to hear both sides?

25 A. Yes.

1 Q. Can you think of any reasons why an innocent
2 person might choose not to testify?

3 A. Their words might get twisted.

4 Q. Okay. Okay. How about lawyers, are lawyers
5 likely to have any affect on that?

6 A. Yes.

7 Q. How so?

8 A. By changing their frame of wording.

9 Q. Okay. So, in other words, the lawyers on the
10 other side might do that?

11 A. Yes.

12 Q. How about the lawyers on the defendant's side; do
13 we have any input in that, or affect on whether
14 somebody testifies or not?

15 A. I don't think so.

16 Q. Okay. And I guess the bottom line is -- Do you
17 like Mrs. Haskell, or Ms Haskell?

18 A. Mrs.

19 Q. Mrs. Okay. The bottom line is, if for whatever
20 reason Mr. Buting and I don't call Mr. Avery as a
21 witness, or he does not testify; can you still
22 presume him innocent and hold the State to a
23 burden of proof, beyond a reasonable doubt?

24 ATTORNEY FALLON: That's asked and
25 answered. She said she could follow the instruction

1 on presumption of innocence, burden of proof.

2 THE COURT: She did, but I will allow it.

3 It's a specific question.

4 A. Yes, I could.

5 Q. Let me turn it around. If he decided to testify,
6 could you consider his testimony just the same as
7 any other witness you would hear?

8 A. Yes.

9 Q. You left unanswered one question in your
10 questionnaire. It was No. 43, not that you will
11 remember that. The question was, if you have
12 formed any opinions as to Mr. Avery's guilt or
13 innocence, based on information from any source,
14 would you be able, should you be selected to
15 serve as a juror, to set aside those opinions and
16 base your decision only on the evidence presented
17 in court and the instruction given you by the
18 Judge? So I will ask you.

19 A. I thought I answered that.

20 Q. Nope. But the answer is yes?

21 A. Yes.

22 Q. Okay.

23 THE COURT: Actually, in fairness to the
24 juror, I should note that the Court didn't artfully
25 word that because it starts out saying, if you

1 formed any opinions, so if the juror hasn't formed
2 any maybe they would feel they didn't have to answer
3 that one.

4 ATTORNEY STRANG: Thank you much. That's
5 all I've got.

6 THE COURT: All right. The Clerk will
7 escort you out of the courtroom at this time, Ms
8 Haskell.

9 Counsel, any motion from either party?

10 ATTORNEY FALLON: No motion from the State.

11 ATTORNEY STRANG: I have no motion specific
12 as to that juror. But I do need to be heard before
13 we bring in the next juror.

14 THE COURT: All right. Ms Haskell will be
15 in then and we can wait a minute before bringing in
16 the next one.

17 ATTORNEY STRANG: I have encountered from
18 the State a number of objections to questions of
19 mine on individual voir dire that I regard not only
20 as proper and unexceptionable, but necessary here.
21 Probably not phrased in a sterile way, but there is
22 no requirement of which I'm aware of that sterility
23 control the process of individual voir dire or
24 general voir dire.

25 And I need to air out just exactly what

1 parameters the Court thinks I'm invading, or what
2 the objections are so that we can deal with that.
3 Because my voir dire here is being hampered
4 materially.

5 ATTORNEY FALLON: I understand where
6 counsel is coming from and it's not something that I
7 ordinarily object to. Here are my only two concerns
8 or complaints. One, I just don't think it's fair to
9 interject facts, for instance, regarding what the
10 juror should know about the past. The question is
11 what do they know about the past.

12 You know, constantly interjecting
13 opinions about, well, he testified in the first
14 case and he was found guilty and shouldn't have
15 been, and what if he doesn't testify in this
16 case; I mean, that's conditioning of the jury.
17 That's one set of questions that I do strongly
18 take exception to, the introduction of facts as
19 opposed to let's find out from them what they
20 think the facts are, or what they know the facts
21 to be.

22 The other questions regarding the
23 presumption of innocence and the burden of proof
24 and it -- I understand exactly where he's going
25 to and most of it I don't object to. My problem

1 is it is in the wording. Because the presumption
2 of innocence, the real essence is -- well, can
3 you take it to heart, or do you believe in it.
4 Well, that's nice, and it might be helpful, but
5 the real question is, can you accept it and will
6 you follow it. That's the essence of it.

7 And whether they are going to get warm
8 and fuzzy over it, is not the issue here. And so
9 I understand completely where counsel is going.
10 And I emphasize with that. I just object to the
11 phrasing on those issues. Because they are
12 important. They are certainly entitled to know
13 that information. My objection there is strictly
14 the way they are being approached and asked.

15 ATTORNEY STRANG: Well, with all due
16 respect, the question whether a juror can or will
17 follow a legal rule satisfies the issue of cause to
18 excuse them. And the question of what a juror
19 believes, what a juror accepts, how a juror reacts
20 to propositions, is this something that sticks in
21 the craw, or something that makes the juror want to
22 stand up and wave an American flag, is exactly the
23 sort of thing that goes to the second purpose of
24 voir dire, which is the intelligent exercise of a
25 peremptory strike.

1 And it's also entirely appropriate in
2 this case or any other, to give some concrete
3 meaning to an abstraction like the presumption of
4 innocence. Because here that means they got the
5 wrong guy. That means he didn't do it. That's
6 what I'm presuming or I'm asking a juror to
7 presume and I have a right to have them presume.

8 So to get them talking and get some
9 sense of what it is these people really believe,
10 and what it is they will simply live with a
11 bridal on or not spit out the bit, is the essence
12 of what we're trying to do in deciding how to
13 exercise but seven peremptory strikes.

14 THE COURT: Well, I'm not sure how I can
15 respond precisely to comments that relate to a
16 variety of objections, some of which I have
17 sustained, some of which I have overruled. I recall
18 a couple of the questions related to something
19 involving the defendant testifying at the 1985 case.
20 It's not immediately apparent to me why that would
21 be relevant to this case. I don't think it's
22 something necessarily that the jury is going to
23 hear.

24 I have to confess it hasn't been the
25 subject of any pretrial motions and perhaps

1 there's an explanation I haven't heard yet, but
2 to the extent that the questions start getting
3 into specific evidence, especially evidence that
4 the jury may or may not hear, the Court is going
5 to be reluctant to allow those types of
6 questions.

7 In other cases, the Court sustained the
8 objection simply based on the phrasing of the
9 question. And I don't think I can give you any
10 advance indication as to whether or not I might
11 sustain or overrule any other objection, other
12 than to make those comments.

13 I agree that the -- both parties are
14 entitled to some flexibility in order to draw out
15 the juror and get an honest answer to questions
16 that are directly relevant to determining whether
17 or not the jury can be impartial. But once the
18 parties start getting into hypothetical
19 questions, or questions that might be somewhat
20 misleading, I will sustain objections.

21 ATTORNEY STRANG: Well, of course, the fact
22 that he testified in 1985 and was convicted all the
23 same, is not at all hypothetical. And it's a
24 wonderful specific concrete example that may bring
25 home to a juror the importance of this rule that we

1 have, that one has a privilege not to testify in a
2 criminal case, if you're the accused. And innocent
3 people well might choose to do that for good
4 reasons.

5 THE COURT: Well, that's true, but it's not
6 necessary to ask the question in this case and it is
7 something that may well be determined to be
8 irrelevant evidence if it was attempted to be
9 introduced in trial. And I just don't see the
10 necessity or reason for it.

11 ATTORNEY STRANG: Well, the reason is that
12 we've got -- I don't know, I can't give the Court a
13 number right now. But we have several jurors who
14 wrote on their questionnaires, I need to hear the
15 defendant, or an innocent man would testify, words
16 to that effect. We have got jurors who have written
17 down that opinion, and jurors -- I should say
18 prospective jurors, panel members. And my guess,
19 knowing human nature, is that for everyone who has
20 written it down, there are three or four who believe
21 it and haven't written it down. And I clearly am in
22 a position, representing someone who may not testify
23 in this case.

24 THE COURT: Don't get me wrong, I'm not
25 saying that you can't ask questions that are meant

1 to ask the jury if they can accept our rule that the
2 defendant doesn't have to testify. But I don't
3 think it's necessary to tell the jurors, and
4 Mr. Avery did testify in his 1985 case in order to
5 drive home the point. That's what I'm saying.

6 ATTORNEY FALLON: And, you know, just an
7 example, then if counsel wants to ask the question,
8 well, can you think of any reasons why the person
9 wouldn't want to testify and, you know, we have the
10 advice of counsel, we have the inartful speaker, and
11 perhaps a few others things they would like to
12 suggest. Does that mean that I get to say, well,
13 what do you think of the fact that he has got six
14 inconsistent statements about what he did in the
15 first eight days of this investigation. What about
16 the fact that he has a felony record. I mean, I can
17 play that routine too, but I don't want to. I don't
18 think it's appropriate. I just think we're opening
19 a box here.

20 THE COURT: Well, I agree that if the
21 questions go too far in that regard, I would stop
22 them. If a juror says, no, I can't think of any
23 reason why the defendant wouldn't want to testify,
24 that doesn't necessarily make the juror unqualified.
25 It just may mean that the juror can't come up with a

1 specific reason.

2 But as long as the question is brief.
3 It probably -- There are a number of jurors, and
4 it's not just this trial, it's any criminal
5 trial, will get up and say, yeah, I think the
6 defendant should testify, so I can hear the
7 defendant's side of the story. The defense is
8 entitled to a brief education to explain to the
9 jury why our rules don't require that. And as
10 long as the time isn't abused, I'm going to allow
11 it.

12 ATTORNEY FALLON: I don't have any
13 objection to that.

14 THE COURT: Diane, can you do another one
15 before we take our break? How are you doing?

16 COURT REPORTER: I think we can take our
17 break.

18 THE COURT: All right. Let's take our
19 break. We'll resume in 15 minutes, 25 to 3.

20 (Recess taken.)

21 THE COURT: The next juror is John Carbon,
22 correct?

23 ATTORNEY FALLON: Correct.

24 THE COURT: Mr. Carbon, if you can remain
25 standing, the Clerk will administer the oath.

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Please stand.

THE CLERK: Raise your right hand.

(Juror sworn.)

THE CLERK: Please be seated.

THE COURT: Mr. Carbon, you have already completed a questionnaire in this case. This afternoon we're moving on to the second step of jury selection which is individual voir dire. The attorneys will each have a chance to ask you some questions this afternoon.

Before we proceed, I wanted to tell you a few things that I didn't tell you last week. First of all, the jurors in this case are not going to be sequestered. That means if you are selected on the jury, you are going to be able to go home and sleep at home every day. And we're doing that because we received a commitment from the jurors not to listen to any news media accounts of this matter, watch any television, read any newspapers, or explore it on the internet, or discuss it in any way with anyone.

I also want you to know that although these proceedings are open to the public, we don't permit television cameras in the courtroom during the voir dire process and the press is not

1 allowed to identify individual jurors by their
2 names in news reports. And finally, for those
3 jurors who are selected to serve on the jury in
4 this case, the cameras are not permitted to show
5 the faces of the jurors at the trial.

6 If you are -- If you continue on the
7 jury after questioning today, you will receive
8 instructions by telephone when to return later
9 this week. With that background then, Mr.
10 Fallon, you may begin your questioning.

11 **VOIR DIRE EXAMINATION**

12 BY ATTORNEY FALLON:

13 Q. Good afternoon, sir.

14 A. Good afternoon.

15 Q. Is it Carbon or Carbon.

16 A. Carbon.

17 Q. Carbon. Thanks for coming. I just have a few
18 questions to follow up on some of the information
19 you provided last week. My name is Tom Fallon.
20 I'm an Assistant Attorney General with the
21 Wisconsin Department of Justice and I'm assisting
22 the prosecutors in this case. All right.

23 Mr. Carbon, I noted from your
24 information here that -- I take it you were a
25 brake press operator?

1 A. Right.

2 Q. Are you currently retired?

3 A. Yes, I am.

4 Q. And how long have you been retired, sir?

5 A. 2002, May 31st.

6 Q. 2002.

7 A. Right.

8 Q. Okay. And where did you work when you --

9 A. Invincible.

10 Q. Invincible.

11 A. Yes.

12 Q. All right. And how long did you work for them?

13 A. Thirty-five years.

14 Q. Were you a brake press operator all that time?

15 A. Yes, I was.

16 Q. Okay. One of the other things that you reported,

17 I take it that you are not much of a newshound?

18 A. No, I'm not.

19 Q. All right. And most of the news that you do get,

20 it seems to be you have a preference for

21 television news?

22 A. That's right.

23 Q. All right. You are not much of a newspaper or

24 magazine guy?

25 A. No.

1 Q. All right. Yet, you report that you have not
2 received much publicity in this case, or at least
3 much that you remember. Is it because you just
4 haven't followed this case?

5 A. Well, I have no interest in it so far.

6 Q. Okay. Fair enough. As a result, you don't have
7 any opinions as to the guilt or innocence of Mr.
8 Avery or anybody else?

9 A. No, I don't.

10 Q. All right. If you were selected as a juror in
11 this particular case, is there any hardship,
12 economic or health-wise that may --

13 A. None whatsoever.

14 Q. None whatsoever. So you are feeling pretty good?

15 A. Yes, I am.

16 Q. Very good. You indicated in your report that you
17 would be able to follow any instructions that
18 Judge Willis gave you and apply that?

19 A. Yes, I would.

20 Q. All right. And you would, if you were selected,
21 base your opinion as to the guilt or innocence of
22 Mr. Avery solely on what you hear in court; is
23 that right?

24 A. Yes.

25 Q. All right. In other words, whatever evidence

1 that the State may present, or the defense
2 presents, whatever occurs in the courtroom is
3 what you would base your opinion on and nothing
4 else?

5 A. Right.

6 Q. All right. And you would be able to accept the
7 Court telling you that Mr. Avery is presumed
8 innocent and unless or until the State can
9 convince you otherwise?

10 A. Right.

11 Q. All right. And you would be able to follow that?

12 A. I sure would.

13 Q. Okay. And you understand that Mr. Avery doesn't
14 have to take the stand or testify?

15 A. Right.

16 Q. All right. And you wouldn't hold that against
17 him if he did?

18 A. No, I would not.

19 Q. All right.

20 A. That's his privilege.

21 Q. All right. Similarly, if he did take the stand
22 and decide to provide some information to the
23 jury, you would evaluate his believability the
24 same way you would any other witness?

25 A. Yes, I would.

1 Q. All right. Now, do you have any close friends or
2 relatives who are working in the media or have
3 recently worked in the news industry?

4 A. No, I don't.

5 Q. No. All right. Do you have a computer at home,
6 sir?

7 A. No, I don't.

8 Q. All right. And as I recall, you do not have any
9 prior jury experience; is that right?

10 A. No, I don't.

11 Q. Okay. As you think about this particular case
12 and the possibility that you would be selected as
13 a juror, is there anything in your background,
14 any personal philosophes or religious beliefs, or
15 anything of that nature which might cause you
16 some concern in terms of being a juror?

17 A. No.

18 Q. All right. You would have no problem
19 deliberating in determining guilt or innocence?

20 A. Not one bit.

21 Q. Okay. In your capacity as a brake press operator
22 at Invincible, did you ever, or were you ever
23 involved in any security matters with the company
24 or the shop?

25 A. No, I was not.

1 Q. Not your area of expertise?

2 A. No.

3 Q. Okay. Excuse me. Since you didn't or haven't

4 followed this case very closely in the media, do

5 you have any strong recollections about anything

6 that you may have heard at this time?

7 A. No, I don't.

8 Q. Okay. How long have you been a resident or

9 member of Manitowoc County, sir?

10 A. 1960 I moved into Manitowoc.

11 Q. Okay. 1960.

12 A. I was born in Branch. I lived out there for 21

13 years and I'm 67 so.

14 Q. I'm sorry? You were born where?

15 A. Born in Branch. And I lived in Branch until I

16 was 21.

17 Q. Very good. All right. So you have a fair amount

18 of experience. Do you think the Sheriff's

19 Department is doing a good job, bad job, or fair

20 job, or no job at all, in terms of dealing with

21 crime?

22 A. I think they are doing okay.

23 Q. Doing all right?

24 A. Sure.

25 Q. Do you have any strong opinions regarding your

1 experience with law enforcement?

2 A. No, I don't.

3 Q. All right. Have you had any encounters with law
4 enforcement?

5 A. No.

6 Q. Okay. Any family members or any friends have any
7 bad experiences that they shared with you?

8 A. No, they haven't.

9 Q. Okay.

10 ATTORNEY FALLON: That's all I have for
11 this witness.

12 THE COURT: All right. Mr. Buting.

13 ATTORNEY BUTING: Thank you, Judge.

14 **VOIR DIRE EXAMINATION**

15 BY ATTORNEY BUTING:

16 Q. Good afternoon, Mr. Carbon.

17 A. Good afternoon.

18 Q. My name is Jerome Buting, and Dean Strang and I
19 are defending Mr. Avery, I assume you understand
20 that.

21 A. Okay.

22 Q. Let me ask you, now you are retired for the last
23 three years, four years?

24 A. Four.

25 Q. Okay. And you stay here year round?

1 A. Yes, I do.

2 Q. What do you generally do with your day?

3 A. I go for walks and I watch the boob tube.

4 Q. Okay. Do you have friends you socialize with,
5 get together and --

6 A. Oh, we go to the bar once a week and play
7 cribbage.

8 Q. Okay. And are they friends you had for a long
9 time?

10 A. Oh, yes.

11 Q. Okay. Good friends?

12 A. Yes.

13 Q. Okay. And you say you watch a fair amount of TV?

14 A. Yes, I do.

15 Q. During the day and in the evening as well,
16 probably?

17 A. Basketball, football, stuff like that.

18 Q. So does this -- As you are socializing with your
19 friends, did this case ever come up in any
20 discussions, like, hey, did you hear about this
21 or that or what do you think about --

22 A. Not really.

23 Q. Do you remember when it was charged originally?

24 A. I think it was a couple years ago. I don't
25 remember.

1 Q. Okay. Can you tell me what it was you recall
2 hearing when it was first charged?

3 A. Just that he was accused of murdering Ms Halbach.

4 Q. And at some point did you later hear news reports
5 about another person who was also charged?

6 A. No, I haven't.

7 Q. Never heard about a nephew.

8 A. Oh, yes, yes, young Dassey.

9 Q. Brendan Dassey.

10 A. Yes.

11 Q. Brendan Dassey.

12 A. Yes, I'm sorry.

13 Q. Where did you hear about that; did you see that
14 on TV?

15 A. That was on TV also.

16 Q. Okay. Did you see the press conference that was
17 on TV for that?

18 A. No, I haven't.

19 Q. You know what I mean by press conference with --

20 A. I haven't. That I haven't seen.

21 Q. Okay.

22 A. I couldn't have had the TV on at the time. I
23 don't know.

24 Q. Okay. But you recall seeing something on TV
25 about it?

1 A. Yes, I did.

2 Q. What do you recall learning about it, the
3 details? What do you remember?

4 A. Just that they were supposed to have stabbed her,
5 mutilated her. That's about the only thing I
6 remember.

7 Q. And did you -- What did you think when you heard
8 that story; was it a pretty graphic detail?

9 A. Yes, it was.

10 Q. Did it bother you to hear those?

11 A. Yes, it did.

12 Q. Did you believe it to be true?

13 A. I don't know if it's true or not.

14 Q. But when you initially heard that, did you just
15 assume, well, it must be true?

16 A. Not really. Not really.

17 Q. Did you think otherwise? Did you think, well,
18 this is kind of a strange story, I'm not sure
19 this really makes sense?

20 A. I don't know if it makes sense or not, you know,
21 I really don't know.

22 Q. Okay. Did you -- Did it have any affect on the
23 way you thought, or do you think it had any
24 affect on whatever feeling or opinion you might
25 have had about Steven Avery as opposed to Brendan

1 Dassey?

2 A. Not really.

3 Q. Do you recall any details about him being
4 involved, that is, Steven Avery being involved,
5 according to Brendan Dassey's first statement?

6 A. Just through the news media and that was about
7 it.

8 Q. Right. So, in that news media though, you
9 learned a story of what this young man apparently
10 initially said, right?

11 A. Yes.

12 Q. Okay. And through the news media, have you ever
13 heard any other versions of it since then, any
14 differences in that story?

15 A. No, I haven't.

16 Q. Have you ever heard whether or not the young man,
17 Brendan Dassey, has since tried to take back that
18 story, had to change the story, or anything of
19 that sort?

20 A. No.

21 Q. Just never heard any of that? What about through
22 talking with your friends?

23 A. We don't even bring it -- discuss it, my friends.

24 Q. Okay. After having heard all that you did hear,
25 though, pretty graphic details, as you see

1 Mr. Avery sitting here today, do you really think
2 you think you can give him the presumption of
3 innocence?

4 A. I really don't know, sir.

5 Q. Be kind of hard?

6 A. I don't know if he's innocent or guilty. I have
7 no idea.

8 Q. Well, if -- the Judge will instruct you that when
9 any defendant, including Mr. Avery, comes to
10 court here, at the beginning of his trial, he's
11 presumed innocent.

12 A. That's true.

13 Q. No matter what you may have heard in the news?

14 A. That's true.

15 Q. Do you think sometimes things you hear in the
16 news aren't true?

17 A. Oh, yeah, and I imagine some things in the paper
18 aren't true.

19 Q. Okay. Would that be true for television as well?

20 A. Yes.

21 Q. Because you primarily get your news from
22 television; is that right?

23 A. Right.

24 Q. Okay. And you understand that generally the
25 defense doesn't get to answer the charges that a

1 prosecutor brings until the trial? A lot of
2 times you don't hear the other side until a
3 trial?

4 A. Okay. I didn't know that.

5 Q. Okay. Did you think the defense should be
6 calling press conferences and responding to it?

7 A. Not really.

8 Q. The fact that you haven't heard any press
9 conference from the defense, or defense
10 attorneys, that, you know, publicly, not only
11 deny the charge but, you know, pick it apart
12 piece by piece; does that have any affect on you?

13 A. No, it doesn't.

14 Q. Do you think that the defense needs to
15 demonstrate here in court, prove to you why
16 Mr. Avery is not guilty of this charge?

17 A. I think so.

18 Q. Why do you think so?

19 A. Because he has got to prove his innocence.

20 Q. He does?

21 A. Yes.

22 Q. Why is that?

23 A. Right now he is charged with murder.

24 Q. Okay. So you think if somebody like Mr. Avery is
25 charged with murder, something so serious and all

1 the details that you did hear at one point, it's
2 really necessary for him to now prove that he is
3 not guilty; is that what you are saying?

4 A. I would think so.

5 Q. Well, do you feel pretty strongly about that?

6 A. Yes, I do.

7 Q. Why?

8 A. He's just got to prove his innocence.

9 Q. Do you also think that that means that he should
10 take the witness stand and testify and present
11 his side of it?

12 A. I think that's up to him if he wants to testify.

13 Q. So that's different, you feel differently about
14 that part of it?

15 A. Yes.

16 Q. You don't feel that in order to prove that he is
17 innocent he would have to testify; is that right?

18 A. That's right.

19 Q. What if he did testify, would you think maybe he
20 is just up there trying to save his own skin, and
21 say whatever he wants, or whatever he needs to?

22 A. No, I don't think so.

23 Q. Why not?

24 A. Well, he's trying to prove that he's innocent,
25 that's why he took the stand.

1 Q. Okay. You know, either way it goes is a tough
2 decision, whether you take the witness stand or
3 not. And, you know, defense attorneys always
4 struggle with that decision, whether they should
5 advise their client to do it or not, take it one
6 way or the other. And can you promise me that if
7 you are on this jury, you are not going to hold
8 it against him either way, whether he does
9 testify or doesn't?

10 A. That's right, I will promise that.

11 Q. Okay. Where do you get together and play
12 cribbage?

13 A. Do I have to say the bar?

14 Q. Sure.

15 A. Saucy's.

16 Q. Saucy's.

17 A. Yes.

18 Q. And that's where, in Manitowoc?

19 A. Yes, up on Washington Street.

20 Q. Okay.

21 A. It's also a sports bar.

22 Q. Okay. Is that something you do pretty much every
23 day?

24 A. No, just on Wednesdays.

25 Q. Just Wednesdays. Okay. During the day, or

1 evening, or both?

2 A. 9:30 it starts. But now we haven't for the last
3 three weeks because there wasn't enough players.
4 You have to have at least four players.

5 Q. 9:30, in the evening?

6 A. Morning.

7 Q. Morning, I see.

8 A. 9:30, I'm in bed.

9 Q. Okay. I try to be, but it doesn't work out that
10 way. What television channels do you usually
11 watch?

12 A. Channel 11. And in the morning, I think 4:30, if
13 I get up early, I watch Channel 5 or 7. Very
14 seldom 2.

15 Q. Seldom 2, but the other 3?

16 A. Yeah, 11, 5 and 7.

17 Q. Okay.

18 A. Or 26, I believe it is.

19 Q. And is it -- You mentioned getting up in the
20 morning and watching something, is it -- do you
21 often have -- Are you often home in the evenings
22 like 6:00, 5:00?

23 A. Sure am.

24 Q. Okay. Is the TV often on?

25 A. It's on, yes.

1 Q. And is it -- At that time of day, usually those
2 channels have local news or half our news
3 broadcast.

4 A. Not at 4:30 in the morning. It's usually world
5 news.

6 Q. Okay. But I mean in the evening, I'm talking
7 about?

8 A. Oh, yes.

9 Q. 5 or 6:00.

10 A. Local news, yes.

11 Q. So that's usually on in your house? The news is
12 on?

13 A. Yes.

14 Q. But you don't pay much attention to it, or do
15 you?

16 A. No. Sometimes I'm in the kitchen making a
17 sandwich or something, or a bowl of soup.

18 Q. Okay. Do you think if Mr. Avery should try and
19 prove that he's innocent of this charge; do you
20 think that means that he would have to prove to
21 you who really did it? If he didn't do it, who
22 did?

23 A. Not really. But that's why he's taking the stand
24 on his own behalf, to see if he can prove his
25 innocence, I would think.

1 Q. Well, is there any way he could prove his
2 innocence if he didn't take the witness stand?

3 A. If he had more witnesses, yes.

4 Q. Okay. So if he had a case, or maybe through
5 questioning -- cross-examination of the State's
6 witnesses, bringing out information that way?

7 A. Sure.

8 Q. Okay. So you do think it would be possible for
9 him to convince you that he's innocent even
10 without him testifying?

11 A. Yes.

12 Q. Okay. Do you think it would be possible to
13 convince you of that if he couldn't also tell you
14 who did do this horrible crime?

15 A. That would be hard.

16 Q. It would be hard to convince you unless you knew
17 that someone else -- unless he showed you who did
18 it?

19 A. Yes, or could prove it.

20 Q. Well, let me ask you this. If somebody is
21 innocent of a crime and they didn't do it, and
22 they don't have the police to go investigate; how
23 would somebody solve the crime? How could you
24 expect a defendant like Mr. Avery to solve the
25 crime and prove who did do it?

1 A. That would be hard to say.

2 Q. I mean, do you think that someone could do that?

3 Is that something you really think a defendant

4 would be able to do?

5 A. If it's -- Yeah, I think so. I think if he wants

6 to prove himself innocent, he would go looking

7 for somebody that -- or a possible killer.

8 That's my opinion.

9 Q. Okay. But do you believe that -- or would you

10 hold Mr. Avery to that burden and say, hey, you

11 know, I'm sorry, if you can't show me who else

12 did it, if it's not you, then I'm going to have

13 to say you did it, you are guilty?

14 A. Not really.

15 Q. No? I mean, do you think it's possible that you

16 could be convinced that Mr. Avery is not guilty,

17 beyond a reasonable doubt?

18 A. Sure.

19 Q. Without really knowing who is the guilty party?

20 A. I think so.

21 Q. You could?

22 A. Sure.

23 Q. Why? You seem to say something other than that a

24 few minutes ago?

25 A. Well, I don't want to contradict myself.

1 Q. Yeah, well, that's okay. We're just talking
2 here. You are just being honest. Why do you
3 think that now it is possible?

4 A. Will you repeat the question, please.

5 Q. Do you think that it would be possible for you to
6 come back and find Mr. Avery not guilty, if he
7 wasn't able to prove to your satisfaction, who
8 really is the murderer?

9 A. I think I could.

10 Q. Pardon me?

11 A. I think so. I don't know.

12 Q. Well, think about it. Do you really think that
13 he -- if I understand you, you are telling me
14 that you won't be able to find him not guilty
15 unless he can also prove to you -- solve the
16 crime, who else did it?

17 A. It's so darn hard to say.

18 Q. All right. Now, you have been in the area for
19 quite some time; do you know where the Avery
20 Salvage Yard is?

21 A. No, I don't.

22 Q. Have you ever been there?

23 A. No.

24 Q. Have you ever met any of the Avery's?

25 A. No, I haven't.

1 Q. Chuck Avery, for instance?

2 A. No.

3 Q. Don't know him from Adam?

4 A. No.

5 Q. Do you know, have you ever talked to anybody

6 about this case and told them that you thought

7 Steven Avery was guilty?

8 A. No, I haven't.

9 Q. Okay. Now, I think you said you have never had

10 any -- any encounters with the police at all; is

11 that right? In all your years, you have never

12 had a ticket even?

13 A. Oh, sure. I have got picked up for drunken

14 driving.

15 Q. Okay. One time?

16 A. Twice.

17 Q. Twice. Okay. What was your experience like with

18 the officers in that instance?

19 A. Very good.

20 Q. Fine, no problems with it?

21 A. Not a bit.

22 Q. Did you feel like you were treated fairly the

23 whole way?

24 A. Yes, I was.

25 Q. Did you plead guilty or go to trial?

1 A. I pleaded guilty.

2 Q. Okay. Because you felt you were guilty, right?

3 A. Yes, I did.

4 Q. If you thought you were not guilty, would you
5 have gone to trial?

6 A. Yes, I would have.

7 Q. Do you think police officers are -- when they
8 take the witness stand in a case and take an oath
9 to swear to tell the truth; do you think that
10 they are more or less likely than the ordinary
11 person to really honor that oath and tell the
12 truth?

13 A. I think so.

14 Q. Let me rephrase that. Do you think that the
15 police are more likely to be telling the truth
16 when they take the witness stand than the
17 ordinary witness, just because they are police?

18 A. Well, that's what they are hired for, to take the
19 oath, to tell the truth, isn't it?

20 Q. Well, they are hired to --

21 A. To protect the law.

22 Q. Sure. Okay. Can you -- Have you ever heard of
23 or can you conceive of any situations where maybe
24 police officers may not tell the truth under
25 oath?

1 A. No, I haven't. I never been to a trial, so I
2 wouldn't know.

3 Q. Okay. But do you think -- Can you consider the
4 possibility that that may occur?

5 A. That might hurt?

6 Q. That may occur. That sometimes police officers
7 may not follow the oath?

8 A. I don't think so.

9 Q. You don't think so.

10 A. No, because it could be perjury.

11 Q. Okay. What about ordinary people that come in,
12 ordinary persons, people like yourself, do you
13 think if they come in and -- into a trial, take
14 the oath to swear the truth; do you think that
15 they will always tell truth?

16 A. No, I think they could fib a little bit.

17 Q. They can fib?

18 A. Yes, I do.

19 Q. Okay. But wouldn't that be perjury too?

20 A. Yes, it would.

21 Q. So -- But you think an ordinary person might be
22 able to do that, actually perjure themselves, but
23 police officers would not?

24 A. I think so. Yes.

25 Q. Why is that?

1 A. I just feel strongly for that. Because a police
2 officer, he don't want to lose his job.

3 Q. Okay.

4 A. A regular citizen doesn't care. That's my
5 opinion.

6 Q. Okay. Now, if the Judge instructed you, though,
7 that under the law you have to judge a police
8 officer's testimony exactly the same way as any
9 other witness, and you can't give any greater
10 weight to the fact that they are police officers
11 in determining whether or not they are telling
12 the truth; do you think you would be able to do
13 that?

14 A. I think so.

15 Q. Why? How could you put aside those feelings you
16 just said and judge them just like any other
17 witness?

18 A. I really don't know about that one.

19 Q. Would have a hard time doing that?

20 A. Yes.

21 Q. That's because you feel very strongly that police
22 officers really wouldn't lie; is that it?

23 A. Well, they shouldn't.

24 Q. Okay. That's fine. I appreciate your honesty.
25 One last area I want to just ask you about,

1 briefly. Do you know anything about Mr. Avery's
2 background?

3 A. No, I do not. Not a bit.

4 Q. Do you know anything about the Innocence Project;
5 have you ever heard of that?

6 A. The what?

7 Q. The Innocence Project.

8 A. Innocence?

9 Q. Innocence Project. An outfit out of Madison that
10 helps free people who have been wrongly convicted
11 of crimes and are in prison?

12 A. Yes.

13 Q. You have had heard of that?

14 A. Yes.

15 Q. Okay. Have you heard of that organization and
16 its involvement with Mr. Avery?

17 A. Yes, that he spent 18 years that he wasn't
18 supposed to.

19 Q. Okay.

20 A. Or 17, whatever it was.

21 Q. So you do recall that?

22 A. Yes, I do.

23 Q. And do you have any concerns or doubts that maybe
24 he was or was not really innocent all that time?

25 A. No, I didn't. Never brought it up. Never

1 discussed it with anybody.

2 Q. I mean, as you sit here today, is there any doubt
3 in your mind that he was wrongly convicted?

4 A. Yes, I think he was wrongly convicted.

5 ATTORNEY BUTING: Okay. Thank you, very
6 much.

7 MR. CARBON: You're welcome.

8 THE COURT: Mr. Fallon, do you have some
9 follow-up?

10 ATTORNEY FALLON: Yes.

11 **VOIR DIRE EXAMINATION**

12 BY ATTORNEY FALLON:

13 Q. Mr. Carbon, if I could clarify a point or two.
14 Now, I want to revisit this presumption of
15 innocence so that we're not confused. If the
16 Court -- I should say, when the Court instructs
17 you that only the State has a burden of proof
18 here, that only I, as a member of the prosecution
19 team, have the burden of proof, beyond a
20 reasonable doubt, of his guilt, the Court tells
21 you that burden is on the State, I represent the
22 State, and tells you that Mr. Avery doesn't have
23 to prove anything; can you accept that?

24 A. Sure can.

25 Q. Will you be able to follow that if you were

1 selected, when you got to deliberate this case?

2 A. To the best of my knowledge.

3 Q. You would do your best?

4 A. Yes, I would.

5 Q. Okay. The only other area I had was for a
6 follow-up on police officer testimony. In your
7 questionnaire, which you may remember having
8 filled out last -- I think it was a week ago
9 Monday, you answered a question, this question:
10 Some of the witnesses in this case will be
11 members of law enforcement. The law
12 requires jurors -- The law requires jurors to
13 evaluate their credibility just as that of any
14 other witness.

15 That is, jurors are prohibited from
16 giving more or less credibility to the testimony
17 of a law officer simply because the witness is a
18 law officer. If selected as a juror, would you
19 be able to assess the credibility of law officers
20 on this basis? And you answered yes.

21 Now, counsel asked you a very good
22 question on that point. And although you feel
23 that law enforcement officers should be honest,
24 and should tell the truth, and it's part of their
25 job; if Judge Willis tells you that may well be,

1 but you are to evaluate their credibility, their
2 believability, their honesty the same way you
3 would any other witness, will you follow that
4 instruction?

5 A. I sure will.

6 Q. You will do your best?

7 A. Yes, I will.

8 Q. All right.

9 ATTORNEY FALLON: That's all I have.

10 THE COURT: I have got a couple of
11 follow-up questions. Touch on things that actually
12 both defense counsel and Mr. Fallon did.

13 **VOIR DIRE EXAMINATION**

14 BY THE COURT:

15 Q. When Mr. Buting was questioning you -- Well, let
16 me step back. One of the disadvantages of voir
17 dire is we ask jurors questions before they have
18 gotten my instructions. You said you have never
19 been to a trial before; is that correct?

20 A. That's right.

21 Q. There are some rules that apply in trials. And
22 in a criminal trial perhaps the most important
23 rule is that the defendant does not have to prove
24 his innocence. As Mr. Avery sits here today, he
25 is not guilty. And he stays not guilty unless

1 the State can prove his guilt, beyond a
2 reasonable doubt; do you understand that?

3 A. Yes, I do.

4 Q. And he's not required to prove his innocence.

5 A. Okay.

6 Q. He doesn't have to say who did it, other than,
7 you know, someone else did it, he doesn't have to
8 tell you who the other person was. He doesn't
9 have to do anything. The State has to prove,
10 beyond a reasonable doubt, that he did it before
11 you, as a juror, could vote guilty; do you
12 understand that?

13 A. Yes, I do.

14 Q. And I know you said a few minutes ago you thought
15 he had to prove his innocence; do you know that
16 that's not true?

17 A. That's true.

18 Q. Now, let me ask you this. Regardless of what you
19 believe, if I instruct you that you can only vote
20 guilty if you can find that the State proved his
21 guilt, beyond a reasonable doubt; can you follow
22 that instruction?

23 A. To prove him guilty only and not innocent?

24 Q. That means -- You can't find him guilty unless
25 the State proves his guilt beyond a reasonable

1 doubt?

2 A. Is that up to the individual juror, to make up
3 his mind?

4 Q. That's what jurors do.

5 A. Right.

6 Q. But you, as a juror, can't require the defendant
7 to prove his innocence, you have to find that the
8 State proved his guilt; do you understand the
9 difference?

10 A. Yes.

11 Q. What does the difference mean to you?

12 A. The State has got to prove him guilty and the
13 defense not guilty, right?

14 Q. Actually, the defendant doesn't have to prove
15 anything.

16 A. No, he doesn't. He doesn't have to testify,
17 that's his opinion.

18 Q. I think you understand that, that he doesn't have
19 to testify. But not only doesn't he have to
20 testify, he doesn't have an obligation to prove
21 anything. The State has to prove he's guilty.
22 Can you follow that instruction?

23 A. Sure can.

24 Q. And do you understand that the defendant doesn't
25 have to prove his innocence?

1 A. Right. He doesn't have to testify.

2 Q. Now, with respect to your comments about police
3 officers, do you agree -- I know you said police
4 officers are supposed tell the truth, and you are
5 right. That's when they get hired, one of the
6 things they do is they are supposed to tell the
7 truth. But do you understand that in the case of
8 a few police officers, sometimes they don't?

9 A. That is true.

10 Q. Have you ever heard of a dishonest police
11 officer?

12 A. I never had, no.

13 Q. Never met one?

14 A. No.

15 Q. Do you believe that an officer could be?

16 A. Yes, they could. I believe they could. Any
17 human being could. They are all human.

18 Q. Okay. If some police officers testify at this
19 trial, will you be able to evaluate their
20 testimony just like anybody else?

21 A. I think so, yes.

22 Q. If you listen to the testimony and you think
23 something a police officer tells you doesn't
24 sound like the truth, will you determine --
25 accept that determination?

1 A. Yes, I will.

2 THE COURT: Anything else, counsel? I will
3 give you a chance for some follow-up, if you wish.

4 ATTORNEY BUTING: No, your Honor.

5 ATTORNEY FALLON: (Shakes head.)

6 THE COURT: All right. You can take
7 Mr. Carbon to the hallway.

8 MR. CARBON: Okay. Thank you.

9 ATTORNEY BUTING: Thank you, sir.

10 JUROR: Thank you. Have a good
11 afternoon.

12 ATTORNEY FALLON: Thanks.

13 THE COURT: Any motion from the State?

14 ATTORNEY FALLON: I'm going to say no. And
15 it's based on just my feeling or intuition. I think
16 he means well. I just think he had a hard time
17 grasping the concept. And I think once the Court
18 explained to him what the rules are, I didn't get an
19 indication from him that he could not follow them.
20 Admittedly, there was some concern, counsel did
21 raise and interesting question as to whether perhaps
22 there was a hearing issue.

23 I didn't get that. I just -- My
24 impression was we were dealing with a gentleman
25 who is not very sophisticated or knowledgeable in

1 the law, and had some ideas about what he thought
2 the rules were. And I think once they were
3 explained to him, I didn't see any reason why he
4 wouldn't necessarily follow them. I'm not going
5 to jump on him and strike for cause.

6 THE COURT: Mr. Buting.

7 ATTORNEY BUTING: Judge, I move to strike.
8 He was very nice gentleman. I think he was trying
9 to be honest, but I think he was confused. This is
10 a situation where, this is an example, I guess,
11 where it's not enough just to ask the jurors will
12 you follow this instruction and tell them what it is
13 and then they say, yes, yes, I will.

14 The Court very wisely asked -- and I
15 don't -- Actually I think counsel was talking
16 with my partner at the moment and didn't actually
17 hear the response, but the Court asked him to,
18 tell me what you think that means, and his
19 response I think was telling. Because even after
20 you told him that the defendant did not -- that
21 he enjoyed the presumption of innocence and
22 didn't have to prove his innocence, his response
23 was, yeah, the State has to prove he's guilty and
24 the defendant has to prove he is not guilty.
25 That's his right, to testify.

1 And then you went off on the issue of,
2 you know, you understand he doesn't have to prove
3 he's innocent and then he says, well, you're
4 right, that's his right not to testify. He
5 doesn't have to testify, I think was his words.
6 He's confused. You know he's -- maybe it is a
7 lack of sophistication. Maybe there's some
8 hearing issues as well; although, I don't think
9 that's it. I think he's just going to have
10 difficulty. This is going to be a problem that
11 we may have to deal with in the future. We have
12 enough jurors I think to deal with it.

13 THE COURT: There are reported cases where
14 sometimes the Courts of Appeal uphold a judge's
15 decision to leave a defendant -- or a juror on the
16 panel, based on observations of his demeanor to
17 explain answers that are questionable. This is a
18 case where when he was asked some leading questions,
19 including by me, he gave answers that on the
20 transcript may look correct, but I have got concerns
21 about whether he was really tracking, following
22 things, and most importantly, able to follow
23 instructions. So while he might be passable as a
24 juror, I have sufficient doubt that I'm going to
25 grant the defense motion to strike this juror.

1 ATTORNEY BUTING: Thank you, your Honor.

2 THE COURT: Ms Schmidt, please remain
3 standing for a minute. I will have the Clerk
4 administer the oath.

5 (Juror sworn.)

6 THE CLERK: Please be seated.

7 THE COURT: Ms Schmidt, you have already
8 completed a jury questionnaire in this case. This
9 afternoon we're moving on to the next stage of the
10 jury selection process which is individual voir
11 dire. That means the attorneys for the parties will
12 have an opportunity to ask you some questions.

13 Before that begins, there's a couple
14 other pieces of information I wish to pass on to
15 you. First of all, I want to make sure you know
16 that the jury in this case will not be
17 sequestered. That means that if you're selected
18 for the jury, during the estimated six weeks of
19 the trial you will be able to go home every night
20 and then come back for the jury trial the next
21 day.

22 We're doing that because of the
23 requirement that the members of the jury not
24 observe any news media accounts of the trial,
25 either in the newspaper, television, radio, the

1 internet, or anywhere else, and make sure that
2 you don't talk about the case with anyone else.

3 I also want you to know that although
4 these proceedings are open, that is, open to the
5 public, no cameras are permitted in the courtroom
6 during the voir dire process. The press is not
7 allowed to identify you as a potential juror in
8 this case. And the jurors that are selected to
9 serve in this case are not being permitted to be
10 shown on camera during the course of the trial.

11 If you remain on the jury panel after
12 today's proceedings you will be notified by
13 telephone in a few days when to return back to
14 court. At this time then I will permit
15 Mr. Fallon to begin questioning for the State.

16 **VOIR DIRE EXAMINATION**

17 BY ATTORNEY FALLON:

18 Q. Good afternoon, Ms Schmidt.

19 A. Good afternoon.

20 Q. My name is Tom Fallon. I'm an Assistant Attorney
21 General with the Wisconsin Department of Justice.
22 I'm one of the prosecutors in this case. And we
23 each have just a few questions to follow up on
24 some of the information you provided last Monday
25 in your questionnaire and a few other related

1 questions to help us in selecting the jury this
2 week.

3 In terms of the information provided, I
4 take it you are currently just working at home?

5 A. Yes, sir.

6 Q. Okay. And you have formally did some work at a
7 temporary service?

8 A. Yes, sir. Most of the time I stayed at home --

9 Q. Okay.

10 A. -- taking care of my family.

11 Q. I see, yes, and you have done well, you have
12 three sons and a daughter.

13 A. Four sons, there wasn't room on the paper for the
14 other one.

15 Q. When you did work outside of the home, what type
16 of work did you do?

17 A. Well, it varied. If I worked at the temporary
18 service it was like sorting bolts or packing. If
19 I worked at some place else it was probably like
20 K Catering Service type of thing, that's about
21 it.

22 Q. So you did a variety of things?

23 A. Yes.

24 Q. Okay. How often did you work in the temporary
25 service?

1 A. Well, my youngest son is 14, so I just said I
2 started working about six years ago again.

3 Q. And what was the last thing you did when you
4 worked for the temporary service; what kind of
5 work was it?

6 A. Sorting and packing.

7 Q. And for whom did you do that work?

8 A. Kaysun. Well, it's through ABR, but I believe it
9 was Kaysun Corporation.

10 Q. Kaysun Corporation. You did answer one question,
11 and I don't mean to pry, but we did want to make
12 sure that it would be all right with you. But on
13 one question, in terms of health concerns, you
14 indicated high blood pressure.

15 A. Yes, sir.

16 Q. Okay. Is it more or less under control or is
17 that something --

18 A. I take a pill every morning. And I usually do
19 that about 5:00 so.

20 Q. And if you were able to keep up that regimen, do
21 you think your blood pressure would be under
22 control such that you could sit as a juror?

23 A. I think so. I think so.

24 Q. Otherwise it shouldn't present a problem for you?

25 A. No, sir.

1 Q. Is that a recent condition you have been working
2 with or is it something --

3 A. Um, I would say it's about eight years that I
4 have been diagnosed with it --

5 Q. Okay.

6 A. -- and have been taking pills for it.

7 Q. All right. So you are pretty experienced then in
8 managing it and keeping it under control?

9 A. Yes, sir.

10 Q. Thanks. Of the sources of news that you have,
11 where would you say you get most of your news
12 from?

13 A. The radio.

14 Q. From the radio?

15 A. Yes, sir.

16 Q. And what type of stations do you listen to.

17 A. WOMET, that's from morning until about 9:00. Then
18 it goes to a Sheboygan station I believe. I
19 don't know what it is, but they play gentle, easy
20 listening music.

21 Q. Okay.

22 A. Then it's back to -- back to WOMET, and that's on
23 until about 6, 7 at night.

24 Q. Have you been following the coverage of this case
25 on the radio?

1 A. No, sir. Every time it came on I turned it off
2 or I walked out of the room.

3 Q. Is there any particular reason why you --

4 A. I wasn't interested in --

5 Q. Okay.

6 A. -- anything like that.

7 Q. So would it be fair to say you really haven't
8 followed the coverage of this case hardly at all?

9 A. Yes, sir, I guess you could say that.

10 Q. All right. You are aware that Mr. Avery is
11 accused of killing Teresa Halbach; I take it you
12 are aware of that?

13 A. Yes.

14 Q. Okay. But you haven't paid attention to any of
15 the details?

16 A. Not as far as what's going on, no.

17 Q. All right. Can you tell us a little bit about
18 what you actually do remember from what little
19 you have listened to or watched?

20 A. Mostly the names that have appeared. Mr. Avery,
21 Ms Halbach, that's all.

22 Q. All right. Do you recognize the name Dassey,
23 Brendan Dassey? Is that a name you are familiar
24 with?

25 A. I know the name, it appeared once in a while, but

1 I don't know what it's --

2 Q. You don't know the --

3 A. -- what it's concerning, no.

4 Q. You don't know the connection --

5 A. No, sir.

6 Q. -- of that name with the case?

7 A. No, sir.

8 Q. All right. You indicated in your questionnaire
9 that you did watch at least one type of
10 television crime show, that being CSI, crime
11 scene investigation.

12 A. Yes, sir.

13 Q. How often do you watch that show?

14 A. Well, it depends on if we have other things going
15 on around the house like butchering or stuff.
16 It's not every week, I know that. And when I do
17 watch it, it's mostly for to see the people, not
18 what they are doing, but because the story line
19 once in a while is interesting.

20 Q. You like the characters?

21 A. Yes.

22 Q. Okay. You indicated you found the show somewhat
23 realistic; any particular reason why that would
24 be?

25 A. Well, sometimes how they scrape the fingernails

1 and things like that.

2 (Changed microphone batteries.)

3 THE COURT: All right. I think we can
4 resume.

5 Q. Very good. I think -- Let's see, where were we?
6 We were talking about CSI and whether it was --

7 A. Realistic or not?

8 Q. Realistic or not.

9 A. The thing I watch when the story gets kind of
10 confusing is, well, like, that I know they take
11 fingernail scrapings. And the rest of the stuff
12 is kind of iffy because you don't know for sure.

13 Q. In terms of its reliability, or whether or not we
14 have the capability of doing it?

15 A. You probably have the capability, but they show
16 things, every week, or whatever, is supposed to
17 be a crime has been committed. And I know that
18 things don't happen that way, you know, it's got
19 to be usually a longer period of time. They
20 don't have them every day.

21 Q. Or at least they're not solved every day.

22 A. I certainly hope they're not solved every day.

23 Q. All right. I'm going to go back to one of the
24 first questions, you indicated farming and
25 butchering; what kind of farm does your family

1 run?

2 A. It's -- Well, it's a working farm, but we have
3 cattle, and we have pigs, and we have chickens,
4 and ducks, and geese. And my husband and my son
5 run -- we have 80 acres. And then woods, the
6 guys all go to the woods and make wood for the
7 winter that we can burn in the house.

8 Q. Not a dairy farm per se?

9 A. No, it's not a dairy farm. The cattle are beef.

10 Q. Okay. Is that the primary source of income for
11 the farm, the beef?

12 A. Yeah, and the chickens?

13 Q. The pork?

14 A. Well, the pork mostly is for ourselves.

15 Q. Okay. Very good. You did leave one question
16 unanswered that is of some importance. Two
17 questions actually, and I guess I will close with
18 those two. One question, you were asked if you
19 were served -- if you served on a jury, or you
20 were selected for this particular jury, how would
21 you feel about that service?

22 A. It wouldn't bother me.

23 Q. All right.

24 A. The only thing that would probably bother me
25 would be making up my mind at the end, if it

1 was -- if it happened the way that was presented
2 to me, or not.

3 Q. All right. So in other words to actually getting
4 down to making a decision might be kind of
5 difficult, weighing the evidence?

6 A. Yes.

7 Q. All right. But there's nothing else about the
8 process that --

9 A. No.

10 Q. -- you would find difficult?

11 A. No.

12 Q. Okay. And the last question we touched briefly
13 upon in the beginning with health and family, but
14 it's very possible this case will go six weeks.
15 As Judge Willis told you, you know, you would be
16 able to go home every night and things of that
17 sort. But is there any particular personal
18 hardship or, you know, would this be really hard
19 on the family business or anything like that if
20 you were here eight, nine hours a day as opposed
21 to being back managing the family business at
22 home?

23 A. No, sir. My husband is retired. He runs most of
24 the business around there if people stop for eggs
25 or whatever. And my older son is in -- he's a

1 senior this year. And the next one is an 8th
2 grader, the 12 year old, yeah. Not my oldest
3 son, he's away from the house, but the second
4 youngest.

5 Q. Okay. In all your years here in Manitowoc in
6 that business, have you ever had any encounters
7 with the Manitowoc Sheriff's Department?

8 A. Not that I know of. They might have, you know,
9 stopped for some reason or other, but I couldn't
10 tell you for sure.

11 Q. All right. Do you have any impressions at all as
12 to whether you think they are doing a good job
13 for you here in Manitowoc, bad job, a fair job in
14 terms of --

15 A. It must be fair because I haven't had any
16 complaints about anybody.

17 Q. Okay. Do you have any friends or family members
18 who work in the news business?

19 A. No, sir.

20 ATTORNEY FALLON: That's all. Thank you.

21 THE COURT: Mr. Buting.

22 ATTORNEY BUTING: Thank you, Judge.

23 VOIR DIRE EXAMINATION

24 BY ATTORNEY BUTING:

25 Q. Good afternoon ma'am. My name is Jerome Buting

1 and I, along with Dean Strang, are the attorneys
2 representing Mr. Avery here today; do you
3 understand that?

4 A. Yes.

5 Q. Okay. I want to follow up on a few of
6 Mr. Fallon's questions and maybe some of my own
7 as well. All right. First of all, I heard you
8 mention that most of the time you have worked in
9 the home, but occasionally you worked at a
10 temporary service, right?

11 A. Yes, sir.

12 Q. You mentioned Kaysun Corporation?

13 A. Yes, sir. That was through ABR. And they sent
14 me out there before Christmas, 2005.

15 Q. Okay.

16 A. And it was just packing bolts -- not bolts. It
17 was like little -- little gear things. And they
18 had to inspect them as far as if the ringings
19 were tight or not?

20 Q. Okay.

21 A. And then the person inspected them and then they
22 were given to us and we had to pack them. And
23 that was all we had to do.

24 Q. Is that the only time you worked for Kaysun?

25 A. Yes, sir.

1 Q. Do you happen to know a woman who also worked
2 there, I'm not sure if it's the same time, by the
3 name of Terri Temme?

4 A. No, sir.

5 Q. Okay. Before today, did you know any of the
6 jurors that you've -- prospective jurors that you
7 have encountered?

8 A. No, sir.

9 Q. They are all strangers to you?

10 A. Yes, sir.

11 Q. Okay. Let's talk about what you have heard,
12 maybe at the very beginning, about this case in
13 the media, okay?

14 A. Yes, sir. That's about all I heard, the very
15 beginning.

16 Q. Okay. Tell me what -- what you recall hearing
17 about this case in the media at the very
18 beginning.

19 A. What do I recall, gee, well, that someone was
20 murdered and they are assuming that Mr. Avery did
21 it. And they said -- I think they told me Ms
22 Halbach's name. But I can't remember anything
23 else on it, because like I said, I wasn't
24 interested in it at the time.

25 Q. And do you remember any information about why

1 they were assuming Mr. Avery was involved?

2 A. No, sir.

3 Q. Okay. Did you ever hear any details about anyone
4 who may have made any confessions?

5 A. No, sir. See, if we're not busy around the farm
6 at that time, which is about 6:00, and it's after
7 our meal time, and it's usually after our chore
8 time, and I have other things to do if we're
9 butchering, or if the kids need help with their
10 school work. Very seldom that we listen to the
11 news. And then when I go up at 6:00, I usually
12 have game shows on like Jeopardy.

13 Q. Sure. Well, I think at one point you said that
14 every time anything about this case came on you
15 would turn it off the radio, or you would walk
16 out of the room?

17 A. I would.

18 Q. Why?

19 A. Well, I wasn't interested in that.

20 Q. Well, okay. But --

21 A. Mostly the radio is on for music.

22 Q. Sure.

23 A. And we hear, once in a while, bits and pieces of
24 news, but mostly it's for the weather.

25 Q. But if the radio is just sort of on in the

1 background, sounds like for hours and hours a
2 day, right?

3 A. All day, yes.

4 Q. Okay. What is it about any kind of reports about
5 this case, though, that would make you want to
6 turn it off?

7 A. I don't know, sir. I just didn't -- wasn't
8 interested in it.

9 Q. Was there something about it that you just said I
10 have heard enough of this, I have heard too much
11 of this, I'm sick of this?

12 A. Could be in the beginning. I don't know what it
13 is, I just turn it off.

14 Q. Is there anything you heard that made you sick to
15 your stomach, or disgusted, or --

16 A. Well, I didn't hear the whole report, I couldn't
17 tell you. I just didn't hear it.

18 Q. Okay. When other news would come on, would you
19 turn off the radio, or walk out of the room,
20 other reports of other --

21 A. Most of the time I listen, but not always. It's
22 like -- it's like background effect stuff. It
23 goes in one ear and out of other.

24 Q. Sure.

25 A. And doesn't stop in between to register.

1 Q. Sure, I understand. But other news reports in
2 other cases perhaps, other crimes even, or other
3 things that are going on, you would just kind of
4 let the radio play.

5 A. Yeah, that's about it.

6 Q. You wouldn't turn it off or walk out of the room?

7 A. Well, I don't turn it off even when it was on
8 about Mr. Avery, I just kind of ignored it, you
9 know.

10 Q. Okay. So it wasn't --

11 A. You don't listen totally to it, you just kind of.

12 Q. So you are not saying that you really turned it
13 off because you were -- because this case would
14 come on the radio?

15 A. I turned it off because that was me turning it
16 off, I just turned it off.

17 Q. And the fact that Mr. Avery's case might have
18 been being reported on the radio at that moment
19 you're saying it had no connection --

20 A. No, sir.

21 Q. -- to your decision to turn it off?

22 A. No, sir.

23 Q. Okay. So when you listen to the radio, is it --
24 WOMET, has -- they have got news in the early
25 morning, correct, and don't they then change over

1 to a music format at some point?

2 A. I'm trying to think. At 5:00, when the radio
3 goes on, I'm usually making lunch for my son.

4 And then they have a little -- a little
5 chatter --

6 Q. A little call in?

7 A. -- in between them.

8 Q. Yeah, okay.

9 A. In between them.

10 Q. Okay.

11 A. And then they have like Be My Guest or something
12 on that order, and music in between.

13 Q. Okay. And is it -- But is it mainly talk and
14 news all day long, or do they convert over to
15 music --

16 A. Mostly it's music all day long. There's a couple
17 shows I know, like Be My Guest, or something like
18 that. Those I don't listen to because I'm
19 usually doing something else.

20 Q. Okay. All right. Now, when you were talking
21 about the CSI, that you said was the only one;
22 you do try and watch that one pretty regularly?

23 A. Yeah. But I'm more interested in the story line
24 as far as like the people. This girl was going
25 out with that guy --

1 Q. I see.

2 A. -- or this one got married, or stuff like that.

3 Q. You're more interested in that than the story

4 about the crimes that they happen to be

5 investigating?

6 A. Right.

7 Q. Okay. I see. And do you -- do you think that

8 the scientific tests that they do, or they claim

9 to do on the show, are all tests that in fact

10 really can be done, or are done?

11 A. I would say -- I would say most of the tests

12 could be done.

13 Q. Okay.

14 A. I don't know for a fact that they are positively

15 done, but I would say that they could be done.

16 Q. Okay. And they are usually pretty good at

17 finding evidence when a crime happened, they are

18 pretty quick at finding evidence right there that

19 proves it, right?

20 A. Yes. But how long does it take, only an hour to

21 show all this interesting stuff, but I'm sure it

22 takes longer than that to run it through a

23 regular lab.

24 Q. Sure, but as a result of that you think that it's

25 pretty likely that real police are able to do

1 that too, that if there's -- if a real crime took
2 place, they are able to get there on the scene
3 and find the evidence that will prove it, right?

4 A. I would think so.

5 Q. Okay. And if they were not able to find any --
6 or significant evidence, or evidence that you
7 might expect they would find at the crime scene,
8 if that was missing in a real case like this,
9 would that -- would that trouble you.

10 A. If the evidence that the person says is there
11 isn't?

12 Q. No, if the evidence that you would think should
13 be there is not.

14 A. No, I don't think so, they have to show me
15 exactly what was there.

16 Q. I appreciate that. Thank you. Now, you have --
17 I'm sorry did you say you have four children,
18 four sons?

19 A. Yeah, four sons and a daughter. But there wasn't
20 room enough on the paper for the last one.

21 Q. Okay.

22 A. So I kind of dropped him off.

23 Q. One got the short straw there?

24 A. I guess so.

25 Q. Is that son still at home?

1 A. Yes, he is. He's only 14.

2 Q. Three sons at home, 35 year old still there.

3 A. Yes, sir.

4 Q. Does the 35 year old work on the farm with your
5 father -- your husband?

6 A. He does most of the work because my husband has a
7 sciatic nerve.

8 Q. Okay.

9 A. And then he can't run around with the tractors
10 and stuff. But the older son does quite a bit.

11 Q. Okay.

12 A. But he also works for EVM. He's a foreman.

13 Q. Okay. Do any of your sons, or your husband for
14 that matter, do they ever talk about this case,
15 what they heard about the Steven Avery case?

16 A. They might talk to themselves about it, they
17 haven't mentioned it around the table.

18 Q. That's not something they talk to you about?

19 A. Not at the meal time.

20 Q. Okay. Well, what about after they heard that you
21 were selected as a prospective juror for this
22 case, did they talk to you about it at all?

23 A. No. No.

24 Q. Did they talk to you about it in the last week at
25 all?

1 A. No.

2 Q. And have you heard of any opinions that they have
3 about whether he, Mr. Avery, is guilty or not
4 guilty?

5 A. They might have opinions, but I don't listen to
6 them?

7 Q. Well, how would you know they would have them if
8 you don't listen to them?

9 A. Well, because they go out to the greenhouse, or
10 wherever, out to the barn, and I usually stay in
11 the house so I don't know what they were
12 discussing?

13 Q. So you are just guessing that maybe they have
14 opinions?

15 A. That's right.

16 Q. I see. Okay. Now, the Judge is going to tell
17 you about -- he's going to give you a number of
18 instructions, sort of rules of the game that you
19 will have to follow. And one of those is the
20 presumption of innocence. Have you heard of
21 that?

22 A. Yes.

23 Q. Okay. What is that -- Well, strike that. Do you
24 think that Mr. Avery is presumed innocent right
25 now?

1 A. Yes, sir.

2 Q. Do you think that he must have done something or
3 he wouldn't be here, we wouldn't have gotten this
4 far in the proceeding so that we're coming up on
5 the trial?

6 A. Yes, sir. I would put it that way exactly.

7 Q. Pardon me?

8 A. I would put it that way exactly.

9 Q. You think he must have done something?

10 A. Well, yes.

11 Q. Why do you think that?

12 A. Well, because otherwise he wouldn't be in a
13 courtroom.

14 Q. Okay. Do you think sometimes people who are
15 completely innocent of any crime whatsoever find
16 themselves in the position Mr. Avery is in here?

17 A. Yes.

18 Q. So why do you think that that couldn't apply to
19 Mr. Avery now?

20 A. That he's innocent? That he is innocent until
21 proven guilty.

22 Q. Okay. What I'm asking, though, is a moment ago
23 you said that you think that he must have done
24 something in order to get himself in the position
25 he is at right now?

1 A. Yes, sir.

2 Q. Why?

3 A. Well, evidently he is in jail. And other people
4 that are in jail also, but they have different
5 trials set up for them. Gosh, I don't know how
6 to put it.

7 Q. Well, just try, you are doing fine.

8 A. Um, well, first of all, all of you people are in
9 line ready to get even with him or whatever. And
10 we don't know until the facts are shown if he is
11 guilty or not guilty. And right now he's
12 innocent.

13 Q. Okay. Well, then why do you think he must have
14 done something wrong if he is here today?

15 A. Because evidently all you people gave evidence to
16 the cops, and police, excuse me, and -- and they
17 arrested him for it.

18 Q. Okay. That's fair. Do you think, though, that
19 sometimes the evidence that the police get may --
20 Strike that. I'm not going to get hypothetical
21 here. Let me put it this way, do you know
22 anything about Mr. Avery's background or past?

23 A. I know he was in jail before. I have no idea
24 why. I know that he was -- he got out, because
25 something proved him wrong, different.

1 Q. Okay. Something proved that he was innocent?

2 A. Yes.

3 Q. And do you have any doubts about whether he was
4 really innocent?

5 A. At that time?

6 Q. Yeah.

7 A. I don't know anything about the case at that
8 time.

9 Q. Okay. Well, do you assume that since he was
10 released from prison, he must -- everybody must
11 agree he really was innocent?

12 A. Yes, sir.

13 Q. Okay. Do you think then that it's possible -- I
14 mean there's an example right here, where
15 sometimes someone gets this far and they get to
16 the position of Mr. Avery, in fact, they get much
17 farther, they are actually convicted wrongly. So
18 can you consider that Mr. Avery, just because
19 he's here today, for this trial, may be entirely
20 innocent of this crime?

21 A. Yes, sir, I believe he is.

22 Q. Okay. Do you think that -- By the way, do you
23 know any police officers at all, personally?

24 A. Not personally. I know Dicky France (phonetic)
25 is constable in Town of Two Rivers, but that's as

1 far as I know.

2 Q. Okay. Do you think that if a police officer
3 comes to court and testifies, takes the oath,
4 swears to tell the truth, that necessarily a
5 police officer will always tell the truth under
6 oath?

7 A. No, sir.

8 Q. Why not?

9 A. Well, everybody has a tendency to fib once in a
10 while, and just because they are a police officer
11 doesn't mean that they don't have that tendency.

12 Q. Sure. So you would judge a police officer on the
13 witness stand the same as any other witness?

14 A. Yes, sir.

15 Q. Just because they have a uniform or badge doesn't
16 make them any more truthful than the ordinary
17 witness; is that right?

18 A. That's right.

19 Q. Okay. Thank you. Do you think that police
20 officers can -- when you say fib, if you're
21 fibbing under oath, that's really perjury, is it
22 not?

23 A. I believe so.

24 Q. Do you think police could actually go that far?

25 A. Yes.

1 ATTORNEY BUTING: I think that's enough.
2 Thank you, very much, ma'am.

3 THE COURT: All right. We'll have the
4 Clerk escort the juror out of the room.

5 Counsel, any motion from either party?

6 ATTORNEY FALLON: None from the State.

7 THE COURT: Mr. Buting.

8 ATTORNEY BUTING: No, your Honor.

9 THE COURT: All right. That juror is in.
10 I have received a request. There's a Julie Dorn,
11 she's No. 18, she has to go to work at 11 tonight.
12 Maybe she's going to go home to sleep after this.
13 But we'll take her out of order and take her next.

14 Ms Dorn, could you raise your right
15 hand, we'll have the Clerk administer the oath.

16 (Juror sworn.)

17 THE CLERK: Please be seated.

18 THE COURT: Ms Dorn, you have already
19 completed a jury questionnaire in this case. Today
20 we're moving on to the next step of the jury
21 selection process which is individual voir dire.
22 The attorneys for each of the parties have a chance
23 to ask you some follow-up questions.

24 Before we begin that process, I want to
25 pass on a few bits of information to you. First

1 of all, I want you to know that the jurors
2 selected in this case will not be sequestered.
3 That means you will be able to go home each night
4 after each day of trial. We made that decision
5 because of the instruction to the jurors that
6 they not listen to any news media accounts of
7 this case either on radio, television, newspaper,
8 the internet, or anywhere else, and also that you
9 not discuss the case with anyone else.

10 Although these proceedings today are
11 open, no cameras are permitted in the courtroom
12 during the voir dire process and the news media
13 is not allowed to identify individual jurors by
14 name in news reports. In addition, once the
15 trial starts, the cameras are prohibited from
16 showing any of the jurors such that any of them
17 could be identified.

18 If you remain on the jury after today's
19 proceedings, you will receive a telephone call in
20 a day or two letting you know when to report
21 back. With that background then, Mr. Fallon, you
22 may begin.

23 **VOIR DIRE EXAMINATION**

24 BY ATTORNEY FALLON:

25 Q. Good afternoon, Ms Dorn. My name is Tom Fallon.

1 I'm an Assistant Attorney General for the
2 Wisconsin Department of Justice. And I'm one of
3 the prosecutors in the case. And I wanted to
4 follow up with a few questions about the
5 information you provided in your jury
6 questionnaire and a few other related matters.
7 Thanks for coming this afternoon. I know you are
8 a third shifter so.

9 A. Mm-hmm.

10 Q. That wreaks havoc with your schedule. And in
11 that regard, if we could just start there. You
12 indicate you are a line operator; what is that?

13 A. Just run a press and you assemble the parts, pack
14 them, different job every night.

15 Q. Oh, okay. So you are on like an assembly line?

16 A. Nope, not necessarily. Just the press that you
17 are working out of and sometimes you are working
18 off a line.

19 Q. I see.

20 A. It's a different job every night.

21 Q. And how long have you been working at the Bemis
22 Manufacturing?

23 A. Bemis Manufacturing, total about eight years, two
24 years full-time.

25 Q. Two years full-time. And before that, what were

1 you doing?

2 A. Before that I was unemployed. I stayed home with
3 the kids. And before that was 15 years at
4 Richardson Brothers in Falls.

5 Q. Richardson Brothers Furniture?

6 A. Furniture, in Sheboygan Falls.

7 Q. All right. Was that sales, marketing, office?

8 A. Factory, assembler.

9 Q. Assembly. Very good. How long have you been
10 working the third shift?

11 A. Third shift, about seven years.

12 Q. As shifts go, do you like third shift?

13 A. Mm-hmm. Mm-hmm.

14 Q. If you were selected as a juror in this
15 particular case, I take it that wouldn't present
16 any particular health or financial hardship for
17 you?

18 A. No.

19 Q. If you were selected as a jury, would that be all
20 right; do you think you would enjoy the
21 experience, or tolerate it, or how would you feel
22 about it?

23 A. I wouldn't mind it.

24 Q. And as I see from the note here, if I remember
25 correctly, I don't think you have had jury

1 experience before; is that right?

2 A. No. No.

3 Q. There were a couple of questions regarding your
4 knowledge of the facts in this case. Presumably
5 that would have come from media coverage. Am I
6 correct in assuming that because of the fact you
7 work the third shift your exposure to the TV
8 coverage is limited?

9 A. I don't really see -- I mean, I seen some of it,
10 but I don't really have to watch it. I mean, I
11 go to work at -- I start at 11:00 at night, work
12 until 7 in the morning, get home at 7:30, do a
13 load of wash, go to bed.

14 Q. Right.

15 A. Get up, start supper, so it's like there's no
16 time really.

17 Q. Okay. So, even if time permitted, you wouldn't
18 say that this was a case of interest to you.

19 A. Not a necessity. I had other stuff to do.

20 Q. Right. The press of day-to-day living takes it's
21 toll?

22 A. Mm-hmm. Mm-hmm.

23 Q. All right. Okay. Let me ask, then, a couple of
24 related questions. In terms of the media
25 exposure that you have had in this case, would

1 you say most of it comes from radio, television,
2 newspaper, magazine, what?

3 A. It would have been television.

4 Q. Television. All right. And have you followed
5 any of the recent coverage at all in the case?

6 A. No.

7 Q. No. Specifically, what do you recall about the
8 case from information provided by the media,
9 particularly the television?

10 A. From what I have seen, from what I watched on
11 television?

12 Q. Yeah.

13 A. That she was missing, and then the arrest, and I
14 think that was -- it wasn't too much. It was
15 just -- Those are the two things that caught my
16 attention.

17 Q. All right.

18 A. I don't remember. I mean, I don't really follow
19 it.

20 Q. Okay. And when asked whether you had formed any
21 personal opinions about the case, based on that
22 information, you said no?

23 A. Right.

24 Q. Do you have any opinions today?

25 A. No.

1 Q. As to guilt, or innocence, or anything about the
2 case?

3 A. No, we were told not to watch anything, or read
4 anything, not listen to anybody.

5 Q. And you followed those instructions?

6 A. Yup.

7 Q. Very good. How long have you been a resident of
8 Manitowoc County?

9 A. Manitowoc County, since 1987.

10 Q. During that time, have you had any encounters or
11 any experiences with the Manitowoc Police
12 Department, or the Manitowoc Sheriff's
13 Department?

14 A. No.

15 Q. Do you have any opinions as to whether you think
16 the Sheriff's Department is doing a good job, a
17 bad job, a fair job, in terms of fighting crime
18 and serving the public?

19 A. I --

20 Q. Don't have an opinion one way or the other?

21 A. No.

22 Q. Okay. That's all right. Now, in your
23 questionnaire there were a number of questions
24 that were designed to see if you would follow the
25 instructions of the judge and the law, if you

1 were selected as a jury -- as a juror, excuse me.
2 One of those questions dealt with the fact that
3 Mr. Avery is presumed to be innocent, unless and
4 until the State can prove him guilty, beyond a
5 reasonable doubt; do you accept that?

6 A. Right.

7 Q. Do you have any problem understanding that?

8 A. No.

9 Q. And do you think you would be able to follow on
10 Judge Willis' instructions on that?

11 A. Mm-hmm.

12 Q. Is that a yes?

13 A. Yes. Okay.

14 Q. She's trying to type it all down so.

15 A. Sorry.

16 Q. Very good. Similarly, Mr. Avery has the right to
17 testify in this case and he also has a right not
18 to testify in this case. And if he does not
19 testify in this case, you won't hold that against
20 him?

21 A. No.

22 Q. All right. In other words, you understand that
23 he has a right not to testify?

24 A. Right.

25 Q. Okay. And you wouldn't consider that adversely

1 against him if he doesn't testify, in terms of
2 deciding, in the end, whether he's guilty or
3 innocent?

4 A. Right.

5 Q. It would be on other evidence that was presented?

6 A. The other evidence provided.

7 Q. Okay. And you have no problem with that?

8 A. No.

9 Q. And you can follow that instruction?

10 A. Right.

11 Q. Okay. Are you a movie watcher?

12 A. Am I a movie watcher, yeah.

13 Q. Have you ever seen a movie called the Thin Blue
14 Line.

15 A. No.

16 Q. In terms of your approach to, oh, forming an
17 opinion or solving a problem; do you consider
18 yourself a detail oriented type of person or are
19 you a big picture person?

20 A. Could you repeat?

21 Q. Well, in terms of going about trying to
22 understand a particular point, or trying to
23 evaluate or solve a particular problem; are you
24 kind of a bottom line, big picture, or do you
25 want to know all the details?

1 A. Detail.

2 Q. You are a detail person. Okay. All right. As a
3 detail person, are you one who likes to solve
4 puzzles, or riddles, or things of that sort?

5 A. Sometimes.

6 Q. In terms of the puzzles you work on, are those
7 jigsaw puzzles, or word puzzles, crosswords, what
8 kind of --

9 A. Word puzzles.

10 Q. Word puzzles.

11 A. Jigsaw once in a while, not puzzles, but mostly
12 words.

13 Q. Okay. Have you ever used a publication such as
14 Auto Trader to buy or sell a car?

15 A. No.

16 Q. Okay. Are you familiar with the publication at
17 all?

18 A. No.

19 Q. Since you have had -- not had any prior jury
20 experience, let me ask this question. Do you
21 have any particular religious, moral, or
22 philosophical beliefs that you think might make
23 it difficult for you to sit and deliberate on the
24 guilt or innocence of a person?

25 A. No.

1 Q. All right. Do you think you would be able to
2 comfortably handle that task?

3 A. Right.

4 ATTORNEY FALLON: That's all I have for the
5 witness.

6 THE COURT: Mr. Strang.

7 VOIR DIRE EXAMINATION

8 BY ATTORNEY STRANG:

9 Q. Hi.

10 A. Hi.

11 Q. I'm Dean Strang. This is Jerome Buting. And
12 we're defending Steve Avery. Back to the
13 beginning, you were born in Chilton.

14 A. Mm-hmm.

15 Q. How long did you stay in Chilton?

16 A. I was born in Chilton but we lived in New
17 Holstein.

18 Q. Oh, okay, New Holstein. So you grew up in New
19 Holstein?

20 A. No, grew up in Kiel.

21 Q. And hence, Kiel High School.

22 A. Mm-hmm.

23 Q. Kiel High School doesn't pull kids in from New
24 Holstein?

25 A. No, it's about three -- three, four mile

1 difference.

2 Q. Okay. And then you gave me the -- or gave us the
3 street address where you and your family live
4 now, but I don't know what town that is in. I'm
5 sorry.

6 A. It would still be Kiel. It's a Kiel School
7 District, yup.

8 Q. Today?

9 A. Mm-hmm.

10 Q. Okay. And you have been there, gosh, in that
11 house, for the last 20 years or so?

12 A. Right.

13 Q. The cheerleading volunteering, is that for your
14 daughter?

15 A. Pardon?

16 Q. The cheerleading volunteering that you do; is
17 that for your daughter?

18 A. Right. Yeah.

19 Q. Could be your son.

20 A. My daughter.

21 Q. Okay. They are twins, the younger?

22 A. Right, they are twins.

23 Q. And how involved are you guys at the church.

24 A. Church twice a month. One of the boys, Cody's
25 basketball games, he plays for St. Peter and

1 Paul. That's about it.

2 Q. Okay. That answered my other question, Sts.

3 Peter and Paul?

4 A. Mm-hmm.

5 Q. Bemis, this is what -- this is -- well, you have

6 got sort of a habit of working down in the Falls,

7 I guess, right?

8 A. Right.

9 Q. When you are working. Do these guys run a full

10 third shift?

11 A. Yes.

12 Q. Just same as the other two?

13 A. Right.

14 Q. And the -- this sort of swing operation where you

15 may be doing a different job every night; is that

16 true of the other two shifts as well?

17 A. Mm-hmm. Right.

18 Q. Now, does that mean you are working with

19 different people every night as well?

20 A. Right. Mm-hmm.

21 Q. Okay. So you really do get --

22 A. Or you are by yourself. Depends if it's a one or

23 two person job.

24 Q. Right. Depending on the job you get, so you get

25 a foreman or someone who assigns you --

1 A. Right.

2 Q. -- this or that?

3 A. Different schedule every night when you come in.

4 Q. Okay. Maybe since it's a full shift I can guess

5 the answer to this, but I will ask you. Is -- is

6 there a radio, you know, sort of playing all the

7 time?

8 A. We can bring our own radios in.

9 Q. And do you do that to help pass the time?

10 A. Yup. Yup.

11 Q. What's on the radio between 11 at night and 7 in

12 the morning?

13 A. Classic rock, the Buzz out of Milwaukee.

14 Q. Okay.

15 A. That's about all we listen to. I don't listen to

16 104.5. I don't care for it, too much talking.

17 I'd rather listen to music.

18 Q. Listening to music.

19 A. Be a long night if you don't have it.

20 Q. Right. And the talk shows get real weird at

21 night. So you are a music -- you are listening

22 to music?

23 A. Right.

24 Q. No TV at work?

25 A. No.

1 Q. I'm assuming. Tell me -- Tell me what you know
2 about Brendan Dassey.

3 A. I saw the arrest of Brendan. Kind of like was
4 Steven's arrest. That was it.

5 Q. Okay. When you say you saw the arrest of it,
6 like a news conference?

7 A. That he was supposedly -- supposedly involved.
8 That's it.

9 Q. Was that news conference sort of thing with
10 microphones?

11 A. Right. Yup. Kind of bringing him in the
12 courtroom. Had the orange -- I believe orange.
13 I don't know.

14 Q. Okay. So you actually saw footage of the court?

15 A. Right. I saw him.

16 Q. Of the court stuff.

17 A. Right. Heard that he was arrested.

18 Q. Okay. And did you watch -- One of the
19 prosecutors and a sheriff gave a news conference
20 two days in a row; did you see that?

21 A. No.

22 Q. Okay.

23 A. Didn't see no conferences at all.

24 Q. Got it. And what -- when -- so back to -- back
25 to Brendan Dassey, what else do you know about

1 him, or have you heard?

2 A. A nephew. The nephew was arrested. Brendan
3 Dassey, the name, a nephew, and relation of
4 the --

5 Q. Other than being Steven Avery's nephew, did you
6 connect up, you know, the charges against Brendan
7 with the charges against Steven in any way?

8 A. What do you mean connect?

9 Q. Do you see them as linked together, tied together
10 in any way, one affecting the other?

11 A. I don't know. Just heard about an arrest. I
12 didn't really hear the details on it. If I would
13 have seen the conference or whatever, I would
14 have heard more about it. But I really can't say
15 because I didn't hear a lot about it.

16 Q. I'm trying to sort of explore that. Have you
17 heard anything that Brendan supposedly said?

18 A. No. No.

19 Q. So -- So let's talk about this trial since this
20 is just Steven Avery's trial. What do you think
21 about innocence or guilt as you sit here now?

22 A. You have to have the evidence, innocent until
23 proven guilty.

24 Q. Okay. So you sort of -- Are you just sort of
25 starting with, hey, I don't know anything and I

1 assume he's innocent, let's hear the evidence?

2 A. Whatever is set out in front of a person, that's
3 how you -- I mean, to me that's how you figure
4 out if they are guilty or innocent. I don't know
5 enough about -- to say if he is or not.

6 Q. All right. As the case gets started, if you are
7 on the jury, and you start hearing the evidence,
8 are you somebody who's going to want to hear both
9 sides?

10 A. Yup.

11 Q. Does that mean that you think he really better
12 testify? I mean, seriously, I just need to know.

13 A. I would like to hear -- Yeah, I would like to
14 hear, but if he decides not to, there still
15 should be evidence.

16 Q. Okay. And in fact, I think the Judge will -- I
17 shouldn't -- I'm not trying to do his job, I can
18 barely do mine. But I think the Judge will tell
19 you that a defendant, you know, somebody charged
20 with a crime --

21 A. Right.

22 Q. -- can decide to testify. And if he does, then
23 you treat him like any other witness.

24 A. Right. Right.

25 Q. Decide what you believe or what you don't.

1 A. Right.

2 Q. Or he can decide not to testify. I mean, is this
3 familiar to you?

4 A. Right. I think it was mentioned when he spoke
5 before, when we did our questionnaire.

6 Q. Right.

7 A. I remember him telling us that.

8 Q. Right. And so, you know, that's a tough call, I
9 guess. Can you think of reasons why someone who
10 really didn't do it might not testify --

11 A. No. No.

12 Q. -- all the same?

13 A. No.

14 Q. Like if he really didn't do it he would testify?

15 A. No.

16 Q. No. Why not testify?

17 A. Because evidence, you have to look at the
18 evidence.

19 Q. So in other words, he could just say, hey, I
20 didn't do it, but they can't prove I did, so I'm
21 just going to rely on the fact they can't prove
22 it, and I'm innocent; is that something you could
23 accept?

24 A. Right. Mm-hmm.

25 Q. And do you know that Mr. Buting and I, as his

1 lawyers, might have something to say about, you
2 know, advising him whether he should or shouldn't
3 testify?

4 A. Right. Yeah. Mm-hmm.

5 Q. Can you live with that role of the lawyers kind
6 of butting in?

7 A. Yeah.

8 Q. When I say can you live with it, can you
9 accept --

10 A. Deal with it, yeah.

11 Q. -- it?

12 A. Accept it, yeah. Mm-hmm.

13 Q. These are the rules --

14 A. Yup. Mm-hmm.

15 Q. -- and that's how it works.

16 A. Mm-hmm.

17 Q. You were asked a question on the questionnaire to
18 the effect of, you know, when you hear a police
19 officer testify, can you weigh their testimony
20 just like any other witness?

21 A. Right.

22 Q. And you said yes.

23 A. Mm-hmm.

24 Q. Do you think that there's anything about being a
25 police officer that makes you less likely to lie

1 under oath than any other person who is under
2 oath?

3 A. No, they are just like you or I. I mean, I would
4 see them as that.

5 Q. Okay.

6 A. They just wear the uniform for their shift and
7 that's it.

8 Q. Yeah, okay. UPS guys have a uniform?

9 A. Yup.

10 Q. Police officers?

11 A. Mm-hmm.

12 Q. Okay. If you're allowed to serve on this jury,
13 are you willing to let the police officers just
14 be human like everybody else?

15 A. Yeah.

16 Q. Not going to hold them to a higher standard?

17 A. No. No.

18 Q. Okay. By the way, have you been sitting back
19 there all day?

20 A. Yup.

21 Q. And you would normally be sleeping from about 8
22 to 4 or something?

23 A. I get home at 7:30. I lay down from about 8:30
24 to about 1:30. And on the weekend I sleep like a
25 normal person. So it works out pretty good for

1 me. Some people it don't.

2 Q. Okay. So have you bumped into anybody you know?

3 A. Here?

4 Q. Yeah.

5 A. No.

6 Q. Okay. And it gets pretty loud.

7 A. There's a joke teller in there.

8 Q. Okay. All right. Are people talking about this

9 case at all, or they just --

10 A. No, they were talking about jokes, how long it's

11 taking. We're timing it, about 45, 50 minutes a

12 person.

13 Q. All right.

14 A. You know. About where everybody works they were

15 just asking.

16 Q. Yeah.

17 A. Trying to get to know each other.

18 Q. Will you take a hit financially if you get stuck

19 on this jury for six weeks?

20 A. No.

21 Q. It will be all right with work?

22 A. Yup, uh-huh.

23 Q. And any concerns about -- I mean, your kids

24 aren't real young, but do you have any concerns

25 about being away from them?

1 A. No. No, they are 13 and 16.

2 Q. They may be at that age where they want you away
3 for awhile.

4 A. Yeah, there's another one to run them to
5 basketball or whatever.

6 Q. Okay. Did you grow up on a farm?

7 A. No, in the city.

8 ATTORNEY STRANG: I think that's -- I think
9 that's -- Just a minute. I'm good, thank you for
10 being patient.

11 THE COURT: All set. Ms Dorn, the Clerk
12 will take you out of the room.

13 Any motion from either party?

14 ATTORNEY FALLON: No.

15 ATTORNEY STRANG: No.

16 THE COURT: Very well. This juror is in.
17 Counsel, before we proceed further, let me take a
18 little inventory here. It's my understanding that,
19 referring to the sheets, 14, 17, and 20 are now --
20 are now being jointly requested to be excused?

21 ATTORNEY BUTING: Oh, that was this
22 morning, wasn't it?

23 ATTORNEY STRANG: Yeah, 14, 17, 20, 23, and
24 27.

25 THE COURT: Okay. I have got 14, 17, 20,

1 23, 27 and 36.

2 ATTORNEY STRANG: I don't know about 36. I
3 know I'm going to move to strike him.

4 ATTORNEY FALLON: Just give me a minute, I
5 might be able to join you in that. If I could have
6 a moment, Judge, to check my numbers.

7 THE COURT: All right. Let's go off the
8 record for a second.

9 ATTORNEY STRANG: Sure.

10 (Off record discussion.)

11 THE COURT: Just for the record, counsel,
12 and to confirm again, it's my understanding that the
13 parties are jointly recommending that the following
14 jurors be excused: 14, Anthony Kabat; 17, Brad
15 Erdman; 20, Thomas Kubichka; 23, Audrey Gagnon; 27,
16 Mark Groth; and 36, Jerome Reszczyski. There may be
17 others tomorrow, but at least through 36, those are
18 the ones that are jointly recommended?

19 ATTORNEY FALLON: Yes, Judge.

20 ATTORNEY STRANG: That's correct.

21 THE COURT: Very well. The Court will
22 excuse those jurors. And I don't know if you folks
23 have the information yet. Number 34, Ryan Manley,
24 it turns out is now a Milwaukee resident.

25 ATTORNEY FALLON: Yes, I think we got

1 information last Monday, or afternoon, or something.
2 At least I was advised that he had moved to
3 Milwaukee, I guess.

4 THE COURT: All right. So we're going to
5 do two more jurors. The next one will be Sharon
6 Thorne.

7 All right. Ms Thorne, before we begin
8 the Clerk will administer the juror's oath to
9 you.

10 THE CLERK: Raise your right hand, please.

11 (Juror sworn.)

12 THE CLERK: Please be seated.

13 THE COURT: Ms Thorne, you have already
14 completed a questionnaire in this case, today we're
15 going on to the next step of jury selection which is
16 individual voir dire by the attorneys for both
17 parties. In a minute they will ask you a few
18 questions.

19 Before we begin, I want to pass on a few
20 additional notes for your information. The jury
21 that is selected in this case will not be
22 sequestered. That means for the duration of the
23 trial, which may go six weeks, the jurors will be
24 permitted to go home every evening after the
25 trial is over for the day. We're doing that with

1 the understanding that the jurors will not
2 observe any reports involving this matter on any
3 news media, either newspaper, radio, or
4 television, the internet, or discuss the matter
5 with anybody else.

6 You should also know that although these
7 voir dire proceedings are open to the public, no
8 cameras are allowed in the courtroom during voir
9 dire proceedings. And the news media is not
10 allowed to identify individual jurors by name in
11 any news reports. In addition, the jurors
12 selected to serve in this case will not be on
13 camera during any portion of the trial. The news
14 media is not allowed to show the juror's faces
15 during the trial.

16 In the event you are selected to stay on
17 the jury panel after today's's questioning, you
18 will receive a notification by telephone as to
19 when to report back to court. It will probably
20 be in the next two or three days.

21 With that background information,
22 Mr. Fallon, you may begin.

23 **VOIR DIRE EXAMINATION**

24 BY ATTORNEY FALLON:

25 Q. Good afternoon.

1 A. Good afternoon.

2 Q. Thank you for your patience with us. I
3 understand you have been having some fun at our
4 expense, so I suppose that's deserved. Just
5 wanted to follow up with some questions based on
6 the information that you gave us last Monday in
7 the questionnaire.

8 My name is Tom Fallon. I'm an Assistant
9 Attorney General with the Wisconsin Department of
10 Justice. I'm one of the prosecutors in this
11 case. And I guess I would like to begin with a
12 couple of questions about your work situation.
13 So tell me, where it is you work again, Kroll's;
14 what is that?

15 A. Kroll's East, Green Bay, as a waitress.

16 Q. Okay. So that's a restaurant then?

17 A. Mm-hmm.

18 Q. All right. And how long have you worked there?

19 A. Just since October.

20 Q. Okay. And prior to that you worked in a -- for a
21 couple of temporary services?

22 A. Mm-hmm.

23 Q. Is that a yes? She has got to type down yes or
24 no so.

25 A. Okay.

1 Q. The others don't work out to well. What kind of
2 work did you do when you were subbing out, as it
3 were, for the temp service?
4 A. Factory assembly work.
5 Q. Okay. And how long did you work for those
6 temporary services? ABR, how long did you work
7 for them?
8 A. About 10 months.
9 Q. Okay. And the Flex Staff Service?
10 A. About a year.
11 Q. About a year, okay. And then you worked for
12 Mirro Company?
13 A. Mm-hmm.
14 Q. And how long did you work for them?
15 A. 11 years.
16 Q. And what kind of work did you do for Mirro?
17 A. Paragon Electric in Two Rivers.
18 Q. Okay.
19 A. Assembling timers.
20 Q. So a fair amount of factory work?
21 A. Right.
22 Q. Piece work, assembly production?
23 A. Right.
24 Q. Okay. Very good. The reason I asked those
25 questions is that, as you have no doubt learned

1 through the process, this case may very well take
2 six weeks to try, when it's all said and done.
3 And if you are selected for the jury, that means
4 you will be here 8, 9 hours a day. So our
5 concern is you indicated you didn't think there
6 would be any hardship for you. Having thought
7 all that through and a week to think about it,
8 are you still confident that you will be able to
9 financially make it through that six week period?

10 A. Yes.

11 Q. All right. Now, in terms of hobbies and
12 interesting things, you indicated you like to
13 fill in puzzles. Are those crossword puzzles or
14 other types of puzzles?

15 A. Fill ins, they look like a crossword puzzle.
16 They give you the word, and you just have to fit
17 them in the puzzle, what I was doing all day
18 today.

19 Q. All right. And do you like to do that because
20 you find it challenging, or relaxing, or any
21 particular reason?

22 A. Relaxing.

23 Q. Okay. Any other kind of puzzle work that you
24 like to do?

25 A. No.

1 Q. Okay. So you lived in Manitowoc County all your
2 life?

3 A. Right.

4 Q. All right. During that time, have you had an
5 opportunity to form any opinions as to the local
6 Sheriff's Department? Do you think they do a
7 good job in fighting crime, a fair job, a lousy
8 job; do you have any opinion on that?

9 A. No problem. I have no -- They do their job all
10 right I figure.

11 Q. In other words, you don't hear any complaints to
12 your --

13 A. No.

14 Q. Okay.

15 A. No.

16 Q. Now, the other couple questions I have for you,
17 you indicate you get your news, I guess,
18 primarily from television, not from newspapers.
19 How often do you watch news telecasts?

20 A. I don't watch much TV at all.

21 Q. You don't?

22 A. No, I'm not.

23 Q. If you don't get your news from the TV, do you
24 get your news from any other source?

25 A. No, I don't get a newspaper.

1 Q. Are you a computer person at all?

2 A. No, I don't have a computer.

3 Q. Okay. Now, in response to one question here, if

4 you were aware of the publicity, you didn't

5 answer yes, but you answered further with a brief

6 explanation. And you said, just some news

7 coverage, local Green Bay channels, very little.

8 As a result of that information, you went on to

9 say you haven't really formed any opinions in

10 this case?

11 A. No.

12 Q. From time to time, do you ever talk about the

13 case, or any of the news with any friends or

14 family members, or anything like that?

15 A. No.

16 Q. Okay. If you are not a TV person, what do you do

17 with your -- with your spare time? You say --

18 A. When it's nice outside, I'm outside a lot.

19 Q. I'm sorry?

20 A. When it's nice outside, I'm outside a lot,

21 camping. I like going in the woods walking my

22 dog. Just hang out with the girls, I mean, you

23 know, having our little coffee klatsch.

24 Q. Oh, do you. Okay.

25 A. Stuff like that, go out for lunch.

1 Q. All right. And I take it, then, with some of the
2 women that you hang out with you don't really
3 talk about news that much, just talk about
4 cooking gardening, and --

5 A. Girl stuff.

6 Q. Girl stuff. All right. That's fair. All right.
7 And how often do you get together with the girls
8 and just kick things around?

9 A. At least a couple times a month.

10 Q. Okay. Do you ever discuss the major events of
11 the day in your coffee klatsch?

12 A. Well, like when it happened that -- in the
13 blowing up the building --

14 Q. The World Trade Center.

15 A. Well, yeah, that was big talk.

16 Q. Sure.

17 A. Stuff like that, but, no, not really.

18 Q. Generally, it's not usually a newsworthy
19 discussion like this?

20 A. No.

21 Q. Okay. Very good. Do you know anyone in the
22 media that you are friends with, or any family
23 members that work in the media that you might
24 talk with from time to time?

25 A. Nope, none.

1 Q. All right. In terms of the little bit of media
2 coverage that you ever experienced in this case,
3 can you tell us what you do recall about the news
4 that you did see in terms of the information, or
5 what facts you think you may have as a result of
6 the media coverage?

7 A. I don't really watch it, the news. Mainly just
8 the weather. I put it on for the weather and
9 that's it.

10 Q. Okay. Very well. So you don't have any
11 particular impressions or what's going on with
12 respect to this case at all?

13 A. None.

14 Q. Okay. In your work with the temporary services,
15 working with producing and manufacturing
16 products, and working on the assembly line, and
17 piece work, and things of that sort; were you
18 ever -- ever in charge of anyone, or supervising
19 anyone in that capacity?

20 A. No.

21 Q. Okay. Did you ever write any safety guidelines,
22 or suggest any safety guidelines, or setting up
23 of any when you are working with the equipment or
24 other people in producing?

25 A. On a Safety Committee, yes.

1 Q. Oh, you did. Okay. Tell us about that.

2 A. Just mark down the dangers on the job that we
3 could see that workers were doing.

4 Q. Okay.

5 A. And how they were performing and the problems
6 that it could cause.

7 Q. All right. And how did you -- Did you like that
8 experience, having some input like that?

9 A. Mm-hmm, yeah.

10 Q. Did you find it valuable?

11 A. Yeah.

12 Q. In terms of coming up with some ideas and
13 guidelines, was that kind of a group process?

14 A. Mm-hmm.

15 Q. Is that a yes?

16 A. Yes, monthly group.

17 Q. All right. And so you would periodically revisit
18 the guidelines and safety concerns?

19 A. Right.

20 Q. Okay. Do you consider yourself, you know, in
21 terms of evaluating opinions, or trying to solve
22 problems, or just generally in looking at things
23 in this world, do you consider yourself a detail
24 oriented person, or a big picture type of person,
25 bottom line approach?

1 A. Well, I'm not sure.

2 Q. Okay. Have you ever used any magazine or
3 publication, such as Auto Trader, to buy or sell
4 a vehicle?

5 A. No.

6 Q. Okay. All right. Have you ever read, or heard,
7 or seen anything in the news or in your
8 discussions with the girls, anything about this
9 Project Innocence in Wisconsin?

10 A. Nope.

11 Q. All right. Or do you know what it is?

12 A. No.

13 Q. It's a group of professionals, based in Madison,
14 that seek to exonerate people who were wrongfully
15 accused; does that ring a bell to you at all?

16 A. No.

17 Q. Okay. Do you know anything about Mr. Avery's
18 background or his past?

19 A. None.

20 Q. Not a thing.

21 A. Uh-uh.

22 Q. All right. In terms of your employment situation
23 and particularly the safety guidelines and
24 concerns and producing these products; would you
25 consider yourself one who follows those rules and

1 guidelines?

2 A. Yes.

3 Q. And that they are there for a particular reason,
4 for instance safety, or to enhance production?

5 A. Right. Yes.

6 Q. All right. You don't have any problem following
7 those rules or anything?

8 A. No.

9 Q. Now, in this particular case, Judge Willis here,
10 if you are selected, will advise you of some of
11 the rules and principles which will guide us
12 during the course of the trial; would you be able
13 to follow those rules?

14 A. Yes.

15 Q. Now, you indicated in your questionnaire you
16 would accept the fact that Mr. Avery is presumed
17 innocent until the State, that's our team here,
18 unless or until we prove him guilty, beyond a
19 reasonable doubt. You can follow that
20 instruction?

21 A. Yes.

22 Q. And do you accept that as a important principle?

23 A. Mm-hmm. I do.

24 Q. Okay. Now, you have never served on any jury
25 before; is that correct?

1 A. No, I haven't.

2 Q. All right. Is there any philosophical reason,
3 any moral reason, or religious reason, as you
4 think about your own experiences in life, which
5 gives you a reason to doubt whether you could
6 serve as a juror in this case?

7 A. No. Uh-uh.

8 Q. If you were selected as a juror in this case,
9 would that be all right with you?

10 A. Fine.

11 ATTORNEY FALLON: All right. That's all I
12 have.

13 THE COURT: Mr. Strang.

14 ATTORNEY STRANG: Thank you.

15 **VOIR DIRE EXAMINATION**

16 BY ATTORNEY STRANG:

17 Q. Hi, I'm Dean Strang. This is Jerome Buting,
18 Steven Avery. And he's prosecuting, and we're
19 defending, Mr. Avery.

20 A. All right.

21 Q. And I will tell you right now, I'm not from
22 around here. And I thought I had a pretty good
23 sense of Manitowoc County, but I don't know where
24 Greenleaf is. I know vaguely where County NN is.

25 A. Out in the country.

1 Q. So where is it?

2 A. 15 miles west of Denmark.

3 Q. 15 miles west of Denmark.

4 A. By Wrightstown and --

5 Q. So you are near Brown County?

6 A. Just a little bird out there.

7 Q. You are near Brown County sort of.

8 A. Mm-hmm. Actually across the street is Brown

9 County line. Mm-hmm.

10 Q. And then how far --

11 A. Between K and Z is where I live. Between

12 Kellnersville and Maribel, there's a little

13 country road between there?

14 Q. Got it.

15 A. I'm right on the borderline of it all. I have a

16 Greenleaf address. I'm Manitowoc County.

17 Township of Cooperstown. It goes on and on.

18 Q. And do you have family around?

19 A. Mm-hmm. A brother in Appleton. A brother in

20 Appleton.

21 Q. Your folks still around?

22 A. No, they are both gone.

23 Q. So there's just the one brother, but he's over in

24 Appleton?

25 A. Mm-hmm.

1 Q. I understand Mrs. Kroll died this weekend.

2 A. Yes, she did. Mm-hmm. 94.

3 Q. 94 years old.

4 A. Yup.

5 Q. How did you wind up waitressing after doing

6 factory work?

7 A. My girlfriend, we worked together at Paragon in

8 1983. And she's been working there for about

9 five years. So she got me into the restaurant.

10 She knew I always wanted to leave factory. And I

11 always talked I wanted to get out of factory. So

12 she said there was openings, she said why don't

13 you try it. So I did.

14 Q. And how is it?

15 A. I like it.

16 Q. Kroll's is a place where everybody is a regular,

17 basically?

18 A. Right.

19 Q. So what do you -- as you are warming up people's

20 coffee, what do you chitty chat with them about?

21 A. All kind of things, the weather?

22 Q. Whatever is on their mind?

23 A. Green Bay Packers, of course, because you are in

24 Green Bay.

25 Q. How else.

1 A. Yes. Is Favre coming back, that's another thing.

2 Q. All right. So, I mean, so this sort of suits
3 you; I mean, are you social that way, it sounds
4 like?

5 A. Oh, yeah.

6 Q. I'm sitting here saying now that I finally have a
7 woman under oath, I could ask what girl talk is,
8 since I have always wondered all my life.

9 A. Something besides not underneath looking at an
10 engine, changing oil and stuff like that.

11 Q. All right. So look, you know, what do you know
12 about Brendan Dassey? If you don't know anything
13 about Steven Avery, what do you know about
14 Brendan Dassey.

15 A. I don't know.

16 Q. Have you ever heard of the name?

17 A. I went, way back, to school with a Dassey?

18 Q. Which one?

19 A. Peter Dassey. And I know a Paul Dassey. I just
20 know because they live in Two Rivers, the name.
21 But I have no idea, you know, for any personal
22 thing about them or anything.

23 Q. Or any connection --

24 A. No.

25 Q. -- to this --

1 A. No.

2 Q. -- case?

3 A. Right. Just lived in Two Rivers all my life and
4 they lived there too. And the name.

5 Q. Was Peter in your class?

6 A. No. Uh-uh.

7 Q. But you knew him through school?

8 A. Right.

9 Q. And, you know, this is all -- this is all pretty
10 new to you if you haven't been on a jury before.

11 A. Mm-hmm.

12 Q. And I don't think you have ever been in trouble,
13 have you?

14 A. No.

15 Q. And so if you wind on this jury, which could be
16 six weeks --

17 A. Right.

18 Q. -- are you going to want to hear from both sides
19 in this case?

20 A. Well, yeah. you can't make a decision until you
21 know what it's all about totally.

22 Q. Yeah. And there's -- there's some things that
23 could interfere with that. And I want to talk
24 you to about those and get your take on them.
25 The State -- I think as you have been told a

1 couple times now, the State has the burden of
2 proof in this case. They have to prove Steve
3 Avery guilty, beyond a reasonable doubt, if they
4 can. So flip that around, what does that mean
5 that we have to prove?

6 A. That he's innocent.

7 Q. Actually, nothing. We don't have to prove
8 anything, because they have to prove he's guilty.
9 I don't have to prove he's innocent.

10 A. Okay.

11 Q. If the Judge tells you those are the rules, can
12 you grab on to that and follow those rules?

13 A. Mm-hmm.

14 Q. Is that yes?

15 A. Yes.

16 Q. I'm sorry. The court reporter will throw a
17 pencil at me or something if I don't get a yes or
18 no out of the you.

19 I think it's a natural human thing to
20 want to hear both sides if you are going to be
21 fair and all that. And I'm sure we'll do stuff
22 in this trial, but do you understand we don't
23 have to prove him innocent? We really don't, in
24 the end. Can you follow that rule --

25 A. Yeah.

1 Q. -- if you wind up on the jury?

2 A. Sure.

3 Q. And it's the same thing with him testifying. I

4 don't know, do you figure that, well, if a guy

5 didn't do it he would get up on the stand and

6 testify that he didn't do it?

7 A. It's not that easy.

8 Q. It's not that easy? Why not?

9 A. It's just not.

10 Q. Actually, it's not that easy.

11 A. It's not.

12 Q. But I'm wondering why you say so?

13 A. Just from like the past, of what my mom and dad

14 used to say about the legal system and that.

15 Q. Who were they?

16 A. That's my mom and dad.

17 Q. Yeah, I know what but --

18 A. The way they would talk and that. I mean, just

19 said don't get into trouble because it ain't that

20 easy to get out of it.

21 Q. Okay. It is true. And the Judge has also told

22 you, and he will tell you a bunch of times again

23 I think, that in America, someone who's accused

24 of a crime is presumed innocent. They start the

25 trial that way. They go through the trial

1 presumed innocent. And only if the jury
2 eventually decides at the end that the State
3 proved it, beyond a reasonable doubt, is the
4 person no longer presumed innocent. He gets
5 found guilty in that case.

6 A. Mm-hmm.

7 Q. And that idea, that someone is presumed innocent,
8 bumps up against -- I think in the real world
9 bumps up against a tendency of people to say,
10 well, he's here, he is sitting in the defendant's
11 table, wouldn't be here if he hadn't done
12 something. And is that, you know, is there a
13 voice in your head saying that too?

14 A. Just have to wait and see what's all summed up,
15 you know.

16 Q. Do you think he must have done something, though,
17 to be charged and to be here?

18 A. Apparently.

19 Q. I don't know.

20 A. Somebody must know something.

21 Q. Somebody has alleged something?

22 A. Yes.

23 Q. But that's the point, somebody has made a claim.
24 And that's the point is, he is presumed innocent.

25 A. I guess that's what we're here to find out.

1 Q. That's -- That's why you are here. That's why we
2 have a jury, in the end. So, you know, as you
3 say, it's not that easy on whether he testifies
4 or doesn't testify. And I guess what I need to
5 know is, when the Judge gives you the rules to
6 follow, are you going to follow them?

7 A. Of course.

8 Q. And, you know, some things we do because we have
9 to, some things we do because we believe in it
10 and we want to. Where do you fall on that, on
11 things like being presumed innocent and the State
12 having the burden or proof?

13 A. Just have to wait and see what I hear and sum it
14 up that way.

15 Q. But are you following those rules because you are
16 told to and that, you know, they are rules you
17 have to follow, or do you say to yourself those
18 rules make sense to me, and if I were charged
19 with a crime, that's what I would want?

20 A. Basically, I will have to just see how it turns
21 out, see what's said, and see how the evidence
22 all goes, and how it all falls in place. You
23 know, that's all I can really say. Can't say he
24 is guilty, can't say he is not guilty. I don't
25 know.

1 Q. But can you presume that he is not guilty?

2 A. Apparently. Maybe. I don't know.

3 Q. This is perfect, you are being very straight with
4 me, which is what I need, you know, to help me
5 make decisions about whether we want you or not.
6 And if you are going to be on the jury, you have
7 got to get past, apparently, or maybe. And it's
8 okay to tell me if you are not going to get past
9 apparently or maybe.

10 ATTORNEY FALLON: I'm going to object to
11 that. That's a mischaracterization of the law, at
12 least in terms of -- Well, I don't want to argue in
13 front of her.

14 THE COURT: There is some ambiguity in the
15 question. Let's move on to the next question.

16 Q. You will be asked to take an oath if you are on
17 the jury, that you are going to follow the
18 Judge's instructions.

19 A. I will be able to, yes.

20 Q. Presuming him innocent is one of those.

21 A. Right.

22 Q. There's a bunch of other instructions too.

23 A. Mm-hmm.

24 Q. Okay. Do you think you will be able to do that?

25 A. Yes.

1 Q. So let me just come out and ask you, do you want
2 to be on this jury?

3 A. Sure.

4 Q. Why?

5 A. I find it interesting. I never done it before.
6 Just find it interesting.

7 Q. What if this trial goes six weeks and takes you
8 away from your life for six weeks?

9 A. I'm aware of that already.

10 Q. And you still want to do it?

11 A. Sure.

12 Q. Just for the new experience? Just because it's
13 interesting? Or is there any other reason?

14 A. It's a lifetime experience. I may never be able
15 to do it again.

16 Q. Do what?

17 A. To be in court, to make the decision?

18 Q. Okay.

19 ATTORNEY STRANG: Thank you.

20 THE COURT: Anything else, Mr. Fallon?

21 ATTORNEY FALLON: Nothing, thank you.

22 THE COURT: Very well. The Clerk will
23 escort you out of the courtroom at this time, Ms
24 Thorne.

25 Any motion from either party?

1 ATTORNEY FALLON: None from the State.

2 ATTORNEY STRANG: None here.

3 THE COURT: All right. Ms Thorne will be
4 in the jury pool -- or panel.

5 Ms Whalen, please raise your right hand.
6 The Clerk will administer the oath.

7 (Juror sworn.)

8 THE COURT: Ms Whalen, first let me
9 apologize in our delay of getting to you today. You
10 have the honor of being the last juror we are going
11 to be voir diring today. You have already completed
12 a questionnaire in this case and today we're
13 proceeding on to the next phase of jury selection
14 which is individual voir dire. Each of the
15 attorneys, in a few minutes, will have an
16 opportunity to ask you some follow-up questions to
17 the information requested in your questionnaire.

18 I can tell you that the jurors who are
19 selected in this case will not be sequestered.
20 That means that after each day of the trial you
21 will be able to go back home. We're doing that
22 because the jurors will be required not to listen
23 to any news media accounts on the radio, not to
24 watch anything on TV, or read anything in the
25 newspaper, or on the internet. And jurors will

1 also have to agree not to discuss the case with
2 anyone during the course of trial.

3 Although the proceedings today are open,
4 during the voir dire process cameras are not
5 permitted in the courtroom. And you should know
6 that the press is not allowed to identify the
7 names of the jurors in any news accounts of the
8 case. You should also know that if you are
9 selected to serve as a juror, during the course
10 of the trial, cameras are not permitted to show
11 the identity of the jurors; that is, show their
12 faces or any part that's recognizable.

13 After the questioning today, if you
14 remain on the jury panel, you will be asked to
15 come back in a couple days. The Clerk's Office
16 will notify you by telephone of exactly when and
17 where. With that background, then, Mr. Fallon,
18 you may proceed with your questions.

19 ATTORNEY FALLON: Thank you.

20 VOIR DIRE EXAMINATION

21 BY ATTORNEY FALLON:

22 Q. Good afternoon. My name is Tom Fallon. I'm an
23 Assistant Attorney General with the Wisconsin
24 Department of Justice. I'm one of the
25 prosecutors in the case. Thank you for your

1 patience. I would like to follow up with some
2 questions on some of the information you provided
3 last week in the questionnaire and a few other
4 related questions.

5 First and foremost, I see that you are
6 currently employed at the -- I can't quite read
7 your writing, a plating company here in
8 Manitowoc?

9 A. Yes.

10 Q. All right. And you're a quality control person?

11 A. Yes.

12 Q. Tell us a little bit about what that involves.

13 A. That's where I check the finished products as
14 they come off the line, making sure they are more
15 or less perfect for the consumer.

16 Q. All right. How long have you been working there?

17 A. It will be 21 years in March.

18 Q. All right. And have you always worked in the
19 quality control division, as it were?

20 A. Um, I -- I have done it for three and a half
21 years previously, and I just wanted to get back
22 on the assembly line. And I did that for a
23 while, and they needed somebody to go back in
24 quality control and I volunteered. And I really
25 like it.

1 Q. All right. And how long is this tour of duty, as
2 it were, on quality control? When did you go
3 back and resume that duty?

4 A. How long have I been on it?

5 Q. Yeah, just recently, last 3 or 4 years or longer?

6 A. Just that I came back on it was like April of
7 this last year.

8 Q. April. Okay. All right. How long had you been
9 away from it?

10 A. Five years.

11 Q. Okay. Now, there is a question regarding your
12 employment that we wanted to explore with you.
13 And in answer to the last question on the
14 questionnaire, you were asked, is there any
15 reason that has not previously been ruled on by
16 the Court, why you should -- or you would suffer
17 exceptional personal hardship if selected to
18 serve as a juror, you answered, yes, you thought
19 so because of a large house payment, and that you
20 might need it to continue working to ensure that
21 you could meet your financial obligations with
22 your home.

23 A. Mm-hmm.

24 Q. Is that still the case?

25 A. Well, yeah. We do have a large house payment,

1 but I think we can make do.

2 Q. All right. So are you suggesting to us then that
3 you are in a situation where you would not be
4 paid if you were selected as a juror?

5 A. I don't know.

6 Q. Okay.

7 A. If the company pays me, I have no idea.

8 Q. All right.

9 A. I already said that I would take vacation.

10 Q. All right. Six weeks vacation?

11 A. No, I only have four weeks.

12 Q. So you would suffer a couple weeks without pay
13 then, possibly, potentially, you just don't know?

14 A. Yes.

15 Q. All right. Are you comfortable with that? I
16 mean, is that really going to put your family in
17 a financial bind?

18 A. No, I guess, you know, there's always a will,
19 there's always a way?

20 Q. Okay. All right. I want to talk a little bit
21 about some of the publicity which has attended to
22 this case. As a lead in to that, do you watch
23 the news fairly regularly?

24 A. Um, like I said, we just built a new home, and
25 we're still tinkering with it, so the news isn't

1 really always on. It is now and then, if I just
2 happen to be in the room or -- but it's not
3 always on. I used to get the paper, but I only
4 get it on the weekends.

5 Q. All right. Have you followed the -- we'll start
6 with the television, have you followed the
7 television coverage with respect to this case?

8 A. In the beginning I did, but then after a while it
9 was getting overwhelming so now I don't watch it.

10 Q. All right. When do you think was the last time
11 you watched any television coverage of the status
12 of the case, or the proceedings, or what have
13 you; how long ago did you stop watching?

14 A. About a week ago when you told me not to, for
15 one.

16 Q. All right.

17 A. But before that was months. Because it just
18 became always on there.

19 Q. Okay. So you really stopped watching months ago
20 and you have been earnest about it after
21 receiving the directive from the Court.

22 A. Mm-hmm.

23 Q. That's a yes?

24 A. Yes.

25 Q. She has to hear the word.

1 A. Sorry.

2 Q. All right. How about the newspaper coverage,
3 have you stopped reading the paper, the news
4 articles as well?

5 A. I saw on Sunday's paper, Steve's picture, and
6 right away I turned it over.

7 Q. All right. You didn't read any of the article at
8 all?

9 A. No.

10 Q. All right. Prior to receiving the directive from
11 the Court, when was the last time you read any
12 newspaper accounts of the case and the status and
13 things of that sort.

14 A. Probably when that Dassey boy, whatever, when
15 that happened.

16 Q. Okay.

17 A. That's probably the last time.

18 Q. All right. So that might have been last March.

19 A. Yeah, because it was just so much every day.

20 Q. Well, what do you recall reading or hearing about
21 the case involving Mr. Dassey?

22 A. That he got picked up, that he was going to jail,
23 that he was from Mishicot High School, that he
24 was more or less involved in it, you know. To
25 me, again, it was just another constant reminder

1 of, you know, what happened.

2 Q. All right. Do you recall any of the details
3 regarding his arrest or any of the statements
4 he's alleged to have made?

5 A. Yeah, he was saying that he was involved with it.

6 Q. Okay. That's the extent of what you recall?

7 A. Yeah, to me that's just gibberish, you know, you
8 hear it and you hear it, and after awhile you
9 don't want to hear it.

10 Q. Okay. Now, as a result of that initial media
11 splurge of coverage, did you form any long
12 lasting, solid opinions about the guilt or
13 innocence of Mr. Avery?

14 A. No.

15 Q. All right. As you sit here today, do you have an
16 opinion as to his guilt or innocence?

17 A. Actually, no, I don't. Because -- you could --
18 it could go either way.

19 Q. All right.

20 A. Maybe she was in love with him and maybe she was
21 trying to break it off, or maybe he, you know, I
22 just -- I don't --

23 Q. There's too much you don't know.

24 A. Yeah, just too much.

25 Q. All right.

1 A. That's why I didn't want to listen or read it any
2 more.

3 Q. You didn't want to what?

4 A. Listen or read.

5 Q. Oh, listen or read about. I got you. All right.
6 In your responses here, you said, well, yes and
7 no. On the one hand, I think he did it. On the
8 other hand, I don't think he did it. Could you
9 kind of elaborate on your --

10 A. Well, that's just what I mean. You know, you
11 hear people at work say, well, yeah, he did it,
12 he did it, he did it. But then it's like what
13 evidence do you have.

14 Q. Right. And the fact that -- In terms of one
15 question, on the one hand, I believe he did it,
16 and on the other hand, then again, I believe he
17 was framed; where does that come from? What
18 opinion is that based on?

19 A. Um, that's probably what I read.

20 Q. Okay.

21 A. Yeah.

22 Q. All right. So in other words, you are willing to
23 give either side a fair shake, as it were, as the
24 evidence is presented.

25 A. Yeah, because I have no evidence.

1 Q. Right. Okay.

2 A. What I hear is what people say.

3 Q. Now, importantly, do you think that whatever

4 opinions you have you can set those aside, and if

5 you were selected as a juror, you could decide

6 this case solely on what you hear in the

7 courtroom, and not so much what your husband

8 might say, or any of your friends and colleagues

9 at work, you can decide this case just on what

10 the evidence in the room is?

11 A. Actually, nobody at our house talks about it, or

12 even at work.

13 Q. Okay.

14 A. It's pretty much an old thing now.

15 Q. All right.

16 A. Yes, I think I could.

17 Q. All right. Excuse me. Just so I'm clear, I

18 thought you said that -- okay -- that there was

19 apparently a time where people did talk about the

20 case quite a bit at work, but you are telling us

21 that that's pretty well subsided now?

22 A. Mm-hmm.

23 Q. That's a yes?

24 A. Yes.

25 Q. Okay. So there's not a great deal of discussion

1 about it at the current time?

2 A. I work with a lot of Mexicans.

3 Q. Okay.

4 A. So, it's just maybe two of us --

5 Q. All right.

6 A. Caucasians.

7 Q. All right.

8 A. Nobody talks about it.

9 Q. Okay. Is that all right with you, that no one is

10 talking about it?

11 A. Yes, that's fine.

12 Q. Okay. In terms of being able to set aside your

13 opinion -- I will get to that in a minute. I'm

14 going to follow up with something else here. On

15 one question you indicated that you, yourself, or

16 your family, were victims of a crime; is that

17 correct?

18 A. Yes.

19 Q. I think you said you were robbed in 1993?

20 A. Yes.

21 Q. And the people were arrested?

22 A. Yes.

23 Q. Okay. Were they prosecuted to your knowledge?

24 A. Yes.

25 Q. Were they convicted?

1 A. Yes.

2 Q. Did the case actually proceed to court, or were
3 you ever a witness, or was it resolved before a
4 formal trial?

5 A. That was so far -- or such a long time ago. Yes,
6 we did go to court.

7 Q. Okay. Did you actually give some testimony at
8 one point, in a preliminary hearing maybe, or a
9 trial.

10 A. My husband sat upfront and I was like in the back
11 a little bit.

12 Q. Okay.

13 A. And we just had to point him out, if that was the
14 right person.

15 Q. Okay. Was that in front of a jury or just a
16 judge?

17 A. Just a judge.

18 Q. Okay. What did you think of that process?

19 A. It was cool.

20 Q. All right. Well, as a victim of a crime, do you
21 think you were dealt with appropriately,
22 respected, and --

23 A. Yes, I do.

24 Q. Okay. And as far as law enforcement's
25 involvement, was that a good experience, bad

1 experience for you?

2 A. It was good, they were very good to us.

3 Q. All right. Is that your only personal experience
4 with law enforcement here in Manitowoc?

5 A. Yes.

6 Q. Was that the Sheriff's Department, or Police
7 Department, or who would have been involved in
8 that?

9 A. County maybe.

10 Q. County sheriff?

11 A. Yes.

12 Q. All right. You also indicated you have a friend,
13 or family member, who is a law enforcement
14 officer?

15 A. Yes.

16 Q. Is that with the city police, or the county
17 sheriff, or one of the surrounding
18 municipalities?

19 A. The city.

20 Q. City police officer. Okay. Is that a son,
21 nephew?

22 A. It's a son.

23 Q. Okay. And how long has he been a member of the
24 Manitowoc Police Department.

25 A. I'm going to say about 10 years, maybe.

1 Q. All right. Well, let me ask you this question,
2 then, since you have had a good experience with
3 the sheriff, and your son is a police officer, I
4 want to ask you about a question that you filled
5 out on the questionnaire.

6 And it says the law requires jurors to
7 evaluate the credibility of police officers just
8 as that of any other witness; that is, jurors are
9 prohibited from giving more or less credibility
10 to the testimony of a law enforcement officer
11 simply because the witness is a law officer. If
12 selected as a juror, would you be able to assess
13 the credibility of law officers on this basis,
14 and you answered yes. Is that still your answer
15 today?

16 A. On the credibility of the law officer?

17 Q. Yes.

18 A. Yes, I think so.

19 Q. All right. Then the tougher question is, well,
20 given your positive experience with the Manitowoc
21 Sheriff, and your son being a police officer,
22 would you have a tendency -- it seems to me you
23 might have a tendency to weigh their testimony
24 more favorably than you would somebody else;
25 would that be the case?

1 A. Toward the Manitowoc police officer?

2 Q. Well, any officer?

3 A. Well, the evidence has got to be there, you know.

4 You have to not be prejudiced either way, you

5 have to be just focused.

6 Q. All right. So is that what you mean when you say

7 you would evaluate their believability, their

8 credibility, the same as any other witness?

9 A. Yes.

10 Q. Okay. Now, you also had a prior jury experience,

11 I see; is that correct?

12 A. That's right.

13 Q. What kind of case was it, you said it was a

14 criminal case? Do you recall what the issue was?

15 A. I'm not sure what criminal and the other thing

16 is, but I think it's criminal. The lady said

17 that her purse was stolen.

18 Q. Right.

19 A. And whoever stole it wrote checks at various

20 different stores. And as we went through the

21 case, we checked her checks that were written

22 from that day, back a year, to two years, to five

23 years, and the handwriting was all the same.

24 Q. All right.

25 A. So it was like only a day.

1 Q. A day long. So it was kind of like a forging a
2 check or --

3 A. Yes.

4 Q. Or uttering or something of that nature?

5 A. Right.

6 Q. And was that a good experience, bad experience,
7 for you?

8 A. It was good.

9 Q. Yeah. What was good about it? Why did you find
10 it a good experience?

11 A. Well, I was never involved in anything like that
12 and it was interesting.

13 Q. Okay. Was there anything about that experience
14 that raises a question in your mind today as to
15 whether you could be a juror and deliberate with
16 your peers and reach a verdict in a case such as
17 this?

18 A. I just think I'm an honest person and I ain't
19 going to lie about something. I think I could do
20 a good job.

21 Q. All right. Did you enjoy the deliberation
22 process with your colleagues, the give and take
23 in the jury room?

24 A. Yes.

25 Q. All right. One moment. In that case, do you

1 recall if -- whether or not the defendant
2 testified in that case?

3 A. She did.

4 Q. She did. And would it have mattered to you, in
5 retrospect, if the defendant -- if she did not
6 testify, if she invoked her right not to testify?

7 A. Well, she had a real good case going until we saw
8 her checks.

9 Q. Well, if -- In this case, if the Court instructed
10 you that the defendant, Mr. Avery, doesn't have
11 to testify, that he has a constitutional right
12 not to testify, would you accept that and not
13 hold that against him?

14 A. No.

15 Q. You would not accept it or you would accept it?

16 A. I would accept it, and I wouldn't hold it against
17 him.

18 Q. You would not?

19 A. No.

20 Q. Okay. So you feel pretty comfortable you could
21 decide this case based on the evidence which is
22 presented and not on any other outside factor?

23 A. Yes.

24 Q. Okay.

25 ATTORNEY FALLON: That's all I have for the

1 witness.

2 THE COURT: Mr. Buting.

3 ATTORNEY BUTING: Thank you, Judge.

4 **VOIR DIRE EXAMINATION**

5 BY ATTORNEY BUTING:

6 Q. Good afternoon. Actually, it's evening now, I
7 guess. My name is Jerome Buting. This is
8 Attorney Dean Strang and Steven Avery. I want to
9 follow up on a few questions, mostly follow up,
10 and I have just a few of my own as well. Let me
11 kind of go in reverse order.

12 This -- The trial that you were a juror
13 on the last time, it was some sort of a forgery
14 type case. Was there a handwriting comparison
15 expert that was presented to the Court?

16 A. I can't remember that far back, but I think so.

17 Q. Okay. When you said that she had a good case
18 going until you looked at the handwriting on the
19 checks --

20 A. All the checks were put on the table.

21 Q. In the jury room or in the courtroom?

22 A. Jury room.

23 Q. Okay. But I'm wondering was this something that
24 the jurors came up with on their own and said,
25 well, let's look at these, see if we can see if

1 the handwriting matches or --

2 A. I think it was put out on the table and they
3 showed it to us, but then they gave it to us to
4 look at closer in our room.

5 Q. Okay. So you think there was actually someone in
6 court who was an expert, talking about
7 handwriting?

8 A. Yes.

9 Q. There's a curve here and that sort of thing? You
10 have to say yes or no.

11 A. Yes.

12 Q. Okay. That was convincing evidence for you?

13 A. Yes.

14 Q. Now, Mr. Fallon asked you about police officers
15 testifying and whether you could -- would hold
16 them to a different standard or whether you could
17 treat them the same as any other witness?

18 A. Yes.

19 Q. Do you think that police officers, if they would
20 take the witness stand, swear to tell the truth,
21 the whole truth, nothing but the truth, that they
22 could still lie under oath?

23 A. Police officer?

24 Q. Yes, law enforcement officers.

25 A. I don't see why they --

1 Q. I'm sorry?

2 A. No, I don't think they should be able to. I
3 think if they are taking an oath, they should not
4 lie.

5 Q. Well, do you think that anyone who takes the oath
6 is always going to be telling the truth from the
7 witness stand?

8 A. Well, they should.

9 Q. Yes, I understand they should, but do you think
10 everyone will?

11 A. I'm not sure.

12 Q. Well, I'm going -- Let me ask it a different way.
13 When I say will, I don't mean predicting in this
14 trial. What I mean is, do you think that people
15 sometimes do get on the witness stand, swear to
16 tell the truth, but yet still lie?

17 A. Yes, I do.

18 Q. Okay. Ordinary people, right?

19 A. Yes.

20 Q. And do you think that police officers may also do
21 that, or do you think that because they are
22 police officers, law enforcement, they are
23 incapable of doing that?

24 A. They shouldn't, but you're right, they can.

25 Q. Sometimes there's just bad cops?

1 A. Yes.

2 Q. Sometimes police officers feel pressure to do
3 something?

4 A. Yes.

5 Q. Sometimes they think they have got the guilty
6 guy, but they want to make sure of it, so they do
7 what it takes to get him?

8 A. Yes.

9 Q. Okay. Sometimes police officers may cross the
10 line in order to get what they believe is the
11 proper ends to justify the means?

12 A. Well, you know, cops go to school to learn not to
13 do that. And you would think that they wouldn't,
14 but you are right, there are the bad ones.

15 Q. Okay. Now, you talked about how at the beginning
16 the publicity that you heard in this case was
17 just overwhelming at some point, right?

18 A. Yes.

19 Q. And I'm not sure if you said it was mainly from
20 television, or television and news coverage --
21 television and newspaper coverage?

22 A. It was both.

23 Q. Okay. So did you read all of the details when
24 the case was first charged back in November, and
25 when she was reported missing, and there was an

1 arrest, and all that?

2 A. Yes, I did.

3 Q. Did you ever read the Criminal Complaint
4 yourself, the actual Criminal Complaint?

5 A. That was in the paper?

6 Q. Well, I think it was -- Let me ask it this way,
7 did you ever go on line on the internet?

8 A. No, we never go on the computer. My son plays
9 with it once in a while. And I'm so computer
10 illiterate that. But I do use the computer at
11 work, but it's only work stuff.

12 Q. There's been quite a few proceedings that have
13 actually been televised live, or at least large
14 sections of it.

15 A. Yeah.

16 Q. Have you seen some of those?

17 A. Well, like I said, I see it on and I turn the
18 channel.

19 Q. I understand that's how it is now, but let's go
20 back to when you were first learning about it.

21 A. Oh, when I was first learning about it?

22 Q. Yes.

23 A. It was interesting because I kind of like my son
24 being in the law enforcement. I kind of think it
25 was interesting. Maybe I should have been a law

1 officer or something. But I think it's very
2 interesting. But you read about it, or it's
3 mostly the TV that draws you. But after awhile,
4 it's just like -- it's like it goes on, and on.
5 It's like boring, an old story.

6 Q. Sure. But, for instance, the preliminary hearing
7 in this case; do you recall that? Did you watch
8 any of that, or where you actually saw witnesses
9 in court testifying?

10 A. I don't recall that.

11 Q. Okay. In the Brendan Dassey story, you mentioned
12 some of the things that he -- he made some
13 alleged statements that he was involved, I think
14 is the way you put it, right?

15 A. Yes.

16 Q. Do you remember any of the details of what his
17 story was?

18 A. Yes, I do.

19 Q. And -- Well, why don't you tell me what you
20 actually recall of that.

21 A. He was involved with Steve, sexually assaulting
22 her, and possibly choking her, or stabbing her.
23 I'm not sure. I guess it was done in the
24 bedroom, you know. But then you read that and
25 it's like, you know, not this again. I just

1 don't like -- It's like a story, you know.

2 Q. So, did you find those details pretty gruesome
3 when you first heard them? I mean, did they
4 really --

5 A. Upset me?

6 Q. Upset you, or make you sick.

7 A. No. No.

8 Q. Having heard all of that, do you think you can
9 actually look at Mr. Avery sitting here and
10 actually presume him innocent?

11 A. Sure.

12 Q. And why is that?

13 A. Because I -- I have got to see all the evidence.
14 I have to see why he did it. And I just -- I got
15 to, you know, like -- everybody is innocent until
16 proven guilty.

17 Q. Or whether he did it, not just why?

18 A. Or whether he did it.

19 Q. So you really want to hear evidence. You don't
20 want to rely on --

21 A. No, I mean?

22 Q. -- things you have heard in the media, or
23 anything like that?

24 A. Newspapers aren't always right, neither is the
25 media.

1 Q. Now, in your questionnaire, you say that -- one
2 of the questions is asked, if you discussed the
3 case at length with any other person. And you
4 mentioned your husband?

5 A. Yeah, we talk about everything.

6 Q. Okay. That's good, but in this particular
7 instance; did you have disputes? Did you guys
8 disagree?

9 A. I think he thinks the same as I, you know. They
10 have got to prove that he did it, if he did it at
11 all.

12 Q. Okay. You mentioned, though, that a number of
13 people -- I don't know if it's friends or
14 neighbors -- that all were saying they just think
15 he is guilty, and you said -- you sort of
16 disagreed with that, wait a minute, let's wait
17 and see what the evidence is?

18 A. Yeah. Yes.

19 Q. But your husband is not one of those people?

20 A. Yes, he is.

21 Q. He's one that thinks he may be guilty, or
22 probably is guilty?

23 A. Well, he's just like me, he would like to see all
24 the evidence put out on the table, if he did it.

25 Q. What about your son, that's the police officer;

1 have you talked to him about this?

2 A. No.

3 Q. Not at all?

4 A. No, not really.

5 Q. Pardon me?

6 A. Not really.

7 Q. Well, let's get past the not really. How about

8 at all?

9 A. Not at all.

10 Q. Never once, you have never talked to him about

11 this?

12 A. No.

13 Q. Do you know -- I'm sorry, what is your son's

14 name?

15 A. Jason Koenig.

16 Q. Could you spell the last name.

17 A. K-o-e-n-i-g.

18 Q. Do you know if he had any involvement in the

19 investigation of this case, the search, or any of

20 that stuff?

21 A. I don't believe so, he works second shift.

22 Q. Okay. He's never told you that he's had any

23 involvement at all?

24 A. No. I think he keeps his work to himself.

25 Q. Okay. You also said in your questionnaire that,

1 you know, as to whether you had formed any
2 opinion, you said, well, on the one hand
3 sometimes -- it's sort of like you are kind of
4 torn. Sometimes I believe he did it. Other
5 times I think, well, wait a minute, I believe he
6 was framed. Is that what you are trying to say?

7 A. Yeah, you get a group of people at the bar, for
8 instance, they are just going to on, and on, and
9 on. It's like, you know. If you get in the
10 right group of people, they are going to sit
11 there and drag him down. But then you get in
12 another group of people and they say the same as
13 I, you know. You've got to put the facts on the
14 table. You don't just convict somebody because
15 he lives there or because you saw him drive past
16 the house.

17 Q. So -- But when you say that maybe he was framed;
18 are you thinking framed by whom?

19 A. It's a possibility it could be anybody. It could
20 be his brother. It could be a police officer.
21 It could be the man down the street. It could be
22 anybody. I'm not saying they did or they didn't.
23 I just.

24 Q. You are just open to that possibility?

25 A. I don't know what happened.

1 Q. But what I would like to know, if you're open to
2 that possibility, I would like to know, because
3 your son is police officer, I would think that
4 you would be the last person who would be open to
5 that possibility.

6 A. Well, like I said, he keeps his work to himself.
7 He don't talk about nothing, who he stopped, or
8 who he's involved arresting, or nothing like
9 that.

10 Q. So, has he ever said anything to you that would
11 give you any reason to think that maybe sometimes
12 police officers might not be all on the up and
13 up?

14 A. No. He is real happy with his job. No, he
15 doesn't say nothing.

16 Q. I don't mean his particular department, I mean
17 just in general.

18 A. He doesn't talk about none of his work.

19 Q. And if you were on this jury, if you were
20 selected for this jury and you came back with a
21 not guilty verdict; would that be a problem with
22 you and your son, do you think?

23 A. No, I don't think so.

24 Q. I mean, think about that, because you have to --
25 you would have to take an oath to do your duty,

1 and follow your conscience, and what the evidence
2 says. And I would like to be sure that you are
3 not going to be thinking, oh, my gosh, I can't --
4 I can't do this and then face my son.

5 A. And to make my son mad at me?

6 Q. Well, or --

7 A. He's got to understand what I'm doing.

8 Q. So that wouldn't be a problem is what you are
9 saying?

10 A. No.

11 Q. And that goes for your friends and your husband
12 as well?

13 A. Right.

14 Q. Okay. Do you know Chuck Avery?

15 A. Not personally, but when we were in high school,
16 or I was in high school. There was like a
17 bonfire there. And we would go and say --
18 somebody said, oh, that that's him, the person
19 that owns the place. Oh. So I don't really
20 think I talked to him ever, I just know of him.

21 Q. So that would be like how many years ago you're
22 talking?

23 A. Oh, my God, I don't know, the '70's maybe.

24 Q. Oh, okay.

25 A. I'm old.

1 Q. Not as old as I am.

2 A. Probably passed you up.

3 Q. Now, given what you have heard from the alleged
4 statement of Brendan Dassey, the nephew, and all
5 of those details; did you believe them at the
6 time you heard them? Did you think, hey, this is
7 the truth, this is it, this is what happened?

8 A. I did in the beginning -- or maybe I even still
9 do, because why would anybody volunteer that?

10 Q. Well, that's a good question. Do you think that
11 people might sometimes admit or confess to things
12 they didn't do? Have you heard of that?

13 A. No, I never -- Well, maybe to take the burden off
14 another person a little bit.

15 Q. Okay. Have you ever read of people who, you
16 know, for all kinds of reasons, either because
17 they are pressured by the police, or because of
18 their mental condition, or whatever it might be,
19 that they might, in fact, admit to something
20 that's really not true, that they didn't do?

21 A. Yeah, it is a possibility. He -- I don't know,
22 for some reason he may have just said it. I
23 don't know. I don't know how to answer that
24 question, or why he said it, or if it happened.

25 Q. Or if he did it, or if he said it, or whatever.

1 What if -- What would you do, or how would you go
2 about evaluating, if you heard any evidence of
3 that in this case, and I'm not saying you are
4 going to, but just how would you go about
5 evaluating whether or not it was a true
6 confession or not?

7 A. I would really have to look at the facts. He
8 doesn't seem to be talking right now, so the
9 facts at the time.

10 Q. When you say he doesn't seem to be talking right
11 now; what do you mean?

12 ATTORNEY FALLON: I'm going to object to
13 this line of inquiry. I think this is beyond the
14 scope of what we need to accomplish here.

15 THE COURT: I'm going to sustain the
16 objection. It goes into too much speculation about
17 what the evidence may or may not be.

18 Q. Are you referring to some news reports you've
19 heard about the boy, Brendan Dassey?

20 A. Like when he was first arrested, all the gossip
21 that went around and what was in the paper. Is
22 that -- that doesn't seem to be in the paper
23 anymore.

24 Q. Okay.

25 A. You don't hear of.

1 Q. Did you read or hear that he had since retracted
2 the confession and said that it's --

3 A. I think somebody at work told me that.

4 Q. Okay. So you would look to see whether there was
5 any underlying evidence that would support the
6 statement before you would determine if it was
7 true or not?

8 A. Well, you would have to.

9 ATTORNEY BUTING: All right. Thank you,
10 very much, ma'am.

11 THE COURT: All right. The Clerk will
12 escort you from the courtroom.

13 Will there be a motion from either
14 party?

15 ATTORNEY FALLON: None from the State.

16 ATTORNEY BUTING: No.

17 THE COURT: All right. Anything else
18 today, before we adjourn?

19 ATTORNEY FALLON: What time tomorrow, 8:30?

20 THE COURT: 8:30. Very well. We'll see
21 you at 8:30.

22 ATTORNEY BUTING: One last thing, it
23 occurred to me when we could hear the jurors in the
24 back; are they in that jury room?

25 THE COURT: They are.

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ATTORNEY BUTING: Okay. I'm just wondering, since we can hear them, and they're not microphoned, and we are miked, are we sure that they are not, in that location -- I thought they were going to be across the hall in that area.

THE COURT: That's a very good question. First of all today, one of the disadvantages of them making a lot of noise is that they disturbed us a bit, but it also assures that they could not hear us. Actually, before we started using the courtroom a few days ago, I had somebody come out and speak on the -- over the PA system. And I went inside, there is a fan that's on pretty consistently in there, that tends to drum out the noise here. Especially where nobody was raising their voice. So I'm confident that they -- even had they been quiet, which they weren't, I don't think they would have been able to hear the proceedings.

ATTORNEY BUTING: Okay.

THE COURT: All right. We're adjourned for today.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
)ss
2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 9th day of April, 2007.

Diane Tesheneck, RPR
Official Court Reporter

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,
4 PLAINTIFF, JURY TRIAL
5 vs. VOIR DIRE - DAY 2
6 STEVEN A. AVERY, Case No. 05 CF 381
7 DEFENDANT.

8 **DATE:** FEBRUARY 6, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES :**

12 KENNETH R. KRATZ
13 Special Prosecutor
14 On behalf of the State of Wisconsin.

14 THOMAS J. FALLON
15 Special Prosecutor
16 On behalf of the State of Wisconsin.

16 DEAN A. STRANG
17 Attorney at Law
18 On behalf of the Defendant.

18 JEROME F. BUTING
19 Attorney at Law
20 On behalf of the Defendant.

20 STEVEN A. AVERY
21 Defendant
22 Appeared in person.

22 * * * * *

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR
25 Official Court Reporter

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1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery, Case No. 05 CF
3 381. We're here this morning for the second day of
4 individual voir dire. Will the parties state their
5 appearances for the record, please.

6 ATTORNEY KRATZ: State by Ken Kratz and Tom
7 Fallon, Judge.

8 ATTORNEY STRANG: Steven Avery in person;
9 Jerome Buting and Dean Strang representing.

10 THE COURT: All right. Counsel, I
11 understand you have some matters you wish to take up
12 before we begin with the first juror today.

13 ATTORNEY KRATZ: Judge, I have one thing.
14 I provided Mr. Strang and Buting with a
15 correspondence which includes four images that the
16 State intends to use in its opening. The Court may
17 recall that on January 18th I provided the Court
18 with images that we intended to use.

19 Some of those images were updated, are
20 changed and I replaced a couple of them with
21 photos rather than diagrams. I don't know that
22 Mr. Buting and Strang are going to object; at
23 some point we need to be heard about this, but I
24 wanted to alert the Court. I will provide your
25 Clerk with those four new images. And Mr. Strang

1 and Mr. Buting have a copy.

2 And sometime before the openings, Judge,
3 we'll have to discuss whether or not there is an
4 objection. I just wanted to note that the
5 replacement or the exchange of those I'm
6 proposing today, but we can bring that up
7 sometime before the openings. Thank you, that's
8 all I have.

9 THE COURT: All right.

10 ATTORNEY STRANG: I acknowledge receipt of
11 the latter. There won't, I don't expect, be any
12 objection to the substitution of new images one and
13 two. Images three and four raise -- they are from
14 the Tim Austin animation and I'm in agreement that
15 before openings we probably need to have the
16 evidentiary hearing on that entire exhibit, so that
17 Mr. Kratz knows whether he can use it or not in his
18 opening statement. I understand Trooper Austin, we
19 think, is back in the country. I shouldn't speak
20 for Mr. Kratz on that, but that was the sense I had
21 in speaking with him.

22 ATTORNEY KRATZ: I told Mr. Strang I would
23 find out at the break, Judge, so I can alert the
24 Court.

25 THE COURT: Very well. All right.

1 Anything else before we bring in the first juror?

2 ATTORNEY FALLON: Yes, Judge. Counsel and
3 I have had an opportunity late last night and again
4 this morning to discuss the potential of agreeing on
5 additional jurors to be struck for cause. I would
6 indicate, I think we have agreement on three. There
7 may well be a fourth, but the State did want to hear
8 from the prospective juror before we made a final
9 decision on that.

10 In terms of those that we have agreed to
11 strike for cause, we have agreed that Juror No.
12 44 would be struck for cause. Upon review of his
13 questionnaire, I think the Court will note that
14 this prospective juror has had discussions with a
15 witness in the case and has some information,
16 thus, that would be available to him, not from
17 the courtroom proceedings. And the parties
18 believe that it would be better not to take a
19 risk relative to that juror.

20 The other two jurors, the parties have
21 agreed, there is some question as to either side,
22 but the parties have agreed that Juror No. 37 and
23 Juror 39 would be excused. We have a question as
24 to whether Juror 37, we have received some
25 information that she may not have been following

1 the Court's directive regarding media coverage in
2 the past 7 to 10 days since receiving her notice.
3 And there's also a question of objective bias for
4 that witness.

5 With respect to No. 39, we're agreeing
6 with the defense request. There may be a
7 subjective bias issue on No. 39, but there's
8 also, looks like a child care hardship issue, if
9 the Court looks. This woman, a grandmother,
10 apparently has care of a 7 year old. And the 7
11 year old would be lacking in supervision if this
12 woman were selected as a juror. So for those
13 reasons, we would ask that Jurors 37 and 39 be
14 struck for cause as well.

15 ATTORNEY STRANG: I -- I agree as to all
16 three. And I -- I simply will add that, as to Juror
17 No. 44, there's clearly a pretty firmly held opinion
18 on the merits of the case, in addition to the
19 comments that Mr. Fallon made.

20 THE COURT: All right. I will review those
21 questionnaires later. But I understand I will
22 review them with the understanding both parties are
23 requesting that those jurors be left out for cause.

24 With respect to the order today, we're
25 going to begin with Juror 19. I think he was the

1 last person here yesterday, who asked to be first
2 today since he sat around yesterday.

3 And then Juror 25 requested to be called
4 earlier because she has to work this afternoon.
5 So after 19, we'll go to 25, then go back in
6 order. Anything else before we begin?

7 Oh, one other thing I did want to
8 mention. I gave to defense counsel -- and I
9 think they were going to pass on a copy to the
10 prosecution -- a draft of the substantive
11 instruction that the Court was going to include
12 in the preliminary instructions to the jurors. I
13 under -- I will be providing the parties and take
14 comment before we begin a complete set of
15 preliminary instructions, which I believe I'm
16 required to do. But I wanted to pass on a copy
17 of the proposed substantive instructions, first,
18 since those are often the -- can be the source of
19 comments from the parties.

20 If there's nothing else, we will bring
21 in Mr. Nelesen at this time. All right.
22 Mr. Nelesen, at this time the clerk will
23 administer the oath to you.

24 THE CLERK: Will you raise your right hand,
25 please.

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(Juror sworn.)

THE CLERK: Please be seated.

THE COURT: Mr. Nelesen, you have already completed a jury questionnaire in this case. This morning we're moving on to the next phase of jury selection which is individual voir dire. In a minute the attorneys for each of the parties will be able to ask you some follow up questions to the information that you included in your questionnaire.

I will let you know that the jurors selected to hear this case will not be sequestered during the jury; that is, you will be permitted to return home at the end of every court session. And we're able to do that because of a requirement that the jurors not learn anything during the course of the trial from the news media regarding this case.

So the instruction that the jurors are not to read any newspapers, watch any television accounts, listen to the radio, or read anything on the internet, or talk to anyone else about the case will continue throughout the trial.

I also want you to know that although the court proceedings today are open to the public, no cameras are permitted in the courtroom

1 during voir dire and members of the news media
2 are not permitted to identify the jurors by name
3 at any time.

4 In addition, should you be selected to
5 serve as a juror, you should know that during the
6 course of the trial the cameras in the courtroom
7 are not permitted to show the faces of the jurors
8 or show anything that would identify the jurors
9 in any way, to any viewers.

10 In the event you remain as a juror
11 following questioning today, you will get a
12 telephone call within the next few days letting
13 you know when to report back to court.

14 At this time, then, Mr. Fallon, you may
15 begin your questioning.

16 **VOIR DIRE EXAMINATION**

17 BY ATTORNEY FALLON:

18 Q. Good morning, Mr. Nelesen.

19 A. Good morning.

20 Q. My name is Tom Fallon and I'm an Assistant
21 Attorney General for the State of Wisconsin and
22 I'm one of the prosecutors in this case. To my
23 left is Mr. Kratz, the lead prosecutor and he's
24 the Calumet County District Attorney. Thank you
25 for coming this morning. Sorry we kept you late

1 last night.

2 A. That's all right.

3 Q. We'll do our best to get you in and out of here
4 this morning. I wanted to start with a few
5 questions from the information you provided in
6 your questionnaire. And, first of all, ask you a
7 couple of questions regarding your employment.
8 And I see you are a mechanic at the transport
9 company?

10 A. Correct.

11 Q. How long have you been employed there as a
12 mechanic?

13 A. Almost two years.

14 Q. Two years?

15 A. Yes.

16 Q. Prior to that, any other employment?

17 A. Yeah, I worked as a mechanic in Appleton for a
18 year. And previously I worked at the same
19 company I do now, for about a little under four
20 years.

21 Q. Okay. The reason I ask is, if you were to be
22 selected as a jury -- as a juror, excuse me, for
23 the jury, the case may very well take six weeks
24 or so to try, which means you may very well be
25 not reporting to work for six weeks. And I just

1 wanted to make sure.

2 On the last question of the
3 questionnaire, you expressed that you didn't
4 think that would be any particular hardship for
5 you. So we wanted to make sure that was the
6 case, that if you were selected as a juror, this
7 wouldn't be any kind of economic hardship. Is
8 that still the case?

9 A. Well, I think for anybody with -- going without
10 wages for, you know, that period of time, I think
11 that would pose some type of a problem, I would
12 think. You know, my savings account would
13 probably be drained, but I don't think I would --
14 I don't think I would die because of it. I don't
15 think I would starve to death because of it.

16 Q. All right. But do you -- you do have a concern
17 as to whether or not you would have sufficient
18 income to meet your expenses?

19 A. Oh, definitely, yeah, I would say so. I have
20 bills like anyone else, loan payments that I do
21 have to make, just like anyone else.

22 Q. All right.

23 A. And I would, like I said, I would think,
24 hopefully, that I would have enough in my savings
25 to, you know, be able to make those payments for

1 that amount of time. But I probably wouldn't
2 have anything left, you know, for some other
3 bills, I wouldn't think.

4 Q. Have you conferred with your employer as to
5 whether there would be any compensation
6 forthcoming at all if you were?

7 A. He hasn't got back to me as of yet.

8 Q. All right. So it's still somewhat of an open
9 question?

10 A. Yeah. I would think so, yeah.

11 Q. All right. If per chance in the next couple of
12 days, if you hear anything more on that, would
13 you be so kind as to advise the court personnel
14 of that and we'll certainly take that into
15 consideration.

16 A. Okay. Sure, I can do that.

17 Q. Thank you. The next bit of information that you
18 provided of some interest for the parties here is
19 the fact that you are at least somewhat familiar
20 with the Avery Salvage Yard?

21 A. Yeah, a little bit. I have purchased a couple of
22 car parts from there in the past.

23 Q. All right. How often would you say you have
24 frequented the yard?

25 A. I think I was probably there maybe three times.

1 Q. During these occasions that you were at the
2 salvage yard, did you wander through the yard and
3 the property at all or were you just basically --
4 A. No, I wasn't allowed to.
5 Q. You weren't allowed to. You were just at the
6 office --
7 A. Just went in the front office there, you know,
8 asked for the part that I needed, and they got it
9 and ...
10 Q. All right.
11 A. I just bought it and left.
12 Q. When was the most recent or the last time you
13 were there conducting some business at the
14 salvage yard?
15 A. I would say probably five or six years ago.
16 Q. All right. Do you recall meeting any of the
17 people there or recognize any of the names?
18 A. No, I don't recognize any of the names.
19 Q. All right. On each of the occasions, your
20 business was limited to the office area?
21 A. Yes.
22 Q. Okay. With respect to your news sources, could
23 you tell us where you -- if you were to -- you
24 checked a number of potential news sources from
25 radio, to television, newspapers, neighbors and

1 things of that sort. If you were to think about
2 it now, what would you say is the medium in which
3 you get most of your information?

4 A. I would probably say the newspaper.

5 Q. The newspaper. Okay. Do you regularly read the
6 paper?

7 A. Not regularly, no. I would say two to three
8 times a week.

9 Q. Okay. Have you been following the -- this
10 particular case with any interest in the
11 newspaper or television?

12 A. I have read about it, but I haven't really
13 followed it with any interest.

14 Q. All right. Have you watched any of the
15 television coverage of the case?

16 A. Yeah, I have seen a little bit of it in the past,
17 you know, just what they had on the news and what
18 not.

19 Q. On the news?

20 A. Yeah.

21 Q. Have you watched any of the actual courtroom
22 proceedings on television or through the
23 internet?

24 A. No, I have not.

25 Q. Okay. Now, in the question as to whether you

1 have formed any opinions based on the information
2 that's been available in the media and elsewhere;
3 you would say, well, from what I have read I
4 would think that he was guilty, but I'm sure that
5 there is more to the case that I don't know
6 about.

7 A. That is correct.

8 Q. All right. Is that your heartfelt opinion as you
9 sit here today?

10 A. I would say from what I have read, I think any
11 --any -- any person would, you know, tend to, you
12 know, think -- think that he were guilty through
13 the information provided in newspapers and what
14 not where I got my information. I think anyone
15 would probably think that.

16 Q. All right. Now, the next question that was asked
17 in the questionnaire, and I think the one that
18 the Court and the parties are most interested in,
19 is whether any of those opinions that you have
20 formed as a result of information obtained in the
21 media could be set aside, if you were selected as
22 a juror, and you could decide this case just on
23 what information is presented in court?

24 A. I would like to think that I could. But I
25 would -- I wouldn't guarantee that I could

1 actually do that.

2 Q. All right. All right. That's a perfectly
3 understandable and honest response, I think. The
4 question then becomes is, although you are not
5 100 percent sure is what you wrote here, are you
6 certainly willing to listen to the instructions
7 of the Judge?

8 A. Oh, definitely.

9 Q. Excuse me. And if you were instructed that your
10 duty as a juror, as it were, is to decide the
11 case based solely on the information contained or
12 presented at trial, you would make your best
13 effort to do that?

14 A. Yes, I would.

15 Q. All right. Is there any other reason, you know,
16 personal philosophy, conscience, religious
17 reason, any other reason that you are aware of
18 that, you know, causes you to doubt whether you
19 could give us your best effort and follow the
20 instruction?

21 A. I would say a little bit of conscience.

22 Q. Okay. Let's talk a little bit about that; what
23 is -- what concern do you have there?

24 A. Well, it's a big decision to make.

25 Q. All right.

1 A. And it's nothing that I would take lightly and
2 it's a very difficult decision.

3 Q. All right.

4 A. It's not the fact that -- I wouldn't say it would
5 be that I would be very nervous about it, but
6 it's -- it's just not anything taken lightly.
7 It's not -- somebody didn't just, you know, steal
8 a candy bar from the gas station or anything;
9 that would be taken lightly. This is a serious
10 issue.

11 Q. All right.

12 A. And I think anyone would, you know, have a little
13 conscience about it.

14 Q. All right. So could I infer or could the Court
15 and the parties infer, that because this is a
16 matter of grave importance, a very weighty
17 matter, that you would give us your best effort
18 in following the instructions that were given to
19 you?

20 A. Yes.

21 Q. All right. You indicated that you do have a
22 friend who is a police officer; is that correct?

23 A. That's correct.

24 Q. All right. And who would that be?

25 A. Officer David Flemal.

1 Q. David?

2 A. Flemal.

3 Q. Okay.

4 ATTORNEY BUTING: I'm sorry, Fleming?

5 MR. NELESEN: Flemal.

6 Q. (By Attorney Fallon)~ All right. And how do you
7 know Officer Flemal?

8 A. He lives down the street from me.

9 Q. All right. Do you regularly get together with
10 him and discuss the world's events as it were or
11 just --

12 A. No, not really. We pretty much just talk motor
13 sports.

14 Q. About what, sports?

15 A. Motor sports and stuff like that.

16 Q. Motor sports. Yes, I see you are a stock car
17 fan; is he as well?

18 A. I used to race motocross and he is into
19 motocross.

20 Q. Motocross?

21 A. Yeah.

22 Q. All right.

23 A. So we talk about that a lot.

24 Q. All right. How often do you get together with
25 Officer Flemal?

1 A. I would say I talk to him every three weeks to a
2 month.

3 Q. Okay. Do your conversations ever get to the more
4 serious matters such as a case like this or
5 criminal justice issues in general or anything
6 like --

7 A. No, that's just his job. We just -- We're just
8 -- We just talk on a friends personal level.

9 Q. Okay. So do you think that your acquaintance
10 with Officer Flemal would in any way impact your
11 ability to be fair and impartial in this case?

12 A. No, that wouldn't affect it.

13 Q. What?

14 A. No, that wouldn't affect it.

15 Q. Okay. Thank you. Do you have any close friends
16 or relatives that are currently working in the
17 news industry?

18 A. Not that I'm aware of, no.

19 Q. Okay. Do you own a computer?

20 A. Yes, I do.

21 Q. All right. Do you occasionally surf the
22 internet?

23 A. Yeah, I look for race car stuff on the internet.

24 Q. All right. Do you ever use the internet to get
25 some more information regarding news stories or

1 events that are current events?

2 A. No.

3 Q. All right. Have you looked at any of the
4 coverage or information regarding this case on
5 the internet?

6 A. No, I have not.

7 Q. All right. In terms of this case, can you recall
8 for us, as best you can, what you do remember or
9 think you know about the case from the media
10 coverage, at least as it pertains to Mr. Avery?

11 A. Um, I can't remember a whole lot. Just let me
12 think about this for a second. Can you be a
13 little more descriptive as to what you are
14 asking?

15 Q. Well, let's see, do you -- do you remember any
16 press conferences or original arrest reports
17 involving Mr. Avery or any other person's
18 association with?

19 A. I don't remember any arrest reports or anything
20 like that. I didn't really read that much into
21 it.

22 Q. Okay.

23 A. Pretty much just looked at it on the front page,
24 read a little bit of it, wasn't really interested
25 in it --

1 Q. Okay.

2 A. -- went on to the next thing.

3 Q. Would it be fair to say you don't really have any
4 strong opinions about the guilt or innocence?

5 A. I have my opinions.

6 Q. Okay. Well, tell us, let's talk about that.
7 What -- what are your opinions?

8 A. Like I stated in the questionnaire, my opinions,
9 from what I have gotten, from what I have read,
10 would -- I think would tend to -- for anyone to
11 think that he was guilty.

12 Q. All right.

13 A. I think that's pretty much just human nature, but
14 that's all that they read.

15 Q. Okay.

16 A. Or all that I read, I should say.

17 Q. All right.

18 A. I read a little bit up on it as far as, you know,
19 what had actually happened. A little bit of the
20 information about the vehicle and blood found in
21 the vehicle, I had read some about that.

22 Q. All right.

23 A. And that he had weapons in his house, things like
24 that.

25 Q. All right. Any other particular details that

1 stand out in your mind at the moment?

2 A. No, not really that stand out in my mind.

3 Q. All right. And are you familiar at all with the
4 circumstances regarding the arrest of a fellow by
5 the name of Dassey?

6 A. Yeah, I have heard a little bit about him.

7 Q. All right. And what do you recall about that?

8 A. I recall that he was questioned and admitted that
9 he was involved with it and had contributed in
10 the crime as well.

11 Q. All right. Do you remember any particular
12 details regarding statements that he made?

13 A. Um, not -- not any real details.

14 Q. All right.

15 A. Just that he was pretty much just involved.

16 Q. All right. Okay. I note from your questionnaire
17 that you don't have any prior jury service, but I
18 did want to ask, is there anything as you sit
19 here today and think about your own philosophy,
20 or conscience, or personal beliefs, or any
21 religious beliefs; is there anything in that area
22 that you think might give you a problem or make
23 it difficult for you to be a juror in this case?

24 A. I would say for anyone it would be a difficult
25 thing. Just, as I stated before, it's not a

1 matter to be taken lightly.

2 Q. All right.

3 A. And I think it's a very big decision and it
4 would -- it would bother me, yeah.

5 Q. All right. I think I probably did not artfully
6 ask that question. I understand it would be
7 difficult. I guess what I'm driving at is, is
8 there any firm, personal beliefs that you hold
9 that, for instance, you could not sit in judgment
10 of another person and assess their guilt or
11 innocence based on the information provided?

12 A. No, I think I could do that.

13 Q. Okay. In your profession as a mechanic, have you
14 ever been called upon to participate in writing
15 any safety guidelines or enforcing any safety
16 standards for work as a mechanic?

17 A. Sure, I have. I have to do a lot of safety
18 stuff, make sure people are doing their job in a
19 correct manner and not doing something that's,
20 you know, going to get them or someone else hurt.

21 Q. All right. Do you enjoy that work?

22 A. Sure, yes.

23 Q. And why is that?

24 A. I enjoy being a mechanic and I enjoy working with
25 others and I enjoy helping people out when they,

1 you know, need help with something.

2 Q. Is there any type of satisfaction that you derive
3 from ensuring that you have a safe work
4 environment for yourself and others?

5 A. Yeah, I would say so.

6 Q. Okay. How long have you been a resident of
7 Manitowoc County?

8 A. All my life.

9 Q. All right. How would you rate the job that the
10 Manitowoc County Sheriff's Department is doing in
11 your community in terms of dealing with crime or
12 servicing the public in other ways; good, bad,
13 fair, excellent?

14 A. I would say they do a good job.

15 Q. Okay. Any particular experiences that you have
16 had or anything in particular that helps you
17 reach that opinion?

18 A. No, I don't really have any reasons why I reached
19 that opinion I just think --

20 Q. I'm sorry, I couldn't --

21 A. I don't really have any reasons. I would think
22 that they do a fairly good job.

23 Q. That's your perception of things?

24 A. Yeah.

25 Q. Okay. Since you are a mechanic and interested in

1 automobiles, have you ever used a publication
2 such as *Auto Trader*, to buy or sell a car?
3 A. I used CarSoup to try to sell a car, but it
4 didn't sell. so.
5 Q. You used what?
6 A. CarSoup, carsoup.com.
7 Q. Okay.
8 A. I used that to try to sell a car, but it didn't
9 sell so, other than that, nothing, no.
10 Q. Didn't have much luck?
11 A. No.
12 Q. Are you familiar with the publication *Auto*
13 *Trader*?
14 A. Yeah, I have seen it.
15 Q. Okay. In terms of your approach to making a
16 decision or, for instance, writing your safety
17 guidelines, or making such policy decisions like
18 that; would you consider yourself a detail
19 oriented person or a big picture person or?
20 A. I would say I get into some detail, yeah.
21 Q. All right. And are you a movie goer?
22 A. I would say no.
23 Q. All right. Have you ever seen or heard about a
24 movie called *The Thin Blue Line*?
25 A. No, I haven't.

1 Q. Okay.

2 ATTORNEY FALLON: That's all I have. Thank
3 you.

4 THE COURT: Mr. Strang.

5 ATTORNEY STRANG: Thank you.

6 **VOIR DIRE EXAMINATION**

7 BY ATTORNEY STRANG:

8 Q. Okay. Sir, you have seen us all stand up
9 awkwardly in front of a group, a room full of
10 people, but I'm Dean Strang; this is Jerome
11 Buting; and Steve Avery. We're the defense
12 lawyers.

13 A. Okay.

14 Q. How do I pronounce your last name?

15 A. Nelesen. Nelesen.

16 Q. Nelesen?

17 A. Yes.

18 Q. Okay. Thanks. The place you are living now, you
19 have been in about seven months?

20 A. What was that?

21 Q. The place you are living now, you have been in
22 that house about seven months?

23 A. Yeah, I would say, yes.

24 Q. Do you rent or own?

25 A. Actually, I live with my parents.

1 Q. Okay.

2 A. Right now.

3 Q. Okay.

4 A. Yes.

5 Q. And had you been in a place of your own before
6 that?

7 A. Yeah, I lived with my girlfriend.

8 Q. And are you -- I don't need to know reasons or
9 anything, but are you looking to move back into a
10 place of your own soon or?

11 A. Yes, yes. This is -- Where I'm living right now
12 is a temporary.

13 Q. Okay. So does that -- where I'm going with that
14 is, really, does this contribute to your concern
15 about building up a savings account a little bit
16 or getting, you know, having --

17 A. Yeah, I'm in the process of trying to purchase a
18 house right now.

19 Q. Okay. All right. So let's sort of go from 0 to
20 100 in about 6 seconds here. It's not just that
21 the trial may last -- well may last six weeks,
22 okay, but at the end of the trial, and we can
23 more or less guess how long the evidence and
24 arguments might go, but at the end of the trial,
25 the people left on the jury have to deliberate?

1 A. Correct.

2 Q. And there's no way to know how long that will go?

3 A. No.

4 Q. Only those 12 people, you know, and they don't
5 know, because it's a matter of you are not done
6 until you -- ideally, until you all 12 agree on
7 the verdicts for however many charges you are
8 considering.

9 A. Okay.

10 Q. So we have no -- none of us have any way of
11 predicting how long that would go. And my
12 concern, since that comes at the very end, is
13 that, you know, would the deliberations and
14 sticking it through and working through the
15 evidence as long as it took, be something you
16 could do when you are already at the end of five
17 or six weeks of being out of work? You see what
18 I'm worried about?

19 A. I didn't really take that into consideration. I
20 wasn't aware that it was going to be that much of
21 an added time. I had heard and I was told that
22 it would probably take -- it could take up to a
23 month, but I didn't really consider that there
24 was added time at the end of it.

25 Q. And I have no way of knowing.

1 A. That makes -- Yeah, that makes matters a little
2 bit different, yeah.

3 Q. Okay. I'm not trying to suggest that that would,
4 you know, go on indefinitely?

5 A. It could take a week or six months is what you
6 are saying.

7 Q. Or 10 minutes, I mean. But, you know, none of us
8 have, and you don't have, any way of knowing.

9 A. Right.

10 Q. Because it's, you know, deliberation is about 12
11 people trying to agree on things that, you know,
12 involve looking back over four or five, six weeks
13 of evidence. And I -- You know, you are very --
14 I have noticed that you are very empathetic in
15 the sense of, you know, that the problems you see
16 you say everybody would have. I mean anybody
17 would feel this is a tough decision and all that.

18 A. Right.

19 Q. But right now it is sort of about you and
20 whether, you know, whether you really would be
21 putting yourself in a hole by getting into this?

22 A. I would, definitely. But if that's what I'm
23 asked to do, then I guess that's what I'm asked
24 to do.

25 Q. Okay. I wanted to hear a little more about what

1 you -- what you really like about being a
2 mechanic; what lights you up about it? I mean
3 your hobby ties into that pretty closely with
4 stock car racing?

5 A. Oh, definitely. And that's one thing that would
6 go down the tubes too, so that's another
7 consideration of mine.

8 Q. What do you mean by go down the tubes, I'm sorry,
9 Mr. Nelesen?

10 A. Stock car racing is pretty expensive.

11 Q. Oh, okay.

12 A. And I have worked pretty hard to be able to
13 afford it.

14 Q. Right.

15 A. And it takes a good percentage of my money to do
16 that.

17 Q. You actually race?

18 A. Yes, I do.

19 Q. Okay. Are you the driver?

20 A. Yes, I am.

21 Q. Okay. And, you know, up here, I mean -- meaning
22 up here in the northern part of the country?

23 A. Yeah.

24 Q. I associate that with being a seasonal sort of a
25 sport, but do you travel around to places where

1 it's warmer?

2 A. No, I don't. It -- Pretty much just regional.

3 Q. Okay. And how, in terms of the season for that,
4 how -- how much of the expense is coming up in
5 February, March?

6 A. A great deal of the expense.

7 Q. Tell me about that.

8 A. Well, as far as -- to give you an example, in the
9 class that I race, I'm looking at coming up
10 with -- trying to come up with 6 to \$8,000 for
11 just one engine. So that's a great deal of money
12 for someone, for me, to come up with. And I have
13 been saving up for it for quite a long time.
14 Probably half way through last year and all
15 winter I have been saving up for that.

16 Q. Is this the time of year where you are in the
17 garage at night?

18 A. All the time.

19 Q. Getting the car ready for May?

20 A. Yeah, exactly.

21 Q. Okay. So you are spending the money now?

22 A. Oh, yeah, faster than it's coming in, yeah.

23 Q. And any purse or any winnings you might get --

24 A. That all goes right back into the operation.

25 Q. And those wouldn't come until the warmer weather?

1 A. Correct.

2 Q. Okay. So back to what -- what -- what lights you
3 up about being a mechanic?

4 A. I just like to work with my hands. It's just
5 something about cars, something about engines
6 that just. I think each person has something
7 that they can just get into, get involved with
8 and forget about all the stress in their lives.
9 And when I'm working on things like that, my
10 stress just goes away.

11 Q. It goes away?

12 A. Yeah.

13 Q. And yet you also like working with people?

14 A. Yeah, I get along with -- I like to talk a lot.

15 Q. Mm-hmm.

16 A. And I --

17 Q. Me to.

18 A. And, yeah, I just like to talk a lot and I like
19 to get along with people. Meet different people.

20 Q. Mm-hmm.

21 A. It's just -- I don't know if it's right or wrong,
22 it's just part of my personality.

23 Q. Why would it be right or wrong?

24 A. I don't know that's --

25 Q. Yeah.

1 A. It's just part of my personality.

2 Q. Okay. So is -- I mean, is it the actual physical
3 labor, having your hands in the, you know --

4 A. Oh, definitely.

5 Q. -- that you like, as opposed to, you know, the
6 math of --

7 A. Oh, no.

8 Q. -- adjusting a carburetor or whatever?

9 A. No, I'm terrible at Math.

10 Q. Okay.

11 A. But it's just getting in there and trial and
12 error and doing those things. It's a challenge,
13 to see if I can do what needs to be done to go
14 faster. That's pretty much all it is, is a
15 challenge.

16 Q. Is -- Is this something where sort of cutting and
17 scraping your hands up is a regular part of life
18 for you?

19 A. Oh, yeah. Definitely, yeah.

20 Q. You have got bandaids around?

21 A. Well, I usually don't wear bandaids, just dirt
22 gets in there and I just leave it, keep working.
23 I have pretty much done it my whole life, so I'm
24 used to that.

25 Q. Okay. The three times you have been out to Avery

1 Auto Salvage --

2 A. Mm-hmm.

3 Q. -- that was just looking for parts for cars you
4 were working on?

5 A. Yeah, just -- just street driven cars that I had
6 at the time.

7 Q. And are there -- are there other auto salvage
8 yards in the area you have snooped around, you
9 know, shopped at?

10 A. Sure. Sure, definitely.

11 Q. Poked around?

12 A. Yes.

13 Q. Pretty much all of them in the area, or is it
14 unusual?

15 A. Yeah, I would say probably 75 percent of them in
16 the area.

17 Q. How about Norb's in Denmark?

18 A. No, not that far away. I haven't gone that far
19 away.

20 Q. But in like the immediate Manitowoc --

21 A. Yeah, the immediate Manitowoc area.

22 Q. And you, I gathered from what you said to
23 Mr. Fallon, that you don't have any memory of who
24 it was you dealt with at the Avery yard?

25 A. No, I don't. I don't know who it was.

1 Q. Or even --

2 A. Just somebody that worked there. I don't know.

3 I just came in and picked up a part --

4 Q. Yeah.

5 A. -- and left.

6 Q. Okay. Or even if it was the same guy the three

7 times you have been there?

8 A. No, I couldn't really tell you that.

9 Q. Okay. Tell me what you know -- and I don't want

10 to do that to you. Tell me what you -- what you

11 have read, or what you have learned, what you may

12 know about Brendan Dassey, from the newspaper or

13 the TV.

14 A. For the most part, just that he was involved --

15 involved in the crime. I didn't really read a

16 whole lot on it. I pretty much just go through

17 the sports section and stuff like that. But, you

18 know, I read over, you know, read a paragraph or

19 so. Then just, like I said, turn the page with

20 just a loss of interest. But I would say just

21 mostly that he was just involved --

22 Q. Mm-hmm.

23 A. -- in the entire thing.

24 Q. Did you get -- did you get a sense of any of the

25 gruesome details?

1 A. Not a lot, no.

2 Q. Okay. And what is -- What does Dassey have to do
3 with Steven Avery's case, in your mind? What's
4 the connection if any?

5 A. Well, if he was -- I would say if he was involved
6 in the crime, I would say he would have
7 everything to do with it.

8 Q. If he, who he?

9 A. I would say -- what is his name, Dassey?

10 Q. Yeah.

11 A. Yeah, I'm not sure -- I'm not sure what his first
12 name was.

13 Q. Brendan.

14 A. Brendan, yeah. I would say if -- well, if from
15 what I have read in the newspaper that he was
16 involved, I would say he would be involved with
17 the entire crime, from what I have known.

18 Q. Yeah. No, I know. I mean, I understand you are
19 getting this from the papers and the TV. I-- I
20 got that. And -- but do I hear you saying that,
21 based on what has been reported to you about
22 Brendan, that it's more likely that Steven Avery
23 is guilty?

24 A. I would say one would tend to believe that, yes.

25 Q. And why -- why would you tend to believe that?

1 A. Because I would say that's pretty much what they
2 had said in the newspaper.

3 Q. Mm-hmm.

4 A. That's what they had -- how can I say this -- he
5 admitted to participating in the crime and that
6 they were both involved in it.

7 Q. Do you have a sense that, you know, a 16 or 17
8 year old like Brendan Dassey would not have
9 admitted to the crime if he didn't do it?

10 A. I wouldn't see why he would admit to it if he
11 didn't do it.

12 Q. If -- if you heard evidence about, or -- or, you
13 know, the lawyers made arguments about why
14 someone might confess to something he didn't do;
15 is that something you would be able to listen to
16 fairly, consider?

17 A. I would say I could listen to it fairly, yes.

18 Q. But it sort of strikes you as ...

19 A. It strikes me as odd.

20 Q. Odd, yeah.

21 A. Yes.

22 Q. Sure. What do you make of the fact that Steven
23 Avery is here, you know, that he is sitting in
24 the defendant's chair?

25 A. He was asked to be here. I don't really make

1 anything of it, I would expect him to be here.

2 Q. Does it suggest he probably did something wrong?

3 A. I would say people think that he did something
4 wrong. I wouldn't want to go and say that he
5 did, that is not really my decision and shouldn't
6 be my opinion right now. But I would say he is
7 here for a reason.

8 Q. Yeah. And, I mean, it is sort of your opinion
9 that we're after now. And it's -- the good thing
10 about this is -- I mean, you are being really
11 candid about that and that's helpful. And the --
12 you will -- you would be told, if you were a
13 juror, that Steven Avery is presumed innocent.

14 A. Exactly.

15 Q. Starts presumed innocent and he remains presumed
16 innocent unless and until the State could prove
17 him guilty?

18 A. And that's a very difficult thing to do, yes.

19 Q. Yeah, it is. It is a hard thing to do. And
20 given, you know, what you have read and thought
21 about the case, you are not 100 percent sure that
22 you could do that, but you would try?

23 A. I would say that would be, yes. I would say that
24 would be the case, yes.

25 Q. And I feel like I'm putting words in your mouth

1 so I want to stop doing that, but.

2 A. No, that's all right.

3 Q. Okay. Have you seen or heard anything really
4 recently in the paper or on the --

5 A. No, I haven't.

6 Q. -- the TV about this?

7 A. No.

8 Q. Why?

9 A. I was told to not read the newspaper, not watch
10 the news if it pertained to that.

11 Q. Okay. And before you were told that, were you
12 still tuning in?

13 A. If something was on, I probably watched a couple
14 minutes of it, but not to my knowledge I haven't
15 really gone out and ran to the TV to watch it or
16 anything like that.

17 Q. Rented a TV.

18 A. Yeah. I haven't really followed it strongly.

19 Q. Yeah.

20 A. It's just something that was on.

21 Q. And since you were told not to, you have obeyed
22 that?

23 A. Since I was told not to, I didn't have any --
24 didn't read the newspaper or anything like that
25 or didn't watch the news.

1 Q. Mm-hmm. Let me get a feel for when -- you know,
2 when it is you stopped. You -- have you heard
3 anything about a blood vial?

4 A. Yes.

5 Q. And that's got some role?

6 A. Yeah, something about the -- it was planted and
7 this and that. I forgot all about that.

8 Q. Okay. But that --

9 A. That did strike -- did jog my memory, yeah.

10 Q. Okay. A related topic on whether -- you know,
11 whether you really can presume Steven Avery
12 innocent, would be the choice whether he
13 testifies or not. And, I mean, is it -- do you
14 think, basically, most fair people want to hear
15 both sides of a story?

16 A. Definitely they want to hear both sides.

17 Q. And how about you?

18 A. Yes, I would definitely want to hear both sides.

19 Q. Okay. Do you -- Do you understand that in
20 America, if you are charged with a crime, you can
21 do either of two things; you could choose to
22 testify and then you would sort of be like any
23 other witness?

24 A. Mm-hmm.

25 Q. We do have a right to testify when we're accused

1 of a crime in this country, even though we're the
2 person who's got to, you know --

3 A. Okay.

4 Q. -- might want to be saving our own skin. And
5 then also, you have a right not to testify. And
6 the jurors get told that they can't consider that
7 in any way in deciding whether the State's proved
8 the person guilty, beyond a reasonable doubt.
9 Were you familiar with those two basic notions?

10 A. No.

11 Q. Okay. If the Judge were to tell you at the end
12 of the case, you know, and I don't know what
13 words he would use, but if he were to tell you
14 that you may not consider the fact that Mr. Avery
15 did not testify, as any evidence of guilt or in
16 deciding the case; is that an instruction you
17 could follow?

18 A. I would do what he asked me to do, yes.

19 Q. And would you do it happily or willingly as
20 opposed to, you know, well, I have to?

21 ATTORNEY FALLON: I'm going to object to
22 that question.

23 THE COURT: I'm going to allow it.

24 MR. NELESEN: Could you repeat that?

25 Q. Sure. Would you do that, you know, willingly and

1 without reluctance, or would you do it because,
2 I'm doing it because this is my duty to do it?

3 A. I would say there would be some reluctance.

4 Q. Okay. Do you think if -- Do you think it would
5 be an easy decision for a person accused to make,
6 whether to testify or not in his own behalf?

7 A. I don't think so.

8 Q. Why not?

9 A. I'm not exactly sure. I just don't think it
10 would be a difficult.

11 Q. You don't think it would be difficult, or you
12 don't think it would be easy?

13 A. I don't think it would be difficult, but I don't
14 really understand what would all be involved.

15 Q. Mm-hmm. Do you figure that Mr. Buting and I
16 might have some input on that? Opinions that we
17 would offer him?

18 A. I would say, yeah, that's your job.

19 Q. Right. And let me see if you would agree with
20 this, you know, if you are the defendant and you
21 take the witness stand, some people on the jury
22 may be saying, well, of course he's denying it,
23 he doesn't -- you know, he doesn't want to get
24 convicted. He's the one with everything at
25 stake. And on the other hand, if you don't take

1 the witness stand, jurors might be saying, well,
2 if he didn't do anything wrong, why doesn't he
3 just get up and tell us, you know, an innocent
4 guy would have nothing to hide. Do you see the
5 sort of dilemma --

6 A. Exactly.

7 Q. -- there? And in the end, you know, because you
8 are not going to be able to get into his head or
9 my head in that decision making process --

10 A. Mm-hmm.

11 Q. -- I would need to be comfortable that you really
12 would and could live with the Judge's instruction
13 that; if he testifies, he's like any other
14 witness; if he doesn't testify, you can't
15 consider that as any evidence of his guilt?

16 A. I would say I could do that, yes.

17 Q. You told us in your jury questionnaire that -- I
18 forget exactly how you put it, but it was pretty
19 good, that -- oh, I'm terrible at math?

20 A. Yeah, I am.

21 Q. That's exactly how you put it. This case, on
22 both sides, may involve a certain amount of
23 scientific evidence and testimony about
24 scientific evidence, you know, collection of
25 evidence, testing of evidence in certain ways.

1 A. Mm-hmm.

2 Q. People who do that for a living and have some
3 expertise in, you know, whatever, ballistics, or
4 DNA, or whatever it might be.

5 A. Mm-hmm.

6 Q. And I don't mean to suggest that that would
7 require a jury full of mathematicians, but is
8 that sort of testimony something that you
9 anticipate as finding boring, or interesting, or
10 what do you think?

11 A. I would say it would be interesting.

12 Q. Why?

13 A. Probably for the fact that it's something that I
14 don't know about and I like to learn new things.

15 Q. Mm-hmm.

16 A. Whether I'm good at them or not, I like to learn
17 new things and I think it would be interesting.

18 Q. And what if there were, let's say, two or more
19 experts and they weren't in complete agreement,
20 or they were even in disagreement about the
21 meaning of certain things, or what certain
22 findings were; how would you sort that out if
23 this is all new to you?

24 A. I would say that each person has there own
25 opinion, their own views, of how it would be.

1 And I can't really answer how I would actually
2 sort that out.

3 Q. But you would listen to both?

4 A. Oh, definitely, yes.

5 Q. And then weigh them and --

6 A. And make a decision, I guess, yes.

7 Q. Mm-hmm. Okay. Let me just check with Mr. Buting
8 and see if he thinks I have missed anything?

9 A. Okay.

10 Q. I did miss something.

11 A. Okay.

12 Q. I realize David Flemal is just your friend --

13 A. Yes.

14 Q. -- down the street, but I want to explore police
15 officers a little bit more with you. There will
16 be a number of police officers or law enforcement
17 officers who testify in this case from different
18 agencies and departments?

19 A. Mm-hmm.

20 Q. And there was a question on the questionnaire
21 about this: You will probably be told that a law
22 enforcement officer who testifies is considered
23 like any other witness.

24 A. Right.

25 Q. And do you -- do you think in your experience and

1 in your belief, is a police officer less likely
2 to lie under oath than other people might be?

3 A. I would say, yeah.

4 Q. Why?

5 A. I would say they are more involved with the law
6 and I think they probably would take it more
7 seriously than an average person.

8 Q. Okay. And that said, setting aside robo cop
9 movies, do you agree that law enforcement
10 officers are human, like the rest of us?

11 A. Definitely, yes.

12 Q. Imperfect, I guess, like the rest of us?

13 A. Yes.

14 Q. Make mistakes like the rest of us?

15 A. Yes.

16 Q. Have personal motives or wants and wishes, just
17 like the rest of us?

18 A. Yes.

19 Q. So, I don't hear you saying that a police officer
20 never could lie under oath, you just think it's
21 probably less likely than comparing him or her to
22 the average joe on the street?

23 A. Yes.

24 Q. Would you at least consider the possibility, be
25 open to and listening for the possibility, that a

1 police officer, a law enforcement officer, might
2 have a reason to shade the truth or not remember
3 something accurately?

4 A. If that's what I was asked to do, then that would
5 be what I would have to do.

6 Q. Okay. There would be some resistance to that
7 idea or ...

8 A. I would say yes.

9 Q. And in putting together all the evidence that you
10 would hear, since Mr. Avery is saying he is not
11 guilty --

12 A. Mm-hmm.

13 Q. -- do you think that he, or we for that matter,
14 ought to have to show you who did kill Teresa
15 Halbach?

16 A. I would think that would be a good thing, yeah.

17 Q. Okay. Sure it would be a good thing. Do we have
18 to do that in order to convince you that Steven
19 Avery didn't?

20 A. I would say yes.

21 ATTORNEY STRANG: All right. I think I'm
22 done, thank you, very much.

23 **VOIR DIRE EXAMINATION**

24 BY THE COURT:

25 Q. Mr. Nelesen, I have got some follow-up questions

1 for you. I take it from a number of your answers
2 that you don't come into court today being
3 familiar with many of the rules that apply in a
4 criminal case.

5 A. No, I don't.

6 Q. I want to follow up, for example, on Mr. Strang's
7 last series of questions?

8 A. Mm-hmm.

9 Q. For one thing, in a criminal case, the defendant
10 is not obligated to prove his guilt or his
11 innocence, the State has to prove that he is
12 guilty before a jury can return a guilty verdict?

13 A. Correct.

14 Q. Do you understand that?

15 A. Yes, I do.

16 Q. That means that a defendant that -- does not have
17 to convince the jury who might have done it, if
18 it wasn't the defendant; the State has to prove
19 that the defendant did it and prove that, beyond
20 a reasonable doubt?

21 A. Now I understand, yes.

22 Q. Likewise, I think you testified that you had read
23 some things about this case and based on what you
24 had read, you thought it appeared the defendant
25 was guilty, but that if the Court instructed you

1 that you had to put those feelings aside, you
2 could follow that instruction?

3 A. Yes.

4 Q. And that, in fact, is -- would be the Court's
5 instruction. Over the course of a six week
6 trial, the jury is going to hear a lot more about
7 this case than has been in the news media.
8 Sometimes information in the news media isn't
9 accurate.

10 A. Yes.

11 Q. But in any event, the jury that is selected will
12 have to agree to base the decision only on the
13 evidence in court and ignore anything else. If
14 you're selected as a juror, do you feel you can
15 do that?

16 A. I would like to think that I could do that. Yes
17 or no answer, that's tough. I would say yes.

18 Q. Is there something specific that gives you pause
19 in answering that question?

20 A. Definitely, everything that I have read.

21 Q. And when you say everything that you have read,
22 you will probably hear some of the things that
23 you have read in court, but you are going to hear
24 a number of those items disputed as well.

25 A. That's true.

1 Q. Will you be able to evaluate the evidence as it
2 comes into court, as it is introduced at the
3 trial, in making your decision?

4 A. Yes.

5 Q. And will you be able to base your decision only
6 on that evidence and not on anything you might
7 have read before?

8 A. Yes.

9 Q. You feel if I instruct you to do that you can do
10 that?

11 A. Yes.

12 THE COURT: All right. At this time we'll
13 have the Clerk escort you from the courtroom.

14 ATTORNEY STRANG: May I ask --

15 THE COURT: All right. Just a second. Go
16 ahead.

17 ATTORNEY STRANG: I don't know if counsel
18 has a follow up, but I do have one.

19 **VOIR DIRE EXAMINATION**

20 BY ATTORNEY STRANG:

21 Q. Putting it altogether, do you want to be on this
22 jury?

23 A. Do I want to be? No.

24 Q. Why?

25 A. It's a very big decision. Whatever the decision

1 would be, is a lot for a person to live with.
2 That, in fact, financial issues is a difficult
3 situation to deal with as well. So to answer
4 your question, do I want to be, no.

5 ATTORNEY STRANG: Thank you.

6 THE COURT: Mr. Fallon, do you have
7 anything else?

8 ATTORNEY FALLON: (No verbal response.)

9 THE COURT: Very well. Linda, you may
10 escort Mr. Nelesen from the courtroom.

11 (Wherein the juror is excused.)

12 THE COURT: Counsel, does either party have
13 any motion? Mr. Fallon?

14 ATTORNEY FALLON: Your Honor, the State
15 does not; I think the juror is acceptable.

16 THE COURT: Mr. Strang.

17 ATTORNEY STRANG: I really hate to do this
18 and I don't expect that we'll have to do it again,
19 or at least not often, but I think we need three
20 minutes to talk. I really do, about this one.
21 Just, I mean, Mr. Buting and I and Mr. Avery.

22 THE COURT: All right. I will give you
23 exactly three minutes and then we'll come back out.

24 ATTORNEY STRANG: Thank you.

25 (Brief recess.)

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THE COURT: Mr. Strang.

ATTORNEY STRANG: Thank you, very much.
The defense is not making a motion to strike.

THE COURT: Very well. The Court will accept this juror. And bring the next one in and that will be Nicole Knier. Ms Knier, if you can remain standing the Clerk will administer the oath.

THE CLERK: Raise your right hand.

(Juror sworn.)

THE CLERK: Please be seated.

THE COURT: Ms Knier, you have already completed a jury questionnaire in this case. This morning we're moving on to the next phase of jury selection which is known as individual voir dire. Each of the attorneys, or the attorneys for each of the parties will have an opportunity to ask you some questions that relate to your qualifications as a juror and follow up questions to the information on the questionnaire.

I did want you to know that should you be selected as a juror in this case, the jurors will not be sequestered; that means that at the end of the trial every day you will be able to go home and then come back to court the next day.

I also want you to know that although

1 today's proceedings are open to the public,
2 during individual voir dire we do not permit
3 cameras in the courtroom and the news media is
4 not permitted to give the names of the jurors to
5 the public. Also, during the trial itself the
6 cameras are not permitted to show the jurors in
7 any way such that any of the individual jurors
8 can be identified.

9 After today's proceedings, if you are
10 still deemed to be a member of the jury panel,
11 you will get a phone call in the next day or two
12 telling you when to report. It will be sometime
13 this week.

14 With that background, Mr. Fallon, you
15 may begin.

16 **VOIR DIRE EXAMINATION**

17 BY ATTORNEY FALLON:

18 Q. Good morning. My name is Tom Fallon. I'm an
19 Assistant Attorney General for the State of
20 Wisconsin. I'm one of the prosecutors in this
21 case. To my left is Mr. Ken Kratz, the lead
22 prosecutor and he is the District Attorney in
23 Calumet County. We're helping out Manitowoc
24 County. Let me first ask, are we pronouncing
25 your last name correctly; it's Knier?

1 A. Yeah.

2 Q. Okay. Very good. One of the first questions
3 that I would like to ask is your employment
4 situation, as it relates to the possibility of
5 your being selected as a juror. All right. In
6 your questionnaire, you told us that you are
7 presently employed by a Jim Skarda, a linebacker?

8 A. Yes.

9 Q. Tell us what kind of --

10 A. It's a bar.

11 Q. Okay. And so you are a bartender by trade?

12 A. Yeah.

13 Q. All right. And how long have you worked at that
14 location?

15 A. About six years.

16 Q. All right. And I understand you are also a
17 student?

18 A. Yup.

19 Q. And where do you attend school?

20 A. I'm going to Blue Sky; it's in Green Bay; it's a
21 massage school.

22 Q. All right. And how often or when is school held?

23 A. It is held one day a week, every Thursday.

24 Q. Every Thursday?

25 A. Correct.

1 Q. And where are you in relation to the curriculum
2 as it were; is this like a regular semester
3 schedule?

4 A. We are set to graduate March 8th, but they are
5 making special circumstances so I could be
6 home-schooled for the rest of it.

7 Q. All right. So it wouldn't -- if you were
8 selected as a juror, it wouldn't mess up your --

9 A. No.

10 Q. -- your massage training?

11 A. No.

12 Q. Okay.

13 A. I'm far enough along.

14 Q. I'm sorry?

15 A. I said I'm far enough along.

16 Q. Okay. Very good. How about your job as a
17 bartender and your ability to support yourself in
18 the interim; is that okay?

19 A. Yeah, it should be.

20 Q. All right. So you are not too concerned for any
21 economic hardship if you were selected?

22 A. Not overly.

23 Q. Okay. You also indicated in your questionnaire
24 that you have at least some information or some
25 knowledge in the field of medicine. Could you

1 tell us a little bit about that. Is that the
2 massage training?

3 A. Yeah, with the massage training, it's actually
4 medical massage and medical terminology is what
5 I'm good at.

6 Q. Well, tell us a little bit about that.

7 A. Just from watching different programs and stuff,
8 I can pick out what they are not saying
9 correctly; what they are saying correctly; that
10 sort of a thing.

11 Q. Okay. And how long have you been at least
12 studying the medical angle as it relates to the
13 massage therapy business?

14 A. For about a year. I started last March. And
15 before that I was also a certified nurses
16 assistant.

17 Q. All right. And where were you a certified
18 nursing assistant?

19 A. Different nursing homes in the area.

20 Q. All right. And how long did you do that work?

21 A. About two years.

22 Q. All right. I take it that work brought you in
23 contact with RNs and physicians?

24 A. Correct.

25 Q. All right. Would you consider yourself the

1 curious type as it were and would ask questions
2 about medical --

3 A. Yes.

4 Q. -- procedures and things?

5 A. Mm-hmm. Yes, I like to know things.

6 Q. All right. Occasionally I have got to make a few
7 notes.

8 A. That's okay.

9 Q. All right. Now, you indicated that you knew a
10 few people of interest, I think, to the Court and
11 the parties here. So I wanted to ask you a
12 little bit about your familiarity with them. You
13 indicated you are familiar with a Debbie Knox,
14 and you believe that Debbie Knox to be a junior
15 high principal; is that correct?

16 A. She was, while I was in junior high.

17 Q. She was the principal when you were there?

18 A. Well, assistant principal but, yeah.

19 Q. All right.

20 A. She was my neighbor growing up as well.

21 Q. She was your neighbor growing up. Okay. How
22 well do you know her?

23 A. I guess pretty well, I went to school with one of
24 her sons too. I graduated with him.

25 Q. And how long ago was that?

1 A. I graduated in 2001, so five years ago.

2 Q. You said that she was a neighbor; literally the
3 person next door or just down the street?

4 A. Just down the street.

5 Q. All right. Since you lived on the same street,
6 did you, other than the school setting, did you
7 have much opportunity to interact with each other
8 or just with her son?

9 A. No, just more acquaintances.

10 Q. Just acquaintances. Okay. Have you ever been to
11 her house or anything for gatherings or anything?

12 A. No.

13 Q. All right. Are you still friendly with her son?

14 A. No, I believe he's going to school somewhere.

15 Q. Okay. When you -- I take it she was the
16 assistant principal at the high school?

17 A. Junior High.

18 Q. Junior High. When you were a student, did you
19 have any occasion to have any discussions or
20 contacts with her during your time as a junior
21 high student?

22 A. I tried not too.

23 Q. Okay. Was she kind of the disciplinarian?

24 A. Yeah.

25 Q. All right. So you were successful in not having

1 any run-ins, as it were?

2 A. Correct.

3 Q. All right. So, I mean other than that occasion
4 or for that reason, you really didn't have any
5 contact with her at the school?

6 A. No.

7 Q. Okay. Well, I would like to talk a little bit
8 about the news business and a little bit about
9 the coverage of this case. Where would you say
10 that you get most of your news from; the
11 newspapers, radio, television, internet?

12 A. Usually like the TV and newspapers, if I get a
13 chance to read them.

14 Q. All right. And how often do you watch the news
15 coverage on TV?

16 A. Not very often.

17 Q. Not very often.

18 A. I have a two year old son; I don't get a chance
19 to watch TV.

20 Q. All right. How about when you are tending bar;
21 is it --

22 A. No, it's mostly ESPN or something like that.

23 Q. All right. So it's a sports bar that you are
24 working at?

25 A. Right.

1 Q. So there's not a lot of news coverage there other
2 than sports coverage?

3 A. A lot of people talking about it but ...

4 Q. All right. Well, I noticed that you did mention
5 that, that you sometimes -- things of word of
6 mouth or you might have talked to people, patrons
7 of the tavern. Was there any extensive
8 discussion on your part of these proceedings or
9 the case, or just casual stuff that you overhear
10 from the public?

11 A. Just casual. I'm doing a job. I'm not there to
12 really get into in depth conversations with
13 people.

14 Q. All right. Have you followed the coverage of
15 this case much at all?

16 A. I try not to.

17 Q. All right. Any particular reason why you try not
18 to?

19 A. I try not to listen to the bad things I guess.

20 Q. To bad things. Okay. Do you recall, as you sit
21 here today, any of the coverage or any of the
22 details of what Mr. Avery is supposed to have
23 done?

24 A. Yeah.

25 Q. Well, tell us about what you remember hearing.

1 A. Just what, I guess, Fox 11 is the only station
2 that they have ever watched at the bar, if they
3 do watch a newscast. And that's about it.

4 Q. All right.

5 A. I guess when the accusations or whatever you want
6 to call them, when they were first on the news,
7 that was the first time that I really watched
8 anything about it.

9 Q. All right. So if you have seen any news coverage
10 is when you were tending bar, not at home?

11 A. Not really.

12 Q. All right.

13 A. I usually watch PBS or something.

14 Q. Okay. Now, you kind of gestured toward
15 Mr. Kratz; do you remember seeing him on
16 television?

17 A. Yeah.

18 Q. All right. And that was several months ago?

19 A. Mm-hmm.

20 Q. That's a yes?

21 A. Yes.

22 Q. You have to --

23 A. Sorry.

24 Q. Okay. What do you remember about his appearance
25 on television?

1 A. Just what he was -- I guess when he was saying
2 what happened.

3 Q. Okay. Do you recall any of the details that --
4 that he may have provided?

5 A. Yeah, because they were pretty graphic.

6 Q. All right. And was this coverage in relationship
7 to a fellow by the name of Brendan Dassey?

8 A. It was both.

9 Q. Both. All right.

10 A. Both parties, I believe. I can't remember, it
11 was a couple months ago.

12 Q. All right. Now, you said it was pretty graphic,
13 do you recall any particular details regarding?

14 A. Just what they said that had happened.

15 Q. All right.

16 A. That is public knowledge, I guess.

17 Q. Okay. Well, if you could tell us, I know it may
18 not be easy for you, but we want to make sure
19 that we have an understanding of what you think
20 you may know about the case and that will help
21 Mr. Strang and I.

22 A. I guess just what they said had happened to
23 Teresa, the series of events that had been
24 published in the news, like with her being tied
25 up and that sort of a thing.

1 Q. Okay. What else do you remember that is supposed
2 to have happened to her?

3 A. Yeah. That she had gotten burned in a burn
4 barrel or something like that.

5 Q. All right.

6 A. Like I said, I don't remember exact quotes so.

7 Q. Okay. All right. Now -- Now, I don't mean to
8 put words in your mouth so tell me if I'm wrong,
9 but I'm getting this feeling that, because it was
10 somewhat graphic in terms of how she is supposed
11 to have died; is that one of the reasons why you
12 haven't paid much attention, or not?

13 A. No, I just don't watch the news.

14 Q. You just don't watch the news, okay.

15 A. Too many bad things happening in the world to
16 worry about.

17 Q. All right. As a result of your, you know,
18 tending bar and seeing some of the news coverage,
19 including some of the coverage of Mr. Kratz, have
20 you formed any opinions at all as to whether
21 Mr. Gave -- Mr. Avery is guilty or innocent of
22 this?

23 A. I think it could go either way.

24 Q. All right. And that -- So --

25 A. To me, you have to prove it either way.

1 Q. All right. In other words, the State has to
2 prove he's guilty?

3 A. Yup.

4 Q. All right. Now, do you think the defense has to
5 prove anything?

6 A. In a way, yeah.

7 Q. Why do you feel that?

8 A. Because if -- why would someone just make
9 something up, I guess.

10 Q. You mean, why would the State make something up?

11 A. Yeah.

12 Q. All right. But if the Court were to instruct you
13 that Mr. Avery and his lawyers, and they will
14 talk with you at some length about this, but if
15 the Court were to tell you that, you know, they
16 don't have to prove anything --

17 A. Mm-hmm.

18 Q. -- not one blessed thing. They don't have to
19 call one witness, put in one piece of evidence,
20 not a thing. They can sit there like bumps on a
21 log. And unless the State has proved to you,
22 beyond a reasonable doubt, that he is guilty, you
23 would have to find him not the guilty; do you
24 understand that?

25 A. Yeah.

1 Q. Do you think you could do that?

2 A. Yeah, but you would like to think that they would
3 have to find holes in here, in theories. Because
4 I can't just believe everything out of your mouth
5 is true either.

6 ATTORNEY STRANG: I didn't catch the
7 answer, I'm sorry.

8 ATTORNEY BUTING: Could you read it back.

9 THE COURT: We'll have the reporter read it
10 back.

11 (Last answer read back.)

12 Q. Well, what if the only effort, or you could say
13 evidence, presented by the defense, came in the
14 cross-examination of the witnesses that Mr. Kratz
15 and I called to the stand and they vigorously
16 challenged the assertions of those witnesses.
17 Under some circumstances, do you think that would
18 be enough to raise a doubt in your mind, a
19 reasonable doubt in your mind of his guilt?

20 A. Yeah, but not beyond all other things that could
21 be brought up.

22 Q. All right. Well, if the Court were to tell you
23 that the burden of proof here is beyond a
24 reasonable doubt, not all doubt; you would be
25 able to accept that?

1 A. Yeah.

2 Q. Okay. And if the Court were to tell you that the
3 State is the only one with the burden of proof
4 and Mr. Avery, as he sits here today, is presumed
5 innocent, can you accept that?

6 A. Mm-hmm.

7 Q. That's a yes?

8 A. Like I -- Yeah. Like I said, it can -- it could
9 go either way.

10 Q. Okay. I'm not quite sure. We're having a little
11 confusion as to when you say it could go either
12 way. If you could kind of explain that a little
13 bit more for us.

14 A. I guess if your -- your thought process is good
15 enough that it's beyond a reasonable doubt, then
16 I'm going to go with you. But if their thought
17 process is it's beyond a reasonable doubt, then
18 it's not.

19 Q. In other words, if their process raises a doubt,
20 you would find him not guilty?

21 A. Correct.

22 Q. Raises a reasonable doubt?

23 A. Yes.

24 Q. All right.

25 A. And if yours does I would find him.

1 Q. All right.

2 A. Yeah.

3 Q. Okay. Now, just so that I'm clear, you answered
4 that you yourself have not formed any opinions at
5 all?

6 A. No.

7 Q. All right. And do you think that you would be
8 able to make a decision as to his guilt or
9 innocence solely on the evidence which is
10 presented during the course of the trial?

11 A. Yeah. Yes.

12 Q. Is there any question in your mind about that?

13 A. No.

14 Q. Okay. You also had some interesting comments
15 regarding television shows like *CSI* and *Bones*,
16 having medical terminology courses, some of the
17 words they used do not make sense to what is
18 going on in the scene?

19 A. Yeah.

20 Q. Tell us about that.

21 A. Like if you watch shows, even *ER*, some of the
22 medical terminology is just crazy. It's not even
23 relevant to what is happening. Like they will be
24 talking about someone's, like, PSA levels and
25 that's a prostate thing, when they are working on

1 their lungs. They just use it to sound like they
2 are smart, I guess.

3 Q. All right. And that opinion comes from your
4 experience as a certified nursing assistant and
5 now in the massage therapy?

6 A. Yeah.

7 Q. All right. As part of your massage therapy, are
8 you taking any physical therapy courses?

9 A. It's, well, all of massage therapy is kind of
10 physical I guess, but it's not -- it's not the
11 stretching and stuff --

12 Q. All right.

13 A. -- that a physical therapist would do.

14 Q. But it's not the same curriculum as you would
15 have as -- if you were to go to school for a
16 physical therapist --

17 A. No.

18 Q. -- you would agree? Okay. You also indicated
19 that you are at least familiar with a member of
20 the Manitowoc County Sheriff's Department?

21 A. Correct.

22 Q. Kelli Tice?

23 A. Yup.

24 Q. How do you know Kelli Tice?

25 A. She is my boyfriend's aunt.

1 Q. All right. How well do you know her?

2 A. Fairly well, we go over to her house often.

3 Q. All right. In your visits to her, do you discuss

4 the events of the news and things of that sort?

5 A. The news, yes, but she's very -- she knows what

6 she does as a job; she takes it as being

7 important and she doesn't say anything.

8 Q. All right. In other words, she doesn't discuss

9 her work with you at all?

10 A. No, she's very adamant on that.

11 Q. Okay. Does -- Has this case ever come up in

12 discussion?

13 A. It's come up, but not to any extent.

14 Q. All right. Tell us about that?

15 A. Just, what have you heard on the news today.

16 This is what I have heard on the news. That sort

17 of thing.

18 Q. All right. And so whatever is discussed is just

19 whatever happened to be the headline of the day?

20 A. Yeah.

21 Q. All right. And she hasn't discussed any inside

22 information that she may have or anything?

23 A. No.

24 Q. No. She doesn't do that?

25 A. No. She's a sergeant in the jail. So she

1 doesn't see a lot of this side of it I guess --

2 Q. Okay.

3 A. -- or she hasn't at least discussed it with me.

4 Q. All right. You also indicated that you did know
5 someone who was killed and that there was a
6 prosecution. Can you tell us a little bit about
7 that?

8 A. It was two of my friends, actually. One of
9 them -- They both had left the party at the same
10 time and one had gone the opposite way down the
11 road and they collided. And one of them was
12 killed and the other one was a person who ran
13 into them.

14 Q. Okay. So both of them were at the same party and
15 they --

16 A. Correct.

17 Q. They left and went different directions but then
18 somehow --

19 A. Yup, it's a circle drive and --

20 Q. I see.

21 A. -- and one had gone out and T-boned --

22 Q. All right.

23 A. -- the other one.

24 Q. Okay. And there was a prosecution. Was there
25 alcohol related in this?

1 A. Yes.

2 Q. Okay. Is there anything about that experience
3 that makes you wonder whether you could be fair
4 and impartial as a juror in -- on a case like
5 this?

6 A. No, they are completely unrelated.

7 Q. Okay.

8 A. It was a vehicle accident.

9 Q. Okay. What do you like to do for your hobbies in
10 your spare time?

11 A. Go horseback riding, that sort of thing, go
12 four-wheeling.

13 Q. Horseback riding and four-wheeling?

14 A. Mm-hmm.

15 Q. Do you -- any other pursuits? Do you like to --
16 well, work -- read books, work on puzzles,
17 boardgames, or play cards or any of those things?

18 A. We usually play cards, but I would like -- I
19 would like to do puzzles but, like I said, I have
20 a two year old and it's just not possible.

21 Q. All right. Does the two year old just take your
22 time --

23 A. Yes.

24 Q. -- or just take over the puzzle?

25 A. Both.

1 Q. All right. If you were selected as a juror, is
2 there any concerns for the care of your two year
3 old if you are here for eight or nine hours a
4 day?

5 A. My boyfriend is laid off of work right now.

6 Q. All right.

7 A. And so -- he -- and he lives with -- we live
8 together.

9 Q. All right. So he's comfortable being the dad for
10 a while?

11 A. Not happy about it but, yeah.

12 Q. All right. Are you worried about it, though?

13 A. Not really.

14 Q. Okay. Do you own a computer?

15 A. Yes.

16 Q. Do you use the internet frequently?

17 A. Mm-hmm. Yes. Sorry.

18 Q. Okay. Do you use the internet to read up on
19 information, or stories, or anything that's of
20 particular interest to you?

21 A. No, I use it to pay my bills and do my banking.

22 Q. All right. So you are a very practical user of
23 that?

24 A. Yes.

25 Q. Business only and not that much entertainment

1 from the computer?

2 A. No, don't have time.

3 Q. Okay.

4 ATTORNEY FALLON: That's all I have for
5 this witness.

6 THE COURT: Mr. Strang.

7 ATTORNEY STRANG: Thank you.

8 **VOIR DIRE EXAMINATION**

9 BY ATTORNEY STRANG:

10 Q. So, I'm Dean Strang and this is Jerome Buting and
11 Steven Avery. We stood up in front of you, I'm
12 sure, last week, but. Mr. Buting and I are
13 defending Mr. Avery. And sort of in deciding
14 what to make of you here, I want to hear more
15 about your work hours at Linebackers?

16 A. It varies every week. I'm not on a set schedule.
17 It's pretty much my only job so he puts me on
18 whenever -- whenever he feels like it, I guess.

19 Q. Is it always evening hours?

20 A. For the most part. There are some days that I
21 work, too.

22 Q. Okay.

23 A. They are willing to work around it, I guess.
24 They are willing to work around my hours here, I
25 guess.

1 Q. Okay. So you're -- What, you would continue to
2 work at Linebackers?

3 A. I would like to.

4 Q. Are they open until bar time?

5 A. Yeah.

6 Q. And do you -- When you work the evening, do you
7 go to bar time?

8 A. Yes, for the most part, if there's not people
9 there, you close early.

10 Q. Okay. Sure. But for the most part, they would
11 be open until last call?

12 A. Yeah.

13 Q. And is that a full-time job? I mean, usually
14 when you are not sitting on juries and doing
15 things like that?

16 A. It's about, I don't know, I would say 15 to 20
17 hours a week.

18 Q. Okay.

19 A. Which is full -- I guess full-time for me but --
20 or full-time for a bartending job, too, I guess.

21 Q. And you have got -- You are going to school
22 obviously and you have also got a job at Family
23 Video?

24 A. Correct.

25 Q. What do you do there?

1 A. Just customer service, just checking people out I
2 guess.

3 Q. Video rental --

4 A. Yeah.

5 Q. -- store? How many hours a week is that usually.

6 A. Maybe five. It's just whenever they need
7 someone.

8 Q. Okay. Are you going to continue to do that if
9 you are on the jury?

10 A. They don't have me on the schedule right now
11 because they are waiting to see what's going on.

12 Q. Okay. And the school, they made arrangements for
13 you to finish up at home?

14 A. Yeah, because I told them of the possibility of
15 this and I didn't want to miss out, I guess, on
16 graduation.

17 Q. Right. And -- But are there some course
18 requirements that you will have to show them that
19 you have completed at home?

20 A. Yeah. We are done with the majority of our
21 classes. We have had final exams. It's pretty
22 much you just finish up what we've been doing.
23 And we're starting one new class and that's what
24 they're kind of worried about. Because they
25 don't know how I'm going to get that class in.

1 But if worse comes to worse, they told me I can
2 take an extension and graduate with the August
3 class.

4 Q. Okay. Would they be checking up with you at home
5 to make sure you are doing the class?

6 A. No. I don't know how it would work, but they had
7 just said that, don't worry about it, we'll take
8 care of it. I'm a straight A student there, they
9 are not worried about me failing anything.

10 Q. Okay. Do you think that you would try to keep
11 your hours at Linebackers from being cut back
12 during the trial?

13 A. I don't think that's possible because, like I
14 said, I work maybe one or two days a week. And
15 like during the day, and that I would just have
16 to give them up, I guess.

17 Q. Okay. How long has your boyfriend been laid off?

18 A. He's been laid off since the beginning of
19 January.

20 Q. So what sort of -- I mean, how bad is the
21 financial hit going to be?

22 A. Not very, we just got our tax returns.

23 Q. Okay. So you can kind of coast on that for -- if
24 you have to?

25 A. I would not like to, but I have to.

1 Q. And he would take care of your son during the
2 day?

3 A. Yes.

4 Q. Would that leave you enough time with your son if
5 you were busy five days a week in trial?

6 A. Yeah, I don't have to spend every second with
7 him, I guess.

8 Q. Mm-hmm.

9 A. And he usually stays up to 11:00 at night anyway.

10 Q. Okay. Do you want to be on the jury?

11 A. It doesn't matter to me.

12 Q. Why doesn't it matter to you?

13 A. Because, in a way it makes me nervous, I guess.
14 And in a way, it would be kind of interesting, I
15 don't know.

16 Q. Tell me what -- Let's start, first things first,
17 you said in a way it makes you nervous; tell me
18 why it makes you nervous.

19 A. Because it's intimidating. It's a big trial.
20 You know, you are deciding the fate of someone's
21 life; it's not something to be taken lightly.

22 Q. And what would be interesting about it?

23 A. Just to actually hear it first hand instead of
24 hearing it through patrons or through, like,
25 newscasts or something and to be able to form

1 your own opinion instead of listening to the
2 media.

3 Q. So, let's say you end up on the jury and then you
4 are tending bar and you are working eight to
5 close one night during the week; TV is on over
6 the bar?

7 A. Yes.

8 Q. And is this -- This is a sports bar?

9 A. Correct.

10 Q. And now you have got regulars at Linebackers?

11 A. Yes.

12 Q. Okay. I mean, it's not like next to a Holiday
13 Inn or something?

14 A. No.

15 Q. Okay. So it's mostly a regular crowd?

16 A. Yeah.

17 Q. These guys are going to know you are on the jury,
18 aren't they?

19 A. More than likely.

20 Q. Okay. Bar talk being bar talk, how in the world
21 would you insulate yourself from everybody
22 talking about what the TV is playing?

23 A. The same way that I have done it this far; just
24 -- I don't listen to them. You serve their
25 drinks and you walk away, or you don't

1 participate in the conversation. That's just
2 like talking about politics, you never
3 participate in it.

4 Q. But don't you have to -- I mean, don't you have
5 to chat people up a little bit to get decent
6 tips?

7 A. Make different conversation. Happened last
8 night, we just started talking about ATV-ing
9 instead.

10 Q. Okay. Somebody brought up this trial with you --

11 A. Yes.

12 Q. -- last night? What did they -- What were they
13 saying?

14 A. Just, they were starting to talk about the jury
15 thing and I'm like, I already know, you don't
16 have to tell me and I don't want to talk about it
17 and we brought up a different subject.

18 Q. And -- But they knew you were on the panel here?

19 A. I don't know if they knew. I just said I didn't
20 want to talk about it. That's how I am about
21 most things. If there's like a murder in a
22 different county or, whatever, I usually -- I
23 don't like to talk about it.

24 Q. Okay.

25 A. Most of the talk is about the stock market or the

1 war in Iraq anyway, so it's not like -- I'm sure
2 it will change now that it's actually going to
3 trial, but.

4 Q. Fox 11 is the channel that's -- I'm assuming ESPN
5 and stuff --

6 A. Mm-hmm.

7 Q. -- like that is on, but Fox 11 is the news
8 channel on at the bar?

9 A. It tends to be, like if a customer wants to
10 watch -- It usually happens about 5:00 in the
11 afternoon, someone wants to watch the news, just
12 to see the weather.

13 Q. Sure.

14 A. Either that or we'll have the weather channel on.

15 Q. Did you -- Did you happen to see a two part
16 series last May that FOX 11 did; it included the
17 Manitowoc County sheriff at the time?

18 A. No, I don't think I did.

19 Q. Okay. It was about the Steven Avery case or
20 about him?

21 A. No.

22 Q. That doesn't ring a bell?

23 A. No.

24 Q. Okay. I think you said the news conferences that
25 Mr. Kratz had, those two, you watched that?

1 A. Yeah.

2 Q. Were you at work --

3 A. Yeah.

4 Q. -- during those?

5 A. Mm-hmm.

6 Q. Okay. And what do you -- how did you react to, I

7 think you called them graphic details, how did

8 you react to that, hearing those?

9 A. Well, if it happened or not, I guess it's

10 horrible that someone would do that.

11 Q. Mm-hmm.

12 A. That's how I reacted to it and you just kind of

13 (witness made sound) and walk away.

14 Q. Yeah, I mean, it's one of these --

15 A. Yeah, that's just like when you hear moms --

16 Q. -- bone chilling things?

17 A. -- that stab their kids, it makes you sick.

18 Q. Mm-hmm.

19 A. But it's not your direct life, so you move on.

20 Q. Right. Okay. But -- I mean, it's one of

21 these -- I mean no murder is good, but this is

22 one of these that made you particularly sick?

23 A. Yeah.

24 Q. Is that -- Are those details something you have

25 ever been able to put out of your mind?

1 A. Yeah, it's not something I think of every day.
2 It doesn't govern my life.

3 Q. No. No. And I'm not -- I'm not suggesting it
4 does, but you, for example, you remembered here
5 today the image of Teresa Halbach being tied up?

6 A. Correct.

7 Q. And her body being burned?

8 A. Mm-hmm.

9 Q. What other images have stuck with you?

10 A. Like the fly by of the house. I don't know.

11 (Court reporter couldn't hear.)

12 A. The fly by, like the helicopter or whatever it
13 was that was over the top of their house.

14 Q. Mm-hmm.

15 A. That sort of a thing.

16 Q. And were you -- Are you aware that Brendan
17 Dassey's statements have a lot to do with --

18 A. Yeah, that was part of the news conference that I
19 listened to.

20 Q. Okay. What do you think of those statements?
21 Did you believe them; did you not believe them;
22 what did you think?

23 A. I don't know, if they are true, I guess that puts
24 a complete hole in your case.

25 Q. In my case?

1 A. Yeah.

2 Q. You know, I don't represent Brendan Dassey?

3 A. I know. I'm just saying, if his testimony --

4 Q. Sure.

5 A. -- is the absolute, honest to God truth, well,

6 then, that's the case right there, I guess.

7 Q. What would you do if the State did not call

8 Brendan Dassey in this case?

9 A. I think that would be stupid. They would have a

10 reason to call him, I guess. I don't know.

11 There's a lot of ifs.

12 Q. Yeah, in other words, you heard all this terrible

13 stuff, but do you still expect to hear it here?

14 A. Yeah.

15 Q. I mean, the Judge, I think, will tell you that

16 the only thing you can consider is --

17 A. What's --

18 Q. -- the evidence you hear in the courtroom?

19 A. Yes.

20 Q. But how would you -- How would you put that image

21 of this tied up young woman out of your mind?

22 A. I don't think about it. It's like when my friend

23 got killed I didn't -- after I went to the

24 funeral and stuff, you don't -- you don't tend to

25 think of bad things because then it just puts you

1 in depression. That's why half the world is on
2 Prozac.

3 Q. Let me chase -- Let me -- Prozac reminded me
4 of -- of massage, which is a good way to deal
5 with stress and depression, I assume, right?

6 A. Mm-hmm.

7 Q. How -- You may have said this and I just zoned
8 out, didn't catch it. But how -- how long -- If
9 you go straight through massage school, how long
10 does it take?

11 A. It's a year course.

12 Q. And that's if you are a full-time student, so to
13 speak?

14 A. Yeah. It's one 12 hour day --

15 Q. A week?

16 A. -- which is considered full-time to them.

17 Q. Right. And is one of the things you learn about,
18 in the massage therapy program, the human
19 skeleton?

20 A. Yes.

21 Q. What kind of detail do you learn about the human
22 skeleton?

23 A. We had to learn and memorize every bone, every
24 muscle, origins, insertions, that sort of a
25 thing.

1 Q. Mm-hmm. And so are you familiar with looking at
2 skeletons, or models of skeletons?

3 A. Yes. And we went to a cadaver lab up at NWTTC.

4 Q. To see the muscle and the connection to bone
5 or --

6 A. Yup, to see what a person looks like when they
7 are dissected, I guess.

8 Q. Mm-hmm. Okay. Was that helpful in learning
9 massage technique?

10 A. Yes and no. I mean, you kind of figure out how
11 big muscles are. It's easy to see a picture of
12 it, but when you see it in real life, you learn
13 how it actually looks.

14 Q. How big -- how big it actually is. Okay. And do
15 you -- Do you think that you know a great deal
16 more about the human skeleton than the average
17 person on the street?

18 A. I would like to think that, but I know from
19 doctors, I don't know more than them.

20 Q. No, but the -- a doctor isn't the average person
21 on the street, right?

22 A. Right.

23 Q. Most streets anyway. How about the -- you
24 obviously had some schooling to be a certified
25 nursing assistant, too?

1 A. Yes.

2 Q. How long was that?

3 A. I think like eight weeks. It wasn't very much.

4 Q. Okay. Also some training there about the human
5 skeleton?

6 A. Yes and no. It was more about like different
7 pathologies and stuff you would come in contact
8 with in the actual field.

9 Q. Okay. So most of your training about the
10 skeletal system has been in the massage --

11 A. Correct.

12 Q. -- school? I'm going to go -- I'm going to go
13 back now to the news conferences following
14 Brendan Dassey's arrest. That was about -- give
15 or take, about 11 months ago now, I guess. And
16 so after 11 months of that, do you have an
17 opinion today about whether Mr. Avery probably is
18 guilty, might be guilty?

19 A. Yes and no. I guess, I don't -- like I said, I
20 would like to believe that someone can prove,
21 beyond a reasonable doubt, either way.

22 Q. Mm-hmm.

23 A. I would like, you know, if they can prove it,
24 well then it's proven, you know. Nothing is fact
25 until it is proven.

1 Q. Right. And if I understood your answers before,
2 the same would apply to us?

3 A. Yes.

4 Q. We would have to prove, beyond a reasonable
5 doubt, that he did not do it?

6 A. Well, I'm not -- Yes, I guess that's the best way
7 of saying it. I understand that it's not your
8 job to prove that he's innocent, but it's your
9 job to prove that he is not guilty.

10 Q. Okay. And would that include proving, to your
11 satisfaction, who did do it if Mr. Avery didn't?

12 A. No. It's -- It's -- It's his case; it's not
13 anyone else's case.

14 Q. Okay. And would it include Mr. Avery testifying
15 in his own behalf?

16 A. That's your job; I don't know.

17 Q. That's my job?

18 A. Yeah.

19 Q. Okay. Do you think that someone who really
20 didn't do a crime he was charged with would
21 testify?

22 A. I don't know. It depends on if it's to his
23 benefit or not, if he can bring something to the
24 case that is going to get him off I guess, then
25 why wouldn't you. If you're worried about

1 tripping up, then you wouldn't go on the stand
2 either.

3 Q. Mm-hmm. And if you're worried about tripping up,
4 does that mean you are guilty, or there are other
5 reasons you might be worried about tripping up?

6 A. Either way, you could, you know -- You could just
7 get nervous and say the wrong thing.

8 Q. Mm-hmm. Do you think if you (sic) took the
9 witness stand, some people on the jury might be
10 saying, well, of course he's denying it, you
11 know, he wants to save his skin?

12 A. Yeah, but then if he's denying it and they can
13 prove that he's lying, well, then, they have to
14 prove it.

15 Q. Right. Okay. In the end, I think the Judge
16 would tell you -- If Mr. Avery testified, I think
17 the Court would tell you that you weigh his
18 testimony just like you would weigh any other
19 witness, consider whether you believe it or not,
20 in the same way you make that decision as to any
21 other witness?

22 A. Mm-hmm.

23 Q. Can you follow that?

24 A. Yeah, that would just be like if Brendan would
25 testify, then, it would be the same, you wouldn't

1 weigh his testimony over anyone else's.

2 Q. Mm-hmm. Okay. And if Mr. Avery decided not to
3 testify or if we, with him, decided that, I think
4 the Court would tell you, in so many words, that
5 a defendant has an absolute right not to testify
6 and that you may not consider that in any way as
7 evidence of guilt, or consider it at all in
8 deciding whether the State has proven Mr. Avery
9 guilty beyond a reasonable doubt?

10 A. I understand that.

11 Q. Is that an instruction --

12 A. It makes sense.

13 Q. It would make sense to you?

14 A. Yeah.

15 Q. Why?

16 A. Because why -- Just because, like, if I didn't
17 want to go out and talk to you today, doesn't
18 mean that I have anything wrong with the case;
19 it's just that I don't want to talk.

20 Q. Gosh, even if this is the time to talk, now or
21 never, it's your trial?

22 A. I don't know. It depends on, does he have
23 something to hide. Is that --

24 Q. Well, and that's the question, would you be
25 sitting there wondering, after the trial was over

1 and you were trying to decide on your verdict,
2 gosh, does he have something to hide, is that why
3 he didn't testify; is that something you would be
4 wondering?

5 A. It's something in the back of everyone's mind, I
6 guess.

7 Q. In addition to the, you know, the publicity about
8 Brendan Dassey and Steven Avery back in early
9 March last year, have you heard anything else
10 about Mr. Avery's background?

11 A. Well, it's public knowledge. It was published
12 how many years ago and it was published when he
13 got out of prison.

14 Q. What?

15 A. Well, when he got out of prison, they said, you
16 know, the reason he was in prison and whatever.
17 And now when they convicted him, of course, you
18 know, that's the first thing they bring up, is
19 all these other convictions that he had, that
20 have nothing to do with the case. I don't
21 understand why. That's just like if you get
22 pulled over for drunk driving they bring up all,
23 like your drug paraphernalia and stuff that
24 doesn't have anything to do with it.

25 Q. Okay. And I guess what I'm -- one of the things

1 I'm interested in is, have you heard that
2 Mr. Avery was let out of prison because some DNA
3 tests showed that someone else, not him,
4 committed that crime?

5 A. Yeah, it was big news. I don't think there's
6 really anyone that hasn't heard it.

7 Q. Uh-huh. And do you have any doubt about that?

8 A. No. If they proved it with DNA evidence, that's
9 kind of scientific, that's your proof right
10 there.

11 Q. Mm-hmm. Okay. And do you think -- Do you think
12 that experience that he had, being convicted of
13 something he didn't do and then getting out of
14 prison later, do you think that has any bearing
15 on this case?

16 A. It's completely different events.

17 Q. So no bearing one way or the other, or what do
18 you think?

19 A. I don't know. I guess there's -- there is some
20 bearing I guess, because you have to consider the
21 mind state that you are in when you get done with
22 prison. You have to consider that now he's going
23 after the county for however many dollars or
24 whatever. There's different ways to look at it.

25 Q. You say going after the county, you are talking

1 about this lawsuit?

2 A. Yes.

3 Q. Okay. What have you heard about the lawsuit?

4 A. Just that he's -- a wrongful conviction lawsuit
5 or something, I think it is.

6 Q. And you heard of that on the TV?

7 A. Yeah. Well, when he was let out, they had said
8 shortly thereafter that he was going to be doing
9 that. Probably do the same thing, you can't
10 blame him.

11 Q. Right. Okay. What have you heard recently about
12 this case --

13 A. Nothing really.

14 Q. -- on the news?

15 A. Just because it said however many -- or two
16 months ago or whatever when we got that
17 questionnaire, not to watch anything, so I have
18 actually tried to stick by that.

19 Q. Okay. Have you heard anything about a vial of
20 blood?

21 A. No, not really. I maybe heard something about it
22 with people talking in the bar, but not really
23 anything I paid attention to.

24 Q. What did you hear?

25 A. Just that there's a vial of blood that was opened

1 and it was his blood. I don't know. That was
2 about it.

3 Q. Where was the vial of blood?

4 A. I have no idea.

5 Q. Okay.

6 A. I didn't pay attention. I don't like to.

7 Q. Okay. But I mean, so you know a little bit about
8 that, not too much?

9 A. Mm-hmm.

10 Q. Anything else at all that you can remember
11 hearing, bar talk or on the TV?

12 A. No. People say a lot of things in the bar; it
13 doesn't mean they are true.

14 Q. People do say a lot of things in a bar. Your --
15 Kelli Tice is both a friend of yours, according
16 to your questionnaire?

17 A. Basically.

18 Q. And your boyfriend's aunt?

19 A. Yeah.

20 Q. Right. You guys are over there a lot you said.

21 And I'm wondering --

22 A. Well, we go over there for birthday parties. And
23 we used to go over there once or twice a week and
24 just hang out, watch American Idol, whatever.

25 Q. Yeah, just hang out. Your boyfriend is close to

1 his aunt --

2 A. Yes.

3 Q. -- in other words? Do you still see her once a
4 week or something like that?

5 A. I haven't seen her much lately. Her son just got
6 out of the hospital for a brain tumor.

7 Q. Okay. So she's pretty --

8 A. Yeah. So she's pretty --

9 Q. Tied up.

10 A. -- pre-occupied.

11 Q. Yeah. And when -- when he is better and she's
12 back in the swing of things, do you expect you
13 will continue to see a lot of her?

14 A. Well, she's relation, you can't exactly just not
15 go see her.

16 Q. Yeah. No, I know. I mean, I'm just -- This is a
17 bad period she's going through, but you guys --

18 A. Yeah.

19 Q. -- will be spending time together again?

20 A. Yeah.

21 Q. Okay. And I'm -- I have no idea whether she
22 would be a witness here. I have no reason to
23 think she will or won't. But, in general, if we
24 just step away from Kelli; do you have any view
25 on whether law enforcement folks, you know,

1 police officers, deputy sheriffs, those kind of
2 people, are more likely or less likely to tell
3 the truth under oath, than Joe Blow, the man on
4 the street?

5 A. You would hope so.

6 Q. Why?

7 A. Because anyone can lie to you at any point in
8 time; it doesn't mean anything if they are a
9 police officer or not.

10 Q. So why -- so why do you say you would hope so?

11 A. You would hope that if you take an oath you
12 actually mean it.

13 Q. Oh, everyone?

14 A. Yes.

15 Q. Whether you are a police officer or not?

16 A. Yes.

17 Q. Okay. And so, I guess if I understand you, you
18 would hope everybody would tell the truth under
19 oath?

20 A. Yeah, that's kind of like why I didn't lie on my
21 thing. There's no point in me lying; I don't
22 want to be thrown in jail.

23 Q. That's sensible. And you are just, if I
24 understand you, you are saying a police officer
25 is no more or less likely, because of his or her

1 job, to tell the truth or not tell the truth,
2 than anyone else?

3 A. No, like I said, everyone should tell the truth.
4 If not, then that just -- I don't know. I guess
5 I like to be pleasantly naive that everyone tells
6 the truth when they are under oath.

7 Q. Okay. What if you have to make tough decisions,
8 though, because one person is saying one thing
9 under oath and another person is saying the
10 opposite, let's say under oath, what do you do?

11 A. You take whoever has the most backing behind
12 them. Like if you are saying one thing and I'm
13 saying the other, if there's more people that are
14 saying the same thing that I am, well, then, you
15 would almost have to think that I would be
16 telling the truth versus you.

17 Q. If the State, here in this trial, called more
18 witnesses than the defense called, you know, just
19 by counting noses if the State called more
20 witnesses than the defense, would that suggest by
21 itself to you that the State had more proof?

22 A. Not necessarily. They all could be up here
23 saying different things. Like if you have a
24 police officer versus one of his family members
25 or something, they are going to say different

1 things.

2 If you pull every member up in his
3 family, they are all going to say -- they'll all
4 have different views on the story. They are not
5 all going to be -- they didn't -- they weren't
6 all there? I don't know.

7 Q. I'm -- and who's the family, whose family?

8 A. Steven's family. If you -- Like, let's say they
9 would call up every member of his family, not all
10 of them were sitting in the same place at the
11 same time. They all have different views on it.
12 They are all going to say something different.

13 Q. Okay. Same with police officers?

14 A. Yeah, like if you pull a police -- two police
15 officers up here, one of them is going to say,
16 like, if they were here two different days, one
17 of them is going to say one thing and the other
18 one is going to say basically the same thing, but
19 in a different way.

20 ATTORNEY STRANG: I'm all done with you.

21 Thank you.

22 **VOIR DIRE EXAMINATION**

23 BY THE COURT:

24 Q. Ms Knier, I have a few follow-up questions to ask
25 you about some of the answers that you gave. One

1 of the disadvantages of voir dire is we put the
2 jurors in your situation before they have heard
3 the instructions from the Court. And I just want
4 to make sure that -- that you are in a position
5 to follow those instructions if you're selected
6 as a juror.

7 One of your statements was, and I
8 believe it was based on the press conference that
9 you recalled, that you would expect the State to
10 call Mr. Dassey to the stand because your
11 recollection of the press conferences, he would
12 have useful information for them.

13 A. Yes.

14 Q. One of the instructions the Court will give you
15 is that you have to base your decision only on
16 the evidence that's introduced at the trial.
17 Mr. Dassey may or may not testify at the trial,
18 for a variety of reasons.

19 And examples of why we don't allow
20 jurors to base their decision on things outside
21 the courtroom is, if Mr. Dassey testified, the
22 jury won't know whether maybe he didn't make the
23 statements that were reported; maybe the State
24 decided the statements weren't true and decided
25 not to call him; maybe the State decides not to

1 call him for some other reason.

2 If he doesn't testify, the jurors won't
3 know, but the jury will be instructed and have to
4 agree to make their decision only on the evidence
5 that comes in at the trial. Will you be able to
6 do that if you are selected as a juror?

7 A. Yeah, that's what I'm saying. It's to their
8 advantage to pull him up here, if what he's
9 saying is correct. And I don't know what he's
10 all said, but if he has all this knowledge or
11 whatever, it would be to their advantage.

12 Q. All right. But if they don't call him to the
13 stand, you have to base your decision --

14 A. Yeah.

15 Q. -- on what you do hear at trial? You can't
16 speculate on what he might have said?

17 A. Yeah.

18 Q. You can --

19 A. Yeah, I understand that.

20 Q. -- agree to do that? Okay. Finally, I know you
21 indicated in answer to a burden of proof
22 question, that as a juror, correct me if I'm
23 wrong here, I think you were hoping that one
24 side's case or the other would be proved, beyond
25 a reasonable doubt, so that would make your

1 decision easier to make?

2 A. Yes.

3 Q. One of the instructions you will get is that it's
4 the State's burden to show that Mr. Avery is
5 guilty of any particular charge, beyond a
6 reasonable doubt, before you find him guilty. If
7 you find that the State's met its burden, beyond
8 a reasonable doubt, then you can vote guilty.
9 And, likewise, if you're convinced after hearing
10 the evidence, that you are convinced beyond a
11 reasonable doubt he is not guilty, then it's
12 easy, you vote him not guilty.

13 But there's other things that could
14 happen in between. You might hear the evidence
15 as a juror and think, well, you know, based on
16 the evidence, I think there's a chance he is
17 guilty; it's not proof beyond a reasonable doubt
18 that he's innocent, but I don't think, beyond a
19 reasonable doubt, that the proof shows he is
20 guilty either. And if you wind up feeling like
21 that, you have to vote not guilty. Do you
22 understand that?

23 A. Yeah.

24 Q. Is that something you can do if you're selected
25 as a juror?

1 A. Yes.

2 Q. The Court will also instruct the jurors at the
3 end of the trial -- and at this point we don't
4 know if Mr. Avery will testify or not, but let's
5 say that he doesn't testify -- if he doesn't
6 testify, the jury will be instructed that he is
7 not obligated to testify and the jury can't hold
8 that against the defense. That means, as I said
9 before, the jury will have to make its decision
10 just based on the evidence that did come in.

11 And you can't be speculating about
12 saying, well, you know, I don't think the State
13 proved their case, but I sure would have liked to
14 have heard from the defendant, so I don't know.
15 If he -- If he doesn't testify, you can only base
16 your decision on what you did hear; can you do
17 that if you are selected as a juror?

18 A. Yeah, that makes sense.

19 Q. Okay. And the last thing is, and this related to
20 some questions that I believe were asked later
21 pertaining to the credibility of witnesses. And
22 I think I understood you correctly, but I want to
23 make sure that I did.

24 There will be another instruction that
25 will say, that in evaluating the credibility of

1 the witnesses and who you believe, that you can't
2 base it solely on the number of witnesses that
3 each side puts on the witness stand. Because, as
4 the juror, you have the right, if you wish, to
5 say, I find this witness or that witness more
6 credible than even four or five witnesses from
7 the other side. And if you believe that that's
8 the case, then you should follow your own
9 conclusions. Can you do that if you are selected
10 as a juror?

11 A. Mm-hmm. Yes. I'm sorry.

12 THE COURT: All right. We're going to have
13 the Clerk escort you from the courtroom at this
14 time.

15 ATTORNEY FALLON: Excuse me, your Honor, I
16 have a couple follow-ups --

17 THE COURT: All right.

18 ATTORNEY FALLON: -- if I may.

19 THE COURT: Go ahead, Mr. Fallon.

20 ATTORNEY FALLON: Thank you.

21 **VOIR DIRE EXAMINATION**

22 BY ATTORNEY FALLON:

23 Q. Ms Knier, I wanted to follow up on something that
24 Mr. Strang and Judge Willis asked you, if I may.
25 If Mr. Dassey does not appear as a witness, then

1 you seem to have an opinion that he would be more
2 favorable to the State than to the defense.

3 So let me ask this, if he did not appear
4 as a witness in the case, for whatever reason,
5 would you hold that against the State in
6 evaluating the rest of the case --

7 A. No.

8 Q. -- in determining whether there was a proof
9 beyond a reasonable doubt?

10 A. No, you base that on what you hear in court.

11 Q. All right. So the fact that he -- So we
12 wouldn't, then, be stupid, as it were, for not
13 calling them.

14 A. Well, the reason I said that is, if you have all
15 that evidence, then why wouldn't you present it.
16 But that's your own business; I'm not a lawyer.

17 Q. All right.

18 A. But you said that you have to base it on what you
19 hear in court and that's what you base it on.

20 Q. Right. So whether -- If we don't call him or the
21 defense doesn't call Mr. Dassey as a witness, you
22 are not going to hold it against either side if
23 he does not appear --

24 ATTORNEY STRANG: I object to that. I
25 object to that suggestion.

1 THE COURT: I will sustain the objection.

2 ATTORNEY FALLON: Then I'll -- It's another
3 way of asking the general question.

4 Q. If he doesn't appear as a witness, you are not
5 going to hold it against --

6 A. No, I just said that.

7 ATTORNEY FALLON: All right. That's fine.

8 THE COURT: All right. The Clerk will
9 escort you out of the courtroom.

10 (Wherein the juror was excused.)

11 THE COURT: Counsel, any motion from either
12 party? Mr. Fallon.

13 ATTORNEY FALLON: I think we both are
14 agreeing that the juror should be struck for cause.

15 THE COURT: Should be struck for cause?

16 ATTORNEY FALLON: Yes.

17 THE COURT: All right. I will hear both of
18 you.

19 ATTORNEY STRANG: I'm in agreement. I
20 think she knows too much from out of court.
21 She's -- Her exposure, at least to the March 1,
22 March 2 news conferences, or one or the other at
23 least, was fairly intense. We got confusing and
24 somewhat conflicting responses on basic questions
25 here.

1 And, although, I don't think any of us
2 were trying to put words in her mouth, she was
3 very ready to agree with the drift of the
4 question from all of us. But when we -- when we
5 got more open-ended answers, I think they
6 invariably suggested at least cause to strike for
7 an inability to understand and live with the
8 presumption of innocence, the burden of proof,
9 deciding a case only on the evidence presented.

10 Beyond that, as a practical matter, too,
11 I will add that I have real concern about a juror
12 here who would be burning the candle at both
13 ends, as this woman clearly would with
14 employment; in addition, employment in a place
15 where she's going to be barraged with discussion
16 about the trial.

17 Now, I'm not saying a bartender or
18 anybody else here by profession in this instance
19 falls into statutory bias, or even objective
20 bias, but the reality here, with this young
21 woman, is that in the aggregate there are just a
22 great number of risk factors and I think more
23 than adequate to add up to cause to strike.

24 THE COURT: Mr. Fallon.

25 ATTORNEY FALLON: Yes. My concern is a

1 little more specific dealing with the interjection
2 of the Dassey issue. I was not comfortable with the
3 witness' responses both orally and in demeanor wise.

4 I was also concerned by the fact that in
5 terms of the reasons why Mr. Dassey may or may
6 not appear as a witness. Chief among them is the
7 fact that he stands accused of this crime and he
8 has a Fifth Amendment right not to testify.

9 The question or the suggestion that
10 whether the State believes his testimony or not
11 or whether the defense believes his testimony or
12 not, the fact that he is listed on both witness
13 lists; I'm not comfortable at all with the manner
14 in which that issue was dealt with and more
15 importantly and more to the point, with her
16 responses on that. And for that reason, we would
17 ask that she be struck for cause.

18 THE COURT: All right. Based on the
19 concerns regarding the juror's familiarity with the
20 factual background, I'm going to strike her for
21 cause, based on the recommendation of both parties.
22 You know, I would indicate, as far as burden of
23 proof and those types of questions, we're bringing
24 jurors in here who haven't been instructed yet. I
25 didn't find fault with her in that area.

1 ATTORNEY FALLON: No. And I'm glad you
2 brought that up, I was just wondering and I hadn't
3 had a chance to mention this to counsel and I'm
4 beginning to wonder if, before we start our
5 questioning of the jury, as to whether or not we
6 might want to tell them what the general rules are
7 before we do this. It's just an idea. That may
8 speed the process or at least eliminate some
9 potential confusion.

10 It is rather interesting, after all
11 these years, and perhaps I have just been in the
12 practice of law too long and take much too much
13 for granted, but it's quite clear that many of
14 our jurors, hard working, decent, law abiding
15 citizens, unfortunately, don't really have a very
16 good command of the principles in this.

17 And you know, I'm wondering if the
18 manner in which we're going about this is -- is
19 creating more confusion than resolving confusion.
20 So I just throw a suggestion out there. Maybe we
21 might want to tell them what some of these
22 general principles are before we start.

23 THE COURT: All right. I'm not -- To this
24 point, we're in individual voir dire. I'm not going
25 to go through lengthy instructions before each

1 juror. I would suggest that counsel can assist in
2 this regard by not kind of deliberately leading them
3 down a wrong path or an open path, or leading them
4 to believe that they have the right to use other
5 rules to decide the case.

6 But I think it's, you know, to have --
7 to get a prospective juror who isn't familiar
8 with the rules that they have to follow, to start
9 saying, well, yeah, I would like to hear from the
10 defendant. Well, that's not unusual for someone
11 who's not familiar with the rules of court.

12 In many cases, the jurors have to be
13 instructed that the defendant doesn't have to
14 testify and they are not permitted to draw an
15 adverse inference from that. And I'm not sure
16 how productive it is to ask them a bunch of
17 questions about it before they know what the rule
18 is.

19 It's important that they understand the
20 rule to be sure, but I'm not sure that it
21 necessarily raises significant red flags to have
22 them, when they are unfamiliar with the rule, to
23 start out feeling otherwise.

24 At any rate, let's take our morning
25 break at this time and we'll come back and start

1 with the next juror.

2 ATTORNEY STRANG: When do you want us back?

3 THE COURT: Let's say 10 minutes after 11.

4 We'll have a 13 minute break.

5 (Recess taken.)

6 THE COURT: All right. At this time we'll
7 bring the next juror, Gerald Shedal, into the
8 courtroom. Go ahead, Linda. Please raise your
9 right hand and we'll have the Clerk administer the
10 oath.

11 (Juror sworn.)

12 THE CLERK: Please be seated.

13 THE COURT: All right. Is it Mr. Shedal?

14 MR. SHEDAL: Yes.

15 THE COURT: Mr. Shedal, you have already
16 completed a jury questionnaire in this case. Today
17 we're moving on to the next phase of jury selection
18 which is the individual voir dire process. The
19 attorneys for each of the parties will have a
20 chance, this morning, to ask some follow-up
21 questions to the questions that are on the
22 questionnaire.

23 I can tell you that should you be
24 selected as a juror in this case, the jurors will
25 not be sequestered during the trial; that means

1 you will be able to return home every evening
2 after the proceedings are done for the day. We
3 will continue to require the jurors not gain any
4 information about the case through any of the
5 news media; that is, newspaper, radio,
6 television, or the internet; and that jurors not
7 talk to anyone about the case.

8 I can also tell you, that although the
9 proceedings today are open to the public, we do
10 not allow cameras in the courtroom during the
11 voir dire process. And the news media is
12 prohibited from disclosing the names of jurors
13 during the course of the trial.

14 In addition, I can tell you that the
15 jurors who are selected to hear this case will
16 not be on camera at any point during the trial
17 itself.

18 If you are still part of the jury panel
19 after the questioning today, you will get a
20 telephone notice as to when to report back to
21 court, later this week. Mr. Fallon, you may
22 begin.

23 **VOIR DIRE EXAMINATION**

24 BY ATTORNEY FALLON:

25 Q. Good morning, Mr. Shedal.

1 A. Good morning.

2 Q. My name is Tom Fallon, I'm an Assistant Attorney
3 General with the Wisconsin Department of Justice
4 and I'm one of the prosecutors on this case. To
5 my left is Mr. Ken Kratz, the District Attorney
6 from Calumet County and lead prosecutor here.
7 Good morning and thank you for coming.

8 There were a couple of things in your
9 questionnaire that has peaked the interest of
10 Court and counsel and we would like to talk with
11 you about them, to assist us in selecting a jury
12 today. I guess the matter of primary interest,
13 at least for the moment, is that you have
14 expressed that you are at least somewhat familiar
15 with several members of Mr. Avery's family; is
16 that correct?

17 A. That's correct.

18 Q. All right. And you work at a place called
19 Federal Mogul here in Manitowoc?

20 A. Correct.

21 Q. Forgive me, but I'm not familiar with that
22 business, can you tell me what it is?

23 A. Sure. It's a factory that we make piston rings
24 for the automotive market.

25 Q. You make what?

1 A. Piston rings for the automotive market.

2 Q. Oh, piston rings. Okay. So is your association
3 with members of his family because of they are in
4 the salvage business and you are in the
5 automotive parts; is that the connection?

6 A. No, that is not. There's members of his family
7 that work by us.

8 Q. That work with you. Okay. And which members of
9 his family work with Federal Mogul?

10 A. There's Marie Avery. She used to work for me,
11 but now she just moved to the weekend, to the
12 second shift. And then there's Bobby Dassey.

13 Q. Okay.

14 A. He works the weekend shift there. He was working
15 for me in the past. And then there is one other
16 one, sorry, I can't remember her name. She works
17 at the other plant down the road.

18 Q. The other plant is -- you say you couldn't
19 remember the name. Carla?

20 A. Carla. Right.

21 Q. All right. Did you at some time work with her
22 directly?

23 A. No, I did not.

24 Q. All right. Do you work with, I think you said
25 Marie it was?

1 A. Right.

2 Q. And with Bobby?

3 A. Right.

4 Q. All right. And you have worked directly with
5 them?

6 A. Yes, I have.

7 Q. Do you know them fairly well?

8 A. No, no, not really.

9 Q. All right.

10 A. They got hired. They put in their -- like their
11 probationary period on my shift and then they
12 went -- they moved on to the next shift that they
13 got hired for.

14 (Loud noise.)

15 THE COURT: We have got a battery. That's
16 what happens when the battery goes in the
17 microphone. Don't be alarmed.

18 Q. (By Attorney Fallon)~ As a result of your
19 familiarity with these three family members --
20 Well, let me ask a couple of first preliminary
21 questions. Have you had any discussions at all
22 regarding this case, with them?

23 A. No, I have not and they never talked about it. I
24 just kind of put two and two together.

25 Q. All right. And meaning that you figured out that

1 they were actually related to him; is that what
2 you are saying?

3 A. Right.

4 Q. Okay.

5 A. Well, the one -- the one I didn't know he was
6 related to until I filled out that questionnaire.
7 Marie, I didn't know if she was related for sure
8 or not until I filled that out, then I seen her
9 name on there, then I knew it was.

10 Q. All right. And now you actually worked with
11 Marie and Bobby; is that correct?

12 A. Right.

13 Q. Now, during the -- How long did you work with
14 them?

15 A. Well, I'm a supervisor there and throughout the
16 day, I would say maybe 15 minutes a day.

17 Q. All right.

18 A. Not a real lot but, yes, I did.

19 Q. Did you get to know them fairly well?

20 A. No.

21 Q. Did you have any personal conversations with them
22 other than, you know, beyond the point of the
23 business, as it was?

24 A. No.

25 Q. All right. All right. Now, in answer to

1 question -- toward the end of the questionnaire,
2 you were asked: Is there anything or any reason
3 at all, however personal or private, that makes
4 you feel you should not serve as a juror on this
5 case, or that if selected to serve you could not
6 be fair and impartial? And you first said, no,
7 you crossed that out and answered yes. And you
8 added, I work with Steven's relatives and then
9 you said the number three, presumably that means
10 that's the three relatives you work with?

11 A. Right.

12 Q. All right. Tell us why, is that your opinion,
13 your feeling today?

14 A. Yeah, pretty much.

15 Q. All right. Let's talk a little bit about that.
16 Why would that make you uncomfortable --

17 A. Well --

18 Q. -- what concerns does it raise?

19 A. Well, I don't know -- I don't know what to --
20 Just say if it would, whatever way it went, I
21 don't know how they would take it toward me.

22 Q. Okay.

23 A. I guess that's about the only reason.

24 Q. Well, you think that they might feel -- some
25 animosity for you --

1 A. Right.

2 Q. -- some anger?

3 A. That's pretty much what I'm saying right now.

4 Q. All right. I mean, do you have any fears of any
5 type of family retribution?

6 A. No, no.

7 Q. Okay.

8 A. Not at all.

9 Q. All right. Do you work with them regularly?

10 A. No, they are -- they no longer work for me.

11 Q. All right. So they are entirely in different
12 shifts with different projects and things?

13 A. Correct. Right.

14 Q. All right. Now, if any of them were to appear as
15 witnesses in this case, would that create some
16 problems for you?

17 A. Uh-uh, I don't feel it would.

18 Q. All right. Why would that not create any
19 problems?

20 A. I guess I don't know how to answer that. I don't
21 know.

22 Q. All right. But if you were to -- So, it's not so
23 much that you know them from work, that if you
24 feel you could evaluate their testimony the same
25 as you would any other witness?

1 A. Sure.

2 Q. All right. So your sole concern here is you are
3 a little bit worried about how they may feel
4 about you should, for instance, you were to enter
5 a verdict of guilty?

6 A. Right.

7 Q. Do you have that feeling if you were to enter a
8 verdict of not guilty?

9 A. Yeah, I would have to say the same.

10 Q. All right.

11 A. Both ways.

12 Q. Could you kind of tell us a little bit why you
13 have that feeling?

14 A. Well, I have been -- I just heard this through
15 the grapevine at work, that other people, that
16 someone else did talk to Bobby in the past and
17 they -- they filled me in on a couple of things.
18 And ...

19 Q. All right. I want to make sure that I can follow
20 you here. You are saying that someone you know
21 has spoken to Bobby Dassey?

22 A. Mm-hmm.

23 Q. Presumably about something related to the case?

24 A. Right. And then I heard --

25 Q. And then --

1 A. -- from that person.

2 Q. And it was passed on to you?

3 A. Right.

4 Q. Do you recall today what that was?

5 A. Geez, basically that -- that -- that his brother,
6 Brendan --

7 Q. Okay.

8 A. -- wasn't involved.

9 Q. Was or was not?

10 A. Was not.

11 Q. All right. And anything else that this person
12 otherwise had informed you of?

13 A. No, I don't think.

14 Q. All right.

15 A. Uh-uh.

16 Q. One second.

17 (Discussion between attorneys.)

18 Q. (By Attorney Fallon)~ Is there any -- any other
19 information that you have from an outside source
20 regarding what may or may not have happened in
21 this case involving either Steven Avery or
22 Brendan Dassey?

23 A. No. I don't know of anything else, no.

24 Q. All right. So what you are suggesting, then, is
25 that you had this one conversation with, I take

1 it a fellow employee?

2 A. Right.

3 Q. Who supposedly talked to Bobby Dassey, at least
4 about some aspect of this case. And the one bit
5 of information that you recall coming to your
6 attention was what you have told us?

7 A. Right.

8 Q. All right. Anything else at all, any other bit
9 of information?

10 A. Uh-uh, nothing.

11 Q. Nothing. All right. Okay. How long have you
12 worked at Federal Mogul?

13 A. Twenty-four years.

14 Q. And I see that you are a supervisor of
15 approximately 30 employees?

16 A. Correct.

17 Q. How long have you been in a supervisory role?

18 A. Eighteen, nineteen years.

19 Q. Okay. And I take it you are a -- Are you a life
20 long resident of Manitowoc?

21 A. Well, I actually live in Newton.

22 Q. I mean, Manitowoc County.

23 A. Manitowoc County, yes, I am.

24 Q. Yeah, okay. Okay. Have you -- Let me first ask,
25 you checked your news sources as radio,

1 television and newspapers as your primary sources
2 of information. Of those three, where do you get
3 most of your news?

4 A. I would have to say probably the TV.

5 Q. All right. And any particular news channels that
6 you watch?

7 A. Channel 5.

8 Q. You watch Channel 5. All right. Have you
9 watched the coverage of this case on Channel 5?

10 A. Bits and pieces of it. The majority of the time
11 when I do get a chance to watch it is usually
12 like on a Friday morning.

13 Q. All right.

14 A. Other than that, not really, only because I'm at
15 work at that time. I start work at 4:30 in the
16 morning.

17 Q. I was just going to ask, what are your hours?

18 A. I work from 4:30 to 4:00, 12 and a half hours.

19 Q. Okay. And how many days a week?

20 A. Four days a week, Monday through Thursday.

21 Q. Okay. When -- Do you watch the evening news at
22 all after you get home?

23 A. No, most of the time when I get home I hit the
24 couch and I take a nap.

25 Q. All right. Have you followed any of the news

1 coverage, any of the newspaper coverage of the
2 case, Sunday papers maybe or ...

3 A. Yeah, here and there I pick up bits and pieces of
4 it, yes.

5 Q. All right. When was the last time you recall
6 either reading something in the newspaper or
7 listening to a news broadcast involving the case?

8 A. This morning I looked at the Herald-Times
9 Reporter. I seen the headlines from yesterday.

10 Q. All right.

11 A. That's what I seen.

12 Q. You saw the headlines. Did you read any of the
13 article?

14 A. Yeah, that -- basically that it's in the process
15 of -- probably about within the first paragraph.

16 Q. All right.

17 A. Yup.

18 Q. And did you read anything more than the
19 paragraph?

20 A. No.

21 Q. All right. Have you listened to anything on the
22 television recently about the case?

23 A. No.

24 Q. What was the last thing -- Other than what you
25 saw from the headline in that first paragraph

1 this morning; what was the last thing you recall
2 hearing about the case or reading about the case
3 before this morning?

4 A. I would have to say it goes back to last week,
5 Tuesday, after the jury selection has been
6 started.

7 Q. Okay.

8 A. I did read that.

9 Q. You mean after you came in and filled out the
10 questionnaire?

11 A. Right.

12 Q. So the next morning you read the paper or
13 listened to the news broadcast?

14 A. No, I did read the paper.

15 Q. You did read the paper on that Tuesday about the
16 selection process?

17 A. Yeah.

18 THE COURT: Excuse me, Mr. Fallon.
19 Counsel, can you approach.

20 ATTORNEY STRANG: Sure.

21 (Side bar taken.)

22 ATTORNEY FALLON: Your Honor, I don't have
23 any more questions.

24 THE COURT: Mr. Shedal, at this time the
25 Clerk will escort you out.

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MR. SHEDAL: Okay.

(Wherein the juror was excused.)

THE COURT: I will indicate for the record at this time I did not ask Mr. Strang if he had any questions because when I called counsel to the bench I was informed that the parties would be jointly requesting to excuse this juror.

And based on the answers given, both the failure to follow the Court's admonition about not reading anything further about this case and the answers concerning the defendant's contacts with members of the defendant's family at work, plus hearing things about this case, I believe there's more than an adequate basis for excusing the juror. And I believe that's the joint recommendation of the parties as well. Correct, counsel?

ATTORNEY FALLON: That's correct, Judge, from the State.

ATTORNEY BUTING: That's correct.

ATTORNEY FALLON: We wanted to flush that out.

THE COURT: Very well, the Court will order this juror excused and we will move on to Nathan Klein.

1 ATTORNEY STRANG: Judge, just so you know,
2 the way we're doing it here is I do two, he does
3 two, I do two, he does two. So he's got the next
4 two.

5 THE COURT: All right. Mr. Klein, please
6 remain standing and the Clerk will administer the
7 oath to you.

8 THE CLERK: Please raise your right hand.
9 (Juror sworn.)

10 THE CLERK: Please be seated.

11 THE COURT: Mr. Klein, you have previously
12 completed a juror questionnaire in this case. This
13 morning we're moving on to the next phase of the
14 jury selection process which is known as voir dire.
15 The attorneys will have a chance to individually ask
16 you some follow-up questions to the information on
17 the questionnaire.

18 I can tell you that the jurors selected
19 to hear this case will not be sequestered; that
20 means the jurors will be permitted to return home
21 each day and spend the rest of the day at home.
22 We're doing that because of the order to the
23 jurors not to follow any news media accounts
24 concerning this case and not to discuss it with
25 anyone during the course of the trial.

1 I can also inform you that although the
2 voir dire proceedings today are open, no cameras
3 are permitted in the courtroom today and the news
4 media is prohibited from disclosing the names of
5 the jurors in news media accounts of this matter.

6 Finally, should you be selected to serve
7 as a juror in this case, the cameras are not
8 permitted to take shots that identify who the
9 jurors are at the trial itself.

10 If you are continued for jury duty after
11 this morning's proceedings, you will receive a
12 telephone call later this week letting you know
13 when to report back to Court. Mr. Fallon, at
14 this time you may begin.

15 ATTORNEY FALLON: Thank you, your Honor.

16 **VOIR DIRE EXAMINATION**

17 BY ATTORNEY FALLON:

18 Q. Good morning, Mr. Klein.

19 A. Good morning.

20 Q. My name is Tom Fallon and I'm an Assistant
21 Attorney General with the Wisconsin Department of
22 Justice. I'm one of the prosecutors in this
23 case. To my immediate left is Mr. Ken Kratz, the
24 District Attorney from Calumet County and the
25 lead prosecutor in this case. Good morning and

1 thanks for coming.

2 We would like to ask a few follow-up
3 questions about some of the information you
4 provided last week in the questionnaire. And
5 after I'm done, Mr. Buting will ask a few
6 questions of you and then perhaps the Court.

7 I would like to begin a little bit, I
8 think first off, with your employment. I see
9 that you are currently employed at the Burger
10 Boat Company?

11 A. Correct.

12 Q. All right. And you are a carpenter?

13 A. Correct.

14 Q. All right. And how long have you been a
15 carpenter?

16 A. Two years at Burger Boat.

17 Q. I'm sorry?

18 A. Two years at Burger Boat.

19 Q. Two years. And so would you say your vocation as
20 it were is woodworking then?

21 A. Yes.

22 Q. And how long have you been involved in that
23 pursuit?

24 A. Since high school.

25 Q. All right. And how long would that be, 7, 8

1 years?

2 A. Yeah.

3 Q. Now, am I correct, I wanted to follow up with one
4 of your other activities, some may call it
5 employment, some may call it volunteer work. But
6 I see that there's a notation here that you do
7 some volunteer firefighting?

8 A. That is correct.

9 Q. With the Two -- Town of Two Rivers?

10 A. Yup.

11 Q. How long have you been involved in that?

12 A. The past four years.

13 Q. Four years. And have you actually had occasion
14 to go out and use those skills and fight some
15 fires?

16 A. Yes, many, and accidents.

17 Q. All right. And what other duties as a volunteer
18 fireman are you occasionally called upon to do,
19 other than fight fires or respond to accidents?

20 A. Sometimes helping out with the community with
21 searches such as this case.

22 Q. Right.

23 A. Do volunteering for Salvation Army to ring the
24 bells at local establishments.

25 Q. Okay.

1 A. That's about it.

2 Q. All right. Do you enjoy that work?

3 A. Yes.

4 Q. All right. The reason I ask is, the question you
5 gave and as you have just indicated now,
6 volunteer searches much like were employed in
7 this case. So let me ask you a little bit about
8 that. You indicated in your questionnaire that
9 you had planned on assisting in the search for
10 Teresa Halbach since apparently other members of
11 your department did participate?

12 A. That's correct.

13 Q. All right. And if I may, what happened that
14 resulted in your not participating?

15 A. It happened to fall on a weekday, the day that we
16 were gathering to go and I was not able to. You
17 have enough vacation to use to go out and do the
18 search.

19 Q. So you had your other work responsibilities?

20 A. Correct, for Burger Boat Company.

21 Q. At the Burger Boat, is that ...

22 A. Yes.

23 Q. Okay. Since you missed out on that opportunity,
24 if you -- if it had fallen on let's say a
25 vacation day or a holiday of sorts; would you

1 have participated then?

2 A. Yes.

3 Q. Did you have any discussions or -- with any of
4 those of your colleagues who did participate in
5 the search?

6 A. Briefly, yes, as to what, at this time I don't
7 really recall.

8 Q. Okay. You don't recall any discussion or
9 anything you had with them regarding what they
10 may have seen, or done, or heard, or any of that?

11 A. Just one story of a possum or some type of animal
12 that was inside a vehicle that one of the guys
13 stirred up and got startled by it, but.

14 Q. All right. So --

15 A. More or less small talk and nothing of, you know,
16 major.

17 Q. Small talk and humorous anecdotes?

18 A. Right.

19 Q. And not much substance?

20 A. Correct. Yes.

21 Q. Okay. And how many of those conversations do you
22 think you had?

23 A. A few, less than five I will say.

24 Q. Less than five?

25 A. Yes.

1 Q. And when was the last time you would have talked
2 with any of your colleagues about that search or
3 about their role in the search for Teresa
4 Halbach?

5 A. Talking was probably done a week after it
6 happened.

7 Q. All right.

8 A. Everything settled down at that time.

9 Q. You haven't had any recent discussions with any
10 of those colleagues about the case?

11 A. No.

12 Q. Okay. Was there anything about the -- even the
13 humor part of it, was there anything about that
14 that makes you wonder or doubt in your mind
15 whether you could be fair and impartial in this
16 case, if you were selected as a juror?

17 A. Not necessarily, no.

18 Q. I'm sorry, not necessarily?

19 A. No. No.

20 Q. Okay. All right. Well, I would like to talk a
21 little bit about the media coverage of this case
22 and your familiarity with it. Where would you
23 say you get most of your news from; radio,
24 television?

25 A. Radio.

1 Q. Radio?

2 A. Yes.

3 Q. And why would that be?

4 A. Radio is played all day at work, every day.

5 Q. And what hours do you normally work?

6 A. 7 till 3:30.

7 Q. And is that a five day a week job?

8 A. Yes.

9 Q. Monday through Friday?

10 A. Correct.

11 Q. Okay. When you get home from work, do you watch

12 television, or do you do chores, or have some

13 fun, or what do you do in your off hours?

14 A. I do chores.

15 Q. All right. And while the chores are being done,

16 do you listen to the radio or listen to the

17 television while you are doing things or not?

18 A. Usually the television is on, yes.

19 Q. All right. Is it on news channel, sports channel

20 or what generally is on in the background as it

21 were?

22 A. Cops, actually.

23 Q. Cops.

24 A. Yeah.

25 Q. Okay. All right. What can you recall now about

1 the coverage of this case? Is there any
2 particular information, particular story or fact
3 that kind of, you know, sits in your mind right
4 now.

5 A. Burning barrel.

6 Q. The burning barrel?

7 A. Yup.

8 Q. All right. What else sticks in your mind?

9 A. The camera, the burning barrel, the vehicle, the
10 nephew.

11 Q. Okay. What fact or what information about the
12 nephew sticks in your -- in your memory right
13 now?

14 A. The -- His admittance to part of this.

15 Q. All right. Are you -- Can you recall any of the
16 details or any of the information that he -- that
17 is attributed to him?

18 A. Meaning as what he admitted to?

19 Q. Right.

20 A. The cutting of hair, taking part of the actions.

21 Q. Okay. Do you remember what he supposedly had
22 done?

23 A. I believe I remember him saying that he had cut
24 portions of her hair.

25 Q. Okay.

1 A. Would you like me to go into more detail.

2 Q. Well, it would be helpful for us, we're trying to
3 have an idea as to how familiar are you may or
4 may not be with some of the facts in the case.

5 A. Taking part in the rape of her.

6 Q. Okay. Anything else that you recall?

7 A. Them are the ones that stand out the most to me.

8 Q. Okay.

9 A. Oh, and the school bus driver seeing her after
10 3:30.

11 Q. Okay. And is the TV the primary source of that
12 information, or is that the radio, or is it fuzzy
13 in your head?

14 A. I couldn't tell you exactly which was for what.

15 Q. Okay.

16 A. But I would say 75 percent radio, 25 percent
17 television.

18 Q. Okay. Now, as a result of that information, you
19 were asked some questions in the questionnaire as
20 to whether or not you formed any opinion based on
21 the information that was available in the media.
22 And you answered: It's hard to say, the news is
23 so one-sided. One should hear both sides. And
24 the nephew's confession doesn't help him.

25 When you say, it doesn't help him, are

1 you referring to Mr. Dassey or Mr. Avery?

2 A. Mr. Avery.

3 Q. All right.

4 (Court reporter asked him to repeat.)

5 A. Mr. Avery.

6 Q. Now, can you elaborate on that, when you say the
7 news is so one-sided, what do you mean by that?

8 A. A lot of times when the news would start, you
9 would see the picture of Steven Avery with the
10 black and white striped jail suit.

11 Q. Right.

12 A. Almost implying that he's guilty already, before
13 the Court has done their thing.

14 Q. Okay. So what did you think about that, is that
15 fair or unfair?

16 A. Very unfair, I believe.

17 Q. Okay. Well, tell us about that, why is that
18 unfair?

19 A. Because it's giving the public the presumption
20 that he is already guilty.

21 Q. All right. And he's entitled to the presumption
22 of innocence, correct?

23 A. Right. Entitled to a fair trial.

24 Q. Right. And he remains innocent until the State
25 proves him guilty, beyond a reasonable doubt; is

1 that right?

2 A. That's correct.

3 Q. All right. And if you were selected as a jury
4 person in this case, would you be able to accept
5 that principle and apply it as the Judge
6 instructed you?

7 A. Yes.

8 Q. All right. Now, do you expect Mr. Avery to prove
9 anything in this case?

10 A. Yes. Yeah, I would.

11 Q. All right. And what would that be? What do you
12 think he needs to prove?

13 A. To prove that he is not the guilty one of this as
14 to --

15 Q. Okay. If the Court were to tell you and I would
16 imagine, in fact, I'm quite confident the Court
17 will tell you that Mr. Avery doesn't have to
18 prove anything and that only the State, the only
19 party with a burden of proof is the State. And
20 the only thing that has to be proved is whether
21 he is guilty, beyond a reasonable doubt. Do you
22 understand that?

23 A. Yeah.

24 Q. All right. And if, for instance, Mr. Avery chose
25 not to present any evidence and just simply

1 picked apart the State's case, if you were not
2 satisfied, beyond a reasonable doubt, of his
3 guilt, would you vote for not guilty? Even if he
4 did not put on any case, he just criticized the
5 State's case.

6 A. It would be difficult to not hear his side of the
7 story if he was --

8 Q. All right.

9 A. -- not to.

10 Q. And if the Court instructed you that they don't
11 have to present any evidence, that they may just
12 simply criticize the State's case and that would
13 be it; would you still be able to follow that
14 direction?

15 A. As long as the solid evidence is brought forward
16 and can be proven.

17 Q. All right. So in other words, if the State does
18 prove to you, beyond a reasonable doubt, you
19 would vote that he was guilty?

20 A. I guess, yes. Yes.

21 Q. Okay. In answer to a question regarding
22 scientific evidence, do you have any special
23 interest in any type of scientific analysis such
24 as fingerprint, hair, or DNA; you indicated yes.
25 And then in your description, you said not to

1 pursue it, but in court it is very dependable.

2 Can you tell us what you mean by that?

3 A. It's factual. It's 100 percent correct. If you
4 can scientifically prove it as to what it is,
5 where it is, when it happened, that's cold, hard
6 evidence. In my opinion, that can make or break
7 a case. It will tell you whether you are guilty
8 or not.

9 Q. All right. So are you suggesting that as someone
10 who would be asked to evaluate and weigh the
11 evidence, you would give greater weight to the
12 scientific evidence because you think it's more
13 accurate than say testimony from witnesses?

14 A. Yes.

15 Q. Okay. What about the people who are presenting
16 the evidence, the scientific evidence; do you
17 find them more believable than someone say who is
18 not a scientist or a doctor?

19 A. Yes.

20 Q. Why would that be?

21 A. More credible. They have more at risk.

22 Q. And is that because they have more information
23 regarding the topic they are talking about or
24 just because they are a scientist?

25 A. Because they know more about it in general, as a

1 whole. I mean, it's -- it's what they do.

2 Q. All right. Well, what would happen, in your
3 mind, if you had two scientists who disagreed?
4 They'd run the same test and one scientist says,
5 well, I think it's A and the other guy says, no,
6 I think it's B; what do you do with that?

7 A. Get some more scientists.

8 Q. I'm sorry.

9 A. Get some more scientists.

10 Q. Get some more scientists. Well, that's a good
11 answer, but let's assume for the sake of our
12 discussion that resources are limited and we
13 can't just run out and get another scientist, so
14 how would you evaluate their testimony?

15 A. I guess you would have to go to the next best
16 thing, a step below --

17 Q. Okay. And what do you think?

18 A. -- go from there.

19 Q. What would that be?

20 A. Any other type of evidence or eyewitness,
21 whatever the case may be, I mean, the next best.

22 Q. Well, I guess what I'm driving at here is, would
23 you be able to evaluate the scientist's testimony
24 the same way you evaluate the testimony of the
25 lay witnesses to make a determination as to who

1 is more credible or whose theory carries the day?

2 A. Yes. I mean, one will obviously make more sense
3 to one person than another.

4 Q. All right. You indicated also in your
5 questionnaire that on one occasion you witnessed
6 a hit-and-run accident and filed a report; is
7 that correct?

8 A. Correct.

9 Q. Are you aware as to how that may or may not have
10 turned out?

11 A. No.

12 Q. All right. You never received any more
13 information or any feed back on your ...

14 A. Nope.

15 Q. Okay. How did you feel about that?

16 A. Kind of hurt in a way, actually, that a citizen
17 takes time out of his day to pursue a suspect
18 that struck a school bus and kept going.

19 Q. Okay.

20 A. And I followed the individual to their residence
21 or wherever they ended up parking and the police
22 did come and I filed a report with them and that
23 was the last I ever heard of it.

24 Q. All right. So you don't know if the particular
25 person was ever prosecuted and convicted, or

1 whatever?

2 A. Nope, I have no idea.

3 Q. Well, since you don't know the outcome, let me
4 ask this; the fact that no one advised you as to
5 what was happening or what occurred as a result
6 of your report, does that create some concern for
7 you in terms of dealing with law enforcement or
8 other witnesses that may appear in this case?

9 A. No, I don't believe it has any bearing on this.

10 Q. All right. Now, you indicated you have a cousin
11 who's a law enforcement officer?

12 A. Yeah, Allouez or Green Bay or ...

13 Q. I'm sorry?

14 A. In Green Bay, Brown County.

15 Q. Brown County?

16 A. Something like that.

17 Q. You gave us his name here, is he a Brown County
18 sheriff or is he a police officer in one of the
19 municipalities?

20 A. I think he is a sheriff. I'm not 100 percent on
21 it.

22 Q. Okay.

23 A. I don't have regular contact with him.

24 Q. All right. So he wouldn't necessarily -- He is
25 not family, or is he?

1 A. He's -- he's a cousin of mine.

2 Q. A cousin.

3 A. But we're not, you know, real close that we see
4 each other, anything like that.

5 Q. Okay.

6 A. Once a year.

7 Q. Special holidays you might run into him?

8 A. Right.

9 Q. Okay. So you don't have occasion to talk with
10 him about his work?

11 A. No.

12 Q. Okay. Now, you also expressed some familiarity
13 with a case involving a co-worker who apparently
14 was convicted of involuntary manslaughter?

15 A. Yes. Yes.

16 Q. How long ago did that happen?

17 A. I worked with this individual probably six, seven
18 years ago. And I'm sure this case happened well
19 before that, probably when he was younger.

20 Q. Oh.

21 A. It's nothing that was recent, but that's the
22 closest thing I could think of to this question.

23 Q. Okay. So it was not like that it happened when
24 you were working together and he had to serve
25 some time?

1 A. No.

2 Q. This was something he told you about after the
3 fact?

4 A. Yes. Yes.

5 Q. All right. Did that have any particular lasting
6 impression on you in terms of the justice system
7 at all?

8 A. No.

9 Q. Did he think he was treated fairly?

10 A. I never really asked him --

11 Q. All right.

12 A. -- or nor was it spoke of too much, you know.

13 Q. All right. Did you have any impression from him
14 as to what -- how he might feel about that
15 experience, based on the discussion you had with
16 him?

17 A. Like I say, I felt sorry for him more than
18 anything.

19 Q. All right. Any chance in your mind that that
20 experience, as related to you by the co-worker,
21 would have any affect on your ability to be a
22 juror in this case?

23 A. No.

24 Q. Do you have any friends, or relatives, or anybody
25 that works in the news business?

1 A. No.

2 Q. Okay. Do you own a computer?

3 A. Yes.

4 Q. All right. Do you use the internet for a news
5 source for you?

6 A. No. No.

7 Q. All right. And what do you use your computer
8 for?

9 A. Searching for items, information and email.

10 Q. Okay. Do you ever use it to buy and sell
11 anything?

12 A. No. No.

13 Q. Pay bills or anything?

14 A. Rarely.

15 Q. Okay. Have you ever heard of a publication
16 called the *Auto Trader Magazine*?

17 A. Yes.

18 Q. Do you read it or use it from time to time?

19 A. Yes --

20 Q. You do?

21 A. Yes --

22 Q. I'm sorry, I don't mean to --

23 A. Yes, from time to time.

24 Q. All right. Have you ever purchased a vehicle, or
25 sold a vehicle, or anything with the use of *Auto*

1 *Trader?*

2 A. I don't believe so.

3 Q. All right. Have you used it to find, perhaps, a
4 vehicle that might be of interest to you?

5 A. Yes and compare prices and milage.

6 Q. Okay. Do you know any of the people that work
7 for that magazine by any chance?

8 A. No.

9 Q. Okay. As a carpenter and a woodworker at the
10 company, I would imagine that shop safety and
11 equipment safety might be important
12 considerations for you?

13 A. On a daily basis, yes.

14 Q. All right. In your capacity as a carpenter have
15 you ever participated in writing up any safety
16 standards or guidelines, or things of that sort,
17 to help manage the production of products?

18 A. No, never to write up anything or put into
19 effect.

20 Q. All right. Have your opinions ever been sought
21 by anyone who was putting together some kind of
22 safety guideline or policy for say the use of a
23 piece of equipment, or the creation of a
24 particular product?

25 A. Yes, yes. I'm on the safety committee at Burger

1 Boat Company.

2 Q. You are.

3 A. We meet monthly and always discussion on what we
4 can do better or how to make things safer.

5 Q. Do you enjoy participating in that type of work?

6 A. Yes, it reflects of my volunteer firefighting and
7 first responder training.

8 Q. Okay. Do you watch movies at all in your spare
9 time or?

10 A. Not many.

11 Q. Not many, okay. Do you consider yourself a
12 detail oriented guy or more of a big picture
13 person?

14 A. Very detail oriented.

15 Q. Okay. Any particular examples you can give us?

16 A. My job.

17 Q. All right. Are you -- Let's talk about that, are
18 you a rough carpenter or a finish carpenter?

19 A. Finish carpenter.

20 Q. Okay. And your carpentry work has been primarily
21 as a finish carpenter?

22 A. Yes. I had rough carpentry experience.

23 Q. Sure.

24 A. Plenty of that, yes, but ...

25 Q. Okay. And the carpentry work that you are doing,

1 is it -- can you give us some examples of the
2 types of work you do?

3 A. I'm a level three carpenter at Burger Boat, top
4 level. And right now I am running the pilot
5 house on one of the boats that we're putting out.
6 It's kind of a one person room where the boat is
7 controlled from. So I'm in the process of doing
8 that entire room by myself.

9 Q. Okay.

10 A. Which is a --

11 Q. It's a big project?

12 A. I have a big responsibility.

13 Q. Sure. Now, do you occasionally supervise other
14 help or is this pretty much your show?

15 A. I supervise other help, yes.

16 Q. You do.

17 A. Yes.

18 Q. Okay. Do you enjoy the supervisory role?

19 A. Yes, makes me feel good that I'm teaching
20 somebody else something.

21 Q. All right. So you like that instructor aspect of
22 it?

23 A. To a point, yes.

24 Q. A little frustrating I imagine from time to time?

25 A. It can be, yes.

1 Q. Do you have a tendency to exact the same
2 standards of professionalism from those you
3 supervise as you do from yourself?

4 A. Yes.

5 Q. All right. As I recall, you do not have any
6 prior jury experience; is that correct?

7 A. That's correct.

8 Q. All right. Is there anything about the jury
9 process or being a juror who's asked to
10 deliberate on guilt or innocence of another
11 person, is there anything about that process you
12 think might be a problem for you, that you might
13 not be able to perform that duty?

14 A. That duty in itself, if I were to be selected, it
15 wouldn't be a problem.

16 Q. Okay.

17 A. I mean, I would step up and do it but, overall, I
18 prefer not to.

19 Q. Not to have to do it?

20 A. Yes.

21 Q. But if you were called upon to perform the
22 service, you would be able to do it?

23 A. Yes, I would.

24 Q. Okay. That's fair enough.

25 ATTORNEY FALLON: I will pass the juror.

1 THE COURT: Mr. Buting.

2 ATTORNEY BUTING: Thank you, Judge.

3 **VOIR DIRE EXAMINATION**

4 BY ATTORNEY BUTING:

5 Q. Mr. Klein, I'm Jerome Buting. This is Attorney
6 Dean Strang. And we're representing Mr. Avery.
7 Okay. You probably saw us last week briefly, but
8 this is our first chance to talk. I see you have
9 got a six week old little girl?

10 A. Yes, that's correct, seven now.

11 Q. Are you getting any sleep?

12 A. A couple hours a night, yes.

13 Q. She's still keeping you up quite a bit?

14 A. Yeah.

15 Q. Would that be a problem if you were selected on
16 the jury, do you think?

17 A. It could be for my wife's sake more, without me
18 there being able to help as much or throughout
19 the day.

20 Q. But do you think you would be able to at least
21 get a night's sleep?

22 A. I could get enough sleep to function, yes, I
23 would not be sleeping --

24 Q. Okay.

25 A. -- during the day.

1 Q. A lot of us have been through that and it's
2 sometimes very difficult to get enough sleep to
3 be functioning during the day, but you think you
4 could do that?

5 A. Yes.

6 Q. Okay. Let me ask you, I'm going to go over a
7 number of things that Mr. Fallon already did, but
8 I have some others as well. The information that
9 you have learned from the media, radio or
10 whatever, you also mentioned, though, that you
11 have learned information -- you get news from
12 co-workers?

13 A. Correct.

14 Q. What kind of information about this case have you
15 gotten from them, do you think?

16 A. Nothing, you know, greater than what was
17 expressed on the news the day before, just small
18 talk at work, the next day, after the news was
19 published.

20 Q. Do people sort of speculate about various
21 theories of what happened?

22 A. Yes. There's speculation of guilty and not
23 guilty. Kind of depends on the day or what was
24 last broadcast on the news.

25 Q. Right. And have you been exposed to people who

1 have got theories that he is guilty, and if so,
2 what are those? What are you hearing?

3 A. Just like I said, yeah, some people say he is
4 guilty and some don't. What more are you looking
5 for?

6 Q. Is it more 50/50 or is it more people thinking he
7 is guilty than not guilty, or I mean are you
8 hearing both equally?

9 A. It depends on the day.

10 Q. Okay.

11 A. What was last on the news.

12 Q. Okay. Speaking of what was last on the news, how
13 much -- how recent have you heard anything on the
14 news or heard co-workers talking about anything
15 on the news?

16 A. At work, it's hard, you can't get away from a
17 radio at work. You try to stay away from it, but
18 you can't, there's radios everywhere and they are
19 on constantly. So it would have been Monday
20 morning.

21 Q. This week?

22 A. Yes.

23 Q. Did you try and avoid listening to?

24 A. Yes. Yes, been to different areas, and sometimes
25 you come across it. But I have tried to avoid

1 the radio, but have not been able to the entire
2 time.

3 Q. Okay. Did you hear information, some discussion
4 in the news about a blood vial?

5 A. Yes.

6 Q. Did you -- What, can you give me a summary of
7 what you heard about that?

8 A. They were going to test it for the chemical in
9 the blood, to see if it was in fact blood from
10 the vial that was stored in the Manitowoc
11 Courthouse.

12 Q. Okay. And so you learned it was stored -- I
13 mean, you heard that whole story, basically?

14 A. Yes.

15 Q. So you have heard information about some of what
16 the defense is as well?

17 A. Yes.

18 Q. Have you formed any opinions about that, that
19 this is a crazy defense or it's a possible
20 defense?

21 A. It's very possible.

22 Q. Okay.

23 A. The tests will -- should tell us.

24 Q. Okay. What if the tests can't tell you? What if
25 in this instance science won't be able to prove,

1 one way or the other, the source?

2 A. It's on to the next.

3 Q. Then you look at something else.

4 A. Correct.

5 Q. You also mentioned that you had heard really
6 quite a bit about Brendan Dassey's statements?

7 A. Yes.

8 Q. Initial statements, right?

9 A. Yes.

10 Q. Have you also heard of other reports where he
11 recanted that statement?

12 A. Yes.

13 Q. Where he's denied it and said that it was false
14 and all of that?

15 A. Yes.

16 Q. And have you heard information about how evidence
17 may or may not support or corroborate that?

18 A. Not in detail, by any means. And I can't really
19 say if I have ever heard that or not.

20 Q. Okay. That's fair. You do -- you put quite a
21 bit of faith in science, I understand, right?

22 A. Yes.

23 Q. And you like it -- is that because you'd like --
24 it's cut and dried, or you hope that it's cut and
25 dried?

1 A. I would hope that it's cut and dried, yes.

2 Q. What about if there's a lack of science, lack of
3 evidence that can be scientifically proved where
4 you might think there should be?

5 A. I would think we could do more to obtain it. I
6 would think that there are ways of getting it,
7 unless there would be a time restriction upon it.

8 Q. Okay. Well, what if -- you expect science to be
9 able to help corroborate what someone says?

10 A. Yes, I would hope that it can, to put more faith
11 in what that person has said.

12 Q. Okay. And if in fact it seems to disprove it or
13 doesn't corroborate what someone says; does that
14 -- what effect does that have?

15 A. That would lead me to believe that that person
16 has got the wrong information that they are
17 telling us.

18 Q. Okay. Either inaccurate or just false?

19 A. Correct.

20 Q. Okay. You said that you -- I forgot how you put
21 it, people presenting the evidence, whether they
22 are actual scientists or perhaps technicians, you
23 would tend to think or view as more credible?

24 A. Correct.

25 Q. Because they have more at risk; what did you mean

1 by that?

2 A. It's -- It's their life. It's their livelihood.

3 It's -- It's their job. It's what they depend

4 on. It's what they do everyday.

5 Q. Do you think that they can make mistakes?

6 A. Everybody makes mistakes, yes.

7 Q. Okay. And that sometimes the results, the

8 science they produce, might be mistaken because

9 they make mistakes?

10 A. Yes, it can be.

11 Q. And are you capable of looking at the whole

12 picture to see whether or not -- have you ever

13 heard the phrase "garbage in garbage out"?

14 A. Yes.

15 Q. Okay. So you have to look very carefully and

16 listen to the witnesses very carefully to

17 understand if the results are the kind of science

18 that you hope it would be?

19 A. Yes.

20 Q. Okay. Now, given what you have heard, all you

21 have heard about this nephew's story, in the news

22 media; what if you didn't hear any of that at the

23 trial, would you be able to put all that aside?

24 A. It would be difficult but -- to put it aside --

25 it can be done.

1 Q. So what if the State didn't call Brendan Dassey
2 at all and you never heard from him?

3 A. I guess we would have to go on to the next and
4 try to prove it in another way. But it seemed
5 like it was major, major information that could
6 be used one way or another.

7 Q. And would you -- would you hold that against the
8 State, that somehow, well, if they are not
9 putting on that evidence they must not, you know,
10 they are hiding something or they don't have --
11 maybe it's not true, or would you be speculating
12 about that?

13 A. I don't know if I would hold it against them
14 either way, if they put him on or if they took
15 him off. I just know that this information
16 probably would be critical to the case.

17 Q. Okay. But if the Judge instructed you that you
18 have to really put aside all of that and forget
19 all of that and really decide this case just on
20 the evidence that comes into court and that you
21 can consider maybe lack of evidence that comes
22 in, but not focusing and speculating about other
23 things you have heard; would you be able to
24 follow that?

25 A. Yes.

1 Q. Okay. Did you -- If you have heard about how
2 Brendan Dassey has recanted at some point, have
3 you ever encountered or heard of people who have
4 confessed falsely?

5 A. No.

6 Q. Can you think of any reasons why someone would
7 confess to something they didn't do when they are
8 being talked to by the police?

9 A. No, I can't possibly think why somebody would
10 confess to something that they have not done.

11 Q. Have you ever -- You have never heard of any
12 situations where people have actually falsely
13 confessed and then turns out not to be true?

14 A. No.

15 Q. Okay. So that would be a completely new
16 experience for you?

17 A. Yes.

18 Q. Do you think it's impossible that someone would
19 do that or could do that?

20 A. I'm sure there are people that do it, but like I
21 said, I don't see why anybody would, or for what
22 reason.

23 Q. Okay. Do you think it's possible that sometimes
24 people feel pressured by the police to say things
25 that they didn't -- they wouldn't otherwise?

1 A. I could never see myself doing it, you know. I
2 guess there may be a possibility and I'm sure
3 there is a possibility because I'm sure people
4 have done it, but I don't see any reason why or
5 to what pressure the police could put on you to
6 make you confess to something.

7 Q. So -- But would you be able to listen to
8 witnesses that talk about -- not how you or what
9 you would do, not evaluate it in terms of whether
10 you would do something --

11 A. Right.

12 Q. -- but whether or not someone else would falsely
13 confess?

14 A. I would be able to listen to it, yes.

15 Q. Okay. Now, your cousin is a deputy sheriff, you
16 believe?

17 A. Yeah.

18 Q. And you work in -- As a volunteer fireman, you
19 probably work with some law enforcement --

20 A. Correct.

21 Q. -- officers as well?

22 A. Yup.

23 Q. Do you ever work with Manitowoc County sheriffs?

24 A. Yes.

25 Q. Which ones?

1 A. Specific names?

2 Q. Do you know?

3 A. I don't know the specific name, but there is
4 usually a certain police officer individual
5 that's kind of in our territory, that usually
6 gets to the same accident calls that we're at, or
7 blocks down roads for house fires, but I don't
8 know his name, no.

9 Q. Okay. So it's not -- is it not -- is it
10 necessarily the same person every time?

11 A. No, not every time, but a lot of the time he is
12 the same one, usually there.

13 Q. And is your only encounter with that deputy when
14 you are at, like, the scene of an accident or
15 something like that?

16 A. Yes. Yes.

17 Q. Traffic control or whatever?

18 A. Yup.

19 Q. So, you don't really discuss his or her work?

20 A. No.

21 Q. Do you think that police officers who would come
22 into court and take the oath and testify are
23 necessarily more truthful than the ordinary
24 average witness?

25 A. Yeah, I would say they are a little more

1 truthful, yes.

2 Q. Okay. Why?

3 A. They have a higher job and a higher duty to
4 withhold and stand up for.

5 Q. Okay. Do you think that -- So you think, then,
6 the police are less likely to lie about something
7 under oath than the ordinary person?

8 A. Yes.

9 Q. Do you think that they would -- Does that mean
10 that they would not ever?

11 A. No, everybody -- anybody can lie. I'm not saying
12 a police officer does not lie.

13 Q. Okay.

14 A. So.

15 Q. Do you think sometimes police get personally
16 involved in an investigation and convince
17 themselves that --

18 A. Yes, yeah.

19 Q. -- convince themselves that this person is guilty
20 and they got to make sure that he's convicted?

21 A. Yes.

22 Q. Do you think sometimes police would cross the
23 line in order to try and make sure that -- that
24 they think the right person is?

25 A. I would hope that's not how it works but, yeah,

1 it can happen.

2 Q. Okay.

3 A. It could happen.

4 Q. All right. The -- Let me go back for just one
5 minute. Your wife, is she off work, I assume, on
6 maternity leave?

7 A. Yes.

8 Q. Would you be financially -- have financial
9 hardship if you were selected for the jury, then?

10 A. It would make things extremely tight. I'm aware
11 now that we're eligible for unemployment, but it
12 is not up to what I currently make. There
13 wouldn't be a lot of extra things going on at my
14 household.

15 Q. But you think you could get by for six weeks?

16 A. Prefer not to but, yes, it could be done.

17 Q. If it's your duty and you are selected you could
18 do it?

19 A. Yes, I would step up.

20 Q. Okay. I appreciate that. You work with your
21 hands?

22 A. Yup.

23 Q. And I know you try to follow safety procedures,
24 right?

25 A. Yes.

1 Q. But do you find you often get little cuts and
2 things on your hands, when you are working with
3 your hands?

4 A. Yes.

5 Q. All right. Mr. Fallon talked about some things
6 or asked you about whether you would expect to
7 hear or would like to hear Mr. Avery's side of
8 the case; do you recall that?

9 A. Yes.

10 Q. And that brings up a quandary for any defense
11 attorney because you have already -- you have got
12 this sort of catch-22, when you are trying to
13 advise your client, should you testify or not
14 testify.

15 If the defendant takes the stand, some
16 people will maybe think he's just trying to save
17 his own skin, he is self-interested, why should
18 we believe what he says. And yet he's a witness,
19 or she's a witness in the case, whatever it is;
20 would you be able to judge Mr. Avery as a
21 witness, if he testifies, just like any other
22 witness?

23 A. Yes.

24 Q. And not discount what he says just because he's a
25 defendant and has an interest in the case?

1 A. Yes.

2 Q. If the Judge instructed you, could you follow
3 that kind of an instruction?

4 A. Yes.

5 Q. And, then, on the other hand, if he didn't
6 testify, that's the other fear that defense
7 attorneys sometimes have, well, is the jury going
8 to think he has something to hide, you know, why
9 doesn't he testify. A lot of people want to hear
10 both sides.

11 A. I would want to hear both sides as well.

12 Q. And can you think of reasons, though, why
13 sometimes a defendant may not testify, that has
14 nothing to with whether they are guilty or have
15 anything to hide?

16 A. I could not think of a reason why one would not
17 want to testify for himself or herself.

18 Q. Well, can you conceive of people who maybe are --
19 don't speak well in public, or aren't articulate,
20 get confused, things like that that they are
21 concerned about?

22 A. I don't think that would be something that should
23 prevent one from doing that.

24 Q. And what about, you know, what if -- what if
25 their attorney says I don't think you should

1 testify, I mean, that's a factor if you have to
2 consider?

3 A. Yes. Repeat what you are asking.

4 Q. Well, let me ask you this. If Mr. Avery didn't
5 testify, would that affect you and your ability
6 to be fair and render a proper verdict?

7 A. I would continue with getting to the verdict. I
8 guess it would have some bearing on it, that he
9 would not speak for his own defense.

10 Q. Okay. But now, you will hear, or you may hear
11 the Judge instruct you, if that would occur, that
12 every person has a constitutional right not to
13 testify and part of that because it's not the
14 defendant's burden to prove that he's innocent,
15 right?

16 A. Okay.

17 Q. And if the Judge instructs you that you have to
18 look at the State's case and the defendant
19 doesn't have to take -- to testify and assume any
20 kind of burden of proof and that you have to,
21 therefore, not consider or speculate why he did
22 or didn't testify; would you be able to follow
23 that kind of an instruction?

24 A. Yes, if that were the instruction from the Judge
25 and that's what we had to follow and that's what

1 we had to do, that's where we would go from it.

2 Q. Okay. Now, in this case, though, you know, I'm
3 concerned because of all the theories that people
4 talk about, that you have heard. And I'm
5 concerned that you may say, well, if Mr. Avery
6 didn't do this, who did?

7 A. Correct.

8 Q. I mean, that's only natural, right?

9 A. That's exactly what I would think.

10 Q. But you understand that, if the Judge instructs
11 you that you can't require Mr. Avery to prove
12 anything, are you still going to say, hey, you
13 know, unless he can prove to me who actually did
14 this crime, I can't find him not guilty?

15 A. I would have that feeling, but I would still make
16 up my decision for the Court at the time. I
17 would still be wondering that after the case has
18 been settled, yes.

19 Q. And I can tell, because of your interest in
20 the -- how certain science can be, that you like
21 to have something cut and dried, you like an
22 answer?

23 A. Yes.

24 Q. Right?

25 A. Yes.

1 Q. But you have to understand that if you're
2 selected on this jury, the question you are not
3 going to be told -- Well, I take that back.

4 You may find yourself in a situation
5 where you have heard all the evidence from the
6 State and you are just not convinced, beyond a
7 reasonable doubt, that Mr. Avery did it, but you
8 also won't know, necessarily, who did if --
9 commit this crime if not him; is that going to
10 trouble you or will you be able to render a
11 verdict of not guilty if you really have
12 reasonable doubt that he did it?

13 A. I will be able to render a verdict one way or the
14 other, you know, at the time.

15 Q. Okay.

16 A. And then I would definitely look forward to
17 hearing more in the future as to where the case
18 has gone from there.

19 Q. Okay. So after hearing all of this, do you think
20 this is a case that you want to be a jury on?

21 A. No --

22 Q. Juror on?

23 A. -- I do not want to be a juror on.

24 Q. But you would do so if it's your duty?

25 A. That's correct.

1 Q. And you wouldn't have regrets and would you be
2 willing to stick it out and do whatever it takes,
3 no matter how long it requires deliberating,
4 after the case is over?

5 A. It's my duty and that's what I would do. I would
6 have regrets of lost time and lost wages and so
7 on and so forth of that sort and hope that it
8 wouldn't drag out beyond the estimated six weeks.
9 But, yeah, there could be regrets of things that
10 I missed, the money that I missed out on, but I
11 could step up and do it, yes.

12 Q. All right.

13 A. Not top on my list of things to do.

14 Q. I don't think it's on top of most people's list,
15 but it is a civic duty and we appreciate you
16 coming here today even and taking time out. So,
17 thank you, sir.

18 A. Thank you.

19 **VOIR DIRE EXAMINATION**

20 BY THE COURT:

21 Q. Mr. Klein, I have just one follow up. The -- One
22 disadvantage of the jurors in your position is
23 you haven't heard the instructions yet, so you
24 don't know what the rules are that the Court is
25 going to give you. But I can tell you that one

1 of them is, that if you're selected as a juror,
2 that the jurors have to base their decision only
3 on the evidence that they hear.

4 A. Correct.

5 Q. You have indicated both that you have some
6 familiarity with Mr. Dassey's confession and also
7 the recantation of that. We have a trial, you
8 may or may not hear any testimony about that for
9 a variety of reasons, that may or may not have
10 anything to do with the credibility or
11 believability of anything Mr. Dassey has said.

12 If no evidence comes in, will you be
13 able to base your decision only on the evidence
14 that comes in at the trial and not speculate
15 about what other evidence might have been?

16 A. I would do my best, but not to say that that
17 wouldn't still be in the back of my mind, whether
18 it would make -- make me lean one way or the
19 other at the final verdict, I really can't say.
20 I would hope that it wouldn't under your
21 advisory. But I would definitely do my best
22 and ...

23 Q. Do you believe, as you sit here today, that you
24 can do that?

25 A. Ninety percent, yes. And there's still a little

1 bit of me that I would hope I would be able to.

2 Q. Well, if something doesn't come in, you really
3 don't know what you are missing, right? You
4 don't know how it would cut?

5 A. Correct.

6 Q. Can I ask you, what is it that gives you -- what
7 gives you concern? Why do you feel you -- why
8 are you only at 90 percent?

9 A. Due to the media and then the drastic -- drastic
10 events that were brought up, you know. I guess
11 that doesn't necessarily give me an opinion, but
12 it gives me faith that there can be some closure
13 to this.

14 Q. Well, if you are a juror you are going to hear a
15 lot more evidence --

16 A. Correct.

17 Q. -- than there's been --

18 A. Correct.

19 Q. -- in the press? And I will instruct you at the
20 end of the trial, if you're selected as a juror,
21 that you can only base your decision on the
22 evidence that you hear. Can you do that?

23 A. Yes. Yes, I would put everything else aside and
24 do that.

25 THE COURT: All right. I will have the

1 clerk escort you from the courtroom.

2 (Juror not present).

3 THE COURT: Counsel, is there any motion
4 from either party?

5 ATTORNEY FALLON: None from the State.

6 ATTORNEY BUTING: Could we have a couple
7 minutes to confer on this one, too, your Honor,
8 please?

9 THE COURT: Yes, you may. I will be back
10 in two minutes.

11 (Brief recess.)

12 ATTORNEY BUTING: Judge, we would move to
13 strike this juror for cause. I'm concerned that
14 he's unable to really commit to follow the Court's
15 instructions. He's obviously been exposed to great
16 detail about Mr. Dassey's confession, which may or
17 may not come in. And he seemed to have -- although
18 he said some positive things too and I think he was
19 being very honest, trying to tell us how he feels.
20 Overall, I don't think he's really committed to set
21 aside his prior knowledge and decide it only on the
22 evidence in this court.

23 There is the other issue I frankly meant
24 to follow up with him and forgot, which is the
25 Court's instruction not to listen or hear

1 anything about the case. And he's, even just
2 yesterday, already been hearing things on the
3 radio. And I don't think deliberately, but as he
4 described it, it seems like it's almost
5 impossible for him not to be exposed to media
6 reports about what's going on in the case.

7 And probably as this case develops and
8 as there may be significant, even sensational
9 developments, who knows, it's going to be all
10 over his work place. He says he tries to avoid
11 it. He goes here, he goes there and the radio is
12 on everywhere. His co-workers are going to be
13 talking to him. It's almost --

14 THE COURT: Wait a minute. If he is on the
15 jury, how is he going to hear these things?

16 ATTORNEY BUTING: Well, if he's --

17 THE COURT: He's not going to be at work,
18 is he?

19 ATTORNEY BUTING: Well, he -- I guess it
20 wasn't clear. He did say he was working first
21 shift, didn't he? So maybe that's true, maybe while
22 the case is going on he won't. But he has
23 already -- Despite the Court's instruction, he has
24 already been exposed and listened to radio. And
25 whether it was intentional or not, I think it's --

1 you know, it's indicative of problems he may well
2 have.

3 But the biggest problem is -- is that
4 he's just honestly saying that he doesn't
5 think -- he is not committing to the Court that
6 he really can set aside whatever prior
7 information he's learned and decide this only on
8 the evidence in the court. So I think he should
9 be struck for cause.

10 THE COURT: Mr. Fallon.

11 ATTORNEY FALLON: Thank you, Judge. This
12 is one where we would disagree with the defense. I
13 think that Mr. Klein did his level best to answer
14 the questions as best he could.

15 I take him at his word when he says -- I
16 think his last answer was probably the most
17 telling in his -- and capsulizes his summary of
18 his presentation today. And that is simply this,
19 that while he may not want to do something or he
20 may not fully embrace everything here, he is
21 willing to, as he said, step up, meet his civic
22 duty. He is willing to follow the instructions
23 of the Court. He indicated he would do his best
24 to do so.

25 And the fact that he may only be

1 90 percent certain that he can follow the
2 instructions is, quite frankly, right there.
3 That's what you would expect. I think if you
4 would ask anybody in this room, are you
5 100 percent sure you could put this out of your
6 mind, are you 100 percent sure you can do this
7 and that, and I would venture to guess that most
8 people in this room wouldn't tell you I'm
9 100 percent sure of anything in this world.

10 And I think, as an example, there is a
11 case, it's not directly on point, but when you
12 get these somewhat equivocal answers, not
13 100 percent certainty that they can follow the
14 instruction or not 100 percent sure of that, the
15 courts have held that any witness who expresses
16 that level of understanding, that level of
17 commitment, should be deemed an adequate juror.

18 You might want to take a look at ***State***
19 ***vs. Erickson***, for instance, a particular juror in
20 there was talking about the victimization that
21 she may have experienced herself. She was a
22 sexual abuse victim many years earlier. And in
23 responding to a couple of questions she said,
24 well, no, I don't think so. When the court asked
25 her if she could be fair and impartial, she said

1 I think so.

2 I mean, those are equivocal responses
3 but, you know what, they are honest responses
4 from the heart and I think that's what Mr. Klein
5 gave us. He indicated he would be willing to
6 give us his level best. And I think that his
7 presentation is, quite frankly, what you would
8 expect.

9 THE COURT: All right. The --

10 ATTORNEY BUTING: Just a brief response.

11 THE COURT: Go ahead.

12 ATTORNEY BUTING: The -- I don't think that
13 these are -- I don't think that these answers were
14 equivocal, but convincing that he could still set
15 everything aside. I think he was being honest and
16 in that regard he was trying to do his best.

17 But it's not enough for a juror just to
18 say I'll try. They don't have to say I'm
19 100 percent but they have got to make some sort
20 of a commitment. And he was very clear, even
21 with the Court's efforts to talk with him, that
22 he says it's in the back of his mind, he can't --
23 he doesn't really think he's going to be able to
24 put all this aside. So, for those reasons, I
25 think he should be stricken.

1 THE COURT: All right. This is a situation
2 where the Court understands the objection to be that
3 the juror is subjectively biased; that is, that he
4 is unable, based on his exposure to this pre-trial
5 publicity, to put it behind him.

6 This is also a situation where the
7 Court's observation of the juror; that is, his
8 demeanor as he was giving his answers comes into
9 play. Yesterday, I struck a juror based on the
10 fact that he gave answers that were -- seemed to
11 be acceptable, but his demeanor didn't strike me
12 as indicating that -- that I could just take his
13 answers at face value.

14 In this case, the Court's observations
15 of the demeanor of this witness, I believe that
16 he is very aware of his duty and very conscious
17 of the need to follow that duty. And he is
18 aware -- well, he's been aware of publicity
19 relating to an alleged inculpatory statement that
20 Mr. Dassey gave, but is also aware that
21 Mr. Dassey has recanted it. And he is also -- so
22 he knows there's some dispute. And I believe,
23 based on his answer, that he is committed to
24 putting that behind him, if no evidence is
25 introduced on that issue at trial.

1 I believe also, based on his demeanor,
2 that he has the commitment and the willingness to
3 do so. And his 90 percent, if you will, argument
4 or statement before he finally said just yes at
5 the end, is based on the fact that he recognizes
6 that he's human and he believes he could put it
7 behind him, but like anyone else, nobody can say
8 for sure until the time actually comes.

9 I'm satisfied, based on my observations
10 of this juror, that he could be a fair juror in
11 this case. And, therefore, the Court is not
12 going to strike him for cause.

13 Counsel, we'll take our noon break at
14 this time and resume at 10 after one, because
15 we're going to have to make a little better
16 headway than we have been making thus far. So I
17 will see you at 10 after 1.

18 ATTORNEY BUTING: Could we make that just
19 1:15, your Honor, an extra five minutes.

20 THE COURT: All right. I will make it
21 1:15, but I have to say, I was hoping not to go
22 later today, but we may have to. I will see you at
23 1:15.

24 (Noon recess taken.)

25 THE COURT: At this time we're back on the

1 record. Counsel, before we bring in the next juror,
2 I did, in my explanation on Mr. Klein, forgot to
3 address on the record the radio issue. My
4 recollection of his statement was that he -- because
5 of the radio being on at his place of employment,
6 that it was impossible to completely avoid it, but
7 that he has, since he received the instruction from
8 the Court, attempted to avoid listening to reports
9 on the radio and left the area, or I forgot exactly
10 what his words were. But it appeared to the Court
11 from whatever his exact words were, that he was
12 attempting to comply with the Court order and had
13 not been exposed to any meaningful publicity since
14 he has been instructed to avoid publicity. For that
15 reason, I did not choose to excuse him on that
16 basis.

17 All right. At this point, we'll bring
18 in Mr. Saari, who is I believe Juror 26, the next
19 juror on the list. Mr. Saari, at this time the
20 Clerk will administer the oath to you.

21 THE CLERK: Raise your right hand.

22 (Juror sworn.)

23 THE CLERK: Please be seated.

24 THE COURT: Mr. Saari, you have already
25 completed a written questionnaire in this case. And

1 today we're moving on to the next phase of the jury
2 selection process which is individual voir dire.
3 The attorneys for each of the parties will have an
4 opportunity to ask you some follow-up questions to
5 the answers you gave in your questionnaire.

6 Before we begin with those questions, I
7 want to make sure that you know that the jurors
8 who are selected to serve in this case will not
9 be sequestered. That means that at the end of
10 the court proceedings every day the jurors will
11 be brought back here to Manitowoc and permitted
12 to go home.

13 The Court will continue throughout these
14 proceedings to require that the jurors not be
15 exposed to any news media accounts concerning
16 this case; that is, radio, television, newspaper
17 or the internet.

18 And I also want to let you know that
19 although these proceedings are open today, the
20 Court does not allow cameras in the courtroom
21 during jury voir dire and the media is prohibited
22 from disclosing the names of the jurors during
23 the course of the trial.

24 And, finally, if you are selected to
25 serve on a jury -- on the jury in this case, you

1 should know that the cameras are not permitted to
2 show the faces or any other identifying
3 characteristics of the jurors during the trial.

4 After the questioning today, if you
5 remain on the panel, you will get a phone call in
6 a day or two telling you when to report back,
7 sometime later this week.

8 At this time, Mr. Fallon, you may begin
9 questioning for the State.

10 **VOIR DIRE EXAMINATION**

11 BY ATTORNEY FALLON:

12 Q. Good afternoon, Mr. Saari.

13 A. Good afternoon.

14 Q. My name is Tom Fallon. I'm an Assistant Attorney
15 General with the Wisconsin Department of Justice.
16 And I'm one of the prosecutors in this case. To
17 my left here is Mr. Ken Kratz. He's the lead
18 prosecutor in this case and he's the District
19 Attorney in Calumet County. Good afternoon and
20 thanks for being here.

21 The Court and counsel here would like to
22 follow up with some questions of you, based on
23 the information you provided last week in the
24 questionnaire. So I would like to begin with a
25 little bit about your employment. If you can

1 tell me how long you have worked for the company.

2 A. Two years.

3 Q. And have you performed -- What is a material

4 handler?

5 A. Forklift driver, operate a forklift.

6 Q. All right. And have you been employed doing that

7 particular duty for the two year period?

8 A. Yes.

9 Q. All right. Have you performed any other

10 functions for Northern Labs?

11 A. I worked in the office for a little while.

12 Q. You will have to speak up just a little bit.

13 A. I worked in the office for a little while doing

14 computer work.

15 Q. Doing computer work.

16 A. Yeah.

17 Q. Okay.

18 A. For like a month.

19 Q. What kind of computer work did you do?

20 A. Data entry.

21 Q. All right. Do you consider yourself fairly

22 proficient in the use of the computer?

23 A. Yeah.

24 Q. All right.

25 A. I would think so.

1 Q. And do you have one at home?

2 A. Yeah.

3 Q. And do you use it frequently?

4 A. Mainly for playing games.

5 Q. For playing games.

6 A. Yeah.

7 Q. Do you get any news or any information from the
8 internet that way?

9 A. Not really.

10 Q. Okay. How long did you do the data entry work at
11 Northern Labs?

12 A. For like a week.

13 Q. What kind of material or what kind of product do
14 you work with at Northern Labs?

15 A. Car waxes, car soaps. What else do they do?
16 Kaboom, mostly Orange Glo products.

17 Q. I'm sorry, mostly?

18 A. Orange Glo. Orange Glo.

19 Q. Okay. And do you work with any industrial
20 solvents or cleaners, or things of that sort?

21 A. No, I'm in distribution warehouse. Everything
22 that's hazardous is in the other warehouse.

23 Q. Okay. So you are just in the actual usable
24 product division as it were?

25 A. Yeah.

1 Q. Okay.

2 A. Finished goods.

3 Q. All right. Forgive me, but I was -- I was unsure
4 as to how to read your -- or interpret an answer
5 that you gave. So let me kind of read it back to
6 you, if you can kind of explain it to me. In the
7 question: Please list all groups or
8 organizations in which you participate or are a
9 member; and you write --

10 A. DCI.

11 Q. Right. What is that?

12 A. Doesn't have a name any more, but just like a
13 card tournament for playing cards.

14 Q. Oh, okay.

15 A. For a card game.

16 Q. Is it kind of like a club?

17 A. Yeah, like a social group.

18 Q. Okay. What kind of card games do you like to
19 play?

20 A. It's Magic Gathering. It's like a Pokémon game
21 kind of, but more challenging.

22 Q. Like Pokémon, you said?

23 A. Yeah, kind of like that, but more challenging.

24 Q. Forgive me, but age has caught up with me I'm
25 afraid. Can you tell me a little bit about the

1 type of game. I mean, what kind of game is it?
2 Is it a game of skill, chance, or what kind of
3 game?

4 A. Everything like skill, chance, strategy. Your
5 mental ability to watch everything.

6 Q. All right. In terms of something perhaps that
7 I'm a little more familiar with, is it anything
8 like poker or anything like Texas Hold 'em, or
9 bridge, or penuchle, or ... Is it anything like
10 any of those games?

11 A. I would say it's kind of like poker; you have got
12 to have the poker face kind of when you are
13 playing.

14 Q. All right. So it's as much as playing the cards
15 as it is the person who is holding the cards?

16 A. Yeah.

17 Q. Okay. Is there a fair amount of bluffing
18 associated with that game?

19 A. Yeah, I would think so.

20 Q. What is it about the game that you find
21 interesting or appealing?

22 A. The amount of people that show up at, like,
23 tournaments when you have it.

24 Q. All right.

25 A. Last one I went to was in Illinois. There was

1 like 3,000 people --

2 Q. Really?

3 A. -- 2,000 people.

4 Q. All right. How often do you travel for the

5 tournaments?

6 A. Maybe three times a year.

7 Q. All right. And the last one was in Illinois;

8 when was that?

9 A. About two weeks ago.

10 Q. And where, Chicago area?

11 A. Yeah, outskirts of Chicago. I can't remember

12 what the name of the city was.

13 Q. And -- Well, I have got to ask; how did you do?

14 A. Not very good.

15 Q. No?

16 A. No.

17 Q. Did you make it through the first couple of cuts

18 or?

19 A. They do like a bunch of mini tournaments. I got

20 like 4th in one of them.

21 Q. All right.

22 A. There was like 35 people in it so.

23 Q. All right. Now, are there prizes or is this

24 money or ...

25 A. First, second and third place get prizes.

1 Q. They get prizes.

2 A. They get cards.

3 Q. Okay. And do the cards have a value?

4 A. Yeah, each card -- There's cards that came out
5 when the game started and it's -- they can go up
6 to like \$2,000, \$10,000. It can be expensive.

7 Q. All right. Is there an entry fee associated with
8 the tournament?

9 A. Yeah, it's usually like each pack of cards costs
10 between 3 and \$4. And you get 3 packs to build a
11 deck.

12 Q. Okay.

13 A. And then you play with that. So it's like -- I
14 think they charge \$20 and then they use the
15 remaining money to give out prizes.

16 Q. Okay. And so the last tournament had as many as
17 3,000 participants?

18 A. Yeah, throughout the whole day.

19 Q. All right. In terms of sources for your news,
20 you checked the newspapers and television; which
21 one of those would you say you get most of your
22 news from?

23 A. I would say television.

24 Q. All right. And what kind of -- or -- Well, first
25 of all, what time of day would you ordinarily

1 listen to television newscasts?

2 A. In the mornings, usually before I go to work --

3 Q. All right.

4 A. -- around 5:00.

5 Q. All right. And what are your hours?

6 A. For work?

7 Q. Yup.

8 A. Six to two.

9 Q. Six to two. So what do you do when you get home

10 from work?

11 A. Depends on what I have planned. Usually either

12 watch TV, make something to eat, go to the Y, go

13 down to the card shop, play cards. That's

14 basically it.

15 Q. All right. And newspapers, how often do you read

16 the newspapers?

17 A. I usually get the Sunday paper.

18 Q. All right. And maybe, what, one other day of the

19 week maybe, or just Sunday?

20 A. Just the Sunday paper.

21 Q. All right. Considering the television and the

22 Sunday papers, have you followed this particular

23 case at all through the media?

24 A. I haven't really seen it in the paper. No, I

25 would say I haven't followed it.

1 Q. Okay. When do you recall last seeing an article
2 in the paper or last hearing a television
3 broadcast regarding the events of this case?

4 A. I can't say that I have.

5 Q. Anything -- Well, let's just -- anything in the
6 last month for instance?

7 A. I usually don't look at the front page. I
8 usually just look at classifieds.

9 Q. Okay. While we're there, anything in particular
10 that you're looking for in the classified
11 section?

12 A. Apartments.

13 Q. Okay.

14 A. Anything for sale in the classifieds like
15 couches, dressers.

16 Q. Okay. Are you living at home now?

17 A. No, I live in an apartment.

18 Q. In an apartment. So you're thinking of moving
19 up, as it were, a better apartment?

20 A. Yeah.

21 Q. All right. How long have you been living on your
22 own?

23 A. Like five years.

24 Q. Okay. All right. What, if anything, can you
25 tell us that you remember hearing or reading

1 about this case in either the television, news,
2 or the Sunday paper?

3 A. I remember somebody talking about at work that
4 there was a box of blood that was tampered with
5 or something.

6 Q. Okay.

7 A. Something like that.

8 Q. And when do you recall hearing that?

9 A. That was maybe -- I can't remember when I heard
10 that. I just remember it at work, somebody
11 talking about it.

12 Q. Would that have been fairly recently or was that
13 some time ago?

14 A. I would say it was pretty recent.

15 Q. Okay. So that was not from the media, but just
16 one of your co-workers.

17 A. Yeah, just somebody talking about it.

18 Q. All right. Were they talking directly to you or
19 were they talking, you know, in a conversation
20 with somebody else and you just happened to be
21 standing by or nearby?

22 A. They were talking between each other and I walked
23 past them.

24 Q. Okay.

25 A. I heard about it.

1 Q. Okay. Did you participate or join in in the
2 conversation at all?

3 A. No.

4 Q. Did you continue on your way or did you stop and
5 listen to some of the conversation or ...

6 A. I was talking to the other two that were next to
7 him.

8 Q. Okay. So you were talking to two other people --

9 A. While they were talking about something.

10 Q. -- in close proximity to these two having a
11 discussion?

12 A. Yeah.

13 Q. And do you recall any more of the conversation
14 that the other two were having regarding this box
15 of blood?

16 A. That's basically all they were talking about was
17 that it was either tampered with or somebody put
18 it there. I don't remember.

19 Q. I'm sorry, I couldn't quite hear you.

20 A. They said it was tampered with or somebody placed
21 it somewhere. I can't remember what they were --
22 I wasn't really listening to what they were
23 saying.

24 Q. Okay. So you remember hearing those words --

25 A. Yeah.

1 Q. -- but you don't have a context in which to place
2 them?

3 A. Yeah.

4 Q. What else, if anything, do you remember hearing
5 about the case, not necessarily from that
6 conversation, but any other conversation or any
7 other news coverage of it?

8 A. I can't say that I -- That's the only thing I
9 have really heard.

10 Q. All right. Do you ever remember reading or
11 hearing anything about a fellow by the name of
12 Dassey?

13 A. Dassey, Dassey. There was a guy at work that
14 talked about Dassey.

15 Q. Okay. What do you recall hearing about that
16 fellow?

17 A. Um, that he -- What did he do? Um, something
18 about him getting off a school bus and -- What
19 was he doing? I just remember him -- that he was
20 getting off a school bus and he was going --
21 Where was he going? I can't remember where he
22 was going.

23 Q. Okay.

24 A. But ...

25 Q. Anything else stick in your mind about after he

1 got off the school bus as to what might have
2 happened or what he might have said happened?

3 A. That he was -- I'm trying to think.

4 Q. If you can't remember, that's fine. We're just
5 trying to see what might be up in your head
6 there. That's all.

7 A. I just -- It was hearsay. I don't know what they
8 were -- They talked about that one a lot at work.
9 And I just don't really -- I didn't really pay
10 attention too much to them.

11 Q. Okay. They talk about it a lot at work but you
12 apparently have not been interested in the
13 discussion?

14 A. I usually talk with -- There's two people that
15 are usually talking about it and I don't really
16 talk to them too much.

17 Q. Okay. Do you have any opinion at all regarding
18 Mr. Avery's guilt or innocence, based on anything
19 that you heard from the news or anything that
20 anybody at work has been saying or talking?

21 A. I really don't know, either way.

22 Q. Okay. Do you watch much TV, I mean, regular
23 television shows?

24 A. Regular television, yeah.

25 Q. Now, you indicated that in your way of thinking

1 that shows like *Crime Scene Investigation* and
2 *Bones* are not very realistic. Can you tell us a
3 little bit why you think that.

4 A. Most of them aren't really based off of true
5 stories or ...

6 Q. Do you watch those shows frequently?

7 A. I watch -- what is it -- crime scene special
8 victim's unit I think it's called, maybe twice a
9 week.

10 Q. Okay. So even though you don't find it very
11 realistic, is there a particular reason why you
12 watch it once or twice a week?

13 A. It's interesting. My girlfriend likes watching
14 it.

15 Q. All right. All right. Now, you said you had a
16 couple of interesting experiences, I just wanted
17 to ask you about. You said at one time your dad
18 was accused or arrested for spanking your younger
19 brothers, but the case never went anywhere. Can
20 you tell us a little bit about that experience.

21 A. Yeah, he was -- What happened was, my two little
22 brothers, they -- there was flies in our bedroom
23 from because it's hot out in the summer. They
24 had took everything out from underneath the
25 cupboard, bleach, Drano, and just put it all over

1 our floor in our bedroom.

2 So my dad spanked them because they
3 weren't supposed to go underneath there. My mom
4 took them to the hospital, and she told them they
5 had bruises. The police came to my dad's work
6 and took my dad.

7 And after I think it was a month or two,
8 it got thrown out for -- I don't remember. It
9 was something with the judge. I don't remember
10 what it was.

11 Q. How old were your little brothers at the time?

12 A. I want to say five and seven.

13 Q. Okay. So, as I -- as I understand it, they were
14 trying to get some cleaning materials and in
15 their youthful exuberance kind of made a mess of
16 things in the bedroom?

17 A. Yeah. A really big mess. There was a thick goop
18 on the floor.

19 Q. I'm sorry?

20 A. There was a thick goop on the floor.

21 Q. All right. So in their effort to clean things up
22 they kind of made things worse?

23 A. Yeah.

24 Q. All right. So that did not set well with your
25 dad?

1 A. No.

2 Q. Okay. So he spanked them and your mom took them
3 in for some medical treatment?

4 A. Yeah, to see if they had poisoning from anything
5 that was under the sink.

6 Q. Oh, from all the chemicals that they were playing
7 with?

8 A. Yeah.

9 Q. And then they had to explain how they got the
10 bruises?

11 A. Yeah.

12 Q. Okay. Did that experience -- Does that, or would
13 that have any affect on your ability to be a
14 juror in this case, your encounter? I assume
15 that the police were involved in that?

16 A. Yeah, there was two police officers.

17 Q. Okay.

18 A. I don't know, they seemed -- they seemed okay.
19 Didn't seem to -- They just came in and asked us
20 questions, like, if he ever did anything to us.

21 Q. Okay.

22 A. But it was -- it was a bad experience, but it
23 wasn't a bad experience with the police officers.

24 Q. Okay. Just kind of embarrassing for the family
25 in other words?

1 A. Right.

2 Q. In terms of how law enforcement handled
3 themselves, you were not -- it was not a bad
4 experience from that perspective?

5 A. I think if they would have, you know, took into
6 consideration what was going on, it wouldn't have
7 even went that far, but ...

8 Q. So, in other words, you might disagree with their
9 judgment to make an arrest?

10 A. Yes.

11 Q. But in terms of, otherwise, how they dealt with
12 you and your mom they seemed fair otherwise?

13 A. Yeah, I would say so.

14 Q. Okay. Now, you also had an experience with law
15 enforcement. If you can tell us a little bit
16 about that. You said you were with -- in your
17 friend's car and looks like you were involved in
18 an accident of some sort. Tell us about that
19 experience.

20 A. We were driving down Dewey Street by Wal-Mart.
21 And there was a car that was stopped, but he
22 didn't have his blinker on. And then he turned
23 his blinker on and then we hit the back of him.
24 And we slid a little bit. And then when we got
25 out of the car, the police -- there was a lady

1 police officer, woman police officer, and then
2 later on a guy showed up. And then the woman was
3 trying to question me and she just walked away,
4 basically.

5 Q. Okay. Were you the driver of the car?

6 A. No, I was sitting in the back seat. I was trying
7 to explain to her. You know, she asked me what
8 happened and then she kind of just walked away.

9 Q. Okay. That is the -- And that was a Manitowoc
10 Police Department?

11 A. I think so. That was right by Wal-Mart. I think
12 she was a Manitowoc police.

13 Q. Well, did she have a blue law enforcement outfit
14 or a brown one?

15 A. God, that was -- I think it was a brown one.

16 Q. Brown?

17 A. Yeah, I think so.

18 Q. Okay. Have you had any other encounters with law
19 enforcement?

20 A. Not that I can think of --

21 Q. Okay.

22 A. -- off the top of my head.

23 Q. Did your friend get a ticket out of that
24 incident?

25 A. He got a ticket but then he went to the

1 courthouse and he got it cut in half, I think it
2 was.

3 Q. So he got a reduced fine?

4 A. Yeah.

5 Q. Okay. How did that experience with the police
6 officer -- how did that sit with you?

7 A. Not very well.

8 Q. Okay. Well, tell us why. Tell us about that.

9 A. She didn't listen to what I had to say.

10 Q. Okay.

11 A. That's -- That's about it.

12 Q. Did she take some time to interview your friend
13 who was driving and get his version of what
14 happened?

15 A. The other officer took me and my -- the other guy
16 who was in the car, took him to school and took
17 me home.

18 Q. Okay. Took him to school and took you home. How
19 long ago was this?

20 A. I would say two years, maybe a little longer.

21 Q. Well, the reason I ask these questions is there
22 will probably be a fair amount of testimony from
23 law enforcement officers, some police officers,
24 some sheriffs officers, some state agents, maybe
25 some state patrol individuals. So is there

1 anything about your two encounters with law
2 enforcement that makes you doubt whether you can
3 evaluate their testimony the same way you would
4 any other witness?

5 A. I don't know. It -- I guess it would depend on
6 how they answer questions or --

7 Q. Okay.

8 A. -- how they act. I don't know.

9 Q. All right. Depending on how they answer the
10 questions or how they act; that's a good answer.
11 Anything in particular you might be looking for
12 in terms of giving their testimony a fair shake?

13 A. I don't know. I ...

14 Q. Okay. Well, if the Court instructs you that you
15 are to evaluate their credibility, their
16 believability, their honesty, the same way you
17 would any other witness, would you be able to
18 follow that instruction, even though you have had
19 these two other experiences in your youth?

20 A. I think I could.

21 Q. All right. You would give it your best shot?

22 A. Yeah.

23 Q. Okay. And in that regard, in the terms of
24 evaluating the evidence in this case, if you were
25 selected as a juror, do you think you could

1 decide the guilt or innocence of Mr. Avery, based
2 solely on the evidence that is presented in
3 court?

4 A. I think so, yeah.

5 Q. All right. Is there anything about your previous
6 experiences with law enforcement that really
7 makes you wonder, or really have a doubt in the
8 back of your head whether you could do that?

9 A. Personally, I think it was just that one lady,
10 she seemed like she was having a bad day.

11 Q. Okay. And we all have bad days, don't we?

12 A. Yeah.

13 ATTORNEY FALLON: All right. That's all I
14 have for this witness. Thank you.

15 THE COURT: Mr. Buting.

16 ATTORNEY BUTING: Thank you, Judge.

17 **VOIR DIRE EXAMINATION**

18 BY ATTORNEY BUTING:

19 Q. Good afternoon. My name is Jerome Buting. And
20 I, along with Dean Strang here, are the attorneys
21 for Steven Avery. I assume you understand that.

22 A. Mm-hmm.

23 Q. I have some follow-up questions and a few others
24 for you, sir. You say that you play computer
25 games?

1 A. Yeah.

2 Q. Do you also have Xbox?

3 A. No.

4 Q. Or play stations?

5 A. I have a game cube that my friend gave me that I
6 never play.

7 Q. Okay. Do you ever play games like Grand Theft
8 Auto?

9 A. I played it once.

10 Q. Okay. That game and maybe some other games you
11 have had the opportunity to play; do they involve
12 games where people can sort of -- fantasy games
13 where people can pretend to do things they
14 couldn't really do?

15 A. Yeah, I would say so.

16 Q. And in Grand Theft Auto they are actually
17 pretending to do crimes?

18 A. Yeah.

19 Q. Some of them pretty bloody crimes, right?

20 A. Yeah.

21 Q. Including sexual assaults, shootings?

22 A. I think you can do shootings in Grand Theft Auto,
23 but I don't know about sexual assaults.

24 Q. Okay. Any of these other games that you have
25 seen that you play that people can do those kinds

1 of things?

2 A. Just the Grand Theft Auto, I think.

3 Q. Do you know some people who just seem to be -- I
4 don't know if obsessed is the word, but they play
5 so many of these games that it's almost like
6 their life; do you know people like that?

7 A. I know one kid like that, yeah.

8 Q. Yeah. Okay. The name of this tournament, did
9 you call it Magic Gathering or Magic --

10 A. Magic, The Gathering.

11 Q. Magic, The Gathering.

12 A. Yeah.

13 Q. And is that probably your, like, number one hobby
14 would you say, or number one outside interest?

15 A. Yeah, it used to be. I kind of slowed down a
16 little bit with it since I started working.

17 Q. How long have you been involved with that
18 particular thing?

19 A. Oh, probably like seven years, I would say.

20 Q. Oh, okay, so it's -- Are people still doing
21 Pokémon or has that kind of died out?

22 A. That's kind of died out.

23 Q. This has -- but this has had longer staying power
24 it sounds like?

25 A. Yeah, this has been since I think 1990, I think

1 or -- no.

2 Q. Okay.

3 A. Around there somewhere.

4 Q. Somewhere like that.

5 A. Yeah.

6 Q. And these -- these cards have acquired, like,
7 collector's value, particularly the early ones
8 that come out?

9 A. Yeah.

10 Q. These prior incidents that you have had with
11 police, so your father was actually charged with
12 a crime for simply trying to discipline his
13 children, right?

14 A. It's been a while, I think so, yeah, I'm pretty
15 sure.

16 Q. He came to court?

17 A. I wasn't at court, so I don't ...

18 Q. Okay. But as far as you know he had to -- he had
19 to -- did he have to get a lawyer?

20 A. Yes.

21 Q. Okay.

22 A. I think so.

23 Q. And the case proceeded for a couple of months you
24 said?

25 A. Yeah, it was. Yeah.

1 Q. And eventually a judge or somebody threw the case
2 out?

3 A. Yeah.

4 Q. So your father got lucky, basically, right?

5 A. Well, I don't know if it was lucky. I think it
6 was just something that -- I don't know how to
7 explain that.

8 Q. Well, okay. I understand. Were you surprised it
9 even went that far before it finally got dropped?

10 A. Yeah, I was kind of surprised I would say.

11 Q. In fact, I think you said that -- I mean, that
12 was a serious charge, right?

13 A. Yeah.

14 Q. Some sort of felony child abuse probably, right?

15 A. I think it was child abuse that he was charged
16 with.

17 Q. Okay. And you said that you thought if -- maybe
18 if the police, at the very beginning, had maybe
19 taken into consideration all the circumstances,
20 it never would have gone that far, right?

21 A. Yeah.

22 Q. And then you had another incident with apparently
23 a Manitowoc County sheriff deputy. If she was
24 wearing brown; was it in Manitowoc County?

25 A. Yeah, it was in Manitowoc. It was right by

1 Wal-Mart where it happened.

2 Q. Okay. Where you were concerned, again, that
3 officer wasn't listening to your side and wasn't
4 listening to all of the circumstances, right?

5 A. Right.

6 Q. So if you had a couple of experience then where
7 you noticed that officers can sometimes, you
8 know, almost have tunnel vision and just focus on
9 one aspect of what's going on and ignore some
10 other things that are going on around the
11 outside?

12 A. Um, that would -- yeah, that would kind of seem
13 like what it was.

14 Q. Okay. In fact, in your case where the officer
15 didn't even want to hear another witness who was
16 sitting right there, right?

17 A. Yeah.

18 Q. Do you think that that's -- you said that that
19 officer was just maybe having a bad day you
20 thought?

21 A. That's what it seemed like, I don't know.

22 Q. Okay. On the other hand, your father experienced
23 something similar, right?

24 A. Yeah, that was in Michigan, I think it was.

25 Q. Okay. But do you think that -- that police

1 officers can -- can do that, that they can
2 sometimes get too focused on one part of the case
3 or one part of their investigation and just kind
4 of, you know, full speed ahead down this road and
5 that's it?

6 A. It seems like it, yeah, with the two that I
7 encountered.

8 Q. Okay. Is that the only two times that you have
9 encountered police?

10 A. That I can -- that I can remember, yeah.

11 Q. Okay. Now, do you think that police officers if
12 they come -- actually come into court and testify
13 and take an oath to swear the truth; do you think
14 that they are more or less likely to tell the
15 truth than the ordinary citizen who comes into
16 court and takes the very same oath? Or the same?

17 (Court reporter couldn't hear.)

18 Q. Or the same, in other words, are they more
19 likely, less likely, or the same likely?

20 A. I would say the same.

21 Q. Okay. So there's -- You don't think there's
22 anything about officers that makes them more
23 believable or more trustworthy when they take the
24 oath than an ordinary citizen, right?

25 A. Yeah, I would say that's right.

1 Q. Okay. Do you think it's possible a police
2 officer could lie under oath?

3 A. Yeah, I think it's possible.

4 Q. Just like anyone else?

5 A. Yeah.

6 Q. All right. Do you think it's possible that
7 police officers would get so invested in their
8 case that they want to get somebody they think is
9 guilty and maybe cross the line in doing so?

10 A. I don't know.

11 Q. Have you ever heard of that happening?

12 A. I have heard of that like on TV, but I don't know
13 if ...

14 Q. Okay. So you have seen it on TV where sometimes
15 police officers cross the line, right?

16 A. Yeah.

17 Q. The CSI shows and, you know, they get real
18 personally involved. And of course in those
19 shows there's usually no doubt about who the
20 guilty person is, right?

21 A. Right.

22 Q. And the officers are usually portrayed as heroes
23 because they are going after the guilty guy and
24 really getting him, right?

25 A. Yeah.

1 Q. But you can -- Can you see that if that happens
2 in real life and they happen to be focused on the
3 wrong person, that that could be a serious
4 problem?

5 A. Yeah, that would be a problem.

6 Q. Okay. And if you're selected as a juror in this
7 case, will you be able to evaluate all the
8 evidence and consider the possibility that maybe
9 they have focused on the wrong guy?

10 A. If that's part of the evidence ... Yeah, I would
11 think so, if it's part of what I have to look at.

12 Q. All right. What do you know about Mr. Avery's
13 background?

14 A. Runs or owns a junkyard.

15 Q. Okay. Do you know anything about a situation
16 where he spent a long time in prison and was
17 exonerated by DNA?

18 A. Um, yeah, I heard about that. He was -- That's
19 basically all I heard, that he was in prison and
20 that he was left out because of DNA.

21 Q. That he was wrongly convicted actually, right?

22 A. Yeah.

23 Q. And you heard that from media, or from your
24 co-workers, or what?

25 A. He was -- My dad was talking about it.

1 Q. And was your dad -- There was no doubt in your
2 mind or your dad's mind that Mr. Avery was, in
3 fact, wrongly convicted and spent all that time
4 in prison, right?

5 A. Right.

6 Q. So, as he sits here today, given what you have
7 heard from your co-workers and what little
8 information you have had, can you presume that he
9 is innocent of these charges?

10 A. I haven't really heard too much. I don't really
11 know what's ...

12 Q. Well, do you think the fact that he is here today
13 and that this case has progressed as far as it
14 has, right up to a trial here; do you think that
15 that means that he must have done something
16 wrong?

17 A. Yeah, must mean, yeah, he done something wrong.
18 I don't know.

19 Q. Why would you think that?

20 A. Because he is charged for -- is it the murder of
21 Teresa, I think it was.

22 Q. Okay. Well, your father was also charged?

23 A. Yeah.

24 Q. And you know Mr. Avery was also charged and
25 convicted once, wrongly, right?

1 A. Mm-hmm.

2 Q. Correct?

3 A. Correct.

4 Q. Did you know that that case went all the way to a
5 trial as well?

6 A. I didn't know that, no.

7 Q. Okay. So do you think, then, the mere fact that
8 someone, not just Mr. Avery, the mere fact that
9 someone gets this far in the process and has to
10 have a jury to decide, means that it's more
11 likely than not that they have done something
12 wrong or they wouldn't have gotten as far --
13 gotten themselves in this situation, or they
14 wouldn't have found themselves in this situation
15 in the first place?

16 A. Um ...

17 Q. You're not sure about that?

18 A. Yeah, I don't know.

19 Q. Is that because you are having a hard time seeing
20 how somebody could be innocent and be sitting
21 here?

22 A. Well, my dad was kind of in the same situation
23 so, or in that situation where he was innocent
24 and he was still sitting there.

25 Q. Mm-hmm.

1 A. So I could see how an innocent person could still
2 be.

3 Q. Okay. I appreciate that. And so, I mean, given
4 that knowledge and the Judge will instruct you
5 that you will have to presume Mr. Avery innocent.

6 A. Yeah.

7 Q. And -- But I want to be sure that that's not just
8 something that you are going to mouth back or
9 parrot back, yes, I can do that. Do you really
10 believe that you can do that, that you can
11 presume Steven Avery innocent and unless and
12 until, or if the State can prove otherwise,
13 beyond a reasonable doubt?

14 A. Yeah, I think -- I'm positive I can do that, that
15 he's innocent before.

16 Q. Okay. Now, along with that there's sort of a
17 complicated quandary that any defendant finds
18 himself in and that is the question of whether or
19 not the defendant should testify at the trial.

20 A. Okay.

21 Q. Do you know that a defendant has a constitutional
22 right not to testify?

23 A. Yeah, I know that.

24 Q. You have learned that, right?

25 A. Yeah.

1 Q. Okay. On the other hand, a defendant may choose
2 to testify and Mr. Avery may choose to testify,
3 but that some people might tend to discount
4 whatever he says because he's the defendant, he's
5 in trouble, he will say whatever he needs to say
6 and not listen to him like any other witness; can
7 you see that problem?

8 A. Yeah, I can see that problem.

9 Q. So, when Mr. Strang and I are talking amongst
10 each other, trying to decide whether Mr. Avery
11 should take the stand, we have to know if you can
12 promise that you won't -- that you will follow
13 the Judge's instruction, that if he doesn't
14 testify, you can't use that against him, can't
15 consider it in fact in any way, or if he does
16 testify, you have to consider him like any other
17 witness; can you promise to do that?

18 A. Yeah, I can promise to do that.

19 Q. Do you think, though, that if he doesn't testify
20 that he's hiding something?

21 A. I couldn't really say. I don't know if -- I
22 don't think he would be hiding anything if he
23 doesn't testify, I don't know.

24 Q. Why, because there's other reasons that somebody
25 might not testify besides the fact that they are

1 actually guilty; I mean, they could be completely
2 innocent and choose not to? Do you think that?

3 A. Yeah, they could. I don't know. I couldn't -- I
4 don't know why, but I think -- I think they
5 could. I don't know.

6 Q. You are going to hear a lot of testimony, or a
7 lot of evidence about a crime. And if -- if
8 Mr. Avery says he didn't do it, you may wonder,
9 well, then who did, right?

10 A. Right.

11 Q. Human nature. Are you going to expect that
12 Mr. Avery is going to have to convince you who
13 did it, if he didn't?

14 A. Depends, I don't know if he was there when it
15 happened or when.

16 Q. Well, if -- in other words, if -- are you going
17 to say, look, if -- if the defendant -- if the
18 defense can't tell us who really did kill this
19 woman, then it must be him and I'm going to find
20 him guilty?

21 A. So you are, like, saying if he didn't do it
22 somebody else did, but nobody knows who, right?

23 Q. Yeah, that may well be the way the evidence comes
24 in. And if you -- Go ahead.

25 A. I just drew a blank right when you started

1 talking.

2 Q. Okay. If you -- I guess what I'm asking then is,
3 if the State puts on its case and you have a
4 reasonable doubt that Mr. Avery may not have
5 committed this crime, but you start thinking and
6 you're talking among other jurors and you say,
7 well, yeah, but if he didn't do it then who did.
8 Come on, I mean, somebody did it. It's got to be
9 him, we haven't heard anything else. We don't
10 know anybody else.

11 But if you still have a doubt, from the
12 State's case, that Mr. Avery did it, will that be
13 enough for you to render a verdict of not guilty,
14 or will you be still searching and holding the
15 defendant out to some burden of convincing you
16 who really did this crime?

17 A. I would be instructed to go by the evidence, so I
18 would have to, you know, whatever is shown, I
19 don't know.

20 Q. You have to what?

21 ATTORNEY FALLON: I'm sorry --

22 A. Go by whatever is -- I don't know how to put
23 that.

24 Q. Let me put it this way, do you think that -- do
25 you understand that Mr. Avery does not have any

1 burden of proof at all in this case?

2 A. No. No, I didn't know that.

3 Q. Oh, you didn't know that. Okay. Well, the Judge
4 will tell you that the State has the entire
5 burden of proof in any criminal case. And that
6 the defendant can just sit here, in fact, and do
7 nothing. And if the State doesn't present a
8 strong enough case, you have to find not guilty?

9 A. Oh, okay.

10 Q. Or the defendant could, you know, progressively
11 challenge, cross-examine all the State's
12 witnesses and not choose to put on any of his own
13 witnesses or her own witnesses. And if -- if the
14 State didn't convince you, beyond a reasonable
15 doubt, you would have to find not guilty, okay?

16 A. Okay.

17 Q. So I just want to be sure that if the Judge tells
18 you that Mr. Avery does not have to prove his
19 innocence, that he is presumed innocence --
20 innocent, that you are going to be able to follow
21 that instruction and not fall back on what's kind
22 of human nature, which is, hey, well, who did it
23 if he didn't?

24 A. Yeah.

25 Q. You will follow the instructions?

1 A. Yes.

2 Q. All right. What about if you -- if you felt that
3 way, that is, if you felt that the State had not
4 convinced you, beyond a reasonable doubt, and
5 thought about, therefore, voting for a verdict of
6 not guilty; would you be concerned about what
7 your family or friends might think about you?

8 A. Yeah. A little bit, yeah, I would say I would.

9 Q. Because most of your family, or friends, or
10 circle of people you know have strong opinions
11 already?

12 A. The people at work, most of them have strong
13 opinions.

14 Q. And that opinion is what?

15 A. They both -- they go either way. Some say he is
16 guilty, some say he is innocent.

17 Q. Okay. So if you became convinced that a not
18 guilty verdict was the appropriate one, you would
19 still have some fear --

20 A. Yeah, there would still be a -- what would you
21 call it -- there would still be people who would
22 probably be upset or whatever.

23 Q. And would that bother you? Sounds like it would
24 bother you a little bit?

25 A. Yeah, I would say it would bother me a little bit

1 that they would be upset, but ...

2 Q. Do you think you would be -- that concern that
3 you would have would be enough that it might
4 change your mind and cause you not to vote not
5 guilty?

6 A. It could go either way so that, you know, because
7 there's people there that think he's innocent, or
8 he is guilty, or so it could go either way.

9 Q. So if it came back guilty, there would be people
10 upset too?

11 A. Yeah.

12 Q. So what I'm asking, then, is aware of the fact
13 that you may get some sort of a reaction either
14 way, would you be able to put that aside when you
15 are in the jury room and deliberating on what the
16 proper verdict should be?

17 A. Yeah, I believe I could.

18 Q. Well, having heard everything you had today, let
19 me just ask you one last question. Do you -- Do
20 you feel like you want to be on this jury?

21 A. Not really.

22 Q. Is it something you would feel like you would do,
23 though, if it was your civic duty, if you had to?

24 A. Yeah.

25 Q. All right. Thank you, very much.

1 A. Thank you.

2 THE COURT: All right. At this time the
3 clerk will -- Mr. Fallon.

4 ATTORNEY FALLON: There is one matter that
5 I just noticed, neither counsel followed up on and
6 it was a question related to possible hardship that
7 was not answered on the questionnaire. Do we want
8 to ask about that, Question 76 went unanswered?

9 THE COURT: I will ask it.

10 ATTORNEY FALLON: Okay.

11 **VOIR DIRE EXAMINATION**

12 BY THE COURT:

13 Q. Mr. Saari, there was a question on the
14 questionnaire that asked, because the trial could
15 take approximately six weeks, whether or not that
16 would pose any type of hardship for you if you're
17 selected to serve on the jury. You did not
18 answer that question; does that mean that it
19 would not be a hardship for you to serve?

20 A. There wasn't anything going on.

21 THE COURT: Okay. All right. Thank you.
22 At this time the Clerk will escort you from the
23 courtroom.

24 (Wherein the juror was excused.)

25 THE COURT: Is there a motion from either

1 party regarding this juror?

2 ATTORNEY FALLON: Not from the State.

3 ATTORNEY BUTING: Not from the defense,
4 Judge.

5 THE COURT: All right. Very well,
6 Mr. Saari is in.

7 ATTORNEY BUTING: Judge, I do have a
8 further comment, though, on the last juror,
9 Mr. Klein.

10 THE COURT: Okay.

11 ATTORNEY BUTING: Based on -- Following up
12 with the Court's comments right after lunch that you
13 thought that although he had -- there was some
14 question about his exposure to information and media
15 after he was told not to, the Court said that it
16 didn't seem like he had been exposed to anything
17 significant. But, in fact, I think he has.

18 He testified that he specifically knew
19 about an order to test this blood vial that would
20 supposedly show one way or another whether it was
21 a source of planting. Now, that decision was
22 made by this Court in this court at 3:30 p.m. on
23 Friday, a full five days after the jurors had
24 come in here and were told to avoid any publicity
25 or anything significant. And that evidence may

1 not even be admissible, even if it is tested,
2 this Court has said.

3 So now we've got somebody who has been
4 exposed to significant information that may not
5 be admissible and contrary to what the Court had
6 ordered. And that's right, probably not at work
7 because he got off work at 3:30, so he wouldn't
8 have heard about that decision at work. It must
9 have been some time after that, perhaps on the
10 weekend, or on the radio there, or somehow he had
11 been exposed to that information, which wasn't
12 ruled on by this Court until 3:30 Friday
13 afternoon.

14 THE COURT: Mr. Fallon.

15 ATTORNEY FALLON: Well, I see counsel's
16 point, but I'm not sure that it's all that perfectly
17 clear that that is the case. Because the issue of
18 the blood vial and whether there should be an
19 adjournment, whether it should be tested, whether it
20 should be excluded, has been the object of quite a
21 bit of litigation since January 4th.

22 And there are a number of people that
23 when you talk to who think they may have
24 understood the news correctly and have not, you
25 know, understood the news correctly. In fact,

1 just a personal anecdote, I had people ask me, so
2 the Judge has decided to keep the vial out. And
3 at that point in the proceeding the only thing
4 that had been filed was the motion to exclude it.
5 So the people have heard something.

6 But I'm not entirely sure that Mr. Klein
7 was of that -- in other words, that what he
8 thought he heard about the blood vial must have
9 come after 3:30 on Friday afternoon, I'm not
10 convinced the record reveals that at all. And I
11 defer to the Court's original ruling. I think
12 you had it right, he is doing his absolute level
13 best to avoid any of that. He just happened to
14 hear something about a blood vial on the radio
15 and testing it.

16 THE COURT: All right. Well, I will try to
17 take a look this evening at that part of the
18 transcript again, but I didn't -- I suppose there
19 are a number of possible explanations for any
20 comment he would have made regarding the blood vial.
21 It has been in the news. The motions regarding the
22 blood vial have been pending and have been heard for
23 the last month and a half or so.

24 I just -- My primary impression from him
25 was that he had attempted to avoid being exposed

1 to publicity, but recognized that because of the
2 place where he works it was impossible to
3 completely avoid exposure because of the fact
4 that the radio is on at his place of employment.

5 But I will take Mr. Buting's comments
6 into consideration, take another look at the
7 transcript and address it again tomorrow if I
8 feel there is a need for the Court to reconsider
9 its decision.

10 ATTORNEY BUTING: Thank you, your Honor.

11 ATTORNEY FALLON: I would also offer,
12 there's nothing that says we couldn't bring him back
13 and clarify that point either if absolutely
14 necessary, if there's any doubt in the transcript.

15 THE COURT: All right. At this point,
16 then, we'll move on to Mr. Stonebraker. Mr. Saari
17 is in.

18 Okay. Mr. Stonebraker, please just
19 stand there a minute.

20 THE COURT: All right. At this time,
21 Mr. Stonebraker, the Clerk will administer the oath.

22 THE CLERK: Raise your right hand, please.

23 (Juror sworn.)

24 THE CLERK: Please be seated.

25 THE COURT: Mr. Stonebraker, you have

1 already completed a written questionnaire in this
2 case. Today we're moving on to the next phase of
3 juror selection which is the individual voir dire
4 process. The attorneys for the parties will have a
5 chance this afternoon to ask some follow-up
6 questions to you concerning answers that you gave in
7 your questionnaire.

8 Before they begin, I want to make sure
9 that you understand that the jurors who are
10 selected in this case will not be sequestered;
11 that is, at the end of trial each day they will
12 be permitted to go home. And with respect to
13 today's proceedings; although these are open to
14 the public, during the voir dire process we do
15 not permit cameras in the courtroom and members
16 of the media are prohibited from disclosing your
17 name in any media reports of these proceedings.

18 In addition, should you be selected to
19 serve on the jury, cameras will not be permitted
20 to take any shots at the trial that disclose the
21 identity of the jurors.

22 In the event you are still on the panel
23 after today's questioning, you will get a phone
24 call in the next day or two letting you know when
25 you have to report back to court.

1 Mr. Fallon, at this time you may begin
2 your questioning.

3 VOIR DIRE EXAMINATION

4 BY ATTORNEY FALLON:

5 Q. Good afternoon, Mr. Stonebraker. My name is Tom
6 Fallon, I'm an Assistant Attorney General with
7 the Wisconsin Department of Justice. I'm one of
8 the prosecutors in this case. And to my left is
9 Mr. Kratz, the Calumet County District Attorney
10 and lead prosecutor in this case. Good afternoon
11 and thanks for returning to help us out this
12 week.

13 I would like to first begin with you
14 telling us a little bit about your duties and
15 responsibilities at we energies, at the power
16 plant. If you would, tell us a little bit about
17 what you do there.

18 A. I'm an instrument control technician, which is
19 part of the maintenance department. We service
20 the instrumentation of the plant, the automatic
21 control systems, and we do what they call
22 surveillance tests, which is on the reactor, and
23 make sure everything is working right and all the
24 safety systems are operating correctly.

25 Q. All right. And how long have you been employed

1 at the plant doing that type of work?

2 A. In May, it will be 18 years.

3 Q. Have you done any other duties or have you had
4 any other responsibilities at the plant other
5 than the control technician?

6 A. Yeah, the first two years I was there I was an
7 auxiliary operator. Which that's the guys
8 that -- they run the plant, out in the plant
9 itself, not the ones in the control room.

10 Q. Okay.

11 A. Although a lot of that time was in training; it
12 takes awhile to train for that.

13 Q. I'm at a loss because I'm not very familiar with
14 nuclear stuff; what -- what is an auxiliary
15 operator?

16 A. They would be the guys that go out and turn
17 valves, take logs on equipment.

18 Q. Okay.

19 A. That kind of thing.

20 Q. All right. So you did that for two years and
21 then for the past, what, 16 or 18 you --

22 A. Sixteen.

23 Q. Sixteen, an instrument control tech -- control
24 technician?

25 A. Correct.

1 Q. Okay. And prior to that, you served in the
2 United States Navy?

3 A. Yeah, I did have a job in between, the
4 questionnaire said three years, though, so.

5 Q. Okay.

6 A. But, yes, I was in the Navy.

7 Q. Sure. What did you do in between then?

8 A. I was a Rad Con Technician at Maryland Naval
9 Shipyard, which I believe is closed now.

10 Q. All right.

11 A. That was in Vallejo, California, near San
12 Francisco.

13 Q. Oh, sure. What kind of work did you do there?

14 A. I was a Radiation Control Technician. We -- We
15 did surveys to make sure that there wasn't
16 radiation getting outside of the -- It was a
17 shipyard.

18 Q. Okay.

19 A. So we're just making sure we do radiation surveys
20 and contamination surveys. Make sure all the
21 radiation and contamination was where it was
22 supposed to be.

23 Q. And what type of duties did you have in the
24 United States Navy?

25 A. I was an Electronics Technician for the nuclear

1 field, which meant that I worked -- I was on the
2 USS Enterprise. And I worked in the engineering
3 spaces where the reactors were, propulsion
4 reactors.

5 And I was an electronics technician. We
6 were the -- We would operate the plant. They
7 have a control panel and we would do that. There
8 was some other watch stations too where you would
9 just monitor the equipment. And, you know, we
10 did maintenance and stuff too.

11 Q. Okay. And how long did you -- Well, let's see, I
12 see you were six years in the Navy?

13 A. Correct.

14 Q. All right. Were you based primarily here in the
15 United States or did you get to travel a bit?

16 A. We were based in the United States, but we
17 traveled. I did two oversea deployments.

18 Q. Okay. Where did you go?

19 A. Philippines, Hong Kong, Singapore, Pakistan,
20 Australia, France and Italy.

21 Q. All right. That's moving around pretty good.
22 How much time in Australia?

23 A. About a week.

24 Q. On your questionnaire, you indicated you consider
25 yourself at least somewhat knowledgable in the

1 area of chemistry?

2 A. We had -- Yeah, I wouldn't consider myself an
3 expert at all, but we had a fair amount of
4 training on chemistry.

5 Q. All right. And is that training something that
6 you rely upon today to assist you in performing
7 the duties as a instrument control technician?

8 A. No.

9 Q. All right. Have you -- Have you used any of that
10 chemistry background training in your current
11 responsibility at all?

12 A. No, the chemistry training I got was in the Navy.
13 And it was just part of a well-rounded background
14 for being a nuclear operator.

15 Q. All right. In terms of nuclear reactors and the
16 science behind them, were you called upon to
17 learn how they actually work and --

18 A. Absolutely.

19 Q. -- and -- All right. And how much science would
20 you say you had been exposed to; in other words,
21 classroom type of work or ...

22 A. Depends on how you want me to quantify it. We
23 had quite a bit. It would be somewhat equivalent
24 to a college degree.

25 Q. All right. Was that -- That was in -- training

1 that was mandated for the type of work you were
2 doing --

3 A. Correct.

4 Q. -- in other words?

5 A. Right.

6 Q. And so you had a fair amount of it, a couple
7 years worth of training; on-the-job training, I
8 would I imagine.

9 A. There was -- Well, first I had training in
10 electronics because I was going to be an
11 electronics technician. And then I went to
12 nuclear power school, which was all classroom.
13 And, then, after that there was prototype
14 training I went to in Idaho and that was hands
15 on. And each of those was about six months.

16 Q. Okay. All right. So how do you like being a
17 manager of a softball team?

18 A. Oh, it's -- I like softball a lot. I play on two
19 different teams. It's fun. And I forgot to put
20 on there I'm on the Manitowoc County -- or
21 Manitowoc Rec Department Softball Commission.

22 Q. All right.

23 A. So, I like softball a lot; I enjoy it.

24 Q. What do you do for the Rec Commission; what kind
25 of responsibilities or --

1 A. Well --

2 Q. -- what's your level of participation?

3 A. Yeah, we haven't had any meetings for a while so

4 I'm not sure what's going on with that, but when

5 we did have meetings we would talk about ways to

6 improve the diamonds in Manitowoc, in the city.

7 Q. All right.

8 A. Like we had discussions about, some of the fields

9 needed new benches. We would talk about rules,

10 improvements, you know, things like that. Bat --

11 We had things for checking bats to make sure

12 people weren't using illegal bats, things like

13 that.

14 Q. All right. No cork bats?

15 A. Right. Well, the equivalent in softball would be

16 a titanium bat so.

17 Q. All right. Do you like managing people?

18 A. I don't really do it that much. I don't mind it.

19 I mean, a little, sure.

20 Q. All right. Did you have supervisory

21 responsibilities when you were in the Navy?

22 A. No. Um, some people, the rank I was at did, but

23 I didn't.

24 Q. All right. Were you -- Did you work mostly alone

25 or were you on, like, a team of technicians; how

1 did you ...

2 A. In the Navy?

3 Q. Yeah.

4 A. We -- The Enterprise had four different plants.
5 They had two reactors each and they would assign
6 us to one particular plant.

7 Q. Right.

8 A. So -- And then it would be divided by jobs, you
9 know, like the mechanic or electrician types,
10 they would be different. So we had -- it's been
11 a long time but, we had 12 or so guys that I
12 would work directly with.

13 Q. All right. Do you work with a team right now or
14 are you pretty much on your own as an instrument
15 control technician?

16 A. We have a shop of about 20 guys, not counting
17 supervisors.

18 Q. All right. You are not one of the supervisors?

19 A. No.

20 Q. All right. In your role as an instrument control
21 technician, have you been involved in writing of
22 safety guidelines or setting up or enforcing
23 safety standards for working with the reactors
24 and other technical equipment at the plant.

25 A. We have procedures for virtually everything we do

1 and I have -- I did spend some time doing
2 procedure writing, so, yes.

3 Q. All right. Did you enjoy having a hand in that?

4 A. It was interesting. It's nice to do something a
5 little different every once in a while. The deal
6 was that I was just temporarily assigned to it
7 for a couple years. You know, they kind of
8 rotate people through.

9 Q. Right.

10 A. So.

11 Q. All right. Very good. Well, I would like to
12 talk to you a little bit now about some of the
13 information or what you think you may know about
14 our particular case. And I would like to begin
15 with the news media and coverage of the case.
16 You indicate you get most of your news from the
17 radio and the internet?

18 A. Yeah, mostly the internet.

19 Q. All right. You are not much of a television guy,
20 then?

21 A. I never watch, or almost never watch, the local
22 news. And I don't care to watch the national
23 news all that much either.

24 Q. Okay. What kind of radio or what radio stations
25 do you regularly listen to?

1 A. Either a Christian radio stations or like talk
2 radio.

3 Q. Okay.

4 A. And sports, sports talk also.

5 Q. Okay. What type of talk radio, any particular
6 station or --

7 A. Well --

8 Q. -- broadcaster that you find interesting?

9 A. Yeah, I live so close to where I work and the
10 only time I ever listen to it is when I'm in the
11 car for my 12 minute drive in. But when I -- the
12 little bit I hear is, like, sometimes I will hear
13 the end of Rush Limbaugh or Mark Belling out of
14 Milwaukee.

15 Q. Okay. But then these are, as you say, short
16 listens as it were?

17 A. Very short. And if I -- if I go home and I drive
18 into Manitowoc to do a shopping trip or
19 something, I might listen to it too. But I --
20 If, like, if you were to ask me my total time in
21 a week, I would say a couple hours, maybe.

22 Q. Okay. Of all the time that you are in the car?

23 A. Right. And even then, sometimes I will listen to
24 a CD or sports --

25 Q. Right.

1 A. -- radio, whatever, so.

2 Q. What kind of workweek do you have at the plant, I
3 mean, is it regular 40 hour week, or less, more?

4 A. Normally, we work five 8 hour days. Then for
5 refueling outages we work six 12 hour days.

6 Q. I'm sorry, during what?

7 A. Six 12 hour days, that's starting a refueling
8 outage.

9 Q. Oh.

10 A. Each unit, we have one of those every 18 months.
11 It's a two unit plant.

12 Q. Gotcha. All right. In terms of your internet
13 experience, what kinds of things do you use the
14 internet for; do you get your news there, or any
15 other purpose, or ...

16 A. Well, I don't generally go to a news site like
17 cnn.com or abc.com, or any of that kind of stuff.
18 I mostly read blogs and columns.

19 Q. Okay.

20 A. And then I'll -- There's a few TV shows I watch.
21 And I like to read on, you know, shows -- sites
22 that talk about those. For a couple of them, not
23 all of them, but ...

24 Q. Right. All right. Given that background, in
25 terms of your exposure to coverage of this

1 particular case, where would you say you have
2 heard or experienced most of the news from; the
3 radio, the internet, or some other source?

4 A. I haven't read anything on the internet. The
5 radio, a lot of times when I'm driving it will
6 be -- if its on the hour I will hear the six or
7 seven minute newscast they have.

8 Q. Right.

9 A. And a couple times I heard something about it.
10 When the first -- When it first happened I did
11 see some stuff, they put up a TV in our shop to
12 show the -- I can't even remember exactly which
13 event it was. I think it was when they announced
14 they were filing charges. And we watched that
15 for like 10 minutes. And really hasn't been that
16 much.

17 Q. So you only remember that one time, seeing a
18 televised newscast?

19 A. Correct.

20 Q. Okay.

21 A. Did you say anything about newspapers; I can't
22 remember?

23 Q. That's coming up.

24 A. Okay.

25 Q. We're still on the internet and the radio and the

1 one television newscast?

2 A. Okay.

3 Q. So the radio, you might have, if it's the top of
4 the hour --

5 A. Right.

6 Q. -- you catch whatever they throw at you?

7 A. A little blurb, yeah.

8 Q. Right. And nothing on the internet; you don't
9 use that to read up on the case, for instance?

10 A. Right. Right. I don't go, like, to the
11 heraldtimesreporter.com. I have gone there a few
12 times.

13 Q. Mm-hmm.

14 A. Never for that case.

15 Q. Okay.

16 A. It would always be something specific I might
17 have an interest in.

18 Q. All right.

19 A. You know.

20 Q. Do you recall, then, seeing any newspaper
21 articles on the case?

22 A. Yes.

23 Q. Okay. Anything in the last month?

24 A. Well, my in-laws, my wife's parents, live with us
25 and they subscribe to the Herald-Times Reporter.

1 I never read it cover to cover because it just
2 doesn't interest me that much. Typically, what I
3 will do is I will scan the cover, see any big
4 goings on that I didn't hear about. And so I did
5 see an article recently about charges being
6 dropped.

7 Q. Okay.

8 A. Which I sort of knew any way.

9 Q. Right.

10 A. But I didn't read it.

11 Q. You didn't read it?

12 A. No.

13 Q. So you just looked at the headline and moved on?

14 A. Right. Oh, there was another article right next
15 to it that talked about jury selection and
16 because I was in the process, I was kind of
17 interested. And I started reading it and it -- I
18 saw that it didn't pertain to the facts of the
19 case so I went ahead and read that article.

20 Q. You did or did not?

21 A. I did.

22 Q. Okay. And that just talked about this process
23 you are involved in now?

24 A. Correct.

25 Q. Okay. Did you read any other articles or any

1 other coverage of the case, or any discussion of
2 what might or might not be evidence in the case?

3 A. The only things I ever read in the newspaper,
4 other than what I just mentioned, was when it
5 first happened, I remember reading an article and
6 I would read part of it and then they would start
7 talking about things that I didn't really care
8 about or didn't care to read about, so I, you
9 know, just basically enough to get a general idea
10 what was going on. I wasn't interested in the
11 particular details.

12 Q. Okay. And that was many months ago, maybe more
13 than a year?

14 A. Yeah, whatever it was. Yeah.

15 Q. All right. Well, based on what you have seen and
16 read and heard on the radio, have you formed any
17 opinion as to whether Mr. Avery is guilty or
18 innocent of the offenses for which he is charged?

19 A. Well, I know that, judging by what I do hear, the
20 little bit I hear and by what people talk about,
21 they all seem to think he's guilty.

22 Q. Right. But on the questionnaire, when asked
23 specifically if you formed any opinions based on
24 the information from any source --

25 A. Right.

1 Q. -- you said you had no opinion yourself?

2 A. Yeah, I really haven't followed it close enough.

3 I mean --

4 Q. Okay.

5 A. -- you know, I know what other people think. If
6 you backed me into a corner and threatened me and
7 made me say one way or the other, I would
8 probably go with what everybody else seems to
9 think, but I don't know that much about it.

10 Q. Right. You haven't followed it really enough to
11 form -- make an informed --

12 A. No, I don't follow that kind of news.

13 Q. Okay. You also said that whatever information
14 you do have you would be able to set aside and
15 decide this case solely on whatever the evidence
16 is presented, if you were selected from a jury?

17 A. Correct.

18 Q. As a juror. Do you think you can still do that?

19 A. Yes.

20 Q. All right. Is there any -- anything that you
21 have experienced that really raises a question in
22 your mind as to whether you could follow the
23 Court's instruction and simply decide this case
24 based on what the evidence is in the courtroom
25 and not on any of this other stuff?

1 A. Not that I'm aware of.

2 Q. All right. Okay. I just have one last couple
3 questions I wanted to ask you about. I see from
4 some of the information in your questionnaire
5 that either you, or someone very close to you,
6 was a victim of a robbery many years ago?

7 A. I was.

8 Q. You were. All right. And as far as you know,
9 the suspects were never located?

10 A. Correct.

11 Q. Were you still in the Navy at that time or was it
12 just --

13 A. It was when I was in high school.

14 Q. Oh.

15 A. I worked at a fast food place in Fresno,
16 California and that's when it happened.

17 Q. All right. So that's not anywhere -- that was in
18 California?

19 A. Correct.

20 Q. I forgot to check, are you -- you are from the
21 San Francisco area?

22 A. I was born there. I lived in California until
23 1989 when I moved here to work at Point Beach.

24 Q. Okay.

25 A. Not counting Navy time.

1 Q. Right. So is there anything about that
2 experience, having been a victim 26 years ago,
3 that makes you question whether or not you could
4 be fair and impartial in this case?

5 A. No.

6 Q. All right. Were -- Did you have an opportunity
7 to interact with the police in --

8 A. Yes.

9 Q. All right.

10 A. They took me downtown to the police station and I
11 looked through mug shot books and never saw the
12 people so. And that was the last I ever heard of
13 it.

14 Q. All right. Very good. Thank you, sir.

15 THE COURT: Mr. Strang.

16 VOIR DIRE EXAMINATION

17 BY ATTORNEY STRANG:

18 Q. You probably saw us all stand up briefly and
19 awkwardly last week, but --

20 A. Oh, yes.

21 Q. I'm Dean Strang and Jerome Buting and Steven
22 Avery. The two of us are defending Mr. Avery.

23 A. Right.

24 Q. Some -- Some simple questions initially just
25 about the 18 years you have had at Point Beach.

1 A. Sure.

2 Q. During your time there, have you met a woman
3 named Lori Dassey?

4 A. Yes.

5 Q. Have you met a guy named Jason Rezash?

6 A. No.

7 Q. Okay. How did you meet Lori Dassey?

8 A. Oh, let's see, about 10 years ago, 10 or 11 years
9 ago, like I mentioned, with the procedure or
10 anything, occasionally you would get temporarily
11 assigned to another area and I was assigned to
12 corrective actions for awhile and she was one of
13 the clerks there.

14 Q. And how long were you in that area, in corrective
15 actions?

16 A. It's been a long time, but six to nine months.

17 Q. So you worked with her during that period of
18 time?

19 A. She was in the area; I didn't work closely with
20 her. As a matter of fact, she wasn't even in
21 corrective actions. She -- Her cubical was in --
22 nearby. So I didn't really directly work with
23 her.

24 Q. And is this -- is this a large enough staff at
25 this place that if you're not assigned to

1 somebody's area you just don't --

2 A. That's correct.

3 Q. -- see them?

4 A. There's -- There's a lot of people there that I
5 see their face and I know who they are and a lot
6 -- so many times when I would get introduced to
7 somebody and, oh, you know, I have heard of that
8 person, but I had no idea the name and the face
9 kind of thing.

10 Q. So how do you remember Lori's name?

11 A. One reason is because there was somebody at my
12 church that had the same last name. And then, I
13 talked to her a few times, you know, and just as
14 a courtesy, like, if I were to meet her
15 somewhere, like run into her at Wal-Mart or
16 something and I would say hi, might talk for 20
17 seconds, how are the kids kind of thing. But
18 other than that --

19 Q. Mm-hmm.

20 A. -- you know, never -- sort of was never friends
21 with her, never did anything with her outside
22 work or even at work, other than, you know,
23 professional duty kind of thing.

24 Q. What's her connection to this case?

25 A. Somebody told me that she used to be married to

1 the defendant, but I didn't even know that at the
2 time.

3 Q. Okay. And when is the last time you have spoken
4 to Ms Dassey?

5 A. I ran into her at Wal-Mart about a month ago,
6 like I said, I had talked to her like 30 seconds,
7 you know, hi, how's it going kind of thing.

8 Q. Mm-hmm. Okay. Do you know anything about Steven
9 Avery through her?

10 A. No.

11 Q. Or by people talking about her?

12 A. That's kind of how I found out she had been
13 married to him was just by, you know, gossip kind
14 of thing.

15 Q. Right. And what did they tell you other than
16 she --

17 A. They just told me that she was, like, his
18 ex-wife, you know. That's all I remember them
19 ever saying.

20 Q. Not anything more?

21 A. No.

22 Q. Kids together or?

23 A. No idea.

24 Q. Okay.

25 A. And I didn't put that on the questionnaire

1 because it was just a few days ago that I even
2 found this out so.

3 Q. That's fine. No. That's fine. Because you are
4 at Point Beach I thought --

5 A. Right. Right.

6 Q. -- I would ask. Actually, I have several
7 questions about Point Beach?

8 A. Sure.

9 Q. And no particular order, Mr. Stonebraker, but are
10 you -- are you -- I understand you are a member,
11 but are you active in the International
12 Brotherhood of Electrical Workers?

13 A. Oh, the union?

14 Q. Yeah.

15 A. No, I'm kind of a middle-of-the-road guy on
16 unions.

17 Q. What does that mean?

18 A. I tend to be more conservative politically,
19 but -- and unions are very left wing, but I'm
20 glad we have a union. I will say it that way,
21 because I have seen the company do things that I
22 wouldn't agree with. And I'm glad the union
23 keeps them from doing it. There's, like,
24 management people that aren't in the union.

25 Q. Right.

1 A. But on the other hand, I think unions sometimes
2 have too much power. So, you know, it's -- I
3 think it's good that they exist, but I don't
4 think they should have too much power.

5 Q. Yeah. And when you say too much power, over the
6 individual member or over the --

7 A. No, I mean --

8 Q. -- operation?

9 A. No, over the company.

10 Q. The company. Okay. Is it a closed shop, were
11 you required to join?

12 A. Yes. Yes.

13 Q. Or a union shop I should say?

14 A. Correct.

15 Q. Okay. And is -- I don't know the answer to this,
16 but is Point Beach one of the nuclear plants in
17 this nation that, since sometime shortly after
18 September 11, 2001, I think, everybody has been
19 issued a red card, or no?

20 A. I don't have a red card.

21 Q. Everybody is empowered to shut the place down if
22 there are unsafe conditions?

23 A. If anybody has a safety concern, they would --
24 they are encouraged to bring it up, yeah.

25 Q. Mm-hmm. Okay. But there's no specific mechanism

1 for that?

2 A. Well, there's -- It's a little like the military,
3 there's -- it's similar to a chain of command,
4 you know. We bring up the concerns, they would
5 investigate it first, obviously, you know, so
6 they don't just always shut the plant down --

7 Q. Right.

8 A. -- and find out, well, that was dumb.

9 Q. Right.

10 A. So, yeah.

11 Q. Okay. While you were in the Navy, let's see,
12 you -- obviously you volunteered probably close
13 to right out of high school?

14 A. That's correct, I got out of high school in June
15 and I went in the Navy in September. But I
16 was -- I don't remember what they call it any
17 more. I signed up, like, in January of that
18 year, I believe.

19 Q. Mm-hmm. And had the summer off and then went
20 in --

21 A. Yeah, I purposely waited. I figured I wanted to
22 have one more summer off before I went in.

23 Q. Right. And at that point you were still out in
24 the Fresno area?

25 A. That's correct, yes.

1 Q. Was the USS Enterprise your only shipboard
2 assignment?

3 A. Correct.

4 Q. So you were land based for the rest of your two
5 tours, or whatever?

6 A. It's only one tour to be in the nuclear program,
7 because of so much training, we were required to
8 sign up for six years.

9 Q. Okay.

10 A. So I was in the Navy for two years and four
11 months before I even made it to the ship.

12 Q. And how long were you on the Enterprise?

13 A. That would have been three years and about eight
14 months.

15 Q. So really the balance of --

16 A. Oh, that's correct, yes.

17 Q. -- of your tour?

18 A. Yes.

19 Q. And did you -- I think, essentially, you have
20 answered this next question, that you were never
21 submarine based?

22 A. No, I volunteered, but they had too many
23 volunteers, so I ended up on a carrier.

24 Q. Okay. Did the volunteering to be submarine based
25 involve anything more than simply volunteering?

1 Was there a battery of tests or ...

2 A. No. No, they encouraged you because -- I guess
3 because a lot of times they -- they were short of
4 people for submarines, so we were kind of
5 encouraged. And there was a monetary --

6 Q. Incentive?

7 A. -- like one hundred dollars a month. It wasn't
8 really all that much, but on the money you are
9 making in the Navy it was a good amount. And
10 plus that was 25 years ago.

11 Q. Right. And were you particularly interested in
12 serving on a submarine, or it was just a money
13 thing?

14 A. All the people that I was in contact, like the
15 recruiters and stuff -- not -- well, not all the
16 recruiters are nuclear, obviously. I'm guessing
17 that maybe they had some -- I don't know. They
18 just kind of encouraged me the whole way along.

19 It sounded interesting. I remember
20 thinking that the last thing I wanted to do was
21 be on a carrier. And then that's what I ended up
22 on; although I was glad in retrospect, but ...

23 Q. Why?

24 A. Well, I get motion sickness. And submarines,
25 once they get under water and down a ways they

1 don't have any trouble. But when they are near
2 the surface, modern submarines are designed to be
3 under water not on the surface. Where as in
4 World War II it was the other way around. So
5 they rock and roll a lot on the surface and I
6 would have been miserable.

7 Q. Me too. You obviously got to travel the world a
8 bit, thanks to the U.S. Navy. And one thing that
9 stood out on your questionnaire here is an
10 interest in geopolitics. Could you tell us just
11 a little bit more --

12 A. Sure.

13 Q. -- about that?

14 A. That relates to something I forgot to put on
15 hobbies, which would be I like war games,
16 basically historical games.

17 Q. Mm-hmm.

18 A. And my interest in geopolitics kind of grew out
19 of that. I'm very interested in World War II and
20 all the interactions between the countries and
21 stuff that went on and also in the modern world.
22 I just find it fascinating, the interaction
23 between countries and why they do this and that.

24 Q. And at the same time you -- I think the words you
25 used were, I don't care to listen much to the

1 national news, at least on TV?

2 A. Right.

3 Q. What's -- Where's the cleft there or the
4 distinction that you draw between this area of
5 great interest and then not caring to watch the
6 national news on TV?

7 A. You're just saying because they would cover that
8 kind of thing?

9 Q. Well, I don't know that they cover it very well,
10 but I'm just curious --

11 A. Well --

12 Q. -- where the shift in the interest is?

13 A. Well, I don't -- I don't think they -- First of
14 all, I don't think the people that cover it on TV
15 that you can understand it very well. And I
16 don't -- I don't think they give accurate
17 information, partly due to ignorance, but also
18 they -- I guess if you are talking about foreign
19 policy, I would be what you might call a hawk.
20 I -- I wouldn't say an extreme hawk, but I -- I
21 -- I strongly believe this country should stand
22 up for itself. And the news media tend to not
23 feel that way.

24 Q. Okay.

25 A. So that would be, I guess, be the main thing.

1 Q. The interest in war games, this would not be so
2 much of the reenactment variety, I'm taking, you
3 know, civil war or revolutionary war
4 reenactment --

5 A. No.

6 Q. But rather the --

7 A. Board games --

8 Q. -- geopolitics --

9 A. Or computer.

10 Q. Okay. And that's right, you mentioned that you
11 subscribe to *Games For Windows Magazine*?

12 A. Yeah, actually, they send it to me. I used to be
13 a subscriber. I let it run out and they have
14 been sending it to me for like seven years. It
15 says it expires in '09 and I never paid for that
16 but they -- I don't know why but ...

17 Q. But in any event, you are interested in board
18 games or computer based --

19 A. Yeah --

20 Q. -- games?

21 A. I like strategy games. I don't really get into
22 the first person shooters.

23 Q. Okay.

24 A. Like Doom, that kind of games. They are very
25 violent. And I don't want my kids to play those

1 kind of games. And also I get motion sick, so
2 even if I liked them, it would just make me sick
3 to play them so.

4 Q. But the strategy?

5 A. Yeah, I really like strategy games, yeah.

6 Q. And you mentioned an interest in blogs and
7 getting -- getting, I guess, some news, if you
8 will, from blogs. Are you drawn to more
9 specialized blogs with people with a deeper
10 expertise in these areas.

11 A. There's only one blog I read regularly that would
12 be that kind of thing. There was some others I
13 used to read that were about TV shows, you know,
14 like --

15 Q. What are the blogs you read --

16 A. Um --

17 Q. --regularly or semi --

18 A. Well, the --

19 Q. -- regularly?

20 A. -- main one I read that is not a TV base -- or
21 talking about TV is called voxx populi.

22 Q. Voxx Populi?

23 A. Yeah.

24 Q. Mm-hmm.

25 A. And it's -- I don't really think the guy is

1 really a nice guy, if you know what I mean. And
2 I don't -- I just read him quite a bit, but he is
3 pretty sharp and in general I tend to agree with
4 his views. And I don't know, I don't even
5 remember how I found it. I think it was linked
6 from something else. Oh, I know what it is, he
7 has a column on worldnetdaily.com. And I was
8 reading his column once and it said they have a
9 blog so I checked it out and I have been reading
10 it for a couple years.

11 Q. Mm-hmm. And what other blogs?

12 A. One is -- I don't know if it's exactly a blog,
13 it's about the TV show *Lost*. There's one about
14 the TV show *Battlestar Galactica*. Occasionally
15 the Voxx one will have a link to a different one
16 and I will check it out, but it's nothing I have
17 kept reading regularly.

18 Q. Do you read Lakeshore Laments here in --

19 A. Never heard of it.

20 Q. -- you know, the Manitowoc area. It's a
21 Manitowoc area blog. Okay. And moving to the
22 radio, for the 12 minutes in the car, to and from
23 work.

24 A. Okay.

25 Q. Sounds like given your work hours you kind of

1 catch the end of Limbaugh sometimes, some of Mark
2 Belling --

3 A. Right.

4 Q. -- maybe? Out of what, WISN?

5 A. WISN, yes.

6 Q. And are you someone who ever calls into these
7 shows?

8 A. I called into Belling's show once or twice, but
9 that's when I first started listening. That
10 would be like in 1993 time frame.

11 Q. Mm-hmm.

12 A. And it wasn't a pleasant experience; he's kind of
13 a jerk. So, no, typically I'm not.

14 Q. Okay. Is he a jerk when you agree with him?

15 A. You don't have to be a nice guy to be smart about
16 things.

17 Q. Okay.

18 A. In fact, my wife hates his show because of how he
19 is, so.

20 Q. I wanted to go to your wife just in the financial
21 context here. She's -- You have listed her as a
22 homemaker.

23 A. Correct.

24 Q. And I counted eight children --

25 A. Yes.

1 Q. -- you have been blessed with? If you end up in
2 this jury, you know, for five, six weeks, or
3 whatever it turns out to be; is this going to
4 create a, I mean, a serious --

5 A. Not at all.

6 Q. -- financial hardship?

7 A. Because we energies will pay me.

8 Q. So you are covered --

9 A. Right.

10 Q. -- financially. How about otherwise, in terms of
11 family hardship?

12 A. From what I can gather, since it's not going to
13 be sequestered, at least from what I hear, I
14 don't think I would be gone a whole lot longer
15 than I am normally. I don't know for sure
16 exactly but, you know, they don't run court until
17 8:00 at night, as far as I know.

18 Q. I hope not.

19 THE COURT: Not when the jury is here, but
20 we may today.

21 Q. And the specific comment you made, I wanted to
22 follow up on from Mr. Fallon's questions. You
23 described somebody, management or somebody
24 setting up a TV in the shop?

25 A. Oh, yeah. Every big news event that's happened

1 since I worked there, when we -- in the first
2 Gulf War they set up a TV; for the OJ trial they
3 set up a TV; for 911 they set up a TV. So for
4 this, like I said, I think it was the
5 announcement of the filing of charges, they set
6 it up.

7 Q. Who's they?

8 A. Just guys at the shop. We have a TV if, like, if
9 we have a safety meeting, they will have a video
10 we watch. So just wheel the TV out. And, you
11 know, being electronics kind of guys and stuff,
12 they have rigged up an antenna going into the
13 shop. You know, management tolerates it for big
14 news events, but it's not a normal thing.

15 Q. I got it. And I just want to nail down, if at
16 all possible, you said it was, you think when it
17 was first charged. And there were two possible
18 first charged sort of events here. One would be
19 November of 2005, when Steven Avery was first
20 charged. And the other would be, probably March
21 of 2006, when Brendan Dassey was first charged.

22 A. Is it that long ago? I didn't realize it was
23 that long ago. I believe it was Mr. Avery.

24 Q. The first of those, way back?

25 A. Yeah.

1 Q. Okay. Do you remember any news conferences when
2 Brendan Dassey was charged, later?

3 A. No.

4 Q. Okay. And the TV, was that up one day or was
5 that a series of days?

6 A. One day for, oh, it was probably a couple hours
7 because, we turned it on and they said, oh,
8 coming, you know, coming right up, we're going to
9 have this news conference, you know, an hour
10 later they finally get started so.

11 Q. What do you remember of the news conference?

12 A. Not much. I remember -- the main thing I
13 remember was they -- that was interesting, was
14 that the, I believe it was Calumet County was
15 heavily involved in it. But I -- I don't know.
16 I couldn't give you a whole lot of details. They
17 were announcing, you know, murder charges, that
18 kind of thing, but ... And the, you know, the
19 victim's name, that kind of thing.

20 Q. Sure. Later, in March of 2006, do you recall
21 anything about what Brendan Dassey supposedly
22 said?

23 A. I have heard some stuff here and there about him;
24 nothing I can remember concretely. Something
25 about, I thought -- well, I don't know if I even

1 heard what he said. My knowledge about him is
2 that, I guess, he might have helped supposedly in
3 the commission of the crime but, I don't know
4 that much about him.

5 Q. Okay. And where that goes is, you know, you
6 heard, I guess in a news conference or something,
7 when Steven Avery was charged, you know, a little
8 bit about Brendan supposedly being involved --

9 A. Right.

10 Q. -- in the event. And you were a little surprised
11 to hear that much time had passed. So, here we
12 are, a trial starting, as you look across the
13 room at the guy two seats over from me, in your
14 mind do you presume him innocent? Do you think
15 he's probably guilty? Do you have no opinion?
16 What's your sense of it?

17 A. Well, like I said before, I mean, if you -- if I
18 had to guess one way or the other, I would say
19 guilty. But I don't know enough of the facts to,
20 you know, if you wanted a solid opinion I would
21 say, well, show me some stuff, you know, I mean.

22 Q. Which is a natural reaction. And let me ask you,
23 though, first, when the Judge instructs you that
24 you are to presume Mr. Avery innocent --

25 A. Correct.

1 Q. -- is that an instruction you can and will
2 follow?

3 A. Yes.

4 Q. Willingly?

5 A. Sure.

6 Q. Okay.

7 A. I think he should get a fair trial. I mean, I
8 would never want to send a guilty man to prison.
9 And I would, you know --

10 Q. An innocent man to prison?

11 A. I'm sorry, yeah. Sorry.

12 Q. That's okay. That's all right. I think I knew
13 what you meant, I think.

14 A. Yeah.

15 Q. And as a matter of a fair trial and proving
16 stuff, are you aware of the rule in America that
17 in a criminal case the government, the State,
18 whoever the sovereign is, alone, bears the burden
19 of proving someone guilty, beyond a reasonable
20 doubt?

21 A. Yes, I am.

22 Q. Which is to say, and I think you will hear this
23 from the Court, that the defendant has no burden
24 of proving anything?

25 A. Correct.

1 Q. Does that make sense to you?

2 A. Yes.

3 Q. Why should one side not have to do anything and
4 the other side carry all the load?

5 A. That would be because, if you have committed a
6 crime, they should have to prove that you did it.
7 You shouldn't have to prove that you didn't. You
8 shouldn't have to prove that you didn't do it.
9 Just because that's a lot harder I think than
10 proving that you --

11 Q. Proving a negative?

12 A. Right. Exactly.

13 Q. And in the same vein, I guess, if we're not able,
14 in the end, to prove who did kill Teresa Halbach,
15 if Steven Avery didn't; will you hold that
16 against us or, again, is this something where, if
17 you are not satisfied the State proves Steven
18 Avery guilty beyond a reasonable doubt, and you
19 would love to know who did kill Teresa Halbach,
20 but you are not satisfied it was him, are you
21 willing to return a not guilty verdict?

22 A. Yes, if that's what the evidence shows.

23 Q. Without requiring us to prove who did kill her,
24 if he didn't?

25 A. That's irrelevant.

1 Q. And, you know, I'm not -- I'm not saying that I'm
2 necessarily, or Mr. Buting, or for that matter
3 Mr. Avery, are going to sit here like a bump on a
4 log throughout the trial, although we could,
5 under the law, and just rely on the State having
6 the burden of proof. But one of the decisions
7 that ultimately we will have to make at this
8 table is whether Mr. Avery takes the witness
9 stand and testifies. Do you want to hear from
10 him, if you are a juror?

11 A. I would say yes.

12 Q. And can you accept and live with and respect and
13 honor a system that says he does not have to
14 testify if he chooses not to?

15 A. Absolutely.

16 Q. And, indeed, if he doesn't testify, that's no
17 evidence of guilt and can't be considered, I
18 think the Court will tell you.

19 A. Right, I understand that.

20 Q. And can you follow that?

21 A. Yes.

22 Q. By the same token, if at this table we should
23 decide that he does testify, the law, as I think
24 the Judge will tell you, is that he is entitled
25 to have his testimony considered like any other

1 witness. All the same considerations in deciding
2 what weight to give to a witness' testimony apply
3 to the accused, if he testifies. Is that also a
4 rule you can live with?

5 A. Yeah, I don't see anything unreasonable about it
6 at all. I'm not even sure why you are asking,
7 actually, I mean --

8 Q. Well --

9 A. -- what else would you do?

10 Q. You know, because we're asking people to be
11 honest and some people have a problem with the --

12 A. Yeah.

13 Q. -- with the rule?

14 A. Yeah.

15 Q. You know, it's -- I understand it's human nature
16 to want to hear both sides?

17 A. Right.

18 Q. You may not hear all of one side here. You may
19 just have to live with that and -- and be asked
20 to return a not guilty verdict all the same. And
21 so it's important to know whether, you know,
22 whether you can do that?

23 A. Right.

24 Q. Have you heard anything recently about a blood
25 vial?

1 A. Only hearsay at work.

2 Q. What?

3 A. One of the guys at the shop said something one
4 time about it, but I couldn't tell you any
5 specifics.

6 Q. Okay.

7 A. Especially since I got a notice I, you know, they
8 start talking about it, I just go away.

9 Q. Sure. Okay.

10 A. And even if I knew details, what I hear from one
11 of the guys in the shop doesn't mean anything.
12 I'm smart enough to know that.

13 Q. Depends on who, probably, in the shop, right?

14 A. Um, no, not when it comes to if I'm going to
15 decide if he's guilty or not.

16 Q. Sure, on something big, I understand. Last sort
17 of question, or two, or three I have for you.
18 Are you -- Are you a very active member at
19 Lighthouse Assembly of God?

20 A. What do you mean by active? We go there every
21 Sunday, if that's what you want to know.

22 Q. Are you involved? Are you a deacon, or on the
23 church --

24 A. No, I'm not on the board or anything.

25 (Court reporter couldn't hear.)

1 A. I'm not on the board.

2 Q. I'm sorry, we're probably talking over each
3 other. That's my fault, not yours; I'm supposed
4 to know better.

5 Did your church do anything with respect
6 to the disappearance or death of Teresa Halbach?

7 A. Not that I know of. I -- I highly doubt it. I
8 was -- I was going there at the time and I don't
9 remember anything.

10 Q. Okay. Good.

11 ATTORNEY STRANG: That's what I have got
12 for you. Thank you.

13 THE COURT: All right. The Clerk will
14 escort you out of the courtroom at this time.

15 (Wherein the juror was excused.)

16 THE COURT: Any motion from either party?

17 ATTORNEY FALLON: Not from the State.

18 ATTORNEY STRANG: I do. Without being
19 punctilious about, you know, the Court's order on
20 avoiding the media, this is someone who, I guess,
21 took his in-laws' newspaper, they live with him so
22 the paper comes to the house, and read part of one
23 and all of a second article well after he was told
24 to avoid exactly that kind of thing on -- on this
25 case. Probably the next day.

1 In some cases I wouldn't raise that. In
2 this one, with the pervasive pre-trial publicity
3 we have and this juror, of course, saw some of it
4 apparently in November, 2005, where this at some
5 level got equated in terms of bringing a TV into
6 the shop with September 11 and other really, you
7 know, very significant events.

8 I-- I think we have to be very tight
9 about enforcing the Court's order on avoiding the
10 publicity, so I move to strike for cause. I
11 don't have a broader reason than that as to
12 Mr. Stonebraker.

13 THE COURT: Mr. Fallon.

14 ATTORNEY FALLON: I can appreciate the
15 concern for following court rules and guides, but as
16 Mr. Stonebraker indicated, the only thing he looked
17 at was information regarding the jury selection
18 process. And on balance, based upon all of his
19 other responses, and I think counterbalanced by the
20 fact of all the other, I think, relatively, I don't
21 want to say extraordinary, but relatively
22 comprehensive efforts on his part to avoid
23 discussions at work, to avoid other ancillary forms
24 of information or sources of information, I don't
25 think there is a basis to strike him at all.

1 THE COURT: All right. If there was a
2 violation of the Court's order here, I think it was
3 very minimal. He seemed to be aware of it at the
4 time he picked up the paper. He stopped reading the
5 other article about the case, indicated he did read
6 the jury selection article.

7 My impression was that because he felt
8 that particular article not dealing with the
9 facts of the case, but just jury selection, with
10 which he was already involved, wasn't encompassed
11 by the Court's order.

12 At this stage of the game, the Court
13 hasn't fully had the opportunity to directly
14 address the jurors in detail about the Court's
15 restriction. They have been told on somewhat
16 cursory terms about avoiding the media. And I
17 think in his other answers he indicated he
18 recognized that and avoided any discussions at
19 work where discussions had taken place before.

20 So I think it was a di minimus
21 violation, if any at all. And based on all his
22 other answers, I'm more than satisfied that he
23 can be fair and impartial. So the Court is going
24 to deny the motion to strike this juror for cause
25 and keep him on the panel.

1 We're going to take our afternoon break
2 at this time. I did want to say something to the
3 attorneys. I have been giving the attorneys some
4 latitude in the time limit that I set originally.
5 But I want to let both parties know that if
6 there's too much questioning on things like
7 Pokémon like games that have no real direct
8 relevance to the selection of the jury, I'm going
9 to interpose my own objection.

10 I don't like to do that because I
11 realize it can be somewhat embarrassing to the
12 attorneys, but I think we have to stick on track
13 a little bit if we're going to make some headway
14 here. Stick to more directly relevant questions.
15 So I will see you at 3:25.

16 (Recess taken.)

17 THE COURT: Counsel, I'm informed that
18 Juror 33, Ms Abendroth, although she was going to
19 come here at one, has been here since this morning.
20 So we're going to take her out of order.

21 ATTORNEY STRANG: She's someone we -- She's
22 someone we have a motion to strike on.

23 THE COURT: We do?

24 ATTORNEY STRANG: I do. I don't think the
25 State joins it, but ...

1 THE COURT: Prior to voir dire?

2 ATTORNEY STRANG: I think we should.

3 THE COURT: All right. Mr. Strang, I will
4 hear your motion then at this time.

5 ATTORNEY STRANG: The Court may want to
6 pull the questionnaire.

7 THE COURT: I have it in front of me.

8 ATTORNEY STRANG: The -- I think the main
9 issue arises in the answer to No. 74 -- Question
10 No. 74.

11 THE COURT: I'm going to take a look.

12 ATTORNEY STRANG: And then we have also --
13 I mean, she has got a specific connection; she --
14 she works at a credit union, I gather at which the
15 Avery family banks, and is concerned about facing
16 them in an employment context where presumably she
17 would feel, you know, that she had an employment
18 duty not to avoid the contact.

19 Further the answers to Questions 40, 41
20 and 42, well, especially --

21 (Court reporter couldn't hear.)

22 ATTORNEY STRANG: Questions 40 and 42, you
23 know, explain the manner in which she's pre-judged
24 the case. And although she says in Question 43 that
25 she can set that aside, she appears to have both a

1 pretty well-formed prior opinion about the case and
2 an understandable concern about social stigma or
3 consequences. And I think there's probably more
4 than adequate reason to strike for cause.

5 THE COURT: Mr. Fallon.

6 ATTORNEY FALLON: I can see counsel's
7 concern. We briefly talked about it before. But as
8 I indicated, I thought at least we should hear her
9 out and get an idea as to really whether there is a
10 heartfelt or deepfelt fear, or just a reasoned
11 concern, or what have you.

12 As noted, with respect to Question 43,
13 she believes she could set aside whatever
14 opinions she may have as a result of media
15 coverage, the question -- or the answer, I don't
16 think, as framed, is really no different than, I
17 think that he might be guilty, based on the
18 coverage.

19 I don't see any distinction between that
20 and the guilt issue, unless one wants to say,
21 well, it's more directly related to a defense of
22 the case. But the bottom line is, it goes to
23 guilt. I don't see any difference there. And
24 she goes on to say, I can set that opinion aside.

25 So in terms of just on the paper, it

1 seems to me we ought to at least hear the woman
2 out. And it may turn out that she would be an --
3 unsuitable for jury service. If counsel wants,
4 they can go first if they think they can get to
5 that point faster, that's fine. Seems to me on
6 the paper, we ought to hear her out.

7 THE COURT: All right. Here's what I'm
8 going to do. I'm going to bring the juror in, I'm
9 going to ask questions first relating to question
10 No. 74. If I feel, based on those answers, that I'm
11 going to grant the defense's motion, I'm going to
12 simply excuse the juror.

13 ATTORNEY FALLON: That's fine.

14 THE COURT: If not, I will turn her over to
15 the parties.

16 ATTORNEY FALLON: That's fine.

17 THE COURT: Ms Abendroth, please raise your
18 right hand and the Clerk will administer the oath to
19 you.

20 (Juror sworn.)

21 THE CLERK: Please be seated.

22 THE COURT: Ms Abendroth, you have already
23 completed a written questionnaire in this case.
24 Today we're moving on to the next phase of jury
25 selection, which is voir dire. We're going to ask

1 you some questions relating to your qualifications
2 as a juror.

3 I will notify you that the jury in this
4 case will not be sequestered, that is, the jurors
5 will be permitted to return home after each day
6 of trial. The jurors will continually be
7 instructed not to listen to any news media
8 accounts of this case, or read anything in the
9 newspaper, watch anything on television, or from
10 any other source.

11 Today's proceedings are open to the
12 public, but the Court does not permit cameras in
13 the courtroom during voir dire proceedings and
14 the media is not permitted to disclose the names
15 of the jurors in the media reports of today's
16 proceedings.

17 **VOIR DIRE EXAMINATION**

18 BY THE COURT:

19 Q. I do have a question for you at the outset
20 relating to your answer to Question 74 in the
21 questionnaire. To refresh your memory, the
22 question was: Is there anything, or any reason
23 at all, however personal or private, that makes
24 you feel you should not serve as a juror in this
25 case, or that if selected to serve, you could not

1 be a fair and impartial juror?

2 You answered yes and indicated I would
3 be uncomfortable returning to work after the
4 trial knowing that many of his family members
5 that I wait on would have been in the courtroom
6 and recognized me from the jury.

7 ATTORNEY STRANG: Your Honor, I'm sorry to
8 interrupt, but maybe we could approach, sidebar,
9 just very briefly. I apologize.

10 THE COURT: Okay.

11 (Side bar taken.)

12 Q. (By The Court)~ Couple things. You did indicate
13 that, later on your questionnaire, that this was
14 something you wished to address in private. The
15 Court is somewhat limited in personal matters
16 that it can address in that fashion. The law
17 does not permit me to address this particular one
18 in private. You are employed where?

19 A. Shoreline Credit Union.

20 Q. Okay. And do I understand from your answer that
21 members of the defendant's family are customers
22 at that credit union?

23 A. That's correct.

24 Q. Okay. And I think I understand your answer, but
25 can you explain in a little more detail what you

1 mean.

2 A. Um, I don't know if I can.

3 Q. Do I take it from your answer that you -- your
4 concern is that if you were a juror and if the
5 jury reached a guilty verdict, that you would
6 feel very uncomfortable after returning to work
7 because of the situation you would be in.

8 A. I think, yeah, that's what I was getting at.

9 Q. And just to confirm what I think is my reading of
10 your answer, you feel that, that subliminally or
11 not, it could have an affect on your ability to
12 be fair and impartial.

13 A. Yes, that's correct.

14 Q. Do you still feel that way today?

15 A. Yes, I do.

16 THE COURT: All right. I'm going to have
17 the Clerk escort you from the courtroom at this
18 time.

19 (Wherein the juror was excused.)

20 THE COURT: All right. Counsel, the Court
21 is satisfied, based on the elaboration from the
22 answer in the questionnaire and from my own
23 observation of the demeanor of the juror, that
24 objectively she would have a rational basis for her
25 concern and I believe her concern is sincere. So

1 I'm going to grant the defense motion to excuse this
2 juror for cause.

3 ATTORNEY FALLON: We have no objection.

4 THE COURT: The next juror we'll hear from
5 then will be John Lawrence. All right. You are
6 Mr. Lawrence?

7 MR. LAWRENCE: Yup.

8 THE COURT: Mr. Lawrence, please raise your
9 right hand and I'm going to have the Clerk
10 administer the juror's oath to you.

11 (Juror sworn.)

12 THE CLERK: Please be seated.

13 THE COURT: Mr. Lawrence, you have already
14 completed a written questionnaire in this case.
15 Today we're moving on to the next phase of the jury
16 selection process which is individual voir dire.

17 The attorneys for each of the parties
18 will have an opportunity this afternoon to ask
19 you some questions that relate to your
20 qualifications as a juror.

21 Before I have them begin those
22 questions, I want to make sure you understand
23 that the jury in this case will not be
24 sequestered. That means that after each day of
25 trial the jurors will be able to go home and

1 spend the time at home until the next day of the
2 trial.

3 The jurors will continue to be
4 instructed, as they already have, that the jurors
5 are not to watch any news media accounts of this
6 case, either on television, listen to anything on
7 the radio, read anything in the newspapers or the
8 internet, or communicate in any way with anyone
9 else about the case, outside the courtroom.

10 I also want to make sure you understand
11 that while these are court proceedings today,
12 meaning they are open to the public, the Court
13 does not permit cameras in the courtroom during
14 voir dire proceedings and members of the press
15 are not permitted to use your name in any news
16 accounts of today's proceedings.

17 In addition, should you be selected to
18 serve on the jury, the camera operators are not
19 permitted to show the jury during the trial, in
20 any fashion, that allows anyone to identify who
21 the jurors are.

22 If you remain on the jury panel after
23 questioning today, you will get a phone call in
24 the next day or two that will tell you when to
25 come back for the next step in the jury selection

1 process. Mr. Fallon, you may begin your
2 questions at this time.

3 **VOIR DIRE EXAMINATION**

4 BY ATTORNEY FALLON:

5 Q. Good afternoon, Mr. Lawrence.

6 A. Good afternoon.

7 Q. My name is Tom Fallon. I'm an Assistant Attorney
8 General with the Wisconsin Department of Justice
9 and one of the prosecutors in the case. To my
10 immediate left is Mr. Ken Kratz, the Calumet
11 County District Attorney and the lead prosecutor
12 in this matter. Thanks for coming back this
13 afternoon. We have just a few questions for you
14 to follow up on some of the information provided
15 by you in last week's questionnaire.

16 I see from your questionnaire you are 20
17 years of age?

18 A. Yes.

19 Q. All right. And you are currently employed at the
20 Piggly Wiggly Store here in Manitowoc?

21 A. Correct.

22 Q. And how long have you worked for them?

23 A. For three years.

24 Q. For three years. All right. So I take it you
25 worked for them while you were still in school?

1 A. Correct.

2 Q. All right. And you graduated from Manitowoc
3 Lutheran High School?

4 A. Correct.

5 Q. That was just a year or so ago?

6 A. Yup.

7 Q. All right. All right. At this time are you
8 still living at home or are you on your own?

9 A. I'm living at home.

10 Q. All right. The reason I ask is I wanted to
11 inquire as to, if you were to be asked to serve
12 as a juror in this case, we may tie up six weeks
13 or perhaps a little bit more of your time; would
14 that cause a problem for you with your employment
15 for instance?

16 A. No.

17 Q. All right. As far as you know, you would still
18 have a job when you returned?

19 A. Right.

20 Q. You have taken care of that or at least explored
21 that with your employer?

22 A. Yes.

23 Q. Okay. Very good. All right. I see that you
24 also list music and computers as one of your
25 hobbies. What do you do with computers or what

1 do you like to do with them?

2 A. Just surf the internet.

3 Q. All right. Is there any particular types of

4 things that you look for when you surf the

5 internet; news, entertainment, sports, whatever?

6 A. Usually music related material.

7 Q. All right. Any particular type of music that you

8 are interested in?

9 A. Everything, basically.

10 Q. All right. Do you download a fair amount of

11 music?

12 A. Once in a while.

13 Q. All right. Do you use your computer, then, to

14 play the music for you? Is that --

15 A. Yes.

16 Q. All right. How much time do you spend of your

17 free time listening to music?

18 A. Whenever I'm free, there's music always playing.

19 Q. All right. Do you ever use your computer or the

20 internet to assist in getting you news?

21 A. Not really.

22 Q. All right. Where do you get most of your news

23 from?

24 A. Word of mouth.

25 Q. Word of mouth. Do you listen to radio at all?

1 A. Not really.

2 Q. All right. How about television?

3 A. Like, I watch -- What do you mean?

4 Q. Do you regularly watch, for instance, Fox news or
5 Channel 5 news out of Green Bay or, like --

6 A. I don't really watch the news too much.

7 Q. No. Do you read the local paper?

8 A. Occasionally.

9 Q. Once a week, less than that?

10 A. Less than that.

11 Q. If you do read a paper, is it the Sunday paper
12 for instance or ...

13 A. Probably the Sunday paper.

14 Q. Probably the Sunday paper. All right. You
15 indicated you get some news by word of mouth.
16 And from whom, then, would that be? Is that
17 friends, or people at work, or what?

18 A. Just whoever, usually my mother.

19 Q. Okay. Within that framework, what can you tell
20 us about this particular case that you remember
21 hearing either from your mom, or from television,
22 or any other source? What do you know of the
23 case?

24 A. I have actually requested my mother not to say
25 anything.

1 Q. All right. And why did you make that request?

2 A. Because I'm supposed to.

3 Q. That's from the letter from the Court?

4 A. Yes.

5 Q. All right. So you have honored that request?

6 A. Yes.

7 Q. All right. And how long ago did you receive that
8 request from the Court?

9 A. I'm not too sure exactly, maybe a month or so
10 ago.

11 Q. All right. Let me ask you a little bit about
12 what you may remember or what you may have been
13 exposed to prior to receiving the directive from
14 the Court. Do you have any particular
15 recollection of any newscasts, or press
16 conferences, or any information regarding the
17 circumstances of Mr. Avery's arrest and charging?

18 A. I never really followed it much.

19 Q. All right. What about a fellow by the name of
20 Brendan Dassey, have you ever followed the events
21 regarding his arrest?

22 A. I have never heard of him.

23 Q. Never heard of him. All right. As you sit here
24 today, can you recall any information that you
25 learned from either the television, the radio, or

1 some other source?

2 A. No.

3 Q. Not a thing?

4 A. I never followed it really.

5 Q. I'm sorry?

6 A. I never really followed it.

7 Q. All right. Okay. So is it fair to say, then,
8 you really have formed no opinion regarding the
9 circumstances --

10 A. That's right.

11 Q. -- here. That would be correct?

12 A. Yes.

13 Q. All right. I see here that you have never served
14 as a juror before?

15 A. No.

16 Q. All right. Is there any reason you can think
17 now, you know, your own personal philosophy, or
18 maybe some directive from your conscience, or
19 some religious belief, perhaps, that makes you
20 question whether you could follow the rules of
21 the Court and actually be a juror in this case?

22 A. No.

23 Q. Would you like to be a juror in this case?

24 A. It doesn't bother me either way.

25 Q. Doesn't bother you either way. If you were

1 selected as a juror, do you think you would find
2 it interesting?

3 A. Yeah.

4 Q. All right. Can you -- Any idea why you think it
5 might be interesting?

6 A. A new experience.

7 Q. All right. Any other reason?

8 A. Not really.

9 Q. Is there anything about the case or what you
10 think the issues might be which you find
11 interesting?

12 A. Not really.

13 Q. I'm a little bit at a loss. Is there any reason
14 why you -- if you don't really know anything
15 about it, is there -- why you would find it
16 interesting?

17 A. I have never been involved with something like
18 this before, so I thought it would be
19 interesting.

20 Q. Okay. Meaning the court process itself?

21 A. Yes.

22 Q. Okay. Now, it doesn't appear from the
23 information provided on your questionnaire, but I
24 thought I would ask anyways; have you had any
25 encounters with the police?

1 A. Myself?

2 Q. Yes.

3 A. No.

4 Q. All right. Anyone in your family have any
5 encounters with the police?

6 A. I'm pretty sure my father has, but I haven't
7 really heard much about it before.

8 Q. Okay. Has he ever discussed those -- that
9 encounter or those circumstances with you?

10 A. Not at all.

11 Q. Do you have any -- either you or he, have any
12 particular opinions as to, you know, how good or
13 how bad a job the local police department is
14 doing?

15 A. Not at all.

16 Q. How about the sheriff's department?

17 A. Not at all.

18 Q. No discussion?

19 A. No.

20 Q. No. All right. Now, I see that you have a
21 friend or family member who is a police officer;
22 you have an aunt?

23 A. Yes.

24 Q. In Chicago?

25 A. Yes.

1 Q. And is she with the Chicago Police Department?

2 A. I believe so, yeah.

3 Q. All right. Do you know what she does for them?

4 A. I'm not too sure.

5 Q. All right. You don't know if she works patrol,
6 or is in investigations, or ...

7 A. I'm not sure at all.

8 Q. You don't know. You don't see her very often?

9 A. Not too often.

10 Q. Okay. Have you ever discussed her job with her
11 when you saw her?

12 A. No.

13 Q. All right. One of the questions you answered yes
14 to and I wanted to follow up a little bit on your
15 thinking as to how you arrived at that answer.
16 And this case will involve, pretty likely, quite
17 a few police officers or law enforcement officers
18 who would testify in court. All right.

19 And the question was that the jurors
20 would be instructed that you are not to give any
21 more weight or less weight to the credibility of
22 the police officer's testimony than you would to
23 any other witness. And you thought that you
24 could follow that instruction and you would find
25 that to be true; is that correct?

1 A. Yes.

2 Q. Tell me about that. Do you think a police
3 officer is more or less likely to lie on the
4 stand than any other person would be, or would
5 they be the same as any other person?

6 A. They would be the same to me.

7 Q. Okay. And why would that be?

8 A. I don't see a difference really --

9 Q. All right.

10 A. -- about people.

11 Q. There's no difference by virtue of their oath of
12 office or their duty as police?

13 A. Yeah.

14 Q. All right. And to you they are just regular folk
15 who are doing a job?

16 A. Yes.

17 Q. And so they have all the same strengths and
18 weaknesses as anyone else?

19 A. Yes.

20 Q. Okay. Do you have any familiarity with the
21 criminal justice system at all?

22 A. Not really.

23 Q. All right. Did you study it when you were in
24 high school at all?

25 A. Yeah, a little bit. Law, politics.

1 Q. All right. Are you aware that as Mr. Avery sits
2 here today he's presumed innocent?

3 A. Yes.

4 Q. All right. And you -- Therefore, if you were
5 to -- in order to find, for instance, him guilty
6 of this offense, the State would have to prove,
7 beyond a reasonable doubt, that he was involved
8 in the crime for which he is charged?

9 A. Yes.

10 Q. You understand that?

11 A. Yes.

12 Q. All right. And he doesn't have to do anything;
13 you understand that?

14 A. Yes.

15 Q. All right. Would you expect him to have to prove
16 something in court?

17 A. No.

18 Q. All right. And why not?

19 A. Because the evidence has to be proved beyond a
20 reasonable doubt.

21 Q. All right. All right. Does the law require him
22 to do anything?

23 A. No.

24 Q. All right. And you think you can follow those
25 rules?

1 A. Yes.

2 Q. All right.

3 ATTORNEY FALLON: I will pass the juror.

4 THE COURT: Mr. Strang.

5 ATTORNEY STRANG: Thank you. I'm having a
6 little bit of trouble hearing because of the
7 background noise. So maybe, Mr. Lawrence, if you --
8 if you could just try to speak up a little bit.

9 MR. LAWRENCE: All right.

10 ATTORNEY STRANG: That would help. Thank
11 you.

12 **VOIR DIRE EXAMINATION**

13 BY ATTORNEY STRANG:

14 Q. So, I'm Dean Strang, Jerome Buting, Steven Avery.
15 You probably saw us stand up last Monday in
16 court. Mr. Buting and I are defending Mr. Avery,
17 so we're the defense lawyers. And I wanted to
18 pick up at the very beginning for you, okay. You
19 told us that you were born in Illinois?

20 A. Yes.

21 Q. How long did you live in Illinois?

22 A. A little less than a year.

23 Q. And then where to?

24 A. To Manitowoc.

25 Q. So, by the time you were just a little bitty --

1 A. Yes.

2 Q. -- kid you were up here? And when you say
3 Manitowoc, you mean the City of Manitowoc?

4 A. Yes.

5 Q. So you spent, basically, your whole life --

6 A. Yes.

7 Q. -- here? How often do you see your aunt or
8 other -- other relatives, if there are any, in
9 Chicago?

10 A. I saw them maybe once every six years. I barely
11 see them.

12 Q. Okay. And were you born in Chicago, or near
13 there, or some --

14 A. In Evanston, Illinois.

15 Q. -- other place in Illinois? In Evanston,
16 Illinois. Okay. And what, I mean sort of just
17 moving up through your life, what were you --
18 what were you good at or interested in at
19 Manitowoc Lutheran?

20 A. Well, could you rephrase that question.

21 Q. What were your favorite subjects or what did you
22 -- what did you like about --

23 A. Music class, I enjoyed, religion class.

24 Q. Mm-hmm. Did you pick up an instrument? Do you
25 play one or more instruments?

1 A. I picked up the guitar a little bit.

2 Q. When?

3 A. I would say maybe six years ago.

4 Q. Mm-hmm. So that would have been, like, beginning
5 of high school?

6 A. Yeah.

7 Q. Do you still play?

8 A. From time to time.

9 Q. And anything else?

10 A. Not really.

11 Q. So the interest in music, listening, singing,
12 playing?

13 A. Everything.

14 Q. All of it?

15 A. I enjoy it, yes.

16 Q. And are you a good singer?

17 A. I'm okay.

18 Q. In other words, were you in choir, or chorus, or
19 that kind of thing?

20 A. No, I never did that.

21 Q. Okay. At high school at least?

22 A. Yeah.

23 Q. How about academic subjects, what lifted you up
24 and what didn't?

25 A. I enjoy sciences.

1 Q. Biology, physics?

2 A. Yeah, biology.

3 Q. Okay. What about biology attracted you?

4 A. I don't know. I just enjoyed the teacher and the
5 way he taught it. I enjoyed it.

6 Q. And did you start at Piggly Wiggly while you were
7 still in high school?

8 A. Yes.

9 Q. As a stocker?

10 A. Yes.

11 Q. And do you do that full-time now?

12 A. No, I'm just part-time.

13 Q. What do you do with the rest of your time?

14 A. Um, listen to music. I don't know. Go to
15 concerts, hang out with my friends.

16 Q. What sort of concerts?

17 A. Everything. I listen to every type of music.

18 Q. Or what's the last one you recall going to?

19 A. Spud Monkey in Milwaukee.

20 (Court reporter asked him to repeat the name.)

21 A. Spud Monkey, S-p-u-d.

22 Q. At the place on Farwell?

23 A. In Milwaukee?

24 Q. Yeah.

25 A. It was at the Miramar Theater.

1 Q. At the Miramar, okay. And what -- what -- I'm
2 sorry. What does part-time mean at Piggly
3 Wiggly; how many hours?

4 A. Well, they usually have me like 40 hours because
5 I work pretty hard.

6 Q. But they are still treating you as a part-timer?

7 A. Yeah, because I don't want to work there all my
8 life. I'm trying to get into welding.

9 Q. Oh, okay. At LTC?

10 A. Yeah, I took a class at LTC.

11 Q. And what sort of welding?

12 A. Every type of welding, tag, wire welding.

13 Q. When you say you are trying get into that, how
14 are you going about trying to get into welding?

15 A. I help out on my friend's farm once in a while
16 with their -- I weld random things.

17 Q. Mm-hmm. And then would you be looking to catch
18 on with a company here in --

19 A. Probably work with my friend. He is thinking
20 about starting a business in a couple years.

21 Q. Okay. What shift do you tend to work at Piggly
22 Wiggly, or does it --

23 A. Morning.

24 Q. -- change around? Morning?

25 A. Yes.

1 Q. Which means what?

2 A. Eight to five.

3 Q. Monday through Friday or do you get weekend hours

4 too?

5 A. It varies.

6 Q. They will hold your job, but would you have any

7 income coming in if you were on this jury?

8 A. They said whatever days I'm free I can just call

9 and go in. They said they would pretty much work

10 around me.

11 Q. Okay. But they are not intending to pay you --

12 A. No.

13 Q. -- as if you were working while you are on jury

14 duty?

15 A. No.

16 Q. And can you take the financial hit?

17 A. I think I could handle it.

18 Q. When you say you think you could handle it, do

19 you have some --

20 A. Well, I have bills to pay.

21 Q. -- reservation about that? You have bills to

22 pay?

23 A. Yeah, insurance.

24 Q. Sure. But do you have an idea about how you can

25 manage that?

1 A. Yeah, I have a good amount of money saved up.

2 Q. Okay. The issue on that is really -- just so you
3 know, the issue is we all think the trial may go
4 six weeks, but at the end of the trial, whenever
5 that is, whether that's five or six weeks, or
6 whatever, at the end of trial the jury gets the
7 case to deliberate and try to reach a verdict.

8 And there's no way for you or any of us
9 to know how long that process will take because
10 it's just until 12 people can agree, if they can
11 agree, they try to. So there's no way to know
12 how long that is. And I want to make sure that
13 you are not going to be in deciding Steven
14 Avery's fate and worried instead about, you know,
15 boy, I got bills due that I can't pay.

16 A. I'm not really worried at all.

17 Q. Okay. And, I mean, we're -- I know this is
18 awkward to be discussing with a stranger, but are
19 we clear on that?

20 A. Yes.

21 Q. Okay. You said a few minutes ago that the name
22 Brendan Dassey did not ring a bell with you?

23 A. No.

24 Q. Okay. Have you heard about anybody supposedly
25 confessing in this case?

1 A. No.

2 Q. Heard anything at all about who's been arrested
3 or when?

4 A. No.

5 Q. Okay. But there's only one guy sitting here in
6 the defendant's chair, right?

7 A. Yes.

8 Q. Why would you come in presuming him innocent if
9 he is here and he's the guy on trial?

10 A. Because we have to prove that it's beyond a
11 reasonable doubt that he is guilty, so he is
12 innocent right now.

13 Q. And who's got to prove that?

14 A. Prove that he is guilty?

15 Q. Right.

16 A. These guys.

17 Q. That's true. What do I have to prove?

18 A. That he is innocent or remain -- I don't know.

19 Q. No, you're doing fine.

20 A. He is still innocent; you have to defend that.

21 Q. Yeah, I'm defending him. And, actually, I think
22 the Judge will tell you that the defense, in a
23 criminal case, doesn't have to prove anything.
24 There is no, you know, what lawyers and judges
25 call burden of proof, on the defendant in a

1 criminal case. So I'm sure we will take an
2 active role in the trial, but we wouldn't have
3 to, technically.

4 A. Yeah.

5 Q. We could just rely on, as you say, these guys
6 have to prove it. Can you -- Can you honor and
7 respect and follow the rules in the system that
8 says only one side has to prove anything and the
9 other side gets to --

10 A. Oh, yeah.

11 Q. -- sit there?

12 A. Yes.

13 Q. Why shouldn't we have to prove him innocent?

14 A. Because he is innocent until he is proven guilty.

15 Q. How about, you know, the issue -- one of the
16 issues at this table is, should Mr. Avery
17 testify? And that's tough because if he takes
18 the stand and he testifies, you know, people may
19 be saying, well, he's the one person in this room
20 who's got everything at stake, so of course he's
21 going to get up and say he did not do it. But if
22 he doesn't get up and testify, people may be
23 saying, well, what's he got to hide. If he's
24 innocent, why not just get up and tell us he's
25 innocent. So you see the problem?

1 A. Yeah.

2 Q. And the way that American courts deal with that
3 is to say the defendant has a right to testify if
4 he wants to. And if he testifies, he gets
5 treated like every other witness; the juror is
6 supposed to consider him just like everyone else,
7 you know, weigh and decide whether they believe
8 him or not.

9 And if he decides not to testify, that's
10 his absolute constitutional right. And in that
11 case, American judges tell juries everywhere in
12 this country, that the defendant's decision not
13 to testify is his right and that there's --
14 that's no evidence of guilt. And, in fact, it
15 can't even be considered by the jury in deciding
16 what verdicts to bring back. Are those rules you
17 can follow?

18 A. Yes.

19 Q. Do they make sense to you?

20 A. Yes.

21 Q. You talked -- You talked a little bit a few
22 minutes ago, too, about saying, look -- and I'm,
23 you know, I'm just -- as I heard it, you correct
24 me if I'm wrong, cops are human like everybody
25 else. Police officers, you hope they don't lie

1 under oath, but you hope everybody doesn't lie
2 under oath and police aren't more or less likely
3 to violate that oath than anyone else; did I
4 understand you --

5 A. Yes.

6 Q. -- right? Are there things, though, just like a
7 defendant has a stake in a criminal case, can you
8 see how the police officers who spend weeks or
9 months investigating the case, might also develop
10 a stake in the outcome of that case?

11 A. Depends on their personality. I can't really
12 tell.

13 Q. Yeah, that's actually a good answer. I mean, is
14 it just a job or how intense are they; is that
15 where you are going with that?

16 A. Yeah.

17 Q. But would you at least be open to looking at,
18 gee, what motivations might a police officer have
19 to shade his testimony? Even if he doesn't know
20 he's doing it, you know, just bias kind of
21 creeping in. Are you open to considering that
22 kind of ...

23 A. Yeah, I suppose. But I would hope I wouldn't
24 have to. I would hope I could take him for his
25 word.

1 Q. Right. I mean, we all hope we can take a witness
2 for their word, but are you willing to dig a
3 little deeper if you have to --

4 A. Yeah.

5 Q. -- with any witness?

6 A. Yeah.

7 Q. I don't mean just police officers; I mean any
8 witness. Are you willing to dig a little bit --

9 A. Yeah.

10 Q. -- to see what -- what might make this witness
11 tick, what sort of biases they might have?

12 A. Sure.

13 Q. At least consider that?

14 A. Yeah.

15 Q. Do you think there are circumstances where some
16 law enforcement officers might find themselves
17 doing something they otherwise never would do in
18 terms of, you know, planting evidence, or
19 misstating what they found, or where they found
20 it, or -- I don't know, I mean, just sort of
21 crossing over a line?

22 A. Could you restate that.

23 Q. Are there circumstances where a police officer,
24 like anyone else, might be tempted to do that
25 kind of thing?

1 A. Yeah, I'm sure.

2 Q. And I don't know whether you will decide they did
3 or didn't or you will even hear evidence one way
4 or the other of that, but if you do, are you open
5 to considering it?

6 A. Yes.

7 Q. In the end, I guess the question is, are you
8 willing to consider all the evidence that you
9 hear, weigh all of it, decide what you believe
10 and make up your mind, based on the evidence?

11 A. Yes.

12 Q. And I guess, you know, we're all lucky, you
13 included, that you come into this not knowing a
14 lot about this case, right?

15 A. Yup.

16 Q. Is there anything at all you do know about this
17 case that bothers you or that just causes you to
18 say, eh?

19 A. Nothing at all.

20 Q. And you said if you wind up on the jury that
21 would be okay with you, as I heard you?

22 A. Yes.

23 Q. Because it will be interesting, be something new.
24 And at the end of the case, though, in addition
25 to being interesting and new and a learning

1 experience, you would be asked to do about the
2 most serious thing we ask citizens to do and
3 that's decide whether someone is guilty or not
4 guilty of some very serious accusations.

5 The accusation here starts with a young
6 woman being murdered. And I don't know that it's
7 interesting to make that decision. How do you
8 think you would deal, at age 20, or 21, whenever
9 your next birthday is, with that kind of
10 responsibility?

11 A. I suppose it would be a little tough, but it's my
12 duty, I guess; I will stick it through.

13 Q. Have you ever known of someone or, you know, read
14 of someone, heard of someone, confessing to a
15 crime that he actually did not commit?

16 A. What do you mean?

17 Q. Well --

18 A. Who --

19 Q. Hmm?

20 A. Could you restate that.

21 Q. Have you ever heard of that, of someone doing
22 that, confessing to a crime that he really didn't
23 do?

24 A. Not really.

25 Q. Can you think of any reason someone might do

1 that, admit a crime he didn't commit?

2 A. I don't know why you would do that. I don't
3 know.

4 Q. Someone who's very young, impressionable and
5 could be lead around, for example, promised
6 something or, you know, kind of ...

7 A. I don't know. I don't understand why anyone
8 would do that.

9 Q. How about someone who was trying to protect
10 someone else, taking the fall himself?

11 A. I still don't see a way -- a reason why he would
12 do that.

13 Q. How about -- and I'm not suggesting this -- that
14 it would be here, but how about someone who's
15 just flat out crazy, mentally ill?

16 A. Then, I suppose, I guess.

17 Q. If you hear testimony about why human beings
18 occasionally do confess to something they didn't
19 do, will you -- will you hear that testimony,
20 will you consider it?

21 A. Yes.

22 Q. Just like all the other evidence?

23 A. Yes.

24 Q. You liked biology in school and science in
25 general; if you sit on this jury, are you going

1 to be looking for scientific evidence?

2 A. Depends what it is, probably, maybe.

3 Q. And why would you want scientific evidence as
4 opposed to, you know, an eyewitness, or a police
5 officer, or other kinds of evidence?

6 A. I'm looking for every evidence and it's just not
7 scientific alone.

8 Q. Is there anything special about scientific
9 evidence that --

10 A. No.

11 Q. -- really, you think, makes it especially
12 valuable?

13 A. No.

14 Q. If there's -- If there turns out not to be
15 scientific evidence on certain things that you
16 would expect, how are you going to react to that?

17 A. Well, depends. I would have to actually be
18 through it and see what happens.

19 Q. Come at it with an open mind --

20 A. Yes.

21 Q. -- and decide that? Okay.

22 ATTORNEY STRANG: I think that's it for me.
23 Thank you.

24 MR. LAWRENCE: You're welcome.

25 THE COURT: All right. Mr. Lawrence, the

1 Clerk will escort you from the courtroom at this
2 time. Excuse me, Mr. Lawrence -- you are right
3 that's the easiest way to get out.

4 (Wherein the juror was excused.)

5 THE COURT: Any motion from either party?

6 ATTORNEY STRANG: No, not on Mr. Lawrence.
7 I think -- Are we approaching, next, one of the
8 jurors the parties had agreed --

9 THE COURT: The next one I have got listed
10 is Juror 35, August Schuette.

11 ATTORNEY STRANG: Oh, okay, then we're one
12 away.

13 THE COURT: So we'll have Mr. Schuette come
14 in and Mr. Lawrence is in.

15 ATTORNEY KRATZ: Just to alert you,
16 Judge, I will be questioning Mr. Schuette.

17 THE COURT: Very well.

18 ATTORNEY FALLON: How many jurors do we
19 have left back there?

20 THE COURT: Um -- Mr. Schuette, please
21 raise your right hand and the clerk will administer
22 the oath to you.

23 (Juror sworn.)

24 THE CLERK: Please be seated.

25 THE COURT: Mr. Schuette, you have already

1 completed a written questionnaire in this case.

2 MR. SCHUETTE: Right.

3 THE COURT: This afternoon we're moving on
4 to the next phase of the jury selection which is the
5 voir dire part of the process. In a minute the
6 attorneys will each be given an opportunity to ask
7 you some questions that are follow-ups to the
8 information you provided in your questionnaire.

9 Before we get to that, I can inform you
10 that the jurors selected to hear this case will
11 not be sequestered; that is, at the end of trial
12 each day the jurors will be brought back to
13 Manitowoc and permitted to go home.

14 The rule that the Court has already
15 imposed, prohibiting the jurors from having any
16 exposure to any news media accounts of this case,
17 will continue. And the jurors are also
18 prohibited from discussing the case with anyone
19 until the case is over.

20 Although today's proceedings are open to
21 the public, during voir dire we do not permit
22 cameras in the courtroom and the members of the
23 media are prohibited from identifying any of the
24 jurors by name in their news reports.

25 You should also be aware, that in the

1 event you are selected to serve on the jury,
2 cameras are not permitted to identify the jurors
3 in any way during the course of the trial.

4 If you are selected to remain on the
5 jury panel after today's questioning, you will
6 receive a telephone call in the next day or two
7 letting you know when to report back to court.

8 At this time, then, I will permit the
9 attorneys to ask their questions. Mr. Kratz, you
10 may proceed.

11 ATTORNEY KRATZ: Thank you, Judge.

12 **VOIR DIRE EXAMINATION**

13 BY ATTORNEY KRATZ:

14 Q. Mr. Schuette, good afternoon. My name is Ken
15 Kratz, I'm the Calumet County District Attorney.
16 I'm serving as a Special Prosecutor in this case.
17 Joining me this afternoon is Tom Fallon.
18 Mr. Fallon is an Assistant Attorney General. He
19 is also a Special Prosecutor on this case. And
20 we will not only be asking you questions this
21 afternoon, but we'll be presenting the case
22 together, if you are selected to serve on that.

23 This part of the jury selection process
24 is meant to follow up individually with questions
25 that you have answered on a questionnaire. Let

1 me assure you that it's not meant to
2 unnecessarily pry into your personal life or to
3 embarrass you. We're simply trying to get the
4 most impartial jury that we can and so there are
5 a couple follow-up questions that we do need to
6 ask of you.

7 Let me first start, Mr. Schuette, with
8 your prior employment. I understand that you are
9 a retired gentleman, but had served and had
10 worked, what looks like most of your life, in the
11 retail store business; is that correct?

12 A. That's correct.

13 Q. You were president and manager of a department
14 store; was that here in Manitowoc?

15 A. Yes, it was, sir.

16 Q. Could you describe the nature of that store,
17 please; what kind of goods was it that you sold?

18 A. It was a general department store, established as
19 a family department store, established in 1849, a
20 long time. And our family ran it for about 145
21 years. And it sold just a general classification
22 of merchandise: Men's and women's wear, home
23 furnishings, appliances and, at one time,
24 groceries.

25 Q. When was it, sir, that you retired from that

1 business?

2 A. 1992.

3 Q. And upon your retirement, was the business sold
4 or was it carried on by other family members or
5 other concerns?

6 A. The business was acquired by my stepson-in-law,
7 Peter Burbach, and he ran it for two years and
8 then he closed it in 1994.

9 Q. I understand also from your questionnaire that
10 you have some higher education including college
11 and graduate school; is that correct?

12 A. Correct.

13 Q. The area of graduate studies, was that in
14 business and management or was that in some other
15 kind of area?

16 A. It was a work study course at the City College in
17 New York. I worked in a department store and
18 went to classes.

19 Q. All right. So what would now be called an
20 internship or something like that --

21 A. Yes.

22 Q. -- but you also received some kind of educational
23 credit for that; is that right?

24 A. Correct. Work and educational credit.

25 Q. All right. Also indicates in your questionnaire

1 that you served in our armed forces; is that
2 right?

3 A. That's correct.

4 Q. You served in Germany at least through 1946 and
5 attained, as I understand it, the rank of
6 sergeant?

7 A. Correct.

8 Q. As a sergeant, I believe you were stationed in
9 Germany at the time?

10 A. Right.

11 Q. Did that require you to have supervisory
12 responsibility over other soldiers?

13 A. Yes, I obtained the rank of sergeant and I had, I
14 think, six under men -- six other men that worked
15 with me. We were in charge of some of the arm --
16 armors, some of the weapons and ammunition and
17 that type of thing and several ammunition dumps
18 in Berlin.

19 Q. As a member of the armed services, Mr. Schuette,
20 did you ever have the situation of being involved
21 in any investigative proceedings or court martial
22 proceedings or anything where you may have either
23 been called upon as a witness or some other
24 manner participated in those kind of proceedings?

25 A. No, I did not.

1 Q. Have you ever been a witness in a case before in
2 a criminal or a civil case in court?

3 A. I have not.

4 Q. I note from your questionnaire that you are
5 pretty active in obtaining information. Let me
6 ask you, Mr. Schuette, where do you think you
7 obtain most of your news from; would it be the
8 newspaper, or television, or the internet, or
9 some combination?

10 A. Newspaper, primarily, and television news
11 reports. I also -- we also follow that.

12 Q. Do you subscribe to the local newspaper here?

13 A. Correct, I do.

14 Q. And are you a regular reader of that?

15 A. I feel I am, yes.

16 Q. And do you watch your television, at least the
17 news portion of television, regularly?

18 A. Generally, yes, I do.

19 Q. With that having been said, have you some
20 background information of this case that is the
21 reason that you have been called in today?

22 A. Well, I think anybody who does read the
23 newspapers, local papers, and watches the
24 television stations certainly has to have some
25 feeling about news in general coming out of this

1 community.

2 Q. Right.

3 A. So I certainly have -- I wouldn't say I have
4 intently watched or read about this case, but I
5 certainly have done some. I have some awareness
6 of it.

7 Q. Let me go back about 15 months, to November of
8 2005; do you remember some of the early reports
9 of a young photographer, a young woman, Ms
10 Halbach, being missing, that there was a search
11 for her and some law enforcement efforts to find
12 her? Do you remember those stories?

13 A. Yes. I was aware of some of them, yes.

14 Q. Were you also made aware, sometime thereafter, of
15 Mr. Steven Avery's involvement and eventually his
16 arrest or being implicated in Ms Halbach's
17 disappearance?

18 A. Yes, I would have been aware of that.

19 Q. Let me ask you, Mr. Schuette, after being aware
20 early on in this case, at any time, did you form
21 an opinion as to Mr. Avery's guilt or innocence,
22 or are you the kind of person, generally and
23 specifically in this case, did you reserve
24 judgment on that to wait to hear more about the
25 case?

1 A. I would be inclined to want to hear more about
2 it.

3 Q. Now, I asked kind of a two part question; I
4 apologize for that. Is that generally your
5 philosophy; that is, about things that you read
6 in not only the newspaper or hear on television,
7 but any information that you might glean from
8 some source, you are the kind of person that will
9 want to check into the details yourself before
10 forming an opinion about them?

11 A. I would feel I would. I think in my business
12 career I was not quick to jump to conclusion. I
13 think I liked to -- I'm not an impulsive type
14 person, so I think I'm inclined to try and get
15 all the facts in business or in other news.

16 Q. Now, running a business for, I think you said 45
17 years, if I'm --

18 A. Worked there 45, ran it 35.

19 Q. If I'm reading this correctly, that required, I
20 suspect, a great deal of not only hard work in
21 the amount of hours, but also attention to
22 detail. Would that be a fair assumption on my
23 part?

24 A. Correct, yes.

25 Q. How many employees, at any given time, did you

1 have under you?

2 A. Oh, full and part time, 40, approximately 40, 30
3 or 40.

4 Q. And I suspect by the nature of the retail
5 business, some of those individuals came and
6 went; in other words, it wasn't the same 40
7 people, there were --

8 A. No, it wasn't.

9 Q. -- there were individuals in retail sales that
10 would move on to other employment --

11 A. Correct.

12 Q. -- is that right? I note in your questionnaire
13 that you are familiar with the internet. Let me
14 ask you if you're an active user of the internet
15 and how often and what kinds of purposes you
16 might use the computer for?

17 A. I'm really not too active in the internet. I do
18 have a computer. I do have availability to the
19 internet. Seems though I use my computer mainly
20 for word processing, spread sheets, email. I
21 really don't delve into the internet too much
22 except maybe for informational purposes.

23 Q. All right.

24 A. Not news necessarily. Not news but ...

25 Q. I have to ask, Mr. Schuette, the spread sheets,

1 data basis or things like that, are you still
2 employed now or what -- what is it that you are
3 making data basis of at this point?

4 A. Data spread sheets and letter writing, that type
5 of thing.

6 Q. All right.

7 A. And I use it mainly for tax information,
8 checkbook information, that type of thing.

9 Q. I understand. All right.

10 A. I don't really --

11 Q. So you keep some of your more detailed records on
12 the computer.

13 A. Sorry.

14 Q. I note from your response that you have many
15 children, all of which, if I read correctly, have
16 either college or advanced degrees. One of them,
17 it looks like is in the radio or media business;
18 am I reading that correctly?

19 A. Correct.

20 Q. Can you tell me what that child does and where
21 they're -- where they're employed?

22 A. Yes, he is a stepson. I have a second marriage.
23 My wife was a widow and I was a widower. We have
24 been married for 26 years. Her oldest child,
25 David Kollath (phonetic) is a general manager of

1 a public radio station in Kenosha, Wisconsin.

2 Q. All right. Have you and your stepson either
3 discussed this case, specifically, or do you
4 discuss the media business, generally, with him?

5 A. No, we really don't. I don't recall that we have
6 discussed this case. I know we have not recently
7 and I don't even recall if he might have casually
8 mentioned it a year, year and a half ago. And we
9 don't see David that often, so we don't discuss
10 the radio business.

11 Q. All right. I understand. Being a very long time
12 member of the Manitowoc community, have you
13 formed an opinion about the Sheriff's Department
14 and what kind of job you feel that the Sheriff's
15 Department here in Manitowoc is doing? I guess,
16 generally, in fighting crime or just in their
17 day-to-day operations; have you formed such an
18 opinion?

19 A. Well, my opinion would be positive. As far as I
20 know, I think they are doing a commendable job.
21 I'm not aware that they are doing anything but
22 that, so it would be positive.

23 Q. You may, in fact, if you are called to testify
24 (sic) in this case, you will hear from law
25 enforcement officers who will be asked to

1 testify. Let me ask you, Mr. Schuette, since law
2 enforcement officers are people like -- like
3 anybody else and subjected to the same biases or
4 prejudices as anybody else; are you able, despite
5 your positive general reaction towards officers,
6 to consider a law enforcement officer's testimony
7 like that of any other witness?

8 A. Like what?

9 Q. Like that of any other witness that might
10 testify. Are you able to consider their
11 testimony and not give them more credit or less
12 credit just because they are a police officer?

13 A. Well, I think I would accept whatever they say in
14 a general mode. I respect the police officers.
15 I think that they should be thorough and
16 investigate things well, so I would certainly
17 respect what they have to say.

18 Q. Is there anything that you have learned from this
19 case, specifically, that you have a question
20 either about the nature of the investigation, the
21 thoroughness of it, or anything that's come to
22 light, that as you sit here today you think that
23 we should know going into this case?

24 A. No, I don't.

25 Q. Mr. Schuette, have you ever used or are you aware

1 of a publication known as Auto Trader Magazine?

2 A. No, I'm not.

3 Q. Have you ever heard of a project in the State of
4 Wisconsin which is called Project Innocence, a
5 project which is -- or has at least as it's
6 primary goal, the exoneration of those
7 individuals who have been wrongfully accused or
8 convicted?

9 A. Yes, I am aware of that program.

10 Q. Do you believe that is a positive, that is a good
11 program?

12 A. I would think that would be positive, yes.

13 Q. Are you aware of Mr. Avery's past connection with
14 Project Innocence?

15 A. Correct, I am.

16 Q. Can you tell me what you recall of Mr. Avery --
17 and not just the Project Innocence, but what you
18 may know of his past, generally, that may help us
19 in some of our future questions?

20 A. Well, I'm aware of his conviction and a prior
21 offense. I'm aware of the fact that he served a
22 substantial amount of time in prison. And I'm
23 aware that Project Innocence pursued this and he
24 was released from prison; it was determined
25 another person committed the crime for which

1 Steven Avery was convicted.

2 Q. And he was exonerated, that is, he was freed as a
3 result of --

4 A. Correct.

5 Q. -- of that project?

6 A. I'm aware of that, yes.

7 Q. Were you aware of the nature of the exoneration;
8 that is, it was based upon DNA or scientific
9 evidence?

10 A. Yes, I think I was aware of that. That was the
11 way in which he was exonerated.

12 Q. I'm going to ask you just generally,
13 Mr. Schuette, are you a believer in the sciences,
14 specifically in DNA evidence, and from what you
15 have heard or read, do you believe that to be an
16 accurate form of identification, especially in
17 criminal cases?

18 A. From what I understand, yes. I am aware of that
19 and seems -- seems as though it is -- is a true
20 scientific project.

21 Q. The last question I have of you, Mr. Schuette, is
22 as you have thought about sitting on this case,
23 as you have thought about one of the 12 members
24 of your community that may have to sit in
25 judgment of Mr. Avery; do you believe that would

1 be a positive experience for you, individually,
2 or is that something that you would not be
3 looking forward to?

4 A. I'm sure it would be a positive experience. I
5 can't honestly say I would look forward to it,
6 but in the event that I would be chosen. I think
7 I could render a fair and carefully deliberate
8 reasoning to arrive at whatever result would be
9 arrived at.

10 Q. And you would be willing to follow whatever
11 instructions the Judge may have on the law in
12 this case?

13 A. Yes, I would.

14 ATTORNEY KRATZ: That's all the questions I
15 have of this prospective juror. Thank you, Judge.

16 THE COURT: Mr. Buting.

17 MR. BUTING: Thank you, Judge.

18 **VOIR DIRE EXAMINATION**

19 BY MR. BUTING:

20 Q. Good afternoon, Mr. Schuette. My name is Jerome
21 Buting. This is Dean Strang. And this is,
22 obviously, Steven Avery. And you recognize that
23 we are representing him today?

24 A. Correct.

25 Q. Okay. I have some questions about some things

1 that Mr. Kratz hasn't talked about. And I also
2 have some follow-up on some things that he has.
3 Okay.

4 You have obviously been a member of this
5 community a long time. And as president of a
6 department store -- I apologize, but I'm not from
7 here, so I'm not familiar with the store -- but
8 as a result of that position in the community,
9 were you on leadership councils or Chambers of
10 Commerce, or things of that nature?

11 A. Yes. I was involved with a number of
12 organizations, yes.

13 Q. Could you just tell me what those were, in
14 leadership positions?

15 A. Well, the Chamber of Commerce, I was on the Board
16 of Directors; Junior Chamber of Commerce, I was
17 on the Board of Directors. There's a foundation
18 called the West Foundation of which I was the
19 vice president. I was involved in the Manitowoc
20 County Historical Society on the Board of
21 Directors.

22 I'm trying to think if there were any
23 more, but ... I have been a downtown
24 Manitowoc -- Retail Trade Commission of Downtown
25 Manitowoc, Chamber of Commerce. I've just been

1 pretty much involved with a lot of the community
2 affairs. I'm on the Rotary Club right now.

3 Q. You are on the Rotary Club?

4 A. I'm a Rotarian, correct.

5 Q. And do you attend regularly, what, once a month?

6 A. Well, hopefully, weekly.

7 Q. Once a week, okay.

8 A. It's a weekly meeting, yes.

9 Q. Okay. And in that context, do you -- do you ever
10 hear people talking about this case?

11 A. On occasion but, you know, I don't hear a lot of
12 it. I suppose there will be more now. But, no,
13 I do not hear a lot of that discussed.

14 Q. Okay. You still play tennis?

15 A. I still play tennis.

16 Q. Good for you. And you mention volunteer work;
17 what kind of volunteer work do you do?

18 A. I do Meals-on-Wheels --

19 Q. Okay.

20 A. -- too. And I volunteer at the Historical
21 Society in their building. And they have a very
22 nice historical village out in the country.

23 I help transport some people who need
24 some help, some stroke victims, mainly stroke
25 victims, who need to get to an exercise place.

1 I used to help an elderly gentleman with
2 most of his grocery shopping and doctors and that
3 type of thing. He is no longer with us. But I
4 do that -- that type of volunteer work.

5 Q. So it sounds like you keep pretty busy?

6 A. I keep quite busy.

7 Q. And do you also travel out of town for long
8 periods of time or are you primarily here year
9 round?

10 A. We have a small place up in Door County so
11 summers, long weekends we spend up there.

12 Q. Okay.

13 A. We no longer make long travel trips out of the
14 state or out of the country. We did at one time,
15 but not too much any more. We kind of stick
16 around home.

17 Q. Okay. You don't try and go some place warmer in
18 the winter?

19 A. Oh, I love Manitowoc. I love blowing snow.

20 Q. Okay. Now, you have six children or step
21 children?

22 A. Correct.

23 Q. Grandchildren?

24 A. Ten.

25 Q. Ten, okay. And granddaughters? All boys or

1 girls?

2 A. Let's see, I should know. Two granddaughters
3 and -- no, three granddaughters. So would be
4 seven grandsons.

5 Q. Okay. And what's the range of ages from the --
6 of all your grandchildren?

7 A. The oldest is -- must be 24 and the youngest is
8 seven.

9 Q. Okay. And what age are your granddaughters?

10 A. 16, 14, and 12.

11 Q. Okay. So not in the middle 20's, not close to --

12 A. No.

13 Q. -- Teresa Halbach's age or anything of that sort?

14 A. Correct.

15 Q. Okay. Did -- When you heard about this case, did
16 you identify it with your granddaughters at all,
17 what would it be like if this happened to my
18 granddaughters, anything of that nature?

19 A. No, I did not.

20 Q. In your questionnaire, you mention -- Well, let
21 me get to that in a second. Sounds like you keep
22 pretty current on all the news from a number of
23 different sources, right?

24 A. I try to.

25 Q. Do you have an opinion about how accurate the

1 media is in reporting on, particularly, criminal
2 cases?

3 A. Sometimes I feel that they don't get the whole
4 story. I'm sure they aren't really complete in
5 all of the facts. I feel -- I think they do the
6 best they can and sometimes the facts aren't
7 really easily available and maybe they shortcut
8 some of them.

9 Q. Do you find yourself watching the local news more
10 than the cable, like CNN or Fox news outlets, or
11 do you watch those too?

12 A. We watch those also. We pretty much watch the
13 local news, Channel 2, or 5. You know, the 5
14 clock news, or 6 o'clock news, or whatever fits
15 our time schedule.

16 Q. Do you tend to watch a particular programs in the
17 evening like, you know, the Bill O'Reilly show,
18 or Larry King, or any of those kinds of things?

19 A. We watch some of those, Reilly or Larry king.

20 Q. Anyone that's a particular favorite?

21 A. Not really. I think as far as Larry King is
22 concerned, depends on who he's having on.
23 Sometimes it's interesting information, sometimes
24 it's pretty boring, so we skip around.

25 Q. And how about radio news; do you listen to the

1 radio much?

2 A. Probably WOMT, the local news station, maybe at
3 the early -- the early broadcast, the 7 a.m.
4 broadcast.

5 Q. Now, does that -- that station does have some
6 call in shows, doesn't it?

7 A. Sure.

8 Q. Do you -- Have you ever called into any of the
9 radio stations?

10 A. No, I have not. I don't listen to those too
11 much.

12 Q. Now, you have been in this community for ...

13 A. All my life.

14 Q. All your life.

15 A. Right.

16 Q. And you have never had jury duty before?

17 A. I have not, no.

18 Q. You ever talk to the jury clerk about that?

19 A. No, I have not.

20 Q. How that ever happened?

21 A. No, my wife has been called four times.

22 Q. Has she really?

23 A. Yeah.

24 Q. Okay. Has she ever served?

25 A. On one case, I believe.

1 Q. Speaking of your wife, you mention her, that's
2 Shirley, right?

3 A. Correct.

4 Q. Okay. That -- One of the questions we ask,
5 No. 41, was whether you have talked with any
6 people, at length, about this particular case and
7 you said, yes, your spouse.

8 A. Mm-hmm.

9 Q. What sort of things have you talked about or what
10 have you talked with her about?

11 A. Well, I think just a general opinion about the
12 whole situation. And I would think it's pretty
13 hard for anybody who keeps a little bit abreast
14 of the news here to overlook this whole case. I
15 would think --

16 Q. Sure.

17 A. -- it would have to be. And so just, you know,
18 maybe what -- what happened today or when the
19 news comes on, we might casually discuss it.

20 Q. Mm-hmm. And I don't mean to imply there's
21 anything at all wrong with talking to your spouse
22 about it.

23 A. No, I'm sure it's pretty normal for --

24 Q. Sure.

25 A. It would be a little hard for somebody not to

1 talk.

2 Q. Sure. Especially something like this.

3 A. Sure.

4 Q. But, obviously, I assume you probably respect
5 your spouse's opinion on things as well, right?

6 A. In most cases, yes.

7 Q. Not necessarily all, but ...

8 A. Correct, not all.

9 Q. Does she have a particular opinion about whether
10 or not Mr. Avery is guilty or innocent?

11 A. Well, for some reason she kind of questions his
12 guilt.

13 Q. Okay.

14 A. She just ...

15 Q. And does she -- Have you talked with her further
16 about that to see if you agree or disagree with
17 those doubts that she still has?

18 A. No, not really. This is her opinion. She just
19 doesn't feel that she's convinced that this is a
20 guilty situation.

21 Q. Okay. And what about you, do you have any?

22 A. I don't -- I don't strong -- At this point, I
23 think as I mentioned, I don't strongly disagree
24 with her. I think there are probably a lot of
25 questions to be answered. And so I'm not totally

1 convinced that the case has been presented
2 totally. And I think if I served on the jury I
3 would like to see -- and I'm sure both sides
4 would be presented.

5 Q. Mm-hmm. And you --

6 A. So I'm not adamant as to what -- what the guilt
7 or not, innocence is.

8 Q. So you understand that at this point Mr. Avery is
9 presumed innocent, though, right?

10 A. Absolutely.

11 Q. And despite all the -- Would it be fair to say
12 that the media presentation that you have seen,
13 you have seen a lot of it, has skewed more
14 towards making him look guilty?

15 A. Probably, yes.

16 Q. Okay. And despite all of that, do you think that
17 you can still presume him innocent?

18 A. I feel I could, yes.

19 Q. Is that because you realize they are probably not
20 giving you the whole story?

21 A. Correct.

22 Q. Okay. And I recognize that -- Well, what's the
23 most recent thing you can recall hearing reported
24 on the news about this particular case?

25 A. I really haven't been following it much in the

1 last two or three weeks as requested by the
2 Judge. But very frankly, it's pretty hard to
3 avoid headlines.

4 Q. Sure.

5 A. Sunday's Herald-Times had a very big section
6 about the whole case and chronological dates. I
7 did not read it, but I did not miss the headline.

8 Q. Some -- I have discovered some restrooms that you
9 go into, you're standing there and you can't miss
10 it, it's posted on the wall.

11 A. That could be, that's right. It's pretty hard,
12 or the 5 o'clock news on Channel 2, it's our lead
13 story is and the name Avery comes up. And
14 generally I will either leave the room or turn it
15 off or something. And I'm not a purist, but I'm
16 trying to at least follow the Judge's
17 recommendations. I'm trying to think what the
18 most recent thing would be. Last month.

19 Q. Do you recall discussions about a blood vial?

20 A. Yes. Yes. There was something about that, I
21 didn't pursue the whole thing. It was something
22 about DNA evidence and there was a blood vial
23 some place. It was used -- Well, I think it was
24 used to exonerate him from his original
25 conviction.

1 Q. And that it was located in the Clerk's Office?

2 A. Yeah, I'm not sure quite how that whole thing

3 happened, how they found it.

4 Q. Now, I'm going to get back to something on that

5 in a minute. But before I forget, I want to ask

6 you, you mentioned your awareness that Mr. Avery

7 was wrongly convicted --

8 A. Yes.

9 Q. -- and spent a substantial period of time in

10 prison?

11 A. Correct.

12 Q. And, in fact, it was determined that another

13 person had committed that crime?

14 A. Yes.

15 Q. And do you have any doubts of your own about

16 whether or not that's true, that he really was

17 wrongly committed?

18 A. No.

19 Q. Convicted?

20 A. I did not have any doubt about that.

21 Q. And how do you feel about -- or how did you feel

22 when you learned that somebody from your

23 community in Manitowoc, where you have grown up

24 all your life, had been wrongly convicted?

25 A. It's a tragedy. It's a shame. What else can you

1 say.

2 Q. Sure.

3 A. A man's -- A young man's -- 20 years of his life
4 was wasted.

5 Q. Do you -- You are also aware a civil lawsuit was
6 filed?

7 A. Yes, I am.

8 Q. Are you aware of the individuals that were
9 directly accused in the lawsuit of misconduct
10 leading to his wrongful conviction?

11 A. Not all of them. I remember the sheriff, Tom
12 Kocourek, I think was involved in that. I'm not
13 sure, I don't know who the district attorney was
14 at that time, so I suppose he was.

15 Q. Well, I noticed in your questionnaire you
16 mentioned when we asked about people that -- long
17 list of names that you might know, you mentioned
18 Thomas Kocourek.

19 A. Correct.

20 Q. And how do you know him?

21 A. Very casually.

22 Q. Okay.

23 A. The business I was in we met -- maybe I sold Tom
24 a pair of socks or a suit or something sometime.
25 So I have known him on a very casual basis, a

1 name recognition and --

2 Q. Okay. I see.

3 A. -- that's about all.

4 Q. So no personal knowledge of him?

5 A. Not at all. No.

6 Q. Did you ever talk to him about the Steven Avery
7 wrongful conviction?

8 A. No.

9 Q. Nothing of that sort?

10 A. No, not at all.

11 Q. And you also mentioned Curt Drumm.

12 A. Mm-hmm.

13 Q. How do you know him?

14 A. He's been a friend of the family. I think he's
15 my daughter's age. I have known him since
16 kindergarten and I have known his father and
17 mother for a long time.

18 Q. Now, if he were to testify -- and I don't know
19 that he will -- You recognize a lot of these
20 people on this list are not necessarily all going
21 to testify, thankfully, but would you be able to
22 be objective and judge what he would testify
23 about?

24 A. You mean Curt Drumm?

25 Q. Yes.

1 A. Yes, I certainly could accept his forthrightness
2 and honesty, yes.

3 Q. Well, could you also judge him like any other
4 witness, or would you -- would you be maybe too
5 sympathetic towards him because it's somebody you
6 know, that you would assume he is not going to
7 lie, I won't go beyond that?

8 A. No, I don't think I would have any personal
9 interest in his testimony or consider him
10 differently than any other witness.

11 Q. Okay. And I assume that applies to Thomas
12 Kocourek too?

13 A. Correct.

14 Q. Now, one of the things Mr. Kratz asked you about
15 was police officers and whether you would be
16 willing to consider their testimony as witnesses
17 like any other witness; do you recall that?

18 A. Yes, I do.

19 Q. Do you think, though, that because police
20 officers are, you know, they -- they are sworn to
21 serve and protect, enforce the law, that if they
22 were to take the witness stand and take the oath
23 that they, therefore, would be more likely to
24 tell the truth than an ordinary citizen, or would
25 it be the same?

1 A. Hmm. Well, I would hope more likely. I would
2 hope.

3 Q. Okay. But, now, if the Judge gave you an
4 instruction that said, despite what you may hope,
5 they are the same as any other witness and they
6 are human beings, that you must judge their
7 credibility, their truthfulness or
8 non-truthfulness the same as any other witness,
9 would you be able to do that?

10 A. Oh, sure.

11 Q. Okay. You did say, I think -- and maybe I just
12 misunderstood you -- you said, I think I would
13 respect what they have to say. But if you got
14 that kind of an instruction from the Judge, I
15 assume you would be able to also question what
16 they say, just as any other witness; is that
17 right or not? Or would you just respect and
18 accept what they say, unquestionably?

19 A. Well, I suppose if what they respond, their
20 response seems to be logical, I would accept it
21 as being truthful. But, no, I would certainly --
22 I don't know if I would give a police officer any
23 more credibility than another witness.

24 Q. Okay. Because as a juror, if you're selected,
25 you will have to do that, you will have to -- you

1 may hear -- I'm not saying necessarily police
2 officers, but you may hear different things from
3 different witnesses. And you may have to judge,
4 which one am I going to believe. And it could be
5 police officers, it may not be, but that's a task
6 you may find yourself having to do.

7 A. I would understand that, yes.

8 Q. Okay. You also said that you expected police to
9 be thorough, right?

10 A. In general, I would expect them to, yes.

11 Q. Okay. And if you hear evidence that questions or
12 challenges that, challenges whether or not the
13 police were very thorough in this case in looking
14 at all of the evidence and all of the options and
15 possibilities, would you be able to consider
16 that?

17 A. Sure. Yes.

18 Q. Do you think the police sometimes get so engaged,
19 personally, in an investigation that they may
20 tend to go down one tunnel and, you know, focus
21 on one area rather than being as objective as
22 possible and covering all the bases? Do you
23 think that's possible?

24 A. I think if I would get contrary information that
25 seems logical I would have to weigh this and

1 accept it, if that would be the case.

2 Q. Okay. I appreciate that. And if you also heard
3 evidence or reason to think that maybe the police
4 went even farther in this case and crossed the
5 line and, you know, were doing things that were
6 improper and possibly even illegal; would you be
7 able to consider that?

8 A. I would be able to, if the evidence so indicates,
9 yes.

10 Q. Now, since you -- I don't remember if -- No, I
11 don't think Mr. Kratz did ask you about this.
12 You talked about the initial sort of flood of
13 information when Teresa Halbach was missing and
14 then Mr. Avery was arrested; do you also, though,
15 recall the whole Brendan Dassey aspect of the
16 case?

17 A. I'm aware of some of the media coverage of him,
18 yes.

19 Q. Okay. Did you see the -- any of the press
20 conferences when those charges were brought --

21 A. No, I did not.

22 Q. -- back in March? Okay.

23 A. No.

24 Q. Can you just tell us what you recall hearing
25 about Brendan Dassey's involvement in the matter?

1 A. My understanding is that Brendan Dassey is Steven
2 Avery's nephew. And it must have been October
3 31st, or November 1st, or something, he
4 approached Steven Avery's cabin, home, whatever
5 it was, and came into the property. And Teresa
6 Halbach was there. And his uncle -- I did not
7 get all the details, but for some reason I think
8 there was a sexual assault that took place. And
9 after that she was murdered. This is all the
10 information that I understand. And the body
11 disposed of.

12 Q. Okay. And did you also hear -- Well, let me ask
13 you this, what if -- I assume that you would
14 consider that pretty damning evidence for
15 Mr. Avery, right? Against Mr. Avery?

16 A. If this in fact happened, yes, I certainly would
17 have to.

18 Q. Well, what if the State never called Brendan
19 Dassey to the trial and you never heard that
20 story from him, would you be able to put that out
21 of your mind and focus just on what evidence they
22 do present?

23 A. I think I would. As I understand, if we are
24 instructed to be objective in our observation and
25 observe and use only the evidence presented, I

1 think that's what would have to be decided.

2 Q. So you wouldn't assume necessarily that maybe
3 that there is other evidence out there and maybe
4 that is what happened but they just are not
5 telling me; you wouldn't -- you wouldn't look at
6 it that way?

7 A. I think as a jury you have to base your
8 conclusions on the evidence presented.

9 Q. Okay.

10 A. And I think I would do that.

11 Q. Okay. Hard as it may be, you think you could?

12 A. Yes, I think I could.

13 Q. Okay. Did -- Do you also recall, then, that --
14 that Brendan Dassey later recanted that
15 confession, that is, took it back?

16 A. Yes, I'm aware of that, correct.

17 Q. And were you aware of any -- Well, strike that.
18 Can you think of any reasons why somebody would
19 falsely confess, confess to something -- admit
20 that they did something like this when they
21 really didn't?

22 A. I can't think of any reason, but it seems as
23 though I understand that there are some rather
24 severe interrogation procedures sometimes done by
25 investigators. I don't know if a person could be

1 coerced into something like this or not.

2 Q. Okay. That's something that you would be open to
3 considering, though, if it -- if you did hear
4 from Mr. Dassey, or young Brendan Dassey; is that
5 right?

6 A. I think I could be open to do that, sure.

7 Q. Would you also consider whether or not any other
8 evidence corroborated a story like that, physical
9 evidence, or lack of physical evidence; is that
10 something you would consider?

11 A. The story of Brendan Dassey's involvement?

12 Q. Yes.

13 A. If there was other evidence, I would certainly
14 consider it.

15 Q. And if there wasn't evidence that would
16 corroborate it, in fact would tend not to?

17 A. That has to be considered, I would assume, yes.

18 Q. Yes. Well, if you have never been to a trial
19 before -- I know you have never been on a jury,
20 but have you ever sat through a trial before --

21 A. No, I have not.

22 Q. -- as a spectator? Do you ever watch Court TV?

23 A. No, I don't.

24 Q. Well, you may or may not know, but a defendant
25 has a constitutional right not to testify in

1 their own case.

2 A. I'm aware of that, yes.

3 Q. Okay. And a defense attorney always has sort of
4 a difficult decision to make, which is whether or
5 not they should call the defendant in the trial,
6 whether they should testify or not testify.
7 Because there's always a concern that if a
8 defendant does testify and takes the witness
9 stand, that a jury may not believe him anyway
10 because they will think, well, he's the person
11 with the most at stake, why should we believe
12 him, right?

13 A. Correct.

14 Q. On the other hand, if they -- if he doesn't
15 testify, then there's concern that some jurors
16 may think, well, what's he hiding; why doesn't he
17 tell his side of the story; we want to hear both
18 sides. What about you; do you -- would you have
19 any concerns like that?

20 A. I don't think so. I guess I could understand
21 where, as you pointed out, a defendant would have
22 a hard time being very forthright about the
23 situation. I would think it would be difficult
24 in these cases for them to testify.

25 Q. By forthright, you mean convincing?

1 A. Or honest, truthful.

2 Q. You think a defendant would have a hard time
3 being truthful or just being believably truthful?

4 A. Either one.

5 Q. Well, see, that's one of the concerns is that,
6 you know, if a defendant does testify and the
7 jury just thinks, well --

8 ATTORNEY KRATZ: Judge, I'm going to
9 interpose an objection. I don't know if Mr. Buting
10 is asking a question here or giving his closing
11 argument. He can ask the question, Judge. He's
12 gotten an answer and now it's speech time. And I'm
13 interposing an objection, telling this witness (sic)
14 what the next problem is with his answer.

15 THE COURT: Well, the subject matter is
16 legitimate, why don't you rephrase the question,
17 Mr. Buting.

18 MR. BUTING: Okay.

19 Q. (By Mr. Buting)~ Would you -- Would you be
20 able -- If Mr. Avery did, with our advice, if we
21 suggested that he take the witness stand and he
22 testified in this case, would you tend not to
23 believe him just because he's the defendant in a
24 case?

25 A. I suppose it would depend on the evidence

1 presented prior to his testimony. And -- All
2 right. Frankly if -- and I'm sure he would not
3 admit to the crime, if there's other evidence
4 that would indicate -- and I don't know what it
5 could be -- that it did happen and he was guilty
6 of it, then I suppose a person would be a little
7 inclined to doubt his denial.

8 Q. Okay. But my question is, looking at his
9 testimony alone first, with the mere fact that
10 because he is charged in this case and decides to
11 testify, would you hold that against him and
12 not -- not -- I mean, let's say another -- any
13 other witness testifies and the evidence that you
14 are talking about that comes in earlier tends to
15 contradict that witness, I assume you would have
16 that same concern, right?

17 A. Correct.

18 Q. So, can you give Mr. Avery -- if he does testify,
19 can you give him the same benefit and the same
20 consideration of it as any other witness who
21 would testify; that is, consideration of whatever
22 his motives would be to falsify, the consistency,
23 or -- you would get a jury instruction for any
24 witness, to judge the credibility, and you would
25 have to apply it the same for the defendant.

1 Could you do that?

2 A. Yes, I think I could. Yes.

3 Q. And, on the other hand, if Mr. Avery didn't
4 testify, would you be sitting there thinking,
5 aha, well, you know why not, he must be guilty,
6 or what's he hiding?

7 A. No, I don't think I would. I don't think that
8 would make that much difference.

9 Q. Okay. And, in fact, the Judge would instruct you
10 that you are not to consider it in any way --

11 A. Right.

12 Q. -- and you would be okay with that?

13 A. Mm-hmm.

14 Q. You have to say yes or no.

15 A. Yes, I think I could. Yes.

16 MR. BUTING: All right. Well, thank you,
17 very much, sir.

18 MR. SCHUETTE: You're welcome.

19 MR. BUTING: I appreciate it.

20 VOIR DIRE EXAMINATION

21 BY THE COURT:

22 Q. Mr. Schuette, I just want to clear up a couple
23 things because I think some of the later
24 questions were pretty long. And I want to make
25 sure I understand the answer.

1 As Mr. Buting indicated, one thing the
2 Court will instruct the jury in this case is that
3 if the defendant should choose not to testify,
4 the jury cannot draw any adverse inference from
5 that, that that somehow indicates the defendant's
6 guilt. If the defendant doesn't testify, the
7 burden is still on the State to prove his guilt,
8 beyond a reasonable doubt, and you would have to
9 base your decision on the other evidence that
10 came in. Could you follow that instruction?

11 A. Yes, I could.

12 Q. And by the same token, if the defendant does
13 testify, there's another instruction that I
14 cannot remember verbatim but, essentially, you
15 have to treat him like any other witness and base
16 your decision on his credibility, on the same
17 factors you use for other witnesses, taking all
18 the other evidence into account and other
19 considerations and decide whether you think he's
20 telling the truth, just like any other witness.
21 Can you do that?

22 A. Yes, I could.

23 THE COURT: Thank you. The Clerk will
24 escort you from the courtroom.

25 MR. SCHUETTE: Thank you.

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(Wherein the juror was excused.)

THE COURT: Counsel, does either party have a motion with respect to this juror?

ATTORNEY KRATZ: Not by the State, your Honor.

MR. BUTING: Not by the defense, your Honor.

THE COURT: Very well, Mr. Schuette is in. I can -- I can inform the court at this time that there had been four remaining jurors back there. I had the clerk send two of them home. So I think we're left with Marian Flint and Daniel Petermann as the next two on the list. It would be my inclination, to keep my court reporter from falling over, to take a break at this time. But I would like to get those last two jurors in.

MR. BUTING: What happened with No. 36?

ATTORNEY FALLON: We agreed to that already.

THE COURT: Yes, I had previously been informed that that was --

MR. BUTING: That's a cause, okay.

THE COURT: Right.

ATTORNEY STRANG: And we still have the other three that we jointly proposed for cause, I

1 think that the Court has not ruled on?

2 ATTORNEY FALLON: I think he did.

3 THE COURT: I will -- I'm going to talk to
4 the Clerk before we start tomorrow morning and go
5 back and make sure anybody I haven't excused for
6 cause is addressed. We'll take a break at this
7 time.

8 MR. BUTING: I'm sorry, what were the two
9 -- what were the two, Flint and --

10 THE COURT: The two remaining are No. 41,
11 Marian Flint and No. 45, Daniel Petermann.

12 MR. BUTING: All right. Thank you.

13 ATTORNEY KRATZ: Judge, when would you like
14 us back, I'm sorry, 5, 10 minutes?

15 THE COURT: You make the call, Diane. How
16 much time do you want?

17 COURT REPORTER: If we're doing two
18 more, I would say 15 minutes.

19 THE COURT: Fifteen?

20 COURT REPORTER: Yes.

21 THE COURT: Okay, 15 minutes, 5:20.

22 (Recess taken.)

23 THE COURT: At this time we're back on the
24 record. And the next juror is Marian Flint.

25 Ms Flint, please raise your right hand

1 and the Clerk will administer the oath.

2 (Juror sworn.)

3 THE CLERK: Please be seated.

4 THE COURT: Ms Flint, you have already
5 submitted a written questionnaire in this case. At
6 this point we're going on to the next phase of juror
7 selection which is individual voir dire. The
8 attorneys for each of the parties will have a chance
9 to ask you some questions to follow up on the
10 answers that you gave in your questionnaire.

11 Before that, I can tell you that the
12 juror that is selected in this case will not be
13 sequestered. That means at the end of each court
14 day you will be able to go back home.

15 I can also tell you that although the
16 proceedings today are open to the public. There
17 are no cameras allowed in the courtroom during
18 individual voir dire and the media is not allowed
19 to disclose the names of the jurors in their
20 reports to the public.

21 In addition, if you are selected to
22 serve on the jury in this case, the cameras will
23 not be permitted to show the jurors at the trial.

24 Even after today, I will remind you if
25 you are still on the jury panel, that you are to

1 continue not reading anything about this case,
2 watching anything on television, listening to
3 anything on the radio, or discussing the case in
4 any manner with anyone.

5 Mr. Fallon, are you going to be handling
6 this one? You may begin.

7 VOIR DIRE EXAMINATION

8 BY ATTORNEY FALLON:

9 Q. Good afternoon, Mrs. Flint, my name is Tom
10 Fallon. I'm an Assistant Attorney General with
11 the Wisconsin Department of Justice. And I'm one
12 of the prosecutors in the case. To my left is
13 Mr. Ken Kratz, the Calumet County District
14 Attorney. And Mr. Kratz here is the lead
15 prosecutor of this case involving Mr. Avery.
16 Good afternoon. Thank you, very much, for your
17 patience. I know it's a long wait as we
18 long-winded lawyers chat out here with some of
19 your peers.

20 I wanted to follow up with a few
21 questions regarding some of the information you
22 provided last week in your questionnaire to help
23 us in selecting a jury for this case. Let me
24 first begin, I note that for your principal
25 occupation you note homemaker, but somewhere I

1 have this feeling that perhaps you might have had
2 some experience as a teacher, or a teachers aide,
3 or --

4 A. My daughter is a teacher's aide.

5 Q. Your daughter is?

6 A. Mm-hmm. And my son is a teacher.

7 Q. All right. Did you have some teacher training?

8 A. Yes.

9 Q. I see. Okay. But chose to raise a family
10 instead?

11 A. That's correct.

12 Q. Okay. Very well. Have you ever worked outside
13 of your home?

14 A. No, I haven't.

15 Q. Okay. And by the way, I looked at your
16 questionnaire and, please, accept all of our
17 condolences for the passing of your father.

18 A. Thank you.

19 Q. I understand that took a fair amount of your
20 time.

21 A. Yes, it did.

22 Q. Well, now that that has passed, what do you think
23 you might like to do with some of your extra time
24 there?

25 A. I think I would probably donate some of my time,

1 volunteer at the facility where my dad was for
2 the last seven years.

3 Q. Okay.

4 A. Because they were really good to him.

5 Q. All right.

6 A. They can always use an extra hand.

7 Q. I bet that's true. Do you like to read or travel
8 or what do you like do?

9 A. I love to read.

10 Q. You do.

11 A. I've tried traveling in the past 15 years; and
12 I'm not much of a traveler.

13 Q. Not much of a traveler. So, like fine wine, you
14 don't travel very well?

15 A. No.

16 Q. All right. What kind of books or things do you
17 like to read?

18 A. Well, I like romance novels.

19 Q. All right.

20 A. I like a good mystery. I like Nicholas Sparks
21 books.

22 Q. Okay. What is it about his books that you like?

23 A. Well, they're easy to read. He sounds like a
24 very loving husband and father.

25 Q. Okay. And is there a general theme or part of

1 his books that you find particularly attractive
2 that brings you back to his writing?

3 A. Well, *Message In a Bottle* was one to speak of. I
4 like Clive Cussler's books too. As a matter of
5 fact, I'm going to start reading one of those.

6 Q. All right. I note you have done some other
7 volunteer work. Can you tell us something about
8 your volunteer work, the Order of the Eastern
9 Star Shrine Auxiliary, St. James Church. Tell us
10 about some of your volunteer work.

11 A. Order of Eastern Star, I was a Star Point. We
12 raised a lot of money for charity. Shrine
13 Auxiliary, I was the treasurer for that group.
14 And there, again, we raised a lot of money for
15 the Children's Hospitals.

16 Q. Right. How long were you associated with the
17 Shrine group?

18 A. I would say about four or five years and then it
19 folded.

20 Q. I see. Were you the treasurer during that time
21 frame?

22 A. Yes. Mm-hmm.

23 Q. So, with you managing the purse strings, you did
24 well?

25 A. I hope so.

1 Q. Very good. And how about Memorial Hospital?

2 A. I was working for the auxiliary there, patient
3 service, mail, guiding patients around.

4 Q. All right. And senior ice skating, tell us about
5 that.

6 A. Yes, I did ice skate for six years with the
7 senior group at Expo. We brought our own music,
8 our kind of music, and had camaraderie in the
9 group. Was fun.

10 Q. Do you still skate?

11 A. No, two years ago I thought my balance wasn't
12 quite right and I didn't think it was best if I
13 break an arm.

14 Q. All right. So you passed on it?

15 A. Yes.

16 Q. How long did you skate?

17 A. Six years.

18 Q. All right.

19 A. With the seniors.

20 Q. Now, interesting, did you take up skating in your
21 senior years or did you skate when you were
22 younger?

23 A. I skated as a child; my dad taught all three of
24 us kids to skate.

25 Q. All right. And this is figure skating, dance?

1 A. Yes.

2 Q. Excellent. All right. Well, I would like to
3 talk to you a little bit about, first of all,
4 some of the people that may appear during the
5 course of this case and I see one of the
6 individuals you identified as Mr. Drumm.

7 A. If it's the Curtis Drumm that's a pilot, that
8 would be the one; I know his mother.

9 Q. He's the one. If -- We're not really sure
10 whether he will be a witness in this case or not,
11 but if he were, do you think you could evaluate
12 his testimony the same way you would evaluate
13 anyone else's, even though you know his mom
14 pretty well?

15 A. Oh, sure, I think so, yes.

16 Q. In other words, you wouldn't give his testimony
17 any more weight or any less weight than anybody
18 else?

19 A. No.

20 Q. Okay. All right. One of the things of great
21 interest to all of us here is a lot of the
22 publicity that's attended to this particular
23 case. And I wanted to ask you a few questions
24 about that. In terms of the news that you get
25 for day-to-day, you -- you seem to be of --

1 somewhat of an avid reader and somewhat informed;
2 radio, newspapers, television and magazines.
3 If -- Looking at those, where would you say the
4 greatest source of your news comes from?
5 A. Probably the radio, early in the morning.
6 Q. All right. What kind of radio do you listen to,
7 stations or ...
8 A. Basically WOMT.
9 Q. The local station?
10 A. Yes.
11 Q. Okay. All right. And how often do read the
12 newspapers?
13 A. Well, I don't get a newspaper, but my brother
14 saves them for me and so I may read a paper three
15 times a week.
16 Q. Okay. All right. And television, how often do
17 you watch television?
18 A. I would say every evening, watching *Jeopardy*, lot
19 of public TV. I like the programming on public
20 TV.
21 Q. Okay. Do you watch much of the newscast on the
22 local public television stations?
23 A. Well, I used to, but I haven't ever since I got
24 the notice that I was going to be on a jury. And
25 I received that letter back in June of 2006. And

1 I thought there was a possibility that maybe I
2 would be called so, therefore, I was extremely
3 careful not to watch things.

4 Q. Okay. And so you think that was at least -- so
5 you stopped listening to the news coverage last
6 summer?

7 A. Yes.

8 Q. Okay.

9 A. I watched the national news.

10 Q. Sure.

11 A. You know, with Tom Brokaw, when he was on, and
12 his replacement Brian Williams. Those I do
13 watch.

14 Q. Okay. In terms of local media coverage, you
15 haven't followed any of the recent events
16 regarding the case?

17 A. Nothing recent, no.

18 Q. Okay. Based on up to that point of time where
19 you had -- I assume you at least followed the
20 case somewhat?

21 A. Yes.

22 Q. All right. And in your questionnaire you
23 indicated you haven't really formed any opinions
24 about this case?

25 A. No. No, I haven't.

1 Q. And would that be because you just don't have any
2 information upon which to form an opinion or just
3 hasn't been all that interesting?

4 A. I think that there's always two sides to every
5 story.

6 Q. Okay. All right. Well, one of the questions
7 that the -- that's set forth in the questionnaire
8 is, would you be able to decide this case solely
9 on the information which is presented during the
10 trial and not on any of the information that you
11 may have gotten from the media or any other
12 opinions that you may have had?

13 A. That's right. Just from the information we get
14 here.

15 Q. Right. And you are pretty comfortable you can --
16 and confident you can follow that directive?

17 A. Oh, yes.

18 Q. All right. You have never served as a juror
19 before?

20 A. No.

21 Q. Ever been called to jury duty?

22 A. No.

23 Q. So just a little bit of a surprise?

24 A. Yes. Yes.

25 Q. All right. Just your luck, right?

1 A. Well, it's a good learning experience.

2 Q. All right. Do you think that based on any of
3 your background, any -- anything that you have,
4 any philosophy, or conscience, or any religious
5 beliefs that makes you doubt whether you could
6 sit and determine the guilt or innocence of
7 someone, based on the evidence which is presented
8 in court?

9 A. I'm sorry, I didn't understand that.

10 Q. Yeah, is there anything -- Do you have any
11 personal philosophy, personal beliefs, or
12 conscience, or any other reason you think you
13 would not be able to sit and be a juror to
14 determine guilt or innocence?

15 A. No, I don't.

16 Q. Okay.

17 ATTORNEY FALLON: I don't have any more for
18 this witness.

19 THE COURT: Mr. Buting.

20 ATTORNEY BUTING: Thank you, Judge.

21 **VOIR DIRE EXAMINATION**

22 BY ATTORNEY BUTING:

23 Q. Good evening.

24 A. Good evening.

25 Q. May I call you Mrs. Flint, is that what ...

1 A. Sure.

2 Q. Okay. My name is Jerome Buting. And myself,
3 along with Dean Strang, are defending Steven
4 Avery. I assume you understand that.

5 A. Yes.

6 Q. And I have some, a few follow-up questions from
7 your questionnaire and then some of my own that
8 maybe you haven't thought much about yet.
9 Because you -- you said you used to watch quite a
10 bit of news until like the past summer?

11 A. Right.

12 Q. So I assume you saw the news when Mr. Avery was
13 first arrested?

14 A. Yes.

15 Q. Did you see the news conferences that Mr. Kratz
16 was involved in?

17 A. Yes.

18 Q. That would have been in November, when he was
19 first announcing an arrest?

20 A. Yes.

21 Q. Okay. And did you also learn later that -- First
22 of all, do you know the name Brendan Dassey?

23 A. Yes.

24 Q. Mr. Avery's nephew?

25 A. Yes.

1 Q. Okay. And you, did you also see the news
2 conferences for that?

3 A. Yes.

4 Q. And did you assume that, therefore, the case was
5 solved and we now know what happened?

6 A. No.

7 Q. Why not?

8 A. As I said, there's always two sides to a story.
9 And I'm not always sure that when the news media
10 is saying things, that they are saying them
11 right.

12 Q. Sure. But now, in this instance, you actually
13 saw a news conference, right?

14 A. Yes.

15 Q. Which went on for a half hour or something like
16 that, right?

17 A. Mm-hmm.

18 Q. So, you actually heard Mr. Kratz, sitting over
19 here, describing what -- what he now believed --

20 A. Yes.

21 Q. -- the evidence would show?

22 A. Right.

23 Q. After hearing a prosecutor, a special prosecutor
24 make those kinds of statements, wouldn't you then
25 be inclined to say, okay, I guess I believe this

1 is -- this is really what happened?

2 A. No.

3 Q. Why not?

4 A. Well, I know he saw it that way, but that doesn't
5 mean that I have to see it that way.

6 Q. Okay. Very good. So you recognize that lawyers
7 are advocates for their position?

8 A. Yes.

9 Q. And that maybe they might be presenting something
10 in one way that supports their position, but
11 maybe you might see it different?

12 A. Yes.

13 Q. Okay. But now when you -- when you heard the
14 story of -- that Brendan Dassey allegedly gave,
15 or said, or was -- supposedly said, what -- what
16 did that make you feel about this case?

17 A. Sad, shocked.

18 Q. Mm-hmm. The details were pretty graphic?

19 A. Very.

20 Q. Kind of make your hair curl?

21 A. Very. As a mother, when you have children.

22 Q. Yes.

23 A. Yes.

24 Q. I can imagine. What I'm wondering, though, is
25 after hearing that and having that reaction,

1 which is perfectly natural and okay, I'm not
2 criticizing that, and then you see my client,
3 Mr. Avery, right here; how can you look at him
4 and say I -- at this time I presume him innocent?
5 A. He hasn't been proved guilty, though, at this
6 point. He has to be proven guilty and I don't
7 have those details.
8 Q. Well, is that just a matter of a mere formality,
9 you know, we have just got to go through the
10 trial and then -- and then it will be all over,
11 or do you think there's more to it?
12 A. There could be more to it.
13 Q. Did you -- So looking at him, you are telling me
14 that despite what you heard on that day at that
15 press conference, you don't think that you have
16 been so affected by it that you can't be a fair
17 jury -- juror in this trial?
18 A. No, I don't.
19 Q. And why?
20 A. I think I have to have more proof.
21 Q. Okay. Now, did you also learn in the news media
22 that this young man, Brendan Dassey, 16 year old,
23 has since recanted that confession?
24 A. No, I didn't hear that.
25 Q. You didn't.

1 A. No.

2 Q. Did you hear that there was -- that there were
3 different stories that he was giving, changing
4 things?

5 A. No, I didn't hear that either.

6 Q. Didn't hear any of that?

7 A. No.

8 Q. Okay. Can you think of any reason why someone
9 would confess to something that they didn't do?

10 A. That's a tough one. No, I really can't.

11 Q. Do you think -- Have you ever heard of people
12 that have falsely confessed to something and then
13 obviously been proven that they didn't do it?

14 A. Not offhand, no.

15 Q. Okay. If you heard from -- If you heard any
16 evidence or testimony about why that might
17 happen, why people might be inclined or coerced
18 even to say things that aren't true, is that
19 something you could consider?

20 A. Yes.

21 Q. Do you think it's possible that that could
22 happen?

23 A. Yes.

24 Q. And if you heard testimony about certain
25 techniques that police investigators and

1 detectives use when they question people, that
2 might -- might risk the possibility that people
3 would do something like say something that isn't
4 true that they didn't do; is that something you
5 would consider?

6 A. Yes, it's possible.

7 Q. Now, when you said that you want to hear more
8 proof in this case before you make up your
9 mind -- By the way, let me go back for a second
10 about what you might have heard. Have you heard
11 anything, any kind of news reports in the paper
12 or anything about a blood vial?

13 A. Yes, I did.

14 Q. You did hear that?

15 A. Yes.

16 Q. What did you hear about that?

17 A. I just heard it was found in the Clerk of Court's
18 Office.

19 Q. Okay. And did you hear anything else that you
20 recall about it, or why that matters or doesn't
21 matter, or ...

22 A. I really don't know.

23 Q. Okay. All right. That's fine. Now, do you know
24 where you would have heard that from, if you
25 haven't been watching the news?

1 A. I probably heard it on the radio.

2 Q. Okay. So you have heard some things about the
3 case since June, but it's been more on the radio,
4 not the TV?

5 A. And I haven't been sitting down and studying it.

6 Q. Right. Right. And I know in your questionnaire
7 you said that you are in a widow's group?

8 A. Yes.

9 Q. What is that exactly?

10 A. Actually, it came out of a bereavement class.

11 Q. Okay.

12 A. And we enjoyed each other's company so much that
13 we started going out to dinner once a month, to a
14 different restaurant every Friday night.

15 Q. Okay. And you mentioned that you think you might
16 have talked about this case?

17 A. With some of the gals, yeah.

18 Q. With some of the gals?

19 A. Mm-hmm.

20 Q. Do you know what was said or what kind of
21 opinions were expressed?

22 A. No, not opinions. I think they were just
23 expressing what they had or what we all had heard
24 either on the radio or on TV.

25 Q. Did anything about their discussions influence

1 your opinion about --

2 A. Not at all.

3 Q. -- the case or what you thought?

4 A. Not at all.

5 Q. Okay. Now, I assume -- It doesn't seem like you
6 have had much contact with the police over your
7 life?

8 A. No, never.

9 Q. Do you watch police shows, cop shows, crime
10 shows?

11 A. Not really, that's not my favorite.

12 Q. Okay. But you have seen them over the years?

13 A. Not to watch them for a whole hour, though.

14 Q. Okay. Do you think that police officers, simply
15 because they are police officers and they have a
16 badge and they swear an oath to protect and obey
17 the law and enforce the law, do you think that
18 when they come into court and testify on the
19 witness stand, if they do, and take the oath,
20 that -- that they necessarily are more believable
21 than the ordinary witness who comes in and takes
22 that oath?

23 A. Well, I think for somebody my age, we were taught
24 to respect the police and definitely believe what
25 they said.

1 Q. Sure. And so do you think that because of that
2 teaching and that belief, that it would be hard
3 for you to judge them differently, I mean, to
4 question whether or not what they are telling is
5 really the truth?

6 A. No, I don't think so.

7 Q. You don't. Okay. Why not? If you have been
8 taught to believe the police; why not?

9 A. I just believe that they would get up there and
10 tell the truth; if they are sworn to tell the
11 truth, they would tell the truth.

12 Q. Okay. So -- So what I'm asking you then is,
13 because of that, you don't think -- I mean it
14 would be difficult for you to question whether
15 they were telling the truth or not, you would
16 just assume that they are; is that right?

17 A. Yes.

18 Q. All right. Well, what if the Judge -- if the
19 Judge instructed you, though, that you really
20 can't do that, that police officers are just like
21 any other witness and they are human beings and
22 they have the same failings, the same motives or
23 biases as anybody else and that you have to judge
24 their credibility the same way that you would any
25 other witness?

1 A. I think I would be able to do that.

2 Q. Okay. Why, if you believe what you said a few
3 minutes ago, why would you be able to do that?

4 A. You got me there. I'm not sure how to answer
5 that. I'm assuming somebody is on the witness
6 stand and they are -- they were at the scene and
7 investigating early and wouldn't they -- to my
8 mind, they would not put anything false in their
9 report. I would think they would be honest
10 enough to write down exactly what they saw and
11 found.

12 Q. Okay. We would hope so. But my question is,
13 if -- if you hear evidence and questions that are
14 put to the police officers that maybe challenges
15 that belief and maybe makes you question, look a
16 little deeper and think, maybe they weren't being
17 quite as honest as you thought.

18 A. That is possible.

19 Q. And if the Judge instructed you that you -- you
20 have to look beyond just their badge and their
21 role and look at them as human beings who are the
22 same as any other witness who might have reasons
23 to lie --

24 A. Okay. Yeah. All right.

25 Q. -- do you think you could do that?

1 A. I think so.

2 Q. It seems like it would be tough?

3 A. I think every instance is a little different too,
4 it depends on what they would be talking about.

5 Q. Sure, I understand that. And I don't mean to
6 just put you on the spot with some hypotheticals,
7 but do you think sometimes that police officers
8 might get, you know, personally invested in their
9 job or in their investigation such that they --
10 well, let's say, perhaps, even to think that the
11 person is guilty and they want to make sure that
12 the person is convicted because they think he's
13 guilty?

14 A. Well, I would hope not.

15 Q. You don't think so?

16 A. I would hope not.

17 Q. Okay. Well, we would all hope not, but if you're
18 sitting on this jury you are going to have to
19 make some decisions about which witnesses to
20 believe and whether they are really telling the
21 truth, the whole truth.

22 A. Yes.

23 Q. And some of those witnesses may very well be
24 police officers?

25 A. Okay.

1 Q. And so, you know, as Mr. Avery's lawyer, I need
2 to know whether you can promise the Court that
3 you will be able to do that in this case or
4 whether this -- this case is maybe just too hard
5 for you to do that in, to really be able to look
6 at the police officers the same as anybody else,
7 use the -- follow the Court's instruction and
8 apply that instruction to them and not just
9 assume, because when you hope that they wouldn't
10 be dishonest that, therefore, they couldn't be.
11 Do you think you could do that?

12 A. Well, if -- How do I want to say this. If an
13 officer was out there and he wasn't telling the
14 truth, I'm assuming somebody was going to say
15 something else, perhaps one of you two gentleman,
16 that would make it look like he wasn't telling
17 the truth. So I think you would have to be in
18 that instance to be able to question --

19 Q. Sure.

20 A. -- was that testimony true or was it false.

21 Q. And if -- And if you are in that situation and if
22 those questions were put --

23 A. I would think about that.

24 Q. You would think about that?

25 A. Yes.

1 Q. You would seriously give consideration to the
2 possibility that, despite what you hope, maybe
3 that officer has not been telling the truth?

4 A. Sure. Yes.

5 Q. And would that go so far as to even believe the
6 possibility that the police were doing more than
7 just coming in and not telling the truth, but
8 maybe even crossing the line and changing words
9 in reports of what witnesses said, or even
10 planting evidence against somebody because they
11 wanted to make sure that that person was
12 convicted?

13 A. That is also possible.

14 Q. Okay. Well, I understand you haven't heard any
15 evidence right now, so I'm not trying to put you
16 on the spot that way.

17 A. No.

18 Q. All I want to know, is if you are open to
19 consider all of the evidence, including evidence
20 that might look that way --

21 A. Yes.

22 Q. -- despite your upbringing and your hopes and
23 everyone's hopes?

24 A. Yes.

25 Q. Okay. That's fair. Thank you. Do you think

1 that if you did hear all the evidence in this
2 case and you really had a reasonable doubt that
3 the State had proven one or more of these
4 charges, beyond a reasonable doubt, in other
5 words, you really had reasonable doubt about
6 whether Mr. Avery was guilty, you would be able
7 to come back to your community and your widow's
8 group and say, I voted not guilty?

9 A. Yes.

10 Q. And they would be okay with that?

11 A. Yes.

12 Q. You would be okay with it?

13 A. Yes.

14 Q. So there wouldn't be any -- any fear of
15 retribution that you might get?

16 A. No.

17 Q. Okay. I didn't think --

18 A. I'm counting on the other people too, this isn't
19 just my decision. It would be their decision --
20 the other jurors' decision as well as mine.

21 Q. Sure. There's 12 people, right.

22 A. Yup.

23 Q. And we talked a little bit about presumption of
24 innocence. You recognize, also, that the State
25 is the one that has the entire burden of proof?

1 A. Yes. Mm-hmm.

2 Q. And that they have to convince you, beyond a
3 reasonable doubt?

4 A. Yes. That's what the Judge told us last week,
5 Monday.

6 Q. Okay. I wonder, though, in this particular case,
7 you know, people -- might be perfectly
8 understandable for you to think, well, you know,
9 if Mr. Avery is not guilty of this, if he didn't
10 kill that poor young woman, then who did? Right?
11 I mean --

12 A. Yes, I have thought of that.

13 Q. Okay. Would you expect -- In order to be able to
14 come back with a verdict of not guilty in this
15 case, would you expect that Mr. Avery would have
16 to convince you who really did kill her?

17 A. From the little information that I have right
18 now, I don't think I can answer that.

19 Q. Well --

20 A. I don't know enough about Mr. Dassey.

21 Q. I'm not asking you to answer who else would have?

22 A. Okay.

23 Q. I'm not asking that. Maybe that's what you
24 think?

25 A. Yes.

1 Q. What I'm asking is, would you expect that
2 Mr. Avery would have to convince you not only
3 that he didn't do it but here's the name of
4 person who did?
5 A. He might not know.
6 Q. That's right, he might not know.
7 A. No.
8 Q. And so, therefore, how could he, right?
9 A. Right.
10 Q. So it's -- If I understand you, then, if he's
11 unable to present evidence in court that
12 convinces you that somebody else is guilty of
13 this crime, you are not going to say, well,
14 therefore, he has to be guilty --
15 A. No.
16 Q. -- and it must be him? You will look at the
17 State's case and their burden, right, because Mr.
18 Avery doesn't have to prove himself innocent; is
19 that right?
20 A. He is innocent until he is proven guilty.
21 Q. Okay. And if he -- if he is not -- He also
22 isn't -- doesn't have to prove his own innocence
23 either, right?
24 A. Oh, yes, he does.
25 Q. He does?

1 A. I think so.

2 Q. Why?

3 A. Well, if he knows something that he is not
4 saying, that would make somebody else guilty, he
5 has to share that too.

6 Q. Well, what if he doesn't know, how could he?

7 A. Well, then he couldn't.

8 Q. You see what I'm saying, though?

9 A. Yes.

10 Q. You know, I have to know whether or not you are
11 going to say, look, I think it's terrible that
12 this poor young woman was killed and somebody has
13 to pay for that. And since I don't know who
14 else, I'm going to have to say that Mr. Avery is
15 the one who's guilty.

16 A. No.

17 Q. You won't do that, will you?

18 A. No.

19 Q. And along those lines, you just said something
20 about, well, if he knows something, he should
21 tell us. There's -- There's always the question
22 in any criminal case, for a defense attorney,
23 which is whether or not the defendant should
24 testify, or not testify.

25 A. I understand that, yes.

1 Q. And would you think that in order for you to find
2 him, Mr. Avery, not guilty, that you would want
3 to hear from him first?

4 A. Not necessarily.

5 Q. Why not?

6 A. Well, I think if he wanted to say something, I
7 think he would tell you.

8 Q. Okay. And you understand that we, Mr. Strang and
9 I, have, you know, input here and would advise
10 him whether or not to testify, right?

11 A. Right, yes.

12 Q. Well, the Judge will give you an instruction that
13 a criminal defendant, it's one of the rights we
14 have in our constitution, not only do they not
15 have to prove their innocence, but they also do
16 not -- they have a right not to testify, if
17 that's what they choose to do?

18 A. Okay.

19 Q. And that you can't -- If Mr. Avery does choose
20 not to testify, you can't consider that in any
21 way against him?

22 A. No.

23 Q. You can't hold that against him?

24 A. I understand that.

25 Q. On the other hand, if Mr. Avery does choose to

1 testify, do you think you would be able to listen
2 to his testimony just like any other witness?

3 A. Yes.

4 Q. And consider it?

5 A. Yes.

6 Q. You wouldn't think just because he's a defendant,
7 you know, I just can't believe anything he says?

8 A. No.

9 Q. You're sure of that?

10 A. Yes.

11 Q. Okay. All right. Just one last question, do you
12 think you want to be on this jury?

13 A. Yes.

14 Q. Okay. Why?

15 A. I think it's a good learning experience. If he
16 would be guilty, for the family of Teresa
17 Halbach, he should be found guilty beyond that
18 reasonable doubt. And if he is not guilty, he
19 won't be found guilty.

20 Q. And you want to be one of the 12 people who make
21 that kind of decision?

22 A. That's a tough call. I realize that's a big
23 responsibility. And I told the people out in the
24 outer room, that when I came in here last Monday
25 I told God, I can't do this on my own. But I

1 know that he will know and he will help me do
2 this.

3 Q. So you -- you realize what a serious, serious
4 responsibility --

5 A. Absolutely.

6 Q. -- this is?

7 A. Very much so.

8 Q. But you think you could be fair and undertake
9 that responsibility?

10 A. Yes.

11 Q. Okay.

12 ATTORNEY BUTING: Thank you, very much,
13 ma'am. I appreciate it.

14 MRS. FLINT: You're welcome.

15 THE COURT: I just wanted to ask a couple
16 follow-up questions.

17 **VOIR DIRE EXAMINATION**

18 BY THE COURT:

19 Q. I think that it was clarified at the end, but the
20 question of police officers as witnesses --

21 A. Yes.

22 Q. -- I think you indicated at the beginning that
23 you would expect them to tell the truth because
24 that's part of their duty as a police officer?

25 A. Right.

1 Q. And that is true. But as Mr. Buting indicated
2 and there was a question on the questionnaire
3 about this, actually. And the question read as
4 follows: Some of the witnesses in this case will
5 be members of law enforcement. The law requires
6 jurors to evaluate their credibility just as that
7 of any other witness; that is, the jurors are
8 prohibited from giving any more or less
9 credibility to the testimony of a law officer
10 simply because the witness is a law officer.

11 A. Okay.

12 Q. Do you believe that you can follow such an
13 instruction?

14 A. Yes.

15 Q. There will be another instruction at the trial
16 given to the jurors that sets out the factors
17 that the jurors are to consider in evaluating the
18 credibility; that is, the believability of each
19 witness. And they are the same whether the
20 witness is a police officer or not.

21 They include whether the witness has an
22 interest or lack of interest in the result of the
23 trial; the conduct, appearance and demeanor of
24 the witness on the witness stand; the clearness
25 or lack of clearness of the witness'

1 recollections; the reasonableness of the witness'
2 testimony; and bias or prejudice, if any has been
3 shown.

4 Those are among the things you are to
5 consider. And if you are a juror you will have
6 to assess the credibility of all witnesses,
7 including police officers, on that basis. That
8 means you have to look at each of them and make a
9 determination whether they are telling the truth
10 or not. Do you think you can do that if you're a
11 juror?

12 A. Yes.

13 Q. And can you apply the same standards to police
14 officer witnesses as you do to other witnesses?

15 A. Yes.

16 THE COURT: Okay. All right. The Clerk
17 will take you and escort you from the courtroom at
18 this time.

19 (Wherein the juror was excused.)

20 THE COURT: Counsel, any motion from either
21 party?

22 ATTORNEY FALLON: None from the State.

23 ATTORNEY BUTING: No, your Honor.

24 THE COURT: Very well, Ms Flint will be in
25 the jury pool.

1 ATTORNEY FALLON: Judge, counsel pointed
2 out, I thought you had made a ruling on Nos. 37 and
3 39, that we had asked to be excused for cause; did
4 you make that ruling or ...

5 THE COURT: I think I indicated earlier,
6 actually I'm not sure those are the only two for
7 which I have not made a ruling yet. I was going to
8 have the Clerk inventory the jurors before we start
9 tomorrow morning and go over all of those.

10 ATTORNEY FALLON: Oh. All right. Very
11 good.

12 THE COURT: So we have got one juror left
13 today and I believe it is Mr. Petermann. All right.
14 Mr. Petermann, if you will please raise your right
15 hand, the Clerk will administer the oath.

16 (Juror sworn.)

17 THE CLERK: Please be seated.

18 THE COURT: Mr. Petermann, first let me
19 apologize. By luck of the draw, you have the honor
20 of being the last juror we're going to be
21 questioning today. You may recall you already
22 filled out a written questionnaire in this case.

23 MR. PETERMANN: Correct.

24 THE COURT: Today we're proceeding to the
25 next step of the jury selection process which is

1 voir dire. It gives the attorneys an opportunity to
2 ask you some follow-up questions to information that
3 you provided on your questionnaire.

4 Before we begin with the attorney's
5 questioning, I wanted to notify you of a few
6 things. First of all, the jury in this case will
7 not be sequestered. That means that if you are
8 selected to the juror -- jury, you will be able
9 to -- you will be permitted to return home each
10 day at the end of the proceedings for that day.

11 The jurors will continue to be governed
12 by the Court's order on not paying any attention
13 to any news media accounts of this case whether
14 on radio, television, the newspaper, or talking
15 with anyone else.

16 These voir dire proceedings today are
17 held in open court, but the Court does not allow
18 cameras in the court during voir dire
19 proceedings. And you should also know that
20 members of the news media, while they are
21 permitted to be here, cannot use your name in any
22 news reports as a juror.

23 And in addition, if you are selected to
24 serve on the jury, the camera will not be able to
25 identify you in anyway during the trial itself.

1 In the event you remain on the jury
2 panel after we conclude today, you will be given
3 a telephone call in the next few days letting you
4 know when to report back to court.

5 Mr. Fallon, you may begin.

6 VOIR DIRE EXAMINATION

7 BY ATTORNEY FALLON:

8 Q. Good evening, Mr. Petermann, my name is Tom
9 Fallon. I'm an Assistant Attorney General for
10 the Wisconsin Department of Justice. I'm one of
11 the prosecutors in this case. I wanted to ask
12 you a few questions about the information you
13 provided last week and perhaps a few other odds
14 and ends questions as well. Thank you for being
15 so patient with us as we attempt to go through
16 this process.

17 I guess I would like to begin with a
18 little bit about your work at the Brillion Iron
19 Works. How long have you worked for them?

20 A. Thirty-five years.

21 Q. Thirty-five years. And what type of work do you
22 do for them?

23 A. General laborer, pour iron, shake out, run a
24 machine, kind of everything really.

25 Q. Okay. What kind of machine is it, a press or ...

1 A. It's a molding machine.

2 Q. Molding.

3 A. Yeah.

4 Q. All right. All right. Enjoy your work?

5 A. It pays pretty good. Yeah, it's a good job.

6 Q. That raises an interesting question. If you are

7 selected as a juror in this case, I think you

8 have been advised that the case may go on for

9 approximately six weeks or so and then followed

10 by some deliberation time. We don't know how

11 long that would be. Would the selection of

12 yourself as a juror, would that create any

13 economic hardship on you at all in terms of your

14 work or anything?

15 A. No, I'm not really.

16 Q. Okay. So you will -- you would be paid or you

17 will be --

18 A. Yeah, we get jury pay.

19 Q. Okay. Very good. I see from your questionnaire

20 you have hunting and racing as your -- some of

21 your hobbies or pastime activities; what kind of

22 hunting do you like to do?

23 A. Mostly deer.

24 Q. Deer. All right. And what kind of racing?

25 A. Stock car.

1 Q. Stock car?

2 A. Yeah.

3 Q. Now, do you actually race a bit yourself or are
4 you just a fan of the racers?

5 A. No, I race myself.

6 Q. Do you? Very good. What kind of car do you
7 race?

8 A. '99 Monte Carlo.

9 Q. All right. Let's see. How long have you been
10 involved in the racing business?

11 A. Since 1981 -- 1980, actually. I didn't race in
12 '80, but I helped another guy out.

13 Q. And how often do you race each year?

14 A. Um, this year, I think we're scheduled for 16
15 events.

16 Q. Sixteen events. Now, is this a bit of a costly
17 expenditure for you or just a --

18 A. It can be.

19 Q. -- casual hobby?

20 A. It can be. You can spend whatever you want,
21 really, but for me, I don't really do that.

22 Q. You don't spend a great deal of money?

23 A. No. And nobody gives me a lot either so.

24 Q. All right. When does the season start up for
25 you?

1 A. The second last Thursday in May, I think, is when
2 we're starting this year.

3 Q. All right. So have -- are you in the preparation
4 time frame now for racing?

5 A. Yeah. Oh, yeah. Yeah.

6 Q. Do you do all your own work on your car?

7 A. Most of it, yeah.

8 Q. All right. Any modifications or is this just
9 your basic stock 99?

10 A. No, it's pretty much a race car.

11 Q. It is.

12 A. Yeah. Oh, yeah.

13 Q. Are you pretty much a solo operator or do you
14 have like a team or a couple guys that help you
15 out?

16 A. My sister helps me out and there's another guy
17 helps me out. But really, the work on the car, I
18 mostly do it myself.

19 Q. All right.

20 A. It's mostly on race days when they come help me.

21 Q. Okay. And what kind of work does your sister
22 help you with?

23 A. Changing tires.

24 Q. Okay.

25 A. Yeah.

1 Q. So she's pretty handy?

2 A. Yeah, just more somebody around, you know.

3 Q. All right. Okay. Okay. I see you belong to a
4 couple -- a hunting club and this Fox River
5 Racing; is that the club that you belong to --

6 A. Right.

7 Q. -- for stock car racing?

8 A. Mm-hmm.

9 Q. And Holy Family Church. Do you have any -- How
10 long have you been involved with the hunting
11 club?

12 A. Oh, 25 years probably.

13 Q. Longer than your racing or about the same?

14 A. No, I think it was longer with that.

15 Q. Okay. And I take it you are somewhat active in
16 your church?

17 A. I usher a little bit and my son helps me with
18 that.

19 Q. Very good. Now, I note from your questionnaire
20 you circled one name, a person that you might
21 know, a William Brandes, but you had a question
22 mark. The William Brandes that you know, what
23 does he do for a living?

24 A. He works at Manitowoc here, the foundry, the
25 Aluminum Foundry.

1 Q. The foundry?

2 A. Yeah. And he is from Brillion.

3 Q. He is from Brillion.

4 A. Yeah.

5 Q. Do you know if he's a volunteer firefighter?

6 A. Not really.

7 Q. Okay. It's hard to say whether -- Let me ask

8 this, it's a better way of asking. Have you

9 followed this particular case much in the media?

10 A. I usually watch the news, you know, 6:00 news or

11 5:00 news --

12 Q. All right.

13 A. -- in the evening, but ...

14 Q. All right. Have you watched the news recently?

15 A. No, not too much.

16 Q. All right. Did you get a notice from the Court

17 about watching any news coverage of this case?

18 A. Yes.

19 Q. All right. And have you been able to follow that

20 directive?

21 A. It's hard but, yeah, kind of walk away on it,

22 yeah.

23 Q. Okay. Where do you get most of your news from,

24 the television or newspaper?

25 A. More television.

1 Q. All right. Would you consider yourself a regular
2 watcher of the TV news?

3 A. Yeah, I would.

4 Q. Any particular channels you watch or you watch
5 them all about the same?

6 A. When I'm out in the shop I maybe have 11 on, but
7 in the house, I probably have Channel 2 on but.

8 Q. All right. So you occasionally have the
9 opportunity of seeing television at the shop?

10 A. Yeah.

11 Q. All right. Is that frequently that that happens
12 or is that just on occasion?

13 A. That's more on occasion out there.

14 Q. Okay.

15 A. Usually if I'm working out there, I can't even
16 pay attention to it.

17 Q. Sure. Are you -- You don't regularly read the
18 newspaper I take it?

19 A. No, I used to get it, but I don't no more.

20 Q. Okay. What, if anything, do you remember hearing
21 about this case from the television or radio
22 broadcast?

23 A. The search, when they were searching.

24 Q. Searching when she was a missing person?

25 A. Yeah.

1 Q. All right. Anything else?

2 A. Um ...

3 Q. Anything about his arrest or being charged?

4 A. Well, yeah. Um, yeah, it's mostly that. You
5 know, it's general -- generally what was on TV,
6 really.

7 Q. All right. Do you recall hearing about a fellow
8 by the name of Brendan Dassey at all?

9 A. Yeah.

10 Q. All right. Did you watch any of the coverage
11 regarding his arrest?

12 A. Just that he was arrested, you know, and that was
13 about it, really.

14 Q. Do you remember any of the details that were
15 surrounding his arrest? Did you watch any press
16 conferences or any particular media coverage on
17 the details of his arrest, of what he might have
18 said or didn't say?

19 A. Just that there was a rape involved and stuff.
20 They disposed of the body, I guess.

21 Q. All right. Was there any connection in your mind
22 between Mr. Dassey's arrest and that of
23 Mr. Avery?

24 A. I suppose it could be, yeah.

25 Q. Could be, but you don't have any clear connection

1 in your head?

2 A. Well, it seems that way, but it's, you know, is
3 that the way it is, I don't know.

4 Q. All right. In any event, based on the
5 information that you have, have you formed any
6 opinions at all regarding this particular case?

7 A. Not really, no.

8 Q. All right. You answered no on the questionnaire.
9 I wanted to make sure that that's still your view
10 at this time. Is there any recent media coverage
11 that may have changed your opinion, that you are
12 aware of?

13 A. No.

14 Q. All right. As you sit here today, do you have
15 any opinion at all as to whether Mr. Avery is
16 guilty or not guilty of the offenses charged?

17 A. No.

18 Q. You don't have any opinion at all?

19 A. No.

20 Q. Is there any question in your mind that you could
21 set aside this outside information that you have
22 received from the television and radio broadcast
23 and decide Mr. Avery's guilt or innocence solely
24 on the evidence which is presented during the
25 trial, if you are selected as a juror?

1 A. I believe I could.

2 Q. All right. Are you a lifelong resident of
3 Manitowoc County?

4 A. No, I lived in Calumet County for about five or
5 six years.

6 Q. Calumet County for a few years.

7 A. Yeah.

8 Q. And I see you were born in Brown County?

9 A. Yeah, that was just the birth place.

10 Q. Just the birth place?

11 A. Yeah.

12 Q. Hospital?

13 A. Yeah.

14 Q. When did you live in Calumet County, sir?

15 A. Probably about like '87 to '92, somewhere around
16 there.

17 Q. All right. And then you moved to your current
18 address in Brillion?

19 A. Correct.

20 Q. All right. And was that for work purposes or
21 just a better house deal?

22 A. Well, we bought a house.

23 Q. Okay. Good. During your time in Calumet County,
24 did you ever have occasion to meet with, or talk
25 to, or interact with any Calumet County Sheriff's

1 officers or police officers?

2 A. I knew Larry Pagel.

3 Q. You knew Sheriff Pagel?

4 A. Larry Pagel, not Sheriff Pagel.

5 Q. Oh, Larry Pagel.

6 A. Yeah, he was an investigator I think.

7 Q. He was an investigator.

8 A. Yeah.

9 Q. All right. Anyone else that you had any contact
10 with?

11 A. There was Yoder, I can't remember his first name
12 but ...

13 Q. All right. Okay. Were they just friends,
14 acquaintances or ...

15 A. Um, I don't remember how I got to know Yoder, but
16 Pagel, he had a cottage down by my dad's land, he
17 rented.

18 Q. Oh, I see.

19 A. And that's kind of how I knew him. He was in
20 sportsmen's club too.

21 Q. Okay. All right. Would you say you were good
22 friends or just casual acquaintances?

23 A. Casual acquaintance.

24 Q. All right. Wouldn't see him that often?

25 A. No.

1 Q. Okay. Now how about here, since you moved to
2 Manitowoc County, have you had occasion to have
3 any law enforcement contacts or become friendly
4 with any of the officers or anything like that?

5 A. No, not really.

6 Q. Any of the firefighters in your area?

7 A. I know some of the firefighters from Brillion.

8 Q. Who do you know?

9 A. Police chief. There's Dale Gailoff (phonetic).

10 Q. Mm-hmm.

11 A. There's really a bunch of them. There's a couple
12 Behnkes.

13 Q. Okay.

14 A. Some of -- most of them I work with, you know.

15 Q. Okay.

16 A. That I know so.

17 Q. Now, because you work with some of those who have
18 connection to law enforcement, do you think if
19 you were selected as a juror that you could
20 evaluate the testimony of a law enforcement
21 officer the same as you would evaluate the
22 testimony of any other witness who appeared in
23 the case?

24 A. Yes.

25 Q. All right. So just because they are a law

1 enforcement officer and because you happen to
2 know a few law enforcement officers, you wouldn't
3 weigh their testimony more credibly than you
4 would someone else's?

5 A. No.

6 Q. All right. You feel pretty comfortable and
7 confident that you could do that?

8 A. Yes, I do.

9 Q. Now, there was one last couple questions I had
10 for you here. Apparently you had a sister who
11 was killed in an automobile accident?

12 A. Correct.

13 Q. All right. Was that a long time ago or recently?

14 A. No, 1967.

15 Q. Oh, quite a while ago.

16 A. Yeah.

17 Q. All right. Was it simply just an accident or was
18 there some, you know, perhaps some criminal
19 malfeasance there?

20 A. I remember my folks going to court in with it,
21 but I don't remember what the outcome, I didn't
22 really get nothing out of it I don't think.

23 Q. Okay. You don't remember whether there was just
24 a civil suit or a criminal case about how she --

25 A. I thought -- I think it was civil.

1 Q. Okay.

2 A. Okay.

3 Q. All right. Okay. Do you -- Did you have any
4 personal experience in that in terms of --

5 A. No.

6 Q. -- being a witness or talking to any --

7 A. No.

8 Q. -- body?

9 A. I went to school. We never went to court
10 proceedings, nothing.

11 Q. Okay. All right. So you were just a teenager at
12 the time then?

13 A. 15.

14 Q. Right.

15 A. Yeah.

16 Q. Okay. Anything about that experience that makes
17 you wonder whether it would be a good idea or a
18 bad idea for you to be a juror in this case?

19 A. From that, no.

20 Q. Okay.

21 ATTORNEY FALLON: All right. That's all I
22 have.

23 THE COURT: Mr. Strang.

24 **VOIR DIRE EXAMINATION**

25 BY ATTORNEY STRANG:

1 Q. Hi, Dean Strang, Jerome Buting, Steven Avery.
2 You probably saw us last week, briefly. Where --
3 Where did you live in Calumet County when you
4 were there from '87 to '92.
5 A. Just a little bit north of Brillion.
6 Q. A little north of Brillion?
7 A. Yeah, it was on W580 Harvestor Road was the
8 actual address.
9 Q. And the mailing address?
10 A. W580 Harvestor Road.
11 Q. No, no. I mean -- I'm sorry, the post office,
12 the town?
13 A. Oh, Brillion.
14 Q. Brillion?
15 A. Yeah.
16 Q. Yeah. And, actually, part of Brillion lies in
17 Manitowoc County and part in Calumet, I think,
18 right?
19 A. The city?
20 Q. Or is that not so?
21 A. Not the city.
22 Q. The city is all in Manitowoc?
23 A. No, in Calumet.
24 Q. Oh. Okay.
25 A. Okay. But if you seen, my address is Brillion

1 too.

2 Q. Mm-hmm.

3 A. But that's in Manitowoc.

4 Q. You are on the Manitowoc side?

5 A. Yeah.

6 Q. Okay. So you really didn't move very far?

7 A. Mm, I think it's about 6 miles.

8 Q. Yeah. And you told -- One of the things you told
9 us in the questionnaire is that you're acquainted
10 with Teresa Halbach's brother?

11 A. Just slightly.

12 Q. Which one?

13 A. I'm not even sure of his first name. My mother
14 had died like a year and a half ago.

15 Q. Mm-hmm.

16 A. And now my dad is transferring some land and we
17 went to this attorney to try to take care of
18 this.

19 Q. Mm-hmm.

20 A. And my dad signed the land over to me and my
21 siblings and we put it into a LLC.

22 Q. Mm-hmm.

23 A. And Mr. Halbach, I think he dotted the i's and
24 the t's for that paper.

25 Q. Sure.

1 A. And he also did a lease agreement because some of
2 the land is rental and he drew those papers up on
3 that.

4 Q. Okay.

5 A. But when I was there, I didn't -- I didn't know
6 it was him. I knew it like a day later, my
7 sister told me. I think they only used like
8 first name, but like I say, I don't remember.

9 Q. Sure. Tim?

10 A. That could be it.

11 Q. Tim Halbach. Okay. And about how long ago was
12 this?

13 A. I think it was the 25th; it was a Thursday, in
14 January.

15 Q. Oh. Like --

16 A. Just briefly.

17 Q. -- a month ago?

18 A. Yeah.

19 Q. So it -- Was it your siblings who set up this
20 LLC?

21 A. Yeah, me and my siblings. Yeah.

22 Q. And, then, the LLC is the technical owner of the
23 land that your dad sold?

24 A. Right. Right.

25 Q. Okay.

1 A. Yeah, he gave it to us. He transferred it,
2 really.

3 Q. Yeah. And, then, is it a -- is it a working farm
4 or it has a business purpose, commercial purpose?

5 A. It's farm and it's, like, lake property rental.

6 Q. Mm-hmm.

7 A. Okay. And there's cottages there that rent. And
8 the lawyer wanted us to actually have a signed
9 lease, because my dad never did before.

10 Q. Laurie wanted? Oh, the lawyer.

11 A. Yeah.

12 Q. The lawyer did. Okay. And so this is -- How
13 many siblings do you have?

14 A. Besides me?

15 Q. Yeah.

16 A. Four.

17 Q. All five of you went in on this?

18 A. Right.

19 Q. Okay. And the five of you, or the LLC, are
20 paying the lawyer?

21 A. We didn't pay nobody yet. I think my dad is
22 going to take care of it.

23 Q. Okay.

24 A. But I didn't pay nothing yet.

25 Q. And do you know, did the lawyer set up the LLC?

1 A. I don't really know.

2 (Changing battery in the microphone.)

3 Q. That's what happens when the battery dies.

4 THE COURT: She just shuts that off. As
5 soon as they put a battery in, everything will be
6 fine.

7 Q. (By Attorney Strang)~ All right. So are you and
8 your siblings, or at least some of the five of
9 you, officers of this LLC?

10 A. My sister is.

11 Q. And directors, that kind of thing?

12 A. We just, actually just set it up.

13 Q. Right.

14 A. And my sister is the head of it. My sister is
15 the head of it. She's taking care of it.

16 Q. Okay. And then the LLC will rent out these
17 cabins or cottages?

18 A. Right.

19 Q. Like a summer vacation sort of --

20 A. That's what it is, yeah.

21 Q. And do you all plan to continue running the LLC
22 and getting some income out of it?

23 A. For the near future, yeah.

24 Q. Okay.

25 A. Yeah.

1 Q. And then the lawyer, this Mr. Halbach --

2 A. Well, I don't know if he's a lawyer. It was

3 Twohig somebody and Schneider.

4 Q. Right, Twohig, Rietbrock, da, da, da, in downtown

5 Chilton?

6 A. Yeah.

7 Q. But you met Mr. Halbach there?

8 A. Yeah.

9 Q. Doing legal work for the LLC?

10 A. Right.

11 Q. And he's the one who set up the LLC?

12 A. I believe so, because he explained it to us.

13 Q. Right.

14 A. Yeah.

15 Q. Okay. And then do you plan to have him involved

16 in the tax documents and the annual report that

17 the LLC will file?

18 A. I have no idea.

19 Q. Okay. All right. What you know is you are not

20 doing that, I assume, right?

21 A. Yeah.

22 Q. Okay. You -- You mentioned that you had stopped

23 getting the newspaper and I wanted to pick up on

24 that. Why did you cancel your newspaper?

25 A. Um, racing takes a lot of time and I just found I

1 was -- wasn't keeping up, you know, reading so it
2 didn't feel like it paid to get it anymore.

3 Q. Okay. It wasn't that you got ticked off?

4 A. No. No.

5 Q. Okay. Let's go back to the, you know, the
6 details you know about this case or at least the
7 publicity you heard about the case and let's sort
8 of explore that a little bit more. What did you
9 think about, you know, when you heard that a
10 young woman went missing and turns up dead and
11 maybe her body has been burned? What did you
12 think about all that?

13 A. Yeah, it's, you know, it's tragic. You know, you
14 wonder who would do something like that, you
15 know, but ...

16 Q. Not exactly what you want happening in your
17 neighbor.

18 A. No, I have two daughters, too.

19 Q. Yeah. Did you -- Did you -- Did that occur to
20 you when you first heard about this, the ages
21 aren't all that different, actually?

22 A. No. Yeah, you worry about that, you know. I
23 think any father would.

24 Q. So do I. And that's why I'm wondering why you
25 don't have an opinion about it. Because I do

1 think any father would worry about that.

2 A. You mean, when I wrote the paper? When I wrote
3 on that paper, you mean?

4 Q. Yeah. Yeah. Or you said -- How can you not have
5 an opinion about this?

6 A. I -- Yeah, I guess you would really.

7 Q. I mean, I'm not trying to set you up.

8 A. Yeah.

9 Q. I'm defending Steven Avery, but I really need to
10 know, you know, sort of what we're up against,
11 and get at that. I mean, it's -- you are human,
12 I want to know what the opinion is.

13 A. Yeah, I do, you know, worry about her. I'm
14 worried about my kids.

15 Q. Yeah, and this is the guy they charged?

16 A. Yeah.

17 Q. So, is he probably guilty, probably done
18 something really horrible?

19 A. The Court has to prove that, I guess.

20 Q. Actually, they have to prove it.

21 A. Well, yeah, I'm sorry. Yeah.

22 Q. Yeah, right. I mean, it comes out in court and
23 that's all good, you know, that's all good
24 American civics stuff. But I want to get at, you
25 know, where I'm starting with you.

1 ATTORNEY FALLON: Your Honor, could counsel
2 approach the bench?

3 THE COURT: Sure.

4 (Side bar taken.)

5 THE COURT: All right. Mr. Petermann, at
6 this time I'm going to allow you to leave the
7 courtroom with the Clerk.

8 MR. PETERMANN: Okay.

9 THE COURT: I will let you know,
10 Mr. Petermann, because of the -- and this has
11 nothing to do with anything wrong you did, but
12 because of your relationship to the --

13 MR PETERMANN: Okay.

14 THE COURT: -- the legal --

15 MR. PETERMANN: That's fine.

16 THE COURT: -- the legal relationship to
17 the brother of the victim and the fact that he is an
18 attorney for your organization, that makes you
19 disqualified as a juror.

20 MR. PETERMANN: That's fine.

21 THE COURT: So the Clerk will escort you
22 from the courtroom.

23 (Wherein the juror was excused.)

24 THE COURT: Counsel, for the record, it's
25 my understanding that both parties are jointly

1 requesting that this juror be excused for cause?

2 ATTORNEY STRANG: We certainly have no
3 objection to it.

4 ATTORNEY FALLON: I will make the motion.
5 I think we have to. I realize that there is a
6 question here as to whether or not there's been
7 developed a solid objective bias case under the
8 standards. But even in other cases, most notably
9 the *Lindell* case. There's an opportunity that -- In
10 fact, the language is as follows: We caution and
11 encourage a circuit court to strike prospective
12 jurors for cause when the circuit courts reasonably
13 suspect that juror bias exists.

14 They go on to say: To err on the side
15 of striking prospective jurors who appear to be
16 biased, even if perhaps the appellate court would
17 not reverse their determination of an
18 impartiality. And, again, I'm not 100 percent
19 convinced, based on his limited involvement in
20 the family's LLC; nonetheless, I think in
21 fairness, there is that appearance and that he
22 should be struck for cause.

23 ATTORNEY STRANG: I'm convinced. We will
24 join the motion.

25 THE COURT: All right. The Court will

1 grant the parties joint motion and strike that juror
2 for cause.

3 We're going to resume at 8:30 tomorrow.
4 Couple of things before we leave. I allowed
5 members of the news media to have laptops in
6 these proceedings, but that was done with the
7 understanding that they wouldn't be making
8 noises. I believe they are equipped with
9 features to keep them from beeping. So please
10 address that before anyone returns tomorrow. And
11 I believe that's all I have got today, so counsel
12 I will see you at 8:30 tomorrow.

13 (Proceedings concluded.)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 31th day of August, 2007.

Diane Tesheneck, RPR
Official Court Reporter

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, JURY TRIAL
5 vs. VOIR DIRE - DAY 3
Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** FEBRUARY 7, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:**

12 KENNETH R. KRATZ
Special Prosecutor
13 On behalf of the State of Wisconsin.

14 THOMAS J. FALLON
Special Prosecutor
15 On behalf of the State of Wisconsin.

16 DEAN A. STRANG
Attorney at Law
17 On behalf of the Defendant.

18 JEROME F. BUTING
Attorney at Law
19 On behalf of the Defendant.

20 STEVEN A. AVERY
Defendant
21 Appeared in person.

22 * * * * *

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24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery, Case No. 05 CF
3 381. We're here this morning to begin the third day
4 of individual voir dire. Will the parties state
5 their appearances for the record, please.

6 ATTORNEY FALLON: Good morning, your Honor,
7 may it please the Court. The State appears by
8 Assistant Attorney General Tom Fallon and special
9 prosecutor, along with special prosecutor Ken Kratz.

10 ATTORNEY BUTING: Steven Avery is here in
11 person; Jerome Buting represents him, as does Dean
12 Strang.

13 THE COURT: All right. There's a few
14 matters we have to clear up from yesterday before we
15 call out the first juror. First, at this time I had
16 a chance to look at the jury questionnaires; there
17 were three jurors yesterday that the parties jointly
18 recommended be stricken for cause and I believe the
19 Clerk has the names and numbers.

20 THE CLERK: It was Juror No. 44, Kevin
21 Cayemberg; Juror No. 37, Mary Lukes; and Juror
22 No. 39, Betsy Roedig.

23 THE COURT: Does that square with the
24 party's recollection?

25 ATTORNEY STRANG: Yes.

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ATTORNEY FALLON: Yes, that's correct,
Judge.

THE COURT: All right. I have reviewed the
questionnaires in those cases and I agree with the
party's recommendations; those three jurors will be
stricken for cause. I also indicated to the parties
before we began today that -- Well, first of all, at
the outset, the Court had indicated it wished to
place a 15 minute limit on each party for individual
voir dire of the jurors.

The parties were both heard on the
record and felt that time would be too short. I
indicated, I believe, that I would monitor the
situation and somewhat loosely apply the limit.

Having heard the voir dire of the jurors
who have been questioned to date, the Court
believes that if unnecessary visiting with the
juror questions are eliminated and repetitive
questions are eliminated, I'm not sure that I
have heard any juror for which 20 minutes per
side would not have been sufficient. So I'm
going to impose a 20 minute limit on each side
for questioning any particular juror.

I do have a timer here that I will be
using. The way it's set up, and I don't think I

1 can overrule it, but perhaps it's helpful. It
2 gives a short little beep at every five minute
3 interval. So the beep you hear today will not be
4 the laptops of the media, but will be coming from
5 the timer.

6 And when the last one goes off, if the
7 parties wish, I will give you just a brief
8 warning that you have got five minutes left. I
9 won't give it, if the parties don't wish me to,
10 but if you find it of assistance, I will.

11 Counsel.

12 ATTORNEY FALLON: I understand the Court's
13 reasoning and we'll do our best to abide by the time
14 limit and see how it goes. But as I think about the
15 last couple of days, quite frankly, notwithstanding
16 media perception, I don't think we're doing all that
17 badly or going all that slowly.

18 Actually, it feels almost about right, a
19 little tedious yesterday. But our concern is
20 having adequate time to explore the issues. And
21 like I said, the State will do its best to abide
22 by the 20 minute time limit.

23 But as I think about it, I don't think
24 on average we have spent more than 40 to 45
25 minutes on average per juror. And as the Court

1 is aware, the parties have agreed to strike for
2 cause somewhere in the vicinity of 50 jurors.
3 Thereby saving a great deal of time. But in
4 terms of right now, we'll see how it goes and we
5 may renew our request for extended time depending
6 on how it goes.

7 THE COURT: Mr. Strang.

8 ATTORNEY STRANG: I do object to the time
9 limit for a number of reasons, acknowledging that
10 the Court has broad discretion in controlling voir
11 dire and superintending the process of jury
12 selection. But the overriding concern here as the
13 Court itself acknowledges -- and I know the Court
14 understands this -- is that we're trying a case in
15 which a man -- the rest of his life hangs in the
16 balance.

17 And for the other side of the courtroom
18 in which the public has an enormous and
19 legitimate interest and one family in particular
20 has a very deep personal interest, picking 16
21 fair jurors who come to this case after 15 months
22 of publicity that has been unusual in its
23 pervasiveness and in its consistency, without
24 ascribing or characterizing it further, there's
25 been an enormous amount of publicity in this

1 case.

2 And it is not at all unreasonable here
3 for the parties to explore in voir dire well
4 beyond the bases for cause in striking a juror,
5 but explore further the information that will
6 allow each side intelligently to exercise the few
7 peremptory strikes the Wisconsin law allows each
8 side.

9 In two long days of voir dire I -- I and
10 Mr. Buting collectively have made exactly one
11 objection to a question posed by the State. And
12 as this Court knows, I'm not shy about making
13 objections and neither is Mr. Buting. So we made
14 one objection because we thought there was one
15 objectionable question in two days.

16 We have not posed a single question
17 between the two of us that we thought
18 objectionable. We don't intend discourtesy to
19 the Court and we don't intend to do improper
20 things.

21 The State has made a few, several,
22 although not a great number of objections to our
23 questions, some of which the Court has sustained
24 and some of which it has overruled. But in the
25 main, I expect that counsel at the next table

1 would join me in agreeing that neither side has
2 wandered off into inappropriate material.

3 Now, when the Court times each side, on
4 each juror, and a little chime is going off,
5 we're chilling not just the lawyers, but more
6 importantly, the person who is trying to open up
7 in an alien environment and give us some
8 information that's very personal to a bunch of
9 strangers, about themselves, about their
10 attitudes and about their deepest held
11 convictions.

12 And with a chime going off every five
13 minutes, I don't expect the same level of candor
14 from jurors who are already uncomfortable and in
15 an alien environment surrounded by strangers who
16 do very different things with their working lives
17 than they do.

18 So if -- if the Court is of a mind to
19 set some time limits and I certainly understand,
20 I share the desire to be out of here before 6 or
21 6:30 at night, because of all the work we have to
22 do after we leave court. But if the Court was
23 going to do that, I would ask the Court, instead,
24 to set something like a three and a half hour a
25 day limit on each side and let us apportion that

1 time as we will.

2 Because it is -- One of the other
3 problems with a 20 minute limit per side per
4 juror is that not all potential jurors are
5 created equal. Some of them -- some of them can
6 be accepted, or for that matter excused, in five
7 or 10 minutes total.

8 Some of them are well worth an hours
9 total exploration. And if that happens to be 40
10 minutes by the State and 20 minutes by the
11 defense on one juror and, you know, 30 minutes by
12 each side on the next; that's just the way it is,
13 in my view. Each one of these people is
14 individual and presents individual issues for the
15 respective sides in this lawsuit.

16 So, we're in an area of the Court's
17 discretion; I understand and respect that. I'm
18 asking the Court to exercise it a little bit
19 differently in hope here of flushing out, not
20 just cause to excuse a juror, but all the
21 information we reasonably can hope to have so
22 that we might exercise, intelligently, our
23 peremptory strikes when there's everything at
24 stake at the defense table and enormous
25 legitimate interests at stake at the State table.

1 THE COURT: All right. I want to -- in
2 light of those comments I want to make a few
3 additional ones of my own to make sure that the
4 Court's ruling here is not misconstrued. First of
5 all, I will state for the record that the Court is
6 very appreciative of the efforts that counsel for
7 both sides in this case have made to thoroughly
8 review the written questionnaires that were used and
9 agree to strike, before individual voir dire, those
10 jurors whose answers demonstrate that they would
11 have a great difficulty meeting the qualifications
12 of a jury in this case.

13 I am not imposing the time limit as a
14 punishment for the conduct of the parties. I
15 believe that the attorneys have been very
16 responsible. When it comes to whether questions
17 on voir dire are objectionable, it's often more
18 of an art than a science.

19 It's not so much that a particular
20 question is or is not objectionable and certainly
21 in this case the Court recognizes that a
22 legitimate area of inquiry from both parties on
23 voir dire is the extent to which jurors have been
24 exposed to pre-trial publicity and the effect
25 that that might -- that that publicity might have

1 on their actions as a juror. And if it appears
2 that any particular juror has been so exposed
3 that 20 minutes is simply not enough, I'm not
4 saying the Court would not entertain a request
5 for longer time.

6 However, there are some other questions
7 that have been asked, many of which is, you know,
8 taking the first five minutes to ask the juror
9 something about their background, whether it be
10 employment, or hobbies, or whatever, that isn't
11 particularly germane to the qualifications of the
12 juror. And I'm looking with the time limit to
13 get the parties past that and into the meat of
14 voir dire a little bit quicker.

15 If I felt that by imposing a 20 minute
16 limit either party would be prejudiced to the
17 point that they couldn't get the information that
18 they need to evaluate jurors, I wouldn't set the
19 time limit. I'm setting it based on my
20 observations of what's happened so far. And
21 while it's not the primary consideration, I'm
22 also trying to give a little consideration to the
23 jurors who are waiting to be called out here.

24 So, with that background, before we
25 begin, then, there was also a question -- and I

1 will stick the timer on the floor in order to
2 muffle, to the extent possible, the noise it
3 makes. I think you will find it's not as loud as
4 what we were hearing from some of the laptops
5 yesterday.

6 There was one other remaining issue from
7 yesterday relating to the juror, Nathan Klein,
8 and his -- the answers he gave to questions
9 relating to his exposure to radio at work and the
10 fact that he heard something within the last
11 week, I believe it was on Monday, about blood
12 vial evidence. I have reviewed -- and have the
13 parties received this page and a half?

14 ATTORNEY STRANG: No.

15 ATTORNEY FALLON: No.

16 THE COURT: Why don't you come up and take
17 a look at it now. My review of the answers that he
18 gave to the questions was consistent with my
19 recollection at the time; that is, he indicated he's
20 at work; the radio is always on at work; he did hear
21 news last Monday about the blood vial and the
22 State's request to test it.

23 He was candid in describing that he had
24 heard that; although, he indicated he tries to
25 avoid listening to the radio while at work, but

1 had -- did admit that he heard this particular
2 story. He indicated that he thought that -- that
3 the planting of the blood vial evidence was a
4 possible defense in this case. He was hoping
5 that there would be some results from the tests,
6 but if there weren't, he said that, then, he
7 would look at something else.

8 First of all, I would note, I believe
9 he -- based on the answers he gave, he has
10 attempted to comply with the court order as best
11 he can. Obviously, should he be selected as a
12 juror in this case, he won't have to worry about
13 being exposed to the radio at work because he
14 won't be at work.

15 Secondly, I would note that, in the
16 scheme of things, the danger that pre-trial
17 publicity would prejudice a juror in this case is
18 far greater with respect, for example, to what
19 they heard or remember about Mr. Dassey's
20 statements, which may or may not come in at
21 trial.

22 I think that this is not such a major
23 item that it could be expected to have a dominant
24 effect or foreclose him from indicating as he
25 did, that he could put his exposure to pre-trial

1 publicity behind him and become a fair juror and
2 base his decision only on the evidence introduced
3 at trial. So I don't believe there is a basis
4 for excusing Mr. Klein and he will remain as part
5 of the jury panel in this case.

6 ATTORNEY STRANG: Just a couple things to
7 make the record clear on that, your Honor. The
8 transcript excerpt the Court invited us to look at
9 when we approached the sidebar were pages 139 and
10 140 of the February 6, 2007 transcript of
11 proceedings. (Court reporter note: Those page
12 numbers may not match after the transcript is
13 completely transcribed.)

14 And I think the ruling concerning
15 scientific testing to which the juror -- or
16 Mr. Klein, the prospective juror, referred
17 concerned the Court's February 2, 2007 ruling on
18 allowing testing; although, the Court already has
19 ruled or previously has ruled that the results of
20 such tests at present are inadmissible and may
21 not -- and the possibility of doing EDTA testing
22 may not be mentioned by either side.

23 THE COURT: Mr. Fallon, is that a fair
24 summary from your perspective?

25 ATTORNEY FALLON: Not quite. It is with

1 respect to a ruling the Court issued I believe in
2 January relative to the presence or absence of EDTA;
3 however, it does not encompass other potential
4 scientific testing.

5 Secondly, if not -- and it hasn't been
6 directly or -- filed or stated in court, but
7 that, I think, decision is subject to review and
8 a motion to reconsider since that determination
9 was held without evidentiary hearing, without
10 facts, without argument and was based upon, to my
11 recollection and knowledge, an unpublished
12 Federal District Court opinion out of California
13 dealing with a post-conviction motion. So with
14 those caveats, I accept counsel's representation.
15 But the State's position is that the ruling
16 relative to Juror Klein is appropriate.

17 THE COURT: All right. Well, what the
18 Court did rule is the Court was going to allow, and
19 has allowed, the State to conduct tests on the blood
20 vial from the Clerk's Office. I have also provided
21 that sufficient sample be set aside to allow the
22 defense to do the same. And I specifically reserved
23 ruling on the admissibility of any test results
24 should any test results be obtained. Otherwise, I
25 believe Mr. Strang's summary of things is accurate.

1 ATTORNEY STRANG: Okay. Am I correct that
2 the current state of rulings of the law of the case
3 is that EDTA testing is not admissible and as things
4 stand that that was the Court's January something
5 order and that neither side may mention the
6 possibility of doing EDTA testing to the jury?

7 THE COURT: Well, those are two different
8 things. First of all, the Court did not rule that
9 EDTA test results are not admissible. The Court
10 ruled, in essence, if I can summarize my ruling,
11 that they have not been proven to be of such
12 reliability that they justified an adjournment of
13 the trial in this case to await the results of such
14 testing.

15 And I did that based on the information
16 that the parties provided me, which both parties
17 represented was the best information on the
18 state-of-the-art of such testing; namely, the
19 California decision to which Mr. Fallon referred.
20 I do not believe I was asked to rule on the
21 admissibility of EDTA test results, I have not
22 done so at this time. There are no EDTA test
23 results.

24 As to whether either party could mention
25 them in an opening statement or otherwise, I

1 think the rule would be the same as it is with
2 other evidence. I don't recall being asked to
3 make any such ruling, nor do I recall that I made
4 such a ruling.

5 ATTORNEY STRANG: We probably both should
6 go back and look at the written ruling, then,
7 because maybe my recollection is faulty.

8 THE COURT: Okay.

9 ATTORNEY FALLON: Your Honor, if I may make
10 one comment on the voir dire process, just to clear
11 up the record and to make a point. We accept the
12 Court's ruling, but I would like the record to
13 reflect that what many perceive as five minutes of
14 chit chat questions by the State, or the defense for
15 that matter, as they begin there voir dire process,
16 while we agree that it does not go directly to the
17 potential of a strike for cause, it has two very
18 valid purposes.

19 One, information obtained during that
20 introductory questioning is quite valuable in
21 determining how one would exercise their
22 peremptory challenges.

23 And secondly, picking up on a point that
24 Mr. Strang made earlier, it's incredibly
25 difficult to start a conversation with somebody

1 in saying, well, good morning, sir, I understand
2 you were a victim of a crime and how do you feel
3 about that.

4 It seems to me that there ought to be at
5 least some time for a person to walk into a
6 courtroom such as this, with all these people
7 looking at them where they are clearly the fish
8 in the bowl, and make some human effort to relax
9 them and engage them such that -- so that they
10 can honestly answer the questions.

11 So that's the reason for that question,
12 for those types of questions. And I just want
13 the record to be clear about it. It's not like
14 we're wasting time or trying to be buddy-buddy
15 with jurors.

16 THE COURT: Well, that's one of the reasons
17 I'm setting a time limit rather than objecting to
18 when the Court may believe that the number of
19 visiting questions is excessive. I think the best
20 way to police it is to simply set a time limit.

21 All right. If there's nothing else,
22 we'll bring in Jean Koch.

23 Ms Koch, if you will raise your right
24 hand, the Clerk will administer an oath to you.

25 (Juror sworn.)

1 THE CLERK: Please be seated.

2 THE COURT: I know that people with the
3 spelling of your last name sometimes pronounce it
4 differently; how do you pronounce it?

5 MS KOCH: Koch.

6 THE COURT: Ms Koch. All right. You have
7 already filled out a written questionnaire in this
8 case. This morning we're moving on to the next step
9 of the jury selection process which is individual
10 voir dire. Each of the attorneys will have a chance
11 to ask you some questions and for the most part as a
12 follow-up to answers that you gave on your written
13 questionnaire.

14 Before they begin, I can tell you that
15 at this time the jurors who are selected to serve
16 on the jury in this case will not be sequestered;
17 that is, they will be permitted to return home at
18 the end of court proceedings each day, before
19 reporting back to court the following day.

20 We're doing this with the understanding
21 that the jurors will not attempt to learn
22 anything about this case and not be exposed to
23 any media coverage of it, either in the
24 newspapers, television, radio, or the internet
25 and that the jurors will not discuss the case

1 with anyone, including other jurors or family
2 members, until the case is concluded.

3 I can also tell you, that although the
4 proceedings today are open to the public, we do
5 not permit cameras in the courtroom during jury
6 voir dire. And members of the media are not
7 permitted to disclose the names of the jurors in
8 their reports.

9 In addition, you should know that should
10 you be selected as a juror in this case, any
11 cameras that cover the trial are not permitted to
12 show the jury in any way that would identify
13 individual members of the juror -- of the jury.

14 Finally, if you are still on the panel
15 after today's proceedings, you will receive a
16 telephone call in the next day or two letting you
17 know when to report back to court for the next
18 part of the process.

19 Mr. Fallon, you may begin.

20 **VOIR DIRE EXAMINATION**

21 BY ATTORNEY FALLON:

22 Q. Good morning, Ms Koch.

23 A. Good morning.

24 Q. My name is Tom Fallon. I'm an Assistant Attorney
25 General with the Wisconsin Department of Justice.

1 I'm one of the prosecutors in this case. To my
2 immediate left is Mr. Ken Kratz, the lead
3 prosecutor. He is currently the Calumet County
4 District Attorney. Again, good morning and
5 thanks for coming in this morning.

6 We have a few questions, both myself and
7 the defense, Mr. Strang I believe, of you
8 regarding some of the information you provided
9 last week to help us in selecting a jury.

10 First, I'm sorry, I'm not from the area,
11 but what kind of business is Two Rivers
12 Improvement; is it home improvement?

13 A. Twin Rivers Improvement, it's a home improvement
14 business. We do residential and commercial
15 buildings, windows, doors, siding, roofing,
16 remodeling.

17 Q. Okay. How long have you been actively engaged in
18 that business?

19 A. Since 1988.

20 Q. All right. Very good. Thank you. I also
21 noticed from your questionnaire, that you are
22 familiar with our Clerk of Court?

23 A. Yes.

24 Q. Janet. All right. Your familiarity with her,
25 does that raise any question in your mind as to

1 your ability to be a fair and impartial juror in
2 this case?

3 A. No. I don't know if it's the same Janet.

4 Q. Okay.

5 A. Because I do know one, but it might be somebody
6 else.

7 Q. Do you know this young lady?

8 A. No. So is it -- I know a different Janet.

9 Q. All right. Very good. That solves one mystery.
10 Thank you. The next area I would like to ask you
11 about is some of the pre-trial publicity that's
12 attended to this case. And you indicated you are
13 at least familiar with some of that publicity.
14 And in your questionnaire you indicated you get
15 your news sources from radio, television and the
16 internet. So if we could start there. If you
17 could tell me a little bit; of those three, where
18 do you get the majority of your news?

19 A. From TV.

20 Q. From the television?

21 A. Mm-hmm.

22 Q. And is it the regular evening newscasts or ...

23 A. Yeah, the regular evening newscasts, yeah.

24 Q. Do you watch any special news programs at all or
25 just the regular news?

1 A. I watch a lot of Court TV.

2 Q. Court TV?

3 A. Yeah.

4 Q. All right. Okay. In terms of the radio, how
5 much news do you get from the radio sources?

6 A. Just in the mornings when I'm getting ready for
7 work; I will have the radio on. And that's all I
8 hear, is just the morning news.

9 Q. All right. And in terms of your business
10 practice, I mean, generally, what hours do you
11 keep?

12 A. I usually work from like 8 until 1 or 2 in the
13 afternoon.

14 Q. All right.

15 A. It depends on how busy we are, otherwise if
16 someone is at the office, then they will sit in
17 for me and then I just answer the business phone
18 at home.

19 Q. I see. All right. When you are at home, do you
20 have the TV or radio on in the background, or
21 not?

22 A. I have Court TV on.

23 Q. You have Court TV on. All right. Very good. In
24 terms of the internet, how much news or what kind
25 of news do you obtain from the internet?

1 A. Not much.

2 Q. Not much?

3 A. No. No.

4 Q. That's more for --

5 A. I just check the Herald-Times Reporter on the
6 internet --

7 Q. Right.

8 A. -- once in a while, but I really don't go into it
9 that much.

10 Q. So it's not a major news source?

11 A. No. No.

12 Q. Have you watched any of the proceedings
13 associated with this case on the internet, for
14 instance?

15 A. No.

16 Q. All right. Have you watched any of the
17 proceedings as reported on television?

18 A. Yes.

19 Q. All right. And tell us a little bit about that;
20 how much would you say you have observed?

21 A. Well, in the evening news, I usually watch what's
22 coming up, or what's going to be going on in the
23 next week or so. I had seen a couple weeks ago,
24 it was in regards to the Dassey --

25 Q. Right.

1 A. -- trial. But I really don't watch that much of
2 it, you know. If it's on, I will listen to it,
3 but otherwise it's --

4 Q. Mm-hmm.

5 A. It's been on the news for so long that, you know,
6 it just -- I don't know.

7 Q. All right. Did you receive an advisory from the
8 Court asking that you refrain from watching any
9 of the newscasts?

10 A. Yes.

11 Q. All right. And have you been able to abide by
12 that request?

13 A. Yes.

14 Q. All right. With respect to the information you
15 have, you did offer an opinion; have you formed
16 any personal opinions about this case, based on
17 the publicity? And you used the phrase, I know
18 he's guilty.

19 But then, specifically, with respect to
20 the question: Have you yourself formed any
21 opinion, based on the information from any
22 source, as to his guilt or innocence, you said
23 no. So I wanted to talk to you a little bit
24 about that.

25 Based on the information that you have

1 in your head, right now, do you have an opinion,
2 do you think you know enough, do you have an
3 opinion as to whether he is guilty or not?

4 A. Yes.

5 Q. Okay. And what is your opinion?

6 A. Right now I would say he is guilty.

7 Q. All right. And that is based on the information
8 that you received from the media?

9 A. Right.

10 Q. All right. And you realize you have not received
11 any other information, either from the State
12 directly or perhaps from the defense? Is that
13 correct?

14 A. Right, yes.

15 Q. All right. Now, if the Court were to instruct
16 you, and the Judge will in fact instruct you if
17 you were selected as a juror, that you would be
18 required to set that information aside and be
19 asked to decide Mr. Avery's guilt or innocence
20 strictly on the evidence presented in the
21 courtroom?

22 A. Mm-hmm.

23 Q. In other words, you would have more access to
24 more information as a juror than you would
25 listening to the media. Do you think that you

1 could set aside the information that you have and
2 decide this case strictly on the evidence?

3 A. Oh, yes, just listening to both sides I would --
4 I would need a lot more detail into, you know ...

5 Q. All right.

6 A. So I would --

7 Q. Go ahead, I'm sorry.

8 A. So I would love to hear both sides, you know,
9 their ...

10 Q. All right. Well, let's talk a little bit about
11 that. You understand that the State is the only
12 one that has something to prove in the case; in
13 other words, we have to prove his guilt, beyond a
14 reasonable doubt, otherwise you must find him not
15 guilty; do you understand that?

16 A. Yes.

17 Q. And could you accept that ruling --

18 A. Yes.

19 Q. -- that principle from the Court?

20 A. Yes.

21 Q. All right. And do you understand that Mr. Avery
22 and his attorneys, they don't have to present any
23 evidence at all? Do you understand that?

24 A. Yes.

25 Q. All right. And as a matter of fact, if they

1 chose not to do anything but just sit there --

2 A. Mm-hmm.

3 Q. -- you may have to decide this case solely on
4 information provided by the State. And if it
5 does not reach -- if it does not convince you,
6 beyond a reasonable doubt, you must acquit him;
7 do you understand that?

8 A. Yes.

9 Q. You -- Could you follow those instructions, if
10 that's what the Judge instructed you --

11 A. Yes.

12 Q. -- to do?

13 A. Yes, I could.

14 Q. Is there any question in your mind that you could
15 follow those instructions?

16 A. No.

17 Q. Let's talk a little bit about that. Why? You
18 seem pretty confident in your ability to do that
19 even though you have all this exposure to the
20 media coverage.

21 A. Mm-hmm.

22 Q. Why do you think that you would be able to honor
23 the Judge's request and decide this strictly on
24 what's presented in court?

25 A. Um, I don't know how to answer that.

1 Q. Okay. Well, take your time and if you can think
2 about it, please tell us why you feel so
3 confident. There may be lots of reasons. You
4 may be one who has a belief in our system. You
5 may find instructions from the Court something
6 that is your duty. There could be lots of
7 reasons. I'm just wondering, what seems to
8 strike a chord in the back of your head saying,
9 you know, I could do that. Any thoughts?

10 A. I just don't know what to say. I'm nervous. I'm
11 very nervous.

12 Q. I see that. And I don't mean to really put you
13 on the spot that much. But, it's -- Because it's
14 a matter of grave importance to both the State
15 and the defense as to whether or not you would be
16 able to do that and that's why we ask. All
17 right.

18 Another question that follows up on
19 that, on that presumption of innocence, is this
20 question: You would be instructed, if you were a
21 juror, that Mr. Avery is presumed to be innocent
22 throughout the trial and he cannot be found
23 guilty of any offense, unless and until the State
24 has proven each element of that offense, beyond a
25 reasonable doubt. Should you be selected as a

1 juror, would you be able to follow the
2 instruction in reaching a verdict?

3 And you didn't answer yes or no, but you
4 did go on to write: I feel right now that he is
5 guilty. I know we just kind of touched upon
6 that, but as the Court will instruct you, he is
7 presumed innocent as he sits here today.

8 A. Mm-hmm.

9 Q. Do you have any problem with that principle?

10 A. No.

11 Q. Do you accept that?

12 A. Yes.

13 Q. All right. And do you feel that you could honor
14 that presumption if the Court instructed you?

15 A. Yes.

16 Q. Is there any other reason, as you think about
17 this particular case? I see you have not been a
18 juror before; is there anything about the
19 process, or the prospect of being a juror, that
20 makes you wonder whether you could fulfill that
21 role, whether you could honor these principles?

22 A. No.

23 Q. Another point, and counsel will ask a great deal
24 about it, but I wanted to touch upon it as well.
25 You seem to have no problem with the fact that

1 Mr. Avery does not have to testify in this case
2 if he doesn't want to. And if, as a juror, you
3 could not and must not hold that against him.

4 And you indicated you could follow that
5 principle?

6 A. Right.

7 Q. You accept that as --

8 A. Yes.

9 Q. -- a basic tenet of our law?

10 A. Yes.

11 Q. All right. And -- But what if he did testify,
12 would you be able to evaluate his believability,
13 his credibility, his honesty, the same way you
14 would any other witness?

15 A. Yes.

16 Q. All right.

17 A. Yeah.

18 Q. And the fact that he happens to be accused of a
19 pretty serious crime, you wouldn't weigh his
20 testimony any more or any less than anyone
21 else's?

22 A. No. No.

23 Q. All right. You feel pretty comfortable with
24 that?

25 A. Mm-hmm. Yes.

1 Q. That you could follow that instruction?

2 A. Yes.

3 Q. All right. And one last point, you did -- you
4 did feel that there was so much evidence provided
5 against Mr. Avery in the media that it would be
6 difficult to set aside your opinions. Do you
7 feel that -- still feel that way, or do you think
8 that you would be able to set those opinions
9 aside?

10 A. I would probably be able to set them aside.

11 Q. All right. In other words, you would give it
12 your best effort?

13 A. Right, I would, to listen to what everybody has
14 to say.

15 Q. And -- Because it's most important to us that you
16 be able to decide this case strictly on the
17 evidence that's presented in court?

18 A. Yes.

19 Q. And you can do that?

20 A. Yes.

21 ATTORNEY FALLON: Pass the juror.

22 THE COURT: Mr. Strang.

23 ATTORNEY STRANG: Thank you.

24 **VOIR DIRE EXAMINATION**

25 BY ATTORNEY STRANG:

1 Q. Dean Strang, Jerome Buting, Steven Avery. We're
2 the two lawyers defending Steven, in case you
3 missed us when we stood up and sat down last
4 Monday. Look, I'm a little nervous too, so.

5 A. Good. I'm more nervous than you.

6 Q. You probably are. I mean, I'm probably more used
7 to sitting in courtrooms. But this is
8 nerve-racking for everyone. And beyond that, you
9 know, it -- it takes a lot of candor and a
10 certain amount of courage on your part to answer
11 questions honestly and say, look, I have an
12 opinion, whether it's about guilt or innocence.
13 And I -- You know, the questionnaire you filled
14 out was signed under penalty of perjury. You did
15 your best --

16 A. Mm-hmm.

17 Q. -- I'm sure, to be honest on that?

18 A. Yes.

19 Q. And you wrote in response to Question No. 40: I
20 know he -- I think you mean, I know he's guilty?

21 A. Mm-hmm.

22 Q. Is that yes?

23 A. Yes. I'm sorry.

24 Q. No. No. The court reporter will get on me --

25 A. Okay.

1 Q. -- if I don't remind you about that.

2 A. Yes.

3 Q. And then in response to Question 43, you wrote:
4 There's so much evidence against him that it
5 would be difficult to change my mind. You wrote
6 that?

7 A. Yes.

8 Q. Was that -- That was true at the time?

9 A. Yes, it was.

10 Q. Still true today?

11 A. It's -- It would be difficult to change my mind.

12 Q. Do you still know he's guilty?

13 A. Do I still know he's guilty?

14 Q. As you did last Monday?

15 A. Ah, yes.

16 Q. Do you still feel right now that he is guilty, as
17 you wrote in response to Question 69?

18 A. Yes.

19 THE COURT: Counsel, I think I'm going to
20 stop your questioning at this time. Ms Koch, at
21 this time the Clerk will escort you from the
22 courtroom.

23 MS KOCH: Okay.

24 (Wherein the juror was excused.)

25 THE COURT: You may be seated. Without

1 argument, Mr. Strang, does the defense have a motion
2 at this time?

3 ATTORNEY STRANG: I move to strike the
4 juror for cause.

5 THE COURT: Any response from the State?

6 ATTORNEY FALLON: No.

7 THE COURT: All right. I think this is a
8 juror who would try her best to follow the
9 instructions for the Court, but based on her candid
10 answers on the questionnaire and what she reiterated
11 today, I think she would have too much difficulty in
12 doing so and, therefore, I believe there is basis to
13 strike her for cause and the order will -- the Court
14 will order that she be stricken for cause. The next
15 juror is James Diedrich.

16 Mr. Diedrich, would you raise your right
17 hand, please, and the Clerk will administer your
18 oath.

19 (Juror sworn.)

20 THE CLERK: Please be seated.

21 THE COURT: Mr. Diedrich, you have already
22 completed a questionnaire in this case, which the
23 attorneys have had a chance to review. This morning
24 we're moving on to the next phase of the jury
25 selection process which is known as voir dire. The

1 attorneys will have an opportunity to ask you some
2 follow-up questions to the information that you
3 provided on your questionnaire.

4 Before we proceed with their questions,
5 I want to make sure you understand that the
6 jurors in this case will not be sequestered.
7 That means the jurors will be permitted to return
8 home each day after the court proceedings. And
9 we're doing that based on the obligation of the
10 jurors not to be exposed to any news media
11 accounts of this case during the trial, whether
12 it be through television, radio, the newspaper,
13 the internet, or any other source. The jurors
14 will also be prohibited from discussing the case
15 with anyone, including other jurors or family
16 members, during the course of the trial.

17 You should know, also, that although
18 these proceedings are open to the public today,
19 the Court does not permit cameras in the
20 courtroom during the voir dire process and
21 members of the media are not allowed to identify
22 you by name when reporting on today's
23 proceedings.

24 In addition, the jurors who are selected
25 to serve in this case, will not be on camera at

1 any time during the trial itself. In the event
2 that you continue to be a member of the jury
3 panel after today, you will get a phone call in
4 the next day or two, letting you know when to
5 report back to court.

6 Mr. Fallon, you may begin at this time.

7 **VOIR DIRE EXAMINATION**

8 BY ATTORNEY FALLON:

9 Q. Good morning, Mr. Diedrich.

10 A. Good morning.

11 Q. My name is Tom Fallon. And I'm an Assistant
12 Attorney General and -- with the Wisconsin
13 Department of Justice. I'm one of the
14 prosecutors in this case. To my immediate left
15 is Mr. Ken Kratz, the Calumet County District
16 Attorney and lead special prosecutor.

17 We wanted to follow up with a few
18 questions from the information from your
19 questionnaire. Then there is one area that's of
20 great importance to us and I suspect to you as
21 well. And what I wanted to do is start with your
22 employment situation. I see that you are a
23 plumber by trade.

24 A. Yes.

25 Q. Do you work for a company or are you on your own?

1 A. I work for a company.

2 Q. All right. And how long have you worked for
3 them?

4 A. This company, eight years.

5 Q. All right. Now, the matter that we wanted to
6 explore with you was the answer to the very last
7 question in the questionnaire that you provided.
8 This may very well be a six week trial. And as a
9 result of which, you would be here probably nine
10 hours a day and not at your employment, your work
11 situation.

12 Now, if you were selected as a juror,
13 would that present a hardship to you? And you
14 seem to indicate that it would. Wanted to talk
15 to you a little bit about that. Tell us, if you
16 were selected, would you have income still coming
17 in?

18 A. My employer will not reimburse me --

19 Q. He will not.

20 A. -- for the time off.

21 Q. All right. And -- And I take it from the rest of
22 the information provided you're -- you are the
23 main bread winner in your family?

24 A. My wife is also employed.

25 Q. She's employed, but I take it that it would be

1 extremely difficult for your family to continue
2 if you did not have income coming in?

3 A. It would be difficult. I wouldn't say extremely
4 difficult.

5 Q. All right.

6 A. It would present problems.

7 Q. All right. Well, that's what we're trying to
8 figure out on the hardship, just how much of a
9 hardship it would be. I mean, if it's going to
10 really severely impact your ability to provide
11 for your family, then, you know, you will be
12 excused. But if you think you can manage through
13 this, then we'll continue, but. Tell us,
14 honestly, if you think this is going to put you
15 in such a financial hole, then ...

16 A. I don't believe it will put us in such a
17 financial hold as, like, we would be living on
18 the street or ... I think we could get through
19 it.

20 Q. All right. Then, my last question on this area
21 is, do you think that you will be worried more
22 about making ends meet at home without a paycheck
23 coming in, than you would about listening to the
24 evidence in the case?

25 A. No. I'm under the assumption that we can collect

1 unemployment during that period also.

2 Q. All right. Then, will you have a job when you --
3 If you were selected, would you have a job when
4 the case -- when your jury duty was over? Would
5 you be able to go back to the same plumbing
6 company?

7 A. Yes.

8 Q. All right. And you have assurances of that?

9 A. Yes.

10 Q. Okay. All right. The -- This probably is a good
11 way to introduce the topic of publicity and
12 impact. There was one other question that you
13 answered that was of somewhat of a concern for
14 you. And the question was that you as a juror
15 would be instructed not to read, watch, or listen
16 to any news accounts of this trial, whatsoever,
17 until it was over and not to talk with anyone
18 about the case, not even to one another, until
19 you retire to deliberate on its verdict. And the
20 Court said this rule would be strictly enforced.
21 And you said would you find it difficult to
22 follow such an instruction. And you said you
23 would find it difficult. Can you tell us about
24 that?

25 A. I think I was more, between when we filled the

1 questionnaire out till this point, just because
2 of the nature of my work, I listen to the radio
3 all day and you are just going to pick things up
4 from people talking or.

5 Q. Sure. Well, if you were selected as a juror, you
6 understand that you would be here and not at
7 work?

8 A. Correct.

9 Q. So your radio time --

10 A. Correct.

11 Q. -- would be eliminated from that perspective?
12 But the question is aimed at, you know, when you
13 are not here as a juror and you head home and,
14 you know, perhaps on the weekends you might be
15 out to dinner with your wife or something and,
16 you know, somebody may recognize or know that you
17 are one of the jurors and they might want to talk
18 to you; do you think you could be able to say,
19 I'm sorry, I can't talk about it?

20 A. I would be able to say that.

21 Q. Right.

22 A. I still feel you are going to be able to pick up
23 people talking.

24 Q. Right.

25 A. You are not going to be able to shut it out

1 totally.

2 Q. All right. Would you be able to just walk away,
3 then, from those situations?

4 A. I believe I could.

5 Q. All right. And -- So the question is, we
6 understand it might be difficult, the question
7 is: Would you do your absolute level best to
8 follow that directive from the Court?

9 A. I believe I could, yes.

10 Q. All right. And on that note, with respect to
11 publicity, let's talk a little bit about the
12 publicity that you have been exposed to. I take
13 it almost from our discussion here that most of
14 the news you get might very well come from the
15 radio?

16 A. Correct.

17 Q. All right. As I surmise, that's because it's
18 always on, whether you are in the truck or at the
19 shop, you are listening to the radio --

20 A. Exactly.

21 Q. -- most of the time? All right. Before we hit
22 to the radio, do you -- you do say you get some
23 of your news from the television?

24 A. Correct.

25 Q. All right. And how much of your news do you get

1 from the television?

2 A. Um, about 25 percent, 30 percent.

3 Q. All right. And so am I guessing here that you
4 might just turn on the evening news before you go
5 to bed?

6 A. After work.

7 Q. After work. All right. And in terms of the
8 publicity which is attended to this case, is most
9 of the publicity that -- related to this case,
10 come from the radio or the television for you?

11 A. More from the television.

12 Q. All right. And, specifically, what do you
13 recall -- Well, before I even get to that
14 point -- When you originally were notified that
15 you could or might possibly be a juror in this
16 case, I believe the Court sent you a letter
17 asking that you refrain from, as best you could,
18 media coverage of this case; did you get that
19 correspondence?

20 A. Yes.

21 Q. All right. And have you made it a conscious
22 effort to refrain from being exposed to the ...

23 A. As best as I could.

24 Q. All right. Could you tell us a little bit about
25 what you have heard recently about the

1 proceedings, if anything?

2 A. I heard some charges were dropped.

3 Q. All right.

4 A. And that the neph -- Dassey will not be giving

5 any testimony in this case.

6 Q. Will not or may not?

7 A. May not.

8 Q. Okay. And what else do you recall?

9 A. That's about it.

10 Q. Anything else?

11 A. Not that I can recall.

12 Q. All right. Now, thinking back, going back a

13 couple of months, many months ago, do you recall

14 watching any news coverage of Mr. Dassey's arrest

15 or involvement?

16 A. I recall some of it.

17 Q. All right. What do you recall?

18 A. That he admitted to doing the crime.

19 Q. All right.

20 A. With Steven Avery.

21 Q. All right. Any details stick out in your head?

22 A. Not any particular details.

23 Q. All right. Now, if for instance Mr. Dassey did

24 not appear in this trial, did not testify, for

25 who knows what reason, do you think that if you

1 were selected as a juror you could decide this
2 case solely on the evidence which is introduced
3 in the trial of Mr. Avery and not on what you
4 heard in the media?

5 A. I would think that in my mind it would always be
6 there.

7 Q. All right.

8 A. I don't know if I could totally block it out.

9 Q. All right. If the Court were to instruct you
10 that as a juror that would be your duty, to make
11 any and all reasonable possible effort to block
12 it out and decide this case solely on the
13 information presented, do you think you could do
14 that?

15 A. Being honest, I always think that that would be
16 in the back of my mind.

17 Q. All right. So you don't think that you would be
18 able to follow that directive and decide this
19 case because of the pre-trial publicity?

20 A. I don't think I could.

21 Q. All right.

22 ATTORNEY FALLON: I don't have any more
23 questions.

24 THE COURT: The defense have any questions?
25 Let me ask this, is there going to be a joint

1 recommendation to the Court here?

2 ATTORNEY STRANG: I think so, if I
3 understand --

4 ATTORNEY FALLON: Probably.

5 ATTORNEY STRANG: -- eyes and winks.

6 THE COURT: All right. Mr. Diedrich, we're
7 going to have the Clerk escort you from the
8 courtroom at this time.

9 (Wherein the juror was excused.)

10 THE COURT: Counsel.

11 ATTORNEY FALLON: I think we have to
12 concede the obvious here, Judge. It appears that
13 he's been quite frank and doesn't think he can set
14 that information aside and to me it's probably too
15 much of a risk.

16 THE COURT: Mr. Strang.

17 ATTORNEY STRANG: Yeah, I agree. One of
18 the ironies of picking a jury is, I think this was,
19 on my honesty scale, probably the most forthcoming
20 person we have had walk in here, or at least among
21 them, but I think we have got to let him go for
22 cause.

23 THE COURT: All right. The Court agrees,
24 Mr. Diedrich will be stricken for cause. Next we'll
25 hear from Mr. Brotski.

1 ATTORNEY STRANG: Could I have a minute to
2 make a motion before that?

3 THE COURT: Yes.

4 ATTORNEY STRANG: Only in part, I mean in
5 part, but only in part, because of the 20 minute
6 time limitation the Court has imposed this morning,
7 I'm going to move to strike, prospectively here,
8 every -- every juror who's heard a news conference
9 about Brendan Dassey or Steven Avery from March 2
10 back.

11 I mean nothing -- I'm not worried about
12 anything after March 2, but from March 2 back,
13 you know, if they have heard those news
14 conferences and remember them, for all of the
15 reasons I have argued in this case from the
16 motion for sanctions that I filed last spring or
17 summer up through the motion to dismiss a couple
18 of the counts and the request for curative steps
19 by the Court.

20 And in light of the limitations now on
21 the time to explore and possibly rehabilitate
22 someone who has got that kind of gripping
23 information about Mr. Dassey or Mr. Avery, I'm
24 just going to move to strike for cause all of
25 them who saw that -- those news conferences

1 through March 2 or any of them.

2 I realize that we have got a number of
3 people in the qualified group of 16 who did see
4 that, but there comes a point where there's a
5 tipping point. And the Court, so far, has not
6 taken the curative steps that we have requested.
7 This -- This is an alternative curative measure
8 that I'm suggesting. And, again, the urgency for
9 it went up a bit this morning with the time
10 limitations on voir dire.

11 THE COURT: Mr. Fallon.

12 ATTORNEY FALLON: Well, I take it, Counsel,
13 you are asking for those who saw conferences from
14 November 9th through March 2nd; is that the time
15 frame or is it from March 2nd to now?

16 ATTORNEY STRANG: No, no, no. November 5
17 to March --

18 ATTORNEY FALLON: November --

19 ATTORNEY STRANG: -- 2005, through March 2,
20 2006. I'm not worried about anything after that.
21 And I'm not going back and moving to strike any of
22 the 16 we have already qualified.

23 ATTORNEY FALLON: I guess my take on that,
24 Judge, is for obvious reasons we would object to
25 that. First and foremost, the first thing that

1 comes to my mind is that that's a premature and it's
2 an insufficient record upon which to make a class
3 action objection, based on perceived or anticipated
4 bias.

5 Secondly, it seems to me that much of
6 those concerns have already been addressed as
7 best we could by this Court and the steps that we
8 have taken in this case since May. And those
9 include an adjournment of the trial from
10 beginning of September to, then, the middle of
11 October, until now. So it is 15 months since the
12 date of the crime and 11 months since any news
13 conference at all, from the State, relative to
14 the events of the crime.

15 Secondly, we have engaged in a jury
16 questionnaire process, which I think was directly
17 aimed at flushing out those who may have too much
18 of a bias or at least think they have too much of
19 a bias based on the pre-trial publicity.

20 And we have expected a fair process and
21 we have expected that we would have to exclude a
22 fair number, a large number of jurors. In fact,
23 we have 50 or so more. Not all of them for
24 subjective bias, some for economic hardship. But
25 I think the process that we are engaged in is

1 working.

2 And third, I guess I would note that it
3 is the defendant's constitutional right. He had
4 the opportunity to waive that right and ask for a
5 jury from another county, but instead wanted to,
6 for a lack of a better term, take his chances
7 with the juror -- jury of his peers here in
8 Manitowoc. That is his right that is his choice.

9 As a result, we're obviously going to do
10 a lot more sifting and winnowing from the
11 prospective jurors, those who do not have such a
12 bias, to participate in the case. So I think we
13 have a take, as counsel eloquently argued about
14 an hour ago, each juror is different. Each one
15 takes more time. Each one has a different set of
16 issues, a different set of perspectives,
17 interests and biases which need to be explored.

18 And I don't think that we can sit here
19 and just simply say, because you have seen two
20 news conferences, you are out. I think that's
21 unfair to them. It's unfair to the State. And
22 quite frankly, oddly enough, I think it's unfair
23 to Mr. Avery, so we would oppose the request.

24 THE COURT: All right. Well, the Court is
25 going to deny the motion to, on a wholesale basis,

1 disqualify any juror who may have seen these news
2 conferences. The Court believes that while a juror
3 who has seen the news conferences certainly raises
4 some concerns about the juror's ability to be fair
5 and impartial if selected in this case. The
6 questioning to date has proved that there are some
7 people who are capable of doing that and both
8 parties have agreed about that.

9 There are a number of mitigating factors
10 in terms of causing prejudice to the jurors. The
11 news conferences took place nearly a year ago. A
12 number of the jurors were aware that, since the
13 initial news conferences, Mr. Dassey has recanted
14 at least parts of his earlier statements.

15 In some cases the jurors have been
16 exposed to information about blood being planted
17 and -- and the jurors are aware of defenses as
18 well as the initial reports from the State.

19 Finally, there are a number of jurors
20 who are capable of setting aside that
21 information. They have been asked questions by
22 the defense to suggest that there may be -- if
23 the Dassey confession evidence comes in, there
24 may be witnesses who explain why, even a
25 confession, if it was made, may not be true.

1 The Court has allowed a variety of
2 questions and I think that it's just simply
3 unfair to say that any juror who saw the news
4 conferences cannot possibly be fair and
5 impartial. A number of them were, a number of
6 them have been stricken, but some of them
7 weren't. And I think the process to this point
8 has worked fairly and I don't see a reason to
9 believe it won't continue to do so.

10 All right. At this point --

11 ATTORNEY STRANG: Um --

12 THE COURT: Yes.

13 ATTORNEY STRANG: Should we just -- should
14 we just take up one other matter in the hope of
15 speeding it up while we're pausing. The next juror
16 is Kevin Brotski and I don't know of any advance
17 issue about him. But the one after that is David
18 Holschbach, No. 51. This was one that I had asked
19 counsel to look at and I -- I don't think it's even
20 going to be a close call to be honest.

21 He knows Lieutenant James Lenk. He not
22 only knows former Sheriff Kenneth Peterson, but
23 he appears to be a fairly good friend of the
24 Peterson's. And his answers to Questions 42 and
25 74 make me think he's just got firmly held

1 opinions that we're not going to put aside
2 entirely. I'm not sure it's time well spent to
3 bring him in.

4 THE COURT: Mr. Fallon.

5 ATTORNEY FALLON: I'm aware of counsel's
6 concerns. I had check marked this prospective juror
7 as one, for lack of better terms, on the bubble.
8 But my reason for not immediately agreeing to a
9 stipulation for cause is the juror's answer to
10 Question 43 was, yes, that whatever opinions he had
11 he could set aside.

12 He does know, apparently, the retired
13 sheriff. It seems to me that there were some
14 things that were worth exploring here. Now, if
15 the Court wants to review the questionnaire and
16 thinks that there's, on balance, too much and
17 it's not worth the effort at all, then that's
18 fine. If you want to dismiss him for cause,
19 that's fine.

20 But my way of thinking is, if a juror --
21 taking the man at their word thinks that, at
22 least based on what they knew at the time they
23 filled out the questionnaire, that they could be
24 fair, notwithstanding that they know some of the
25 potential witnesses; although, I look at these

1 and I don't know how many of them are really
2 significant witnesses, other than Mr. Lenk.

3 We don't know how he knows Lieutenant
4 Lenk or what level of friendship, if any, they
5 have. And that's my reason for saying, well,
6 maybe we should just talk to him and see, you
7 know, what the situation is. And if it turns out
8 that he's intimately acquainted with these
9 gentlemen then, of course, we will probably have
10 to excuse him.

11 ATTORNEY STRANG: I respect that
12 prerogative and I'm willing to talk to anyone. But
13 the problem questions here are 42, 59, 60, 71 and
14 74. And the acquaintance with -- it's not just Lenk
15 and Peterson, there's a number of other potential
16 witnesses who I view as less significant. This just
17 seems cumulatively like someone who is not on the
18 bubble, but -- but likely to be stricken for cause.

19 If the State and the Court want to spend
20 some time with him, I understand that.

21 THE COURT: I --

22 ATTORNEY FALLON: Maybe the Court might
23 want to ask a couple of questions of that
24 prospective juror.

25 THE COURT: Well, if it was just an

1 acquaintance with Mr. Lenk and Mr. Peterson and -- I
2 might be inclined to do it, but when I couple that
3 with the answer to Question 74, any other
4 information, it's getting difficult for me to
5 perceive what answers this juror is going to give
6 that are going to make him qualify to be a juror.

7 ATTORNEY FALLON: All right.

8 THE COURT: So, does the State have any
9 objection to the Court striking him for cause?

10 ATTORNEY FALLON: I don't have any
11 objection.

12 THE COURT: All right. The Court will
13 order, then, that Mr. Holschbach be stricken for
14 cause. And we'll bring in Mr. Brotski at this time.

15 Mr. Brotski, will you raise your right
16 hand, please, and the Clerk will administer an
17 oath to you.

18 (Juror sworn.)

19 THE CLERK: Please be seated.

20 THE COURT: Mr. Brotski, you have already
21 completed a questionnaire in this case. This
22 morning we're proceeding to the next step of voir
23 dire which is allowing the parties to ask you some
24 questions as a follow-up to the information you gave
25 on your questionnaire.

1 You should know that the jurors in this
2 case will not be sequestered during the trial;
3 that is, they will be permitted to return home
4 each day. And we're doing that because the
5 jurors are being ordered not to learn anything
6 about the case further through the news media,
7 whether it be newspaper, television, radio,
8 internet or anything else. The jurors will also
9 be prohibited from discussing the case with
10 anyone, including any family members or other
11 jurors, until the case is concluded.

12 Today's proceedings are open to the
13 public; however, the Court does not permit
14 cameras in the courtroom during voir dire. And
15 the media is not allowed to identify individual
16 jurors by name in any news reports.

17 In addition, the jurors who are selected
18 to serve in this case will not be on camera
19 during the trial.

20 If you are permitted to continue as a
21 juror in this case, you will receive notice as to
22 when to report back to court again.

23 Mr. Fallon, at this you may begin.

24 **VOIR DIRE EXAMINATION**

25 BY ATTORNEY FALLON:

1 Q. Good morning, Mr. Brotski.

2 A. Good morning.

3 Q. My name is Tom Fallon. I'm an Assistant Attorney
4 General with the Wisconsin Department of Justice,
5 one of the prosecutors in this case. To my
6 immediate left is Mr. Ken Kratz, the Calumet
7 County District Attorney and lead special
8 prosecutor for this matter. Good morning and
9 thanks for coming in.

10 We wanted to begin with asking you some
11 questions, some follow-up questions regarding
12 your questionnaire in terms of determining your
13 suitability for jury service in this case. First
14 and foremost, I see you are a mason. How long
15 have you been engaged in that practice?

16 A. Nine years.

17 Q. All right. And have you spent all that time with
18 the same company?

19 A. Yes.

20 Q. All right. And do you hold any particular levels
21 of mason certification or -- like a master --

22 A. No.

23 Q. All right. If you were selected as a juror in
24 this case, you understand that this case may very
25 well last six weeks or so?

1 A. Yes.

2 Q. And as a result of which, you would be here and
3 not doing some mason work. Just want to make
4 sure that that would not cause you any economic
5 hardship, either directly or maintaining your
6 family and things of that sort?

7 A. No.

8 Q. All right. So you are comfortable that you will
9 have either income and/or a job waiting for you
10 when you are done with your jury service?

11 A. Yes.

12 Q. Okay. Very well. I take it from the information
13 provided that you are not one who follows the
14 news regularly?

15 A. Correct.

16 Q. All right. And where do you get your news from
17 primarily; radio, television?

18 A. Primarily magazines.

19 Q. All right.

20 A. I like watching ABC World News.

21 Q. Okay.

22 A. I like watching the bigger news.

23 Q. All right. So you don't pay that close attention
24 to the local news, but you do pay more attention
25 to the national or world news?

1 A. Yes.

2 Q. Okay. Do you read the local newspapers at all?

3 A. No, I do not get it.

4 Q. All right. Do you own a computer?

5 A. No.

6 Q. All right. So you don't use the internet at all?

7 A. No.

8 Q. Not even at work?

9 A. No.

10 Q. Okay. In terms of the radio, do you listen to
11 the radio when you are at work?

12 A. Yes.

13 Q. All right. With respect to the radio, is it on
14 constantly or is it just at certain times of the
15 day that you have time to listen to the radio?

16 A. Certain times.

17 Q. All right. And do you catch many newscasts?

18 A. No.

19 Q. You do not?

20 A. No, not really.

21 Q. All right. Then, I guess my question for you,
22 sir, is, in terms of the publicity associated
23 with this case, are you familiar with much of it,
24 or any of it, or ...

25 A. A little bit of it.

1 Q. All right. Can you tell us a little bit what
2 you -- what you know about the case from the
3 information you have heard in the media or the
4 guy next door?

5 A. I know Steven Avery is charged with murder.

6 Q. Okay. Any -- any of the details in your head as
7 to, you know, the circumstances surrounding the
8 crime or anything like that?

9 A. No, not really.

10 Q. All right.

11 A. I just know he is charged with murder and that's
12 really about it.

13 Q. Okay. How about a fellow by the name of Brendan
14 Dassey; have you heard anything about him?

15 A. I have heard of his name before.

16 Q. All right.

17 A. He's his cousin, or nephew, or uncle, or
18 something like that.

19 Q. Okay. Do you know any of the circumstances
20 regarding his arrest or his potential
21 involvement?

22 A. No, I do not.

23 Q. All right. You haven't seen or listened to any
24 media or news conferences regarding that?

25 A. No.

1 Q. Okay. Just so I'm clear, you didn't answer one
2 particular question but -- and it may be because
3 you haven't formed any opinion, but I just wanted
4 to clarify this for us. If you were selected to
5 serve as a juror in this case, do you think you
6 could decide this case solely, simply, on the
7 information that you hear in the courtroom and
8 not from what you may hear at work, or the guy on
9 the street, or anywhere else?

10 A. Yes.

11 Q. All right. Is there any -- any doubt in your
12 mind about that?

13 A. No, no doubt.

14 Q. All right. Okay. The other area of -- that I
15 wanted to talk with you about, is the fact that
16 there will be a fair number of police officers
17 and police testimony in this case. And it's -- I
18 take it from your questionnaire that you haven't
19 had any police contacts in your life?

20 A. No.

21 Q. Never had any -- never filed a complaint or been
22 in any, you know, jams where you were ticketed,
23 or arrested, or anything?

24 A. I have had a speeding ticket.

25 Q. Okay. But nothing else?

1 A. No.

2 Q. Okay. And how did that encounter -- was that a
3 local police officer, like a Manitowoc police
4 officer, or county sheriff, or ...

5 A. County sheriff.

6 Q. All right. And was there anything about that
7 experience -- Well, first of all, let me ask you
8 this; do you feel you were treated fairly?

9 A. Yeah. Yes.

10 Q. So you don't have any complaints about how you
11 were treated by the sheriff or -- regarding the
12 matter?

13 A. No, I was speeding and I got a ticket.

14 Q. All right. And you paid your fine and that was
15 it?

16 A. Yeah.

17 Q. Okay. Do you think, then -- I just wanted to
18 make sure, you answered the question yes, but I
19 wanted to talk a little bit about it with you
20 that in terms of evaluating police officer
21 testimony in this case, you would be required to
22 evaluate their believability, their honesty,
23 their credibility, the same way you would
24 evaluate the testimony of any other witness; do
25 you think you could do that?

1 A. Yes.

2 Q. All right. Very good. Last group of questions I
3 had for you is, you realize that -- and you seem
4 to have a good command of this in your
5 questionnaire -- but I wanted to make sure
6 that -- that we're all on the same page here,
7 that Mr. Avery is presumed innocent as he sits
8 here today?

9 A. Yes.

10 Q. And that he remains innocent unless and until we
11 can convince you, as a juror, of his guilt,
12 beyond a reasonable doubt?

13 A. Yes.

14 Q. Do you understand that?

15 A. Yes, I do.

16 Q. And you accept that principle?

17 A. Yes, I do.

18 Q. And you can follow that?

19 A. Yes, I can.

20 Q. All right. And you realize that if we fail to
21 convince you, beyond a reasonable doubt, that you
22 would have to acquit Mr. Avery, you would have to
23 find him not guilty?

24 A. Yes.

25 Q. All right. Even if perhaps there is some

1 question as to whether the real murderer is ever
2 located; do you understand that?

3 A. Yes, I do.

4 Q. All right. And you understand that he has a
5 right not to present a defense at all? In other
6 words, they may do nothing and the only evidence
7 that's presented is that presented by the State,
8 and if we fail to convince you, you still must
9 acquit: do you understand that?

10 A. Yes, I do.

11 Q. All right. And do you think you might have any
12 problem following that instruction?

13 A. No, I don't.

14 ATTORNEY FALLON: All right. Pass -- Hold
15 on.

16 Q. (By Attorney Fallon)~ My colleague here reminded
17 me of one last question I forgot to ask. Do you
18 have an interest in serving on this jury?

19 A. No. If I'm chosen, that's my right, or if I'm
20 not. That's my duty, you know, that's ...

21 Q. So it doesn't matter to you whether you are
22 selected as a juror or not but -- so in other
23 words, if selected you will serve, if not, you
24 won't?

25 A. Right.

1 Q. Okay. Thank you.

2 A. Yup. You're welcome.

3 THE COURT: Mr. Buting.

4 ATTORNEY BUTING: Yes, thank you, Judge.

5 **VOIR DIRE EXAMINATION**

6 BY ATTORNEY BUTING:

7 Q. Good morning, sir.

8 A. Good morning.

9 Q. My name is Jerome Buting, this is Dean Strang and
10 we are defending Steven Avery. I would like to
11 follow up on just a few issues and then touch on
12 some others that we haven't talked about. Your
13 mason experience, are you -- do you belong to a
14 union?

15 A. No, I do not.

16 Q. No. Do you belong to any organizations at all?

17 A. No, I don't.

18 Q. Do you like attend a church or belong to a church
19 or anything like that where you -- you -- Do you
20 go to any meetings with groups of people?

21 A. No.

22 Q. What do you do for -- for spare time when you get
23 home?

24 A. Play with my children. I have a two year old and
25 a five year old. That's really about it.

1 Q. Okay.

2 A. Pretty boring.

3 Q. Well, that's takes up a lot of time, I know.

4 That takes up a lot of time. Your wife is --

5 Does your wife work outside the home, I think you
6 said she did?

7 A. Yes, she's a nurse at Aurora.

8 Q. Oh, okay. And does she have -- Does she work
9 everyday or just part time?

10 A. Weekends.

11 Q. Weekends.

12 A. Weekend nights.

13 Q. Okay. Do you, you know, between taking care of
14 the kids and job duties and all that, do you talk
15 to your wife about current events or things that
16 are in the news?

17 A. Well, yeah.

18 Q. Okay.

19 A. Yes.

20 Q. Does -- Has she ever talked to you at all about
21 what she's heard or watched on TV or anything
22 about the Steven Avery case?

23 A. Well, I was told in the first letter that we got
24 that I wasn't supposed to discuss it with anyone,
25 so we haven't been talking about anything that

1 she might know or that I might know.

2 Q. Okay. And when did you get that letter?

3 A. That was the first letter to come to the 29th, or
4 come for the questionnaire.

5 Q. So that was, like, you got that sometime in
6 December or November; do you recall?

7 A. I don't recall.

8 Q. Okay.

9 A. I'm sorry.

10 Q. Up to that point, though, had you -- You know,
11 there's a lot of publicity about the case in the
12 early stages, particularly last November -- or
13 not last November, November of '05 up through
14 March, April, in that time period; did you -- did
15 the two of you talk about it at that time?

16 A. No, not really.

17 Q. She didn't express any opinions to you all about
18 what she thought?

19 A. Not that I can recall.

20 Q. Okay. And co-workers?

21 A. No, we just -- we get to work and we work.

22 Q. Okay.

23 A. We have got our own jobs.

24 Q. Okay. So, even -- even highly publicized local
25 crimes don't really interest you at all?

1 A. Not really.

2 Q. Much more focused, you did say you like world
3 news?

4 A. Yes.

5 Q. You have a more global view, is that it --

6 A. Yes.

7 Q. -- or national?

8 A. National.

9 Q. Okay. All right. Now, you mentioned that you
10 had heard of Brendan Dassey, you knew the name?

11 A. Yeah, I know the name.

12 Q. And you knew that he was somehow connected with
13 Mr. Avery at least in the media portrayals?

14 A. I know he's his uncle or cousin.

15 Q. Okay.

16 A. Cousin, I believe.

17 Q. And beyond that, what is -- why is he newsworthy?

18 A. Just that he is in -- I know he's somebody -- he
19 has something to do with this, that the name is
20 really familiar to me.

21 Q. Okay.

22 A. He's connected with some -- some of this or ...

23 Q. Allegedly, right?

24 A. Yeah, or something.

25 Q. Do you know whether -- Do you recall any

1 information about whether he has given any
2 statements or admissions, or denials, or anything
3 of that sort?

4 A. No.

5 Q. Okay. And in the last week, after you came and
6 filled out the questionnaires, did you, even
7 inadvertently, hear anything about the case,
8 anything that was going on or coming up, anything
9 of that sort?

10 A. No, I haven't been watching the news.

11 Q. Do your friends and co-workers know that you have
12 been summoned as a potential juror?

13 A. Yes, they know, my boss does.

14 Q. He does?

15 A. Yes.

16 Q. And have they talked to you about the case?

17 A. No, I'm -- I'm laid off right now.

18 Q. Oh, you are?

19 A. It's a seasonal job.

20 Q. I see.

21 A. Yes.

22 Q. I was going to ask you, if you work in the cold
23 like this it must be ...

24 A. No. No, I'm laid off right now.

25 Q. Okay. Do you work on, what, residential or

1 commercial buildings?

2 A. Residential.

3 Q. Residential. So it's just kind of a slow time

4 for that anyway?

5 A. Yes.

6 Q. So you work with your hands every day?

7 A. Yes.

8 Q. Get dirty, get your hands dirty, cut your hands?

9 A. Yes.

10 Q. Pretty frequent part of the occupation?

11 A. Yes.

12 Q. Okay. But you can deal with it, you just -- you

13 just live that way, live with your hands always

14 kind of beat up; is that it?

15 A. Right, yes.

16 Q. Okay. Do you know any police officers?

17 A. My dad is an ex-police officer.

18 Q. Oh, he is?

19 A. Yes.

20 Q. Where did he work?

21 A. Two Rivers.

22 Q. Okay. Did he -- Is he retired or did he take a

23 different job?

24 A. Retired.

25 Q. Retired. How long was he an officer there?

1 A. About 10 years or maybe 15.

2 Q. Okay. Do you know what his rank was when he
3 retired?

4 A. A lieutenant.

5 Q. He was a lieutenant, okay.

6 A. Yes.

7 Q. So did he talk about his work at all?

8 A. No.

9 Q. Did he like being a police officer?

10 A. Yes.

11 Q. Well, I imagine that, with that experience, with
12 your dad being a police officer, a lieutenant
13 even, you learned to respect police, right?

14 A. Yes.

15 Q. Natural, I mean we're all taught to respect
16 authority of police officers, right?

17 A. Yes, right.

18 Q. How long ago did he actually retire?

19 A. Has to be four or five years now.

20 Q. Okay. So not too long ago?

21 A. No, not too long ago.

22 Q. But you were out of the house then, right, or
23 were you still living at home?

24 A. No, I was out of the house.

25 Q. You have been married how long?

1 A. Four years.

2 Q. Okay. Now, I wonder if a police officer comes
3 into court and testifies and you will hear from a
4 number of them, this is a criminal case,
5 obviously police are involved, right?

6 A. Right.

7 Q. Do you think that because they are police
8 officers and, you know, sworn, with badges and,
9 you know, to serve and protect and uphold the
10 law, that they are less likely to lie under oath
11 than the ordinary person?

12 A. No.

13 Q. Why not?

14 A. That they will lie or won't? Sorry, I don't
15 understand the question.

16 Q. Let me rephrase it so you do.

17 A. Sorry.

18 Q. Do you think that because police officers are who
19 they are and they are a sworn occupation, that
20 just because of that they are necessarily less
21 likely to lie under oath than the ordinary
22 person?

23 A. A police officer is human, anyone can lie, you
24 know.

25 Q. Okay. And do you think that people, humans, are

1 capable of lying under oath?

2 A. Yes.

3 Q. That just because they take the witness stand and
4 take the oath you can't necessarily assume
5 everything coming out of there mouth is going to
6 be the truth?

7 A. Yes.

8 Q. Okay. So would you be able to judge a police
9 officer's testimony, just the same way, then, as
10 an ordinary person's testimony, to decide whether
11 that officer is really telling the truth or not?

12 A. Yes.

13 Q. Do you think that if you sat on this jury and
14 listened to the evidence and had a reasonable
15 doubt that Mr. Avery was guilty and, therefore,
16 found him not guilty, do you think you would get
17 any flak from your father or that, you know, any
18 -- any other family or friends would think less
19 of you, how could you do that?

20 A. I don't think so.

21 Q. Why not?

22 A. Because I just don't, I don't think that that
23 would happen.

24 Q. What if in the course of the testimony you also
25 came to the opinion that there was at least a

1 reasonable suspicion that police officers really
2 did some bad things here, maybe even planted
3 evidence, would you be concerned about, you know,
4 what your father might think, you know, how could
5 you -- how could you think that about officers
6 like I was? Wouldn't it be hard?

7 A. No, he wouldn't, my father is not like that.

8 Q. Your father would --

9 A. He would understand and -- how I feel and he
10 respects my opinions.

11 Q. Do you think that that's -- that's possible in
12 life, that police officers could do such a thing?

13 A. Sure, anyone can do such a thing, I feel.

14 Q. Now, was your dad a detective at times too?

15 A. No, I don't think so. He didn't talk much about
16 his work.

17 Q. Okay.

18 A. I just knew his rank and he was a police officer.

19 Q. Okay. Do you think sometimes that officers,
20 because they are human, they get, you know,
21 personally involved in their case and their work,
22 maybe even to the point where they form an
23 opinion about somebody and they think that person
24 is guilty and they work towards that -- with that
25 in mind?

1 A. I don't understand the question.

2 Q. Okay. Do you think that police officers may,
3 sometimes because they get personally involved in
4 a case, they may come to a conclusion that this
5 person is guilty and maybe shade things a little
6 bit in order to try and ensure that -- that they
7 get the guy?

8 A. It's happened before --

9 Q. Okay.

10 A. -- I'm sure.

11 Q. Okay. And you would be open to consider all the
12 possibilities that that may have happened in this
13 case?

14 A. Yes.

15 Q. Do you know anyone who has ever been arrested by
16 the police; friends, or co-workers, or anything?

17 A. No.

18 Q. Do you watch any cop shows on TV?

19 A. No.

20 Q. None. Do you ever -- Maybe in movies, have you
21 ever seen any depictions of the way police
22 officers can interrogate, particularly
23 detectives, interrogate witnesses or suspects to
24 try and get them to talk?

25 A. Yes.

1 Q. Do you think that sometimes people may actually
2 confess to something that's not true?

3 A. Yes.

4 Q. Why?

5 A. Pressure.

6 Q. Okay. From the police?

7 A. Yes.

8 Q. And how do you go about judging whether or not
9 something somebody says is true or not.

10 A. I don't understand, again.

11 Q. How would you -- If you heard witnesses testify
12 about something, how would you go about judging
13 whether what they were saying was the truth?

14 Would you listen to -- Would you look at their
15 demeanor while they are saying it?

16 A. I would listen to what they have to say and judge
17 by that.

18 Q. Okay. And look to see if there's any other
19 corroboration for what they say?

20 A. Yes.

21 Q. What do you think of -- What do you think of
22 scientific evidence?

23 A. I don't know much about it.

24 Q. Okay. Don't know much about DNA, for instance?
25 Have you heard much about it?

1 A. No.

2 Q. Okay. Do you -- Will you be interested in
3 listening to witnesses who are just describing
4 technical scientific type of things?

5 A. I think it would be interesting.

6 Q. Okay. Would you listen to witnesses who come in
7 and do that, expert witnesses, in fact, who are
8 specialists in that area, and judge their -- what
9 they say, the same as any other witness?

10 A. Yes.

11 Q. Or would you just assume, well, they know more
12 than I do, they must be right?

13 A. No.

14 Q. Okay. Now, you do know from the questionnaire
15 and probably just from civics courses and all
16 that, that the -- that a defendant has no burden
17 of proof; is that right?

18 A. Right.

19 Q. So that Mr. Avery doesn't have to prove that he
20 is innocent of this crime?

21 A. Right.

22 Q. But do you really feel that way? Do you really
23 think that, in your heart-of-hearts, you are not
24 going to require Mr. Avery, if he is not guilty
25 of this crime, are you going to think, well,

1 then, who did? If he can't show me who else did,
2 then it must be him?

3 A. I don't understand, again.

4 Q. Well --

5 A. I feel every man is innocent until they can prove
6 to me otherwise.

7 Q. Okay.

8 A. That's how I feel.

9 Q. All right. Well --

10 A. If that's the question you are asking.

11 Q. That's not exactly, but I appreciate that. In
12 this case, though, you are going to -- I think it
13 will be natural human nature to wonder who really
14 did do this crime if it's not Mr. Avery. Okay?
15 I mean, somebody did and that will be a given.
16 You are nodding yes; are you following me?

17 A. Yes, I'm following you.

18 Q. Okay.

19 A. Yeah.

20 Q. Okay. And what I'm wondering is, if you will be
21 able to put aside the natural feeling that, well,
22 you know, we haven't heard who else could have
23 done it, I mean it must be him because we don't
24 know who else. I want you to be clear that you
25 can do that -- that you won't do that, I should

1 say, that you won't ask us to prove to you who
2 did this crime; can you do that?

3 A. Yes, I can.

4 Q. It's their job to do that; do you understand?

5 A. Yes.

6 Q. And if you decide that they haven't proved,
7 beyond a reasonable doubt, that Mr. Avery is
8 guilty of this crime, then you can't worry about
9 who did, other than hope that they follow up and
10 do some further investigation and get the right
11 person, right?

12 A. Right.

13 Q. And you are confident that you are going to be
14 able to do that; you are not going to put any
15 burden on him?

16 A. Yes.

17 Q. Well, along those lines, how would you feel if he
18 didn't testify?

19 A. That's his right.

20 Q. Okay. And that goes along with his right and his
21 constitutional right not to have to prove his
22 case, right?

23 A. Right.

24 Q. Prove his innocence. On the other hand, this is
25 something that defense attorneys have to struggle

1 with, deciding whether to put their witness --
2 their client on the witness stand. What if he
3 does testify, are you going to think, just
4 because he's a defendant that, you know, I can't
5 really believe what he's going to say, he's
6 trying to save his own skin?

7 A. No.

8 Q. You will be able to judge him just like any other
9 witness?

10 A. Yes, I will.

11 Q. And if he doesn't testify, you are not going to
12 hold that against him, you will be able to follow
13 the judge's instruction?

14 A. Yes, I will.

15 Q. Okay. As part of what you have heard, just
16 generally, about the case, have you heard
17 anything about a vial of blood?

18 A. I heard something about it. I know a vial is
19 going to be introduced or something.

20 Q. Okay. And that -- Have you heard anything about
21 the defense, of why that's important to the
22 defense, what it may or may not mean?

23 A. (No verbal response.)

24 Q. Okay.

25 ATTORNEY STRANG: You better get an answer.

1 Q. You have to say yes or no?

2 A. No.

3 Q. Okay. The court reporter has to take down the
4 answers.

5 ATTORNEY BUTING: That's all I have. Thank
6 you, sir.

7 MR. BROTSKI: Thank you.

8 THE COURT: All right. The Clerk will
9 escort you from the courtroom at this time,
10 Mr. Brotski.

11 (Wherein the juror was excused.)

12 THE COURT: Any motion from either party?

13 ATTORNEY FALLON: None.

14 ATTORNEY BUTING: No, Judge.

15 THE COURT: All right. Mr. Brotski is in.
16 All right. Just a minute. All right. Let's take a
17 break at this time. We'll resume at 20 minutes to
18 11.

19 ATTORNEY FALLON: I wonder if you could --
20 It was the reason for the exchange of a note. Can
21 you tell us when you sent that letter to the jurors
22 asking them to refrain. I'm not sure we got a copy
23 and right now that date escapes me.

24 THE COURT: Okay. I will find that out.

25 ATTORNEY FALLON: Okay.

1 THE COURT: I know there was one juror who
2 referred back to a letter like in June of last year;
3 that was a letter -- and I think I informed counsel
4 of this off the record -- that was sent to the
5 members of the panel, but did not indicate what the
6 case was. And I think in the juror's answer she
7 said, kind of read into it -- I don't remember if it
8 was a he or a she -- Well, I figured it was this
9 case, so I stopped paying attention, but that letter
10 did not mention the case or say anything about
11 publicity; it was only the later letter. And I will
12 find out when that was sent.

13 ATTORNEY FALLON: All right. Thank you.

14 (Recess taken.)

15 THE COURT: Counsel, in response to your
16 question just before we went on the break, the
17 letters are dated January 17th and they went out
18 either that day or perhaps the following day.

19 ATTORNEY FALLON: Thank you, Judge.

20 THE COURT: Let's see. I think the next
21 juror we have up is Mr. Mahler.

22 THE CLERK: Yes.

23 ATTORNEY FALLON: Yes.

24 THE COURT: Very well. Mr. Mahler, if you
25 can raise your right hand, the Clerk will administer

1 the oath to you.

2 (Juror sworn.)

3 THE CLERK: Please be seated.

4 THE COURT: Mr. Mahler, you have already
5 filled out a written questionnaire in this case.
6 Today we're moving on to the next phase of jury
7 selection which is voir dire. The attorneys will
8 have a chance, in a few minutes, to ask you some
9 follow-up questions to the information that you
10 provided in your questionnaire.

11 Before we get to that I want to make
12 sure you know that if you are selected as a juror
13 in this case the jurors will not be sequestered;
14 that means the jurors will be permitted to return
15 home at the end of court proceedings each day.

16 The rule that the jurors are to learn
17 nothing about this case from the news media or
18 anyone else will continue, so that means you have
19 to avoid any reporting of the case on the radio,
20 television, the newspaper, the internet, anywhere
21 else and not discuss the case with anyone,
22 including other jurors or even members of your
23 own family.

24 In addition, I can tell you that,
25 although today's proceedings are open to the

1 public, the Court does not permit cameras in the
2 courtroom during voir dire proceedings and
3 members of the news media are not permitted to
4 identify jurors by name in their news reports.

5 If you are selected to serve as a juror
6 in this case, you should know that the cameras
7 that cover the trial will not be permitted to
8 show the jurors in the manner which identifies
9 them as well.

10 If you are permitted to stay on the
11 jury, after this part of the proceedings, you
12 will be given a notice in the next few days, by
13 telephone, as to when to report back to court.

14 Mr. Fallon, you may begin.

15 **VOIR DIRE EXAMINATION**

16 BY ATTORNEY FALLON:

17 Q. Good morning. Is it Mahler or Mahler?

18 A. It's Mahler.

19 Q. Mahler. Good morning, sir. My name is Tom
20 Fallon, I'm an Assistant Attorney General with
21 the Wisconsin Department of Justice. I'm one of
22 the prosecutors in this case. To my immediate
23 left is Mr. Ken Kratz, Calumet County District
24 Attorney and lead special prosecutor. Thanks for
25 coming in this morning and thank you for your

1 patience.

2 Both sides have some questions we would
3 like to ask you regarding some of the information
4 contained in your questionnaire and perhaps cover
5 a few areas not covered by the questionnaire. I
6 think a matter of great interest, and you might
7 detect a bit of envy on our part, but I note from
8 your questionnaire that you manage to be retired
9 at what appears to be a rather young age. What
10 did you do before retiring?

11 A. Um, I was in the cleaning business. And I have
12 been a musician, as a hobby.

13 Q. And how long were you in the cleaning business?

14 A. Ten years.

15 Q. Ten years.

16 A. Twelve years.

17 Q. Now, you were an employee or did you own or run a
18 business?

19 A. I worked with the gentleman who owned the
20 business for about eight years and then he was
21 dying of stomach cancer and I ...

22 Q. -- took over the business?

23 A. My wife purchased the business from him.

24 Q. Okay. All right. And do you still keep your
25 hand in that business?

1 A. Yeah, something to keep busy. I work like six
2 hours a week --

3 Q. All right.

4 A. -- on my time.

5 Q. Okay. Tell me about the music business. How
6 long have you been involved in music?

7 A. Thirty-two years.

8 Q. All right.

9 A. Or 23 years, I'm sorry.

10 Q. Twenty-three years.

11 A. Twenty-three years, right.

12 Q. All right.

13 A. Since I was 16.

14 Q. And is it a business that's more of a hobby or do
15 you actually use it to earn income?

16 A. Well, I do earn income from it.

17 Q. All right.

18 A. Not very much. I mean, if you weigh out what you
19 spend on the equipment and all the other stuff, I
20 don't make any money at it.

21 Q. All right. What type of music are you involved
22 with?

23 A. A variety.

24 Q. All right.

25 A. I do variety. I'm the lead singer and bass

1 player, used to be a guitar player.

2 Q. Lead singer and you play base and lead guitar.

3 A. Rhythm guitar. Rhythm.

4 Q. Okay. This -- excuse me -- this group you are
5 involved with, how many are involved in that?

6 A. It was five, now it's just me, my wife and lead
7 guitar player, until we can find a drummer.

8 Q. And how many gigs a month do you normally do?

9 A. It varies.

10 Q. Okay. All right. I see, also, from your
11 hobbies, that you like computers?

12 A. Yes, sir.

13 Q. What particular tasks or how do you use the
14 computer, for what purpose?

15 A. My mixing down music, recording music, writing
16 out lyrics, typing out lyrics, that kind of
17 stuff.

18 Q. Do you use the computer at all for information
19 purposes or to get news?

20 A. No, I don't.

21 Q. All right. In that regard, I would like to talk
22 a little bit about your familiarity or lack there
23 of of media coverage with respect to this case.
24 And let me first ask you, you indicated you get
25 your news from three sources; radio, television

1 and newspaper?

2 A. Right.

3 Q. Of those three, where would you say you get the

4 lion's share of your news information?

5 A. Usually the Sheboygan Press.

6 Q. Sheboygan Press?

7 A. Yeah.

8 Q. All right. So you are a regular reader of that?

9 A. Yeah, pretty much so.

10 Q. How about television and radio?

11 A. I'm not much into television because there's

12 nothing really on there I care to see.

13 Q. All right.

14 A. And radio, I listen to the music, that's about

15 it.

16 Q. Okay. So you don't listen to any news shows or

17 talk radio? It's just for the music?

18 A. No, I don't really care for it.

19 Q. I'm sorry?

20 A. I don't really care for news.

21 Q. All right. Just haven't shown an interest in it?

22 A. No, I'm more into the music and stuff like that.

23 Q. All right. If you could do us a favor and maybe

24 lean forward a little bit and talk into that

25 microphone?

1 A. I can't move the chair so.

2 Q. I understand, it's a little difficult, but --

3 A. All right.

4 Q. -- we do need to hear your responses. Thanks.

5 A. Yes, sir.

6 Q. In terms of the media coverage attended to this
7 case, have you seen any of the newscasts or media
8 coverage of this case at all?

9 A. No. At the beginning of -- I mean, I remember my
10 wife saying something about -- that Teresa was
11 missing. I remember that part. And then she
12 told me something later about some fire pit or
13 something, but that's about all I know.

14 Q. All right. Excuse me, you haven't followed any
15 of the newscasts, then, or any of the information
16 that's been developed other than the original
17 breaking of the story?

18 A. Right.

19 Q. All right. You have listened or heard nothing on
20 the radio recently or nothing on the television
21 recently?

22 A. No, I haven't really listened to the radio at
23 all.

24 Q. All right. And from the information you provided
25 in your questionnaire you indicated you haven't

1 formed any opinions based on the small amount of
2 information you currently have?

3 A. No, I have no opinion.

4 Q. All right.

5 A. Because I don't know -- I don't know any of the
6 evidence or anything.

7 Q. Okay. Well, then, let me just conclude this
8 aspect of the questioning with this question, if
9 you were selected as a juror in this case, do you
10 think that you would be able to decide the guilt
11 or innocence of Mr. Avery solely on what you hear
12 in the courtroom; in other words, the evidence
13 which is presented and on no other source?

14 A. That's correct.

15 Q. All right. You have no problem with that?

16 A. No.

17 Q. All right. Since you are into music and those
18 types of endeavors, I thought I would ask, do you
19 watch old movies or are you a movie guy?

20 A. I like the old Jerry Lewis, Dean Martin movies.

21 Q. All right. Do you ever watch any documentaries,
22 anything on law enforcement, or anything like
23 that?

24 A. I think one of my favorite shows I watched on TV
25 was *Law and Order*, but that's --

1 Q. All right.

2 A. -- probably the only thing that I see that was
3 worth watching on television.

4 Q. Okay. Did you ever see a documentary called the
5 *Thin Blue Line*?

6 A. I have heard of the name, but I have never.

7 Q. You have never seen it?

8 A. No.

9 Q. Okay. The next area of inquiry that I have for
10 you is any encounters that you or your family may
11 or may not have had with the local police
12 department or the sheriff's department. Have you
13 yourself had any reason to call upon them for
14 services or had any interaction with them?

15 A. Not at all.

16 Q. All right. Any other members of your family have
17 any encounters with the police or law
18 enforcement?

19 A. My son -- my stepson, I mean.

20 Q. Okay.

21 A. This was about a year ago, he wrote out
22 prescriptions for himself, which was kind of --

23 Q. Okay. Any --

24 A. -- dumb on his part.

25 Q. -- and he didn't have any -- and he shouldn't

1 have been doing that, right?

2 A. Right.

3 Q. All right. And was he arrested for that?

4 A. Yes, he was.

5 Q. Okay. Based on your experience for that, or with
6 that, did you have any direct contact with the
7 police or the sheriff's department in that
8 incident?

9 A. No, since he's not my son, my wife --

10 Q. Okay.

11 A. -- you know, I stay out of it.

12 Q. Sure.

13 A. It's better if I stay out of it.

14 Q. All right. Well, let me ask you this, then, I
15 imagine you might have had at least some
16 discussion of that happening, with your wife?

17 A. No.

18 Q. Okay.

19 A. She doesn't like me getting involved in --

20 Q. -- in the family business?

21 A. It's like get out of here, stay out--

22 Q. All right.

23 A. -- it's none of your business.

24 Q. So you didn't have any discussions as to the
25 appropriateness of the law enforcement activity

1 or involvement in that.

2 A. No.

3 Q. Okay. So you don't have any particular opinion
4 regarding how the case was handled or anything
5 like that?

6 A. No, I don't know anything about it.

7 Q. Okay. Fair enough. In terms of how you go about
8 approaching solving a problem, or even in your
9 interacting with other people, in discussing and
10 formulating opinions, would you consider yourself
11 a detail oriented type of guy or are you more of
12 a big picture perspective, bottom line approach
13 to things?

14 A. I try to piece together things.

15 Q. Okay. So, do I interpret that to mean you do
16 kind of look at the details?

17 A. Right. I'm articulate --

18 Q. Okay.

19 A. -- when it comes to things like that.

20 ATTORNEY BUTING: I'm sorry, I couldn't
21 hear that.

22 A. I'm articulate when it comes to, you know, like
23 my music, picking things apart and trying to put
24 it all together.

25 Q. All right. So the nature of your -- your

1 interest, your hobby in music, makes you tend to
2 be more of a detail oriented approach in terms of
3 putting together music, or scoring it, or writing
4 it?

5 A. Right. To get it to where it's just ...

6 Q. So the words fit the music?

7 A. Right.

8 Q. Okay.

9 A. And the feeling is there and everything comes
10 together.

11 Q. Okay. All right.

12 ATTORNEY FALLON: That's all I have.

13 THE COURT: Mr. Buting.

14 ATTORNEY BUTING: Thank you, Judge.

15 **VOIR DIRE EXAMINATION**

16 BY ATTORNEY BUTING:

17 Q. Good morning.

18 A. Good morning.

19 Q. My name is Jerome Buting. This is Dean Strang
20 another Jerry -- Dean and Jerry combination, but
21 not like the movies that you have seen. We
22 represent Steven Avery. And I want to follow up
23 on a few things that -- that Mr. Fallon has asked
24 you, but also get into some different issues that
25 maybe will come up and you are going to have to

1 consider. All right?

2 A. Okay.

3 Q. First, just in more general background, your
4 name -- it may be just a coincidence, but are you
5 related in any way to the Peter Mahler that has a
6 cleaning -- office cleaning business in the
7 Milwaukee area?

8 A. No, sir.

9 Q. Okay. Just a coincidence, I guess. You have
10 two -- you list two female children at age 17;
11 are those twins or are they from different
12 marriages?

13 A. My daughter was from my first marriage, one of
14 them, and she's living with her mother. And the
15 other one is living with us and she's my
16 stepdaughter.

17 Q. I see. Okay. I thought maybe she was a
18 stepdaughter, but you didn't mention your stepson
19 in here so maybe that's --

20 A. Yeah, he's in -- He's like 23 or something like
21 that.

22 Q. So he's out on his own?

23 A. Correct.

24 Q. Okay. And your wife is retired also?

25 A. Yes.

1 Q. Well, when you say retired, it wasn't clear to
2 me, you have -- you still have the cleaning
3 business?

4 A. I do it to keep busy.

5 Q. Okay.

6 A. My wife has a trust fund out of Milwaukee.

7 Q. Your wife has what?

8 A. A trust fund out of Milwaukee; she gets dividends
9 every month.

10 Q. Oh, I see. Okay. So that's your primary source
11 of income and you don't have to worry so much
12 about the cleaning business?

13 A. Correct.

14 Q. Okay. But is your wife, your current wife -- how
15 long have you been married to your current wife?

16 A. Ten years.

17 Q. Okay. And she's in the band too?

18 A. Right.

19 Q. What does she do?

20 A. She plays the piano.

21 Q. Okay. And you play around Manitowoc County,
22 Sheboygan, what's your area?

23 A. Manitowoc, Sheboygan, Plymouth, tri-county pretty
24 much.

25 Q. Okay. And you mentioned you have actually sung

1 the National Anthem at Road America?

2 A. Right, for all the races I do.

3 Q. Okay. That's something you have done for quite a
4 while?

5 A. The past seven years.

6 Q. Well, okay. Are you interested in racing too
7 or ...

8 A. Yeah, I said if my voice ever went, I would get
9 into racing.

10 Q. So, do you work on cars yourself?

11 A. No, I just have a love for the racing thing.

12 Q. So you have a love for the racing, but you are
13 not -- you are not really mechanically inclined
14 or ...

15 A. No, I never really got totally into it. I just
16 like watching --

17 Q. Okay.

18 A. -- especially the motorcycle races.

19 Q. You would like to be the driver and not the one
20 who -- not the mechanic?

21 A. Right.

22 Q. Okay. Now, in terms of knowledge that you gained
23 about this case, it sounds like your wife is
24 really the one that was the source of any
25 information?

1 A. Yeah, she -- I guess she's been keeping up on it,
2 watching the news on it.

3 Q. Okay. So she does. She shows an interest in it?

4 A. Right.

5 Q. And she likes to talk with you about it on
6 occasion apparently, right?

7 A. Right.

8 Q. Sometimes it's hard to remember when someone
9 says, you know, tell us what it is you remember
10 about -- remember hearing. And sometimes you
11 don't -- doesn't come to mind, certain things,
12 but you actually really did hear them, you just
13 don't recall at this moment. So, I just want to
14 maybe explore that a little bit, okay?

15 A. Okay.

16 Q. For instance, Brendan Dassey, have you heard of
17 him?

18 A. I have never, no.

19 Q. Have you heard anything about a nephew of
20 Mr. Avery?

21 A. I have heard about the nephew, but I don't
22 remember names or anything.

23 Q. Didn't connect the name. Okay. What have you
24 heard about the nephew as has been reported?

25 A. I don't recall.

1 Q. Okay. Do you recall any -- anything either you
2 heard on the news or that you talked about with
3 your wife about the nephew that involved his
4 alleged confession or admission to certain
5 things?

6 A. No, she never discussed anything about the
7 nephew.

8 Q. Or anything about his later recanting of those
9 confessions and --

10 A. No.

11 Q. -- denying it?

12 A. I did not hear anything about that.

13 Q. Okay. Did you -- In talking with your wife, did
14 you ever hear anything about, you know, what it
15 is that Mr. Avery was supposedly supposed to have
16 done here?

17 A. I remember that Teresa was missing. And that's
18 about all I remember of it. And supposedly he
19 was accused of her disappearance, but that's
20 about what I know.

21 Q. Okay. And when you say, Teresa, did you know her
22 at all?

23 A. No, just by my wife and some of the things I have
24 seen in the paper.

25 Q. And what kind of things do you recall having seen

1 about her or learned about her?

2 A. I know she was from -- I don't even remember
3 where she lived.

4 Q. Do you know what she did, you know, how and why
5 she was missing or involved in this at all?

6 A. I have no clue.

7 Q. Okay. Other than your stepson, which you
8 probably wisely stayed out of, have you had
9 any -- ever had any exposure to the police
10 yourself?

11 A. Eleven, twelve years ago, a Manitowoc Sheriff
12 picked me up because of a computer mistake in
13 Sheboygan with Child Support.

14 Q. Okay.

15 A. Said I was behind on my child support, but I
16 wasn't.

17 Q. And when you say picked you up, did they actually
18 take you down and book you and all that?

19 A. Yeah, and brought me to Manitowoc County Jail.

20 Q. And how long did you sit in jail?

21 A. I was -- I think in Manitowoc for one day and
22 then I was transferred to Sheboygan until Monday
23 morning, because they picked me up on a Friday
24 which was kind of weird. Then I sat for the
25 weekend because there was nothing they could do.

1 So Monday morning my wife came in, paid a little
2 bit on my child support, just to get me out and
3 take care of that situation. But, you know, I
4 never missed a payment, but it was a computer
5 glitch that --

6 Q. Mm-hmm.

7 A. -- happened.

8 Q. So -- So you had to spend a whole weekend in jail
9 for something really that was just a mistake?

10 You didn't --

11 A. Right.

12 Q. Wasn't your fault.

13 A. That is correct.

14 Q. Well, how did you feel about the system when that
15 happened?

16 A. I mean, mistakes happen. You know, there was
17 nothing I could do about it, so I just -- I
18 accepted it.

19 Q. Okay. What do you know about Mr. Avery's
20 background?

21 A. I know he owned some kind of business out here
22 somewhere.

23 Q. Do you know anything about the -- all the
24 information about how he was wrongly imprisoned
25 for many years and was later exonerated when DNA

1 tests proved he didn't do the crime?

2 A. Yeah, I seen one news report when he got out, you
3 know, out of jail the first time.

4 Q. Yeah, I have seen that many times; he looks --
5 looks quite a bit different today, doesn't he?

6 A. Yeah, a little shorter in person.

7 Q. That beard that he had was quite a bit different
8 too. But, you know, in that environment you have
9 to adjust, I suppose. Did you also read anything
10 or hear anything about how he had a lawsuit
11 against Manitowoc County ...

12 A. I might have heard bits and pieces about it, but
13 I don't know much about it.

14 Q. ... because of that whole experience? Did you --
15 Do you have any opinion about whether or not it
16 was -- that was a good idea or a bad thing for
17 him to try and sue because of his wrongful
18 conviction?

19 A. I don't have any opinion on that.

20 Q. Okay. Other than that one encounter with -- that
21 was a Manitowoc County sheriff you said?

22 A. That's correct.

23 Q. Any other contacts with the police even when you
24 were growing up as a teenager or, you know, out
25 after curfew, any kind of -- not arrest but times

1 when you have encountered the police?

2 A. Yes, speeding tickets, things like that.

3 Q. Do you think that the police officers, because
4 they take an oath, get a badge, you know, that
5 they are supposed to serve and protect, that --
6 that somehow if they come into court and testify,
7 that -- that they are always going to tell the
8 truth?

9 A. I think they would.

10 Q. Well, you think they would or you'd hope they
11 would?

12 A. Well, as their, you know, oath, if they took the
13 oath, I feel they should.

14 Q. Okay. That's fine. But do you think that simply
15 because of that, because of their position and,
16 you know, we're taught to respect police
17 officers, of course?

18 A. That's correct.

19 Q. That if you heard testimony from them, that you
20 might give that greater weight and think that
21 they are more reliable and trustworthy than other
22 ordinary citizens you may hear from?

23 (Cellphone rang.)

24 A. No. Okay. That distracted me. Okay. Could you
25 repeat the question.

1 Q. Sure, I'm sorry about that. Do you think that --
2 that because police are police, that if they come
3 into court and testify, that what they say, that
4 you will look at that as being more reliable and
5 more trustworthy than maybe you would something
6 that you hear from the witness stand that comes
7 from an ordinary citizen?

8 A. No, I don't, because the police are just telling
9 their side of the story, just like all the other
10 witnesses.

11 Q. And that they are human too, right?

12 A. That's correct.

13 Q. And that -- Do you think it's possible, then,
14 that police may also be mistaken about things?

15 A. Well, you know, just because it's coming from an
16 officer doesn't mean it's the facts and totally
17 the facts on the case.

18 Q. Okay. Do you think it's possible that police
19 get, you know, personally involved in a case
20 where they are invested and they really care
21 about the outcome, they are not just sort of,
22 just the facts, ma'am, that kind of thing?

23 A. Well, I think they are just, you know, like I
24 said, they are just telling what they discovered
25 from the case, you know. And it's -- I have --

1 you know, it has to be all weighed out.

2 Q. If you heard evidence that might indicate that
3 they -- that police officers in this case maybe
4 were a little more personally involved in things
5 related to Mr. Avery, would you be able to
6 consider whether those -- that kind of
7 involvement or motive might affect what they are
8 saying on the witness stand?

9 A. What do you mean by "personally involved"?

10 Q. Well, I don't want to get into all the evidence
11 here. I mean, if you're selected, you will hear
12 some of it, but ...

13 A. That's correct.

14 Q. But the Judge will give you an instruction that
15 police officers are to be judged as witnesses
16 just the same as any other witness; that is, that
17 they have no special aura about them that makes
18 them more honest or trustworthy than any other
19 witness.

20 You have to judge their demeanor, what
21 they say, what the facts are, if there's any
22 corroboration or conflicting information. And
23 what I want to understand is if you can do that?

24 A. Yes.

25 Q. And can you do it even if it means more than just

1 that maybe the police are shading or -- or even
2 lying about something. Can you do that and
3 consider whether or not the police crossed the
4 line in this case and went -- went way beyond
5 what simple investigating is?

6 A. Well, I judge their evidence just as I would any
7 other witness, the same, you know. They don't
8 have -- You know, they are just telling what they
9 know and the other people are testifying -- are
10 telling what they know. And there's no
11 difference between an officer and somebody else
12 who is testifying.

13 Q. All right. Well, you say they are just telling
14 what they know, but do you understand that
15 sometimes witnesses come into court and even
16 under oath, that they tell lies?

17 A. Right. I do.

18 Q. And if you are selected on this jury, you are
19 going to have make those kinds of judgments and
20 judgment calls as to whether a person is really
21 telling the truth or not?

22 A. Yes, I understand that.

23 Q. Okay. And you can do that for police officers
24 just as the same as others?

25 A. That's correct.

1 Q. Now, you may also -- You have a lot of -- Well, I
2 don't know if you have or not. Did you have
3 musical training or did you kind of teach
4 yourself?

5 A. I took a half a year of lessons and then I got
6 tired of lessons so I learned on my own and
7 pretty much play by ear. I mean, I know the
8 chords and stuff, but I play by ear.

9 Q. Did you ever take any music theory or learn about
10 any music theory?

11 A. No.

12 Q. Okay. So, in terms of your knowledge of science,
13 do you have any particular background of that or
14 mathematics?

15 A. No.

16 Q. Well, you may hear some scientific evidence in
17 this case that will come from expert witnesses
18 and will you be able to listen to their testimony
19 and judge what they say with the same kind of
20 standards as any other witness?

21 A. Yes.

22 Q. In other words, just because they --

23 A. -- are professionals.

24 Q. -- are experts in their field, what they say may
25 or may not be completely accurate; you have to

1 listen to all -- all of what they say.

2 A. Right.

3 Q. Okay. Let me go back for just one minute. The
4 -- In terms of what you have heard maybe from
5 your wife or just picked up; have you heard
6 anything at all about a blood vial?

7 A. Um, no, I haven't heard anything about that.

8 Q. Nothing about a blood vial.

9 A. No.

10 Q. Okay. Now, you like to -- Well, let me ask you
11 this, one of the questions talked about, a
12 defendant's right not to testify. And I think
13 you understood that in your questionnaire, at
14 least you answered, yes, you could follow that.

15 A. Right.

16 Q. But do you think that if you didn't hear directly
17 from Mr. Avery testifying at this trial that that
18 would be a problem for you?

19 A. Not at all.

20 Q. You wouldn't be concerned about why he didn't
21 testify, why haven't I heard his side?

22 A. No.

23 Q. Why not?

24 A. Because, you know, I would listen to every, you
25 know, everybody's input on what they had to say

1 about the case and I would make my decision on
2 that.

3 Q. Well, on the other hand, if he did take the
4 witness stand and testify, would you think that,
5 well, you know, I'm not going to really believe
6 much of what he says because he's the defendant
7 in the case, he has got everything at stake?

8 A. No, I would listen to his side of the story also.

9 Q. You could treat him the same as any other witness
10 you are saying?

11 A. That's correct.

12 Q. So, either way, you are not going to hold it
13 against him or us, his attorneys obviously will
14 be talking with him about that decision. You
15 will be able to make sure that doesn't affect
16 your decision in the case?

17 A. That's correct, either way.

18 Q. And if at the end of this case you believe that a
19 crime was committed, a very serious crime was
20 committed, but you have a reasonable doubt
21 whether Mr. Avery did the crime, will you be able
22 to return a verdict of not guilty even if he, or
23 we, are unable to show who is, in fact, the
24 guilty party?

25 A. I don't understand the question.

1 Q. Well, if you hear the evidence and you decide
2 that, yes, in fact, a very serious crime, a
3 murder, occurred here; it's maybe human nature to
4 think, well, if Mr. Avery didn't do it, then who
5 did, right? I mean, can you -- do you -- Can you
6 see that?

7 A. Yeah, I can understand that.

8 Q. But, what you have to understand is that the
9 defense doesn't have a burden of proof. And
10 that -- What I want to know is whether you are
11 going to be thinking, hey, you know, somebody did
12 this and we have got to convict somebody of this
13 crime, and if it's not Avery, he hasn't shown us
14 who it is, who did do it, so we're just going to
15 go ahead and find him guilty?

16 A. No, I wouldn't.

17 Q. Why not?

18 A. Because it would be wrong.

19 Q. Okay. So you really will look at the State's
20 case to see whether the State's proven to you,
21 beyond a reasonable doubt, that Mr. Avery is the
22 guilty party?

23 A. That's correct, I will look at both sides.

24 Q. And even if coming out of that you say, well,
25 this is really sad, I wish -- Somebody did this.

1 I know somebody did this. And the defense hasn't
2 proven to me who did, but the State also hasn't
3 proven, beyond a reasonable doubt, that Mr. Avery
4 did, you will be able to return a not guilty
5 verdict?

6 A. That's correct.

7 Q. Okay.

8 ATTORNEY BUTING: Thank you, sir.

9 THE COURT: All right. Mr. Mahler, the
10 Clerk will escort you from the courtroom at this
11 time.

12 (Wherein the juror was excused.)

13 THE COURT: Any motion from either party?

14 ATTORNEY FALLON: None from the State.

15 ATTORNEY BUTING: No, Judge.

16 THE COURT: Mr. Buting, you must have good
17 timing in your head, you concluded exactly on --

18 ATTORNEY BUTING: I heard that. And I
19 thought --

20 THE COURT: You beat the clock, though.

21 ATTORNEY BUTING: I didn't know if that was
22 the extra five minutes over or not.

23 THE COURT: All right. We'll bring in Ms
24 Gosz at this point.

25 Ms Gosz, if you can raise your right

1 hand, the Clerk will administer the oath to you.

2 (Juror sworn.)

3 THE CLERK: Please be seated.

4 THE COURT: Ms Gosz, you have already
5 completed a written questionnaire in this matter.
6 Today we're moving on to the next step in the jury
7 selection process which is known as voir dire. The
8 attorneys for each of the parties will have an
9 opportunity to ask you some questions today that
10 relate to your qualifications as a juror.

11 Before they begin, I can tell you that
12 if you are selected as a juror in this case, the
13 jury will not be sequestered. That means the
14 jurors will be permitted to go home each day at
15 the end of the court's proceedings for that day.

16 The jurors will continue to be required
17 not to obtain any information about the case from
18 any news media; that would be radio, television,
19 newspaper, the internet, or anything else. And
20 the jurors will also continue to be prohibited
21 from talking to anyone about the case, including
22 family members or other members of the jury.

23 The proceedings today are held in open
24 court, but during the voir dire process the Court
25 does not allow cameras in the court. And the

1 news media is not permitted to identify the
2 jurors by name in any news reports of today's
3 proceedings.

4 In addition, if you are selected to
5 serve on the jury, you should know that at the
6 trial itself, the cameras which may be present
7 are not permitted to focus on the jurors or
8 identify them in any way.

9 If you are to remain on the jury panel
10 after today's questioning, you will be notified
11 in the next day or two when to report back to
12 court.

13 I believe Mr. Kratz is going to be
14 questioning you now on behalf of the State.

15 ATTORNEY KRATZ: Thank you, Judge.

16 **VOIR DIRE EXAMINATION**

17 BY ATTORNEY KRATZ:

18 Q. Ms Gosz, good morning. My name is Ken Kratz, I'm
19 the Calumet County D.A., and special prosecutor
20 in this case, lead counsel in this case. Mr. Tom
21 Fallon who is with me is an Assistant Attorney
22 General. He will be assisting in the prosecution
23 as well.

24 As the Judge told you, this is the time
25 for some follow-up questions. We all received

1 your written responses in your questionnaire.
2 This process is not mean -- is not meant to
3 embarrass you or to pry into your personal life,
4 at least unnecessarily. We're trying to get the
5 most impartial jury --

6 A. Okay.

7 Q. -- that we can.

8 A. I understand.

9 Q. And that's why we're doing this. Your employment
10 with Natural Ovens Bakery as a packaging
11 supervisor, you described that as packaging
12 bakery items; is that the whole gambit of bakery
13 items or is this just bread or something?

14 A. Bread, buns, bagels, muffins, cookies.

15 Q. All the good stuff, right?

16 A. All the good stuff, yeah.

17 Q. All right. Ms Gosz, interestingly you noted that
18 you don't watch TV or the news very much. You
19 don't read the newspapers.

20 A. No.

21 Q. You don't gather news from any other source
22 except I think you mentioned your neighbors. I
23 was interested in that response; what does that
24 mean?

25 A. Well, I pretty much get up in the morning, get

1 the kids off to school. Then I get to work. And
2 being in charge of the department, I never know
3 what time I'm going to get done. Sometimes I'm
4 lucky enough where it's 8 hours, but more times
5 than not it's usually 9 or 10.

6 So that means I don't usually get home
7 until 6. Then I'm trying to get the kids some
8 supper, homework. And I don't really -- I don't
9 get the newspaper. I just -- I know my friends
10 laugh at me because I really never know what's
11 going on, but my life pretty much revolves around
12 my job and my family and that's about it.

13 Q. I understand. The information that you do
14 receive from your neighbors, did any of that
15 include the case for which you have been called?

16 A. No, there's a lady that lives across the street
17 that every once in a while if I go out and get
18 the mail or whatever, you know, will stop and
19 talk and, oh, did you hear this, did you hear
20 that. I will be, like, not in regard to this,
21 but just general stuff, and I'll be like, no.
22 And she always laughs at me, you know, but, so,
23 yeah, I'm pretty boring I guess.

24 Q. Let me ask you just directly, Ms Gosz; do you
25 know anything about the Steven Avery prosecution?

1 A. I mean, truthfully, I have heard his name, her
2 name, and -- and any more full details, not
3 really, because I really don't pay attention to.

4 Q. By her name, who are you talking about?

5 A. Teresa.

6 Q. Teresa Halbach?

7 A. Yes.

8 Q. Okay. Did you know what Mr. Avery has been
9 charged with?

10 A. Mm-hmm.

11 Q. And did you receive that, again, just by kind of
12 hearing things around town or around your
13 community?

14 A. Yeah.

15 Q. You mentioned in your questionnaire that you have
16 not formed an opinion as to Mr. Avery's guilt or
17 innocence. I assume that remains today; is that
18 correct?

19 A. Correct.

20 Q. And if the Judge was to instruct you that you
21 should decide the case only on what you heard in
22 the courtroom; that is, by witnesses or exhibits,
23 or other kinds of evidence, will you be able to
24 do that?

25 A. Definitely.

1 Q. Now, the State has the burden of proof. It's
2 beyond a reasonable doubt. But the defendant
3 doesn't have to prove anything in this case. I
4 think you understood that in your
5 questionnaire --

6 A. Mm-hmm.

7 Q. -- are you willing, then, to presume, as
8 Mr. Avery sits here today, that he's innocent and
9 that will remain until and unless the State can
10 prove, beyond a reasonable doubt?

11 A. Yup.

12 Q. You are willing to do that?

13 A. Definitely.

14 Q. And that's something, not just generally, but
15 specifically in this case, that you are able to
16 do?

17 A. That's what I believe.

18 Q. Have you yourself, Ms Gosz, had the misfortune of
19 having contact with law enforcement officials
20 ever in your life?

21 A. No.

22 Q. Are you familiar at all with the Manitowoc County
23 law enforcement community? Or let me ask you
24 this question, because this is something that you
25 might have an opinion on. Do you have an opinion

1 as to how the Manitowoc County Sheriff's
2 Department is generally doing regarding crime
3 prevention, or how they handle criminal
4 investigations?

5 A. I really don't know one way or another. I mean,
6 I don't have an opinion one way or the other,
7 because I have never really had any personal
8 things to do with the law, I guess.

9 Q. All right. Have any family, or friends, or
10 anything like that ever had run-ins with the law
11 or have complained about the Sheriff's Department
12 or anything else in our law enforcement community
13 here?

14 A. No. No, actually, you know what, I did call one
15 time, just to question. And this is probably, I
16 don't know if it's even worth saying, but my
17 daughter had stayed overnight by a friend's
18 house. And my sister works second shift and was
19 coming home from work and saw her out with her
20 friends at like quarter to 12 at night. And I'm,
21 like, I thought we had some kind of --

22 Q. Curfew.

23 A. Curfew. So I just called inquiring about that
24 and they're, like, yeah, it's midnight. And I'm,
25 like, it was 10 to, these are, like, 15 year old

1 girls, why didn't they at least stop and question
2 them and they said, because they weren't breaking
3 the law. And I'm, like, okay, makes sense.

4 Q. Until after midnight.

5 A. Yeah.

6 Q. Okay.

7 A. So I just took care of it myself.

8 Q. Other than taking care of your children and
9 working and I understand that you are a married
10 lady; is that right?

11 A. Mm-hmm.

12 Q. And I suspect your husband takes some of your
13 time as well?

14 A. Yup.

15 Q. Other than that, what do you do for fun or for
16 hobbies?

17 A. Scrap booking is basically the thing I do a lot
18 of.

19 Q. All right. Do you enjoy puzzles or anything like
20 that?

21 A. Uh-uh.

22 Q. Have you ever?

23 A. No.

24 Q. Or you just don't now?

25 A. Not particularly.

1 Q. You are a high school graduate, I note, and was
2 wondering if in high school you had any interest
3 in any particular subjects?

4 A. Not really.

5 Q. You have no educational background after high
6 school; is that right?

7 A. Correct.

8 Q. You ever watch any shows on TV that deal with
9 science, either scientific evidence or the
10 sciences generally?

11 A. Well, I watch *Law and Order* occasionally.
12 Sometimes forensic files is on either before or
13 after, I'm not quite sure.

14 Q. Those shows typically deal with a area of science
15 that's called DNA analysis.

16 A. Yup.

17 Q. Are you familiar with that at all?

18 A. Yup.

19 Q. Do you generally accept that as a accurate way to
20 make identifications, at least from a forensic
21 stand --

22 A. I believe so.

23 Q. -- or aspect? What I'm getting at, Ms Gosz, is
24 there isn't anything that you have heard or read
25 or in your history that brings DNA analysis into

1 question for you or anything like that?

2 A. Uh-uh.

3 Q. All right.

4 THE COURT: Ms Gosz, if you can answer yes
5 or no to the questions --

6 MS GOSZ: I'm sorry.

7 THE COURT: -- it will make life easier for
8 the court reporter. Thank you.

9 MS GOSZ: It's easier to spell yes than
10 mm-hmm. Okay.

11 ATTORNEY KRATZ: It is.

12 MS GOSZ: Sorry.

13 Q. (By Attorney Kratz)~ Are you aware of Mr. Avery's
14 history or a project in Wisconsin called Project
15 Innocence?

16 A. No.

17 Q. All right. Ms Gosz, I understand that you at
18 least provide some income to your home; your
19 husband is employed as well?

20 A. Yes.

21 Q. Would being on a jury for what is estimated to be
22 about six weeks; would that create a financial
23 hardship for you?

24 A. No.

25 Q. Can you tell me why?

1 A. Because Natural Ovens supports the community on
2 the basis that if do you have to report for jury
3 duty, they will supplement my income.

4 Q. That's nice. That's good.

5 A. Mm-hmm.

6 Q. You have had to, at least since you got the
7 notice about this case, thought of the
8 possibility of being a juror on the Steven Avery
9 case?

10 A. Mm-hmm. I'm sorry. Yes.

11 Q. Yes. Is that something that you believe would be
12 interesting? Is that something that you would
13 look forward to doing or, quite honestly, would
14 prefer not to do?

15 A. I don't know if look forward is the appropriate
16 way to say, but I definitely believe that being a
17 juror is part of your civic duty and I certainly
18 would be there to do that if you guys called upon
19 me to be there.

20 Q. You would agree to serve and if called by the
21 Court or by the attorneys to be one of those
22 jurors asked for this very important
23 responsibility, you would step up and do that; is
24 that right?

25 A. Yes.

1 Q. Okay. The last area of inquiry I have and the
2 Judge has told you that you will be able to go
3 home at night after each day of jury service.
4 But it looks like you are involved, in some
5 respects, with your son's Cub Scouts --

6 A. Mm-hmm.

7 Q. -- is that right? Do you have any contact with
8 any of their parents? Are you a den mother or
9 something --

10 A. No.

11 Q. -- like that?

12 A. No, I just take him to the meetings because my
13 husband works second shift so that makes me the
14 Cub Scout parent.

15 Q. All right. Kind of like a soccer mom, just with
16 -- with Cub Scouts, right?

17 A. Yeah.

18 Q. You would be able, then, to avoid contact with
19 other citizens and avoid contacting --

20 A. Mm-hmm.

21 Q. -- other people and talking about this case; is
22 that right?

23 A. Definitely.

24 Q. If I could have just a moment.

25 ATTORNEY KRATZ: I think that's all we

1 have, Judge. Thank you.

2 THE COURT: All right Mr. Strang.

3 ATTORNEY STRANG: Thank you.

4 **VOIR DIRE EXAMINATION**

5 BY ATTORNEY STRANG:

6 Q. Good morning.

7 A. Good morning.

8 Q. I'm Dean Strang and this is Jerry, or Jerome,
9 Buting and Steven Avery. We're the two lawyers
10 defending Mr. Avery. Let's start with your
11 husband a little bit, if I may.

12 A. Mm-hmm.

13 Q. Roman is a sanitation supervisor?

14 A. Mm-hmm.

15 Q. Is that with a municipality or is it with a
16 private company?

17 A. No, it's -- Natural Ovens has their own
18 sanitation crew, that's on Natural Oven's
19 payroll.

20 Q. Okay. So he's actually at Natural Ovens --

21 A. Yup.

22 Q. --too?

23 A. Yeah.

24 Q. All right. And he works second shift?

25 A. Mm-hmm.

1 Q. Which means 4 to midnight or ...

2 A. He works 1:30 to 9:30.

3 Q. All right. Are his hours consistent or does

4 he --

5 A. Yes.

6 Q. -- get called in for snow plowing or ...

7 A. No. No. It's very consistent.

8 Q. Okay. So, if you -- if you were tied up in a

9 jury trial for let's just say six weeks

10 approximately and having to go to Chilton every

11 morning and come back every evening --

12 A. Mm-hmm.

13 Q. -- so adding on to the day at both ends; someone

14 is able to get the kids off to school or ...

15 A. Yeah, see, right now a neighbor takes my daughter

16 because he's got a daughter that's the same age

17 that goes to the same school and he's on his way

18 to work anyway.

19 Q. Mm-hmm.

20 A. And my son, I drop off by that same neighbor

21 because they have kids that are his age, also,

22 that takes him to school. And that same

23 individual picks both my kids up from school, so

24 I'm not responsible for any of that at this

25 point.

1 Q. You are covered --

2 A. Yup.

3 Q. -- and I suppose your daughter is old enough to

4 sort of keep an eye on your son?

5 A. Yeah, she's basically the babysitter until I get

6 home. So she does that every day now for me.

7 Q. Okay. Has your husband talked about this case at

8 all?

9 A. No.

10 Q. Have any opinions on it?

11 A. No.

12 Q. When you first heard that Teresa Halbach --

13 Halbach went missing and, you know, they decided

14 she had been killed --

15 A. Mm-hmm.

16 Q. -- what was your reaction to that?

17 A. Well, you have concern because if it can happen

18 to her it can happen to anybody.

19 Q. Including your daughter?

20 A. Yeah.

21 Q. I mean, did you react as a mom?

22 A. Probably.

23 Q. When you say probably, I mean, do you --

24 A. Well, that's probably the way -- that's probably

25 the thinking I had because I'm very strict with

1 my daughter and always wanting to know where she
2 is.

3 Q. I picked up on that.

4 A. Yeah.

5 Q. Were you meaning to call the police on her or you
6 were just checking?

7 A. Well, I wanted to inquire about the curfew
8 because I just thought that it was kind of weird
9 that there would be a police -- and I guess the
10 reason I called, I didn't state that before is,
11 my sister had stated to me that there was a
12 patrol officer, like, in the vicinity.

13 Q. Mm-hmm.

14 A. So I just was kind of curious why they
15 wouldn't -- and, no, the curfew wasn't in effect
16 as far as they weren't breaking any laws in
17 essence, but still, three 15 year old girls out
18 at that time of night, I just thought that maybe
19 he would at least question, say, hey, you know,
20 it's getting close to that time, do you guys
21 think you should head home? Do you need a ride?
22 You know, so I guess I was just inquiring on that
23 nature.

24 Q. Okay. Sure. So you're protective, you reacted
25 to this as something horrible and if it could

1 happen to her, it could happen to anyone.

2 A. Mm-hmm.

3 Q. Were you glad to hear that they caught the guy?

4 A. I guess, in my opinion, it remains to be seen if
5 they have really caught the person.

6 Q. Okay. And that's sort of where I'm going. I
7 mean, are you concerned that they have not caught
8 the guy?

9 A. I guess I have really drawn no conclusion yet
10 because I don't really listen to what is said,
11 one way or another.

12 Q. Mm-hmm. And I -- We all would need to know but,
13 you know, let's -- let's be honest about it, at
14 this table, we have got a real immediate interest
15 in knowing that, if you sit on Mr. Avery's jury,
16 you can come into this presuming him innocent.

17 A. Definitely.

18 Q. You know, and I was glad to hear, I don't know
19 that they have the guy.

20 A. I mean, that's truly what this is all about
21 right, to make sure that the right person is
22 given the punishment needed for the crime that's
23 been committed. But the fact remains that it's
24 the right person and that's what everybody's job
25 here is to prove or not prove.

1 Q. Okay. And let's pick up on that. I want to pick
2 up on that because you say everybody's job here
3 is to prove or not prove. You know, to get -- to
4 get past sort of legal jargon --

5 A. Mm-hmm.

6 Q. -- it's not everybody's job here to prove that.
7 It's not the Judge's job to prove that and it's
8 actually not our job at all to prove that.

9 A. And I probably shouldn't generalize in saying
10 everybody. It's just everybody has their part in
11 the trial.

12 Q. Right.

13 A. You know what I'm saying?

14 Q. And I'm not picking on you.

15 A. Okay.

16 Q. Okay. I don't mean to pick on you, it's just --
17 that's why I'm trying to, you know, let's get
18 into a discussion about this.

19 A. I understand.

20 Q. The job to prove guilt lies with the State and
21 the State here happens to be represented by the
22 two gentleman, the two lawyers to my left.

23 A. Correct.

24 Q. And then our job is to defend Mr. Avery, but
25 those are very different jobs; do you understand

1 that?

2 A. Oh, definitely.

3 Q. In the sense that we don't have to prove
4 anything --

5 A. Right.

6 Q. -- to you?

7 A. I understand.

8 Q. Doesn't mean we're going to sit here like a bump
9 on a log. I mean, I'm talking to you now --

10 A. Mm-hmm.

11 Q. -- which technically Mr. Avery doesn't have to
12 have a lawyer do.

13 A. Right.

14 Q. But in the end, we don't have to prove anything
15 to you or convince you of anything; do you accept
16 that?

17 A. I understand that, yes.

18 Q. Can you -- Can you follow the rules in the system
19 that works like that?

20 A. I believe so.

21 Q. I mean, because I guess at some level it's
22 natural, obviously, to say there are two sides to
23 every story and I would like to hear both
24 sides --

25 A. Mm-hmm.

1 Q. -- before I make a decision?

2 A. Right.

3 Q. Do you react that way too?

4 A. I think so.

5 Q. I mean, just in everyday life?

6 A. Right.

7 Q. But when it comes to law in America and burdens
8 of proof, these folks do have the only burden.

9 A. Correct.

10 Q. They have to prove it, beyond a reasonable doubt.
11 If -- if he were to decide anyway to testify in
12 his own behalf, I think the Court would tell you,
13 the Judge would tell you, that you would weigh
14 his testimony just like any other witness.

15 A. Mm-hmm.

16 Q. Yes?

17 A. Yes. Sorry.

18 Q. Okay. And, you know, just decide like you would
19 any other witness, whether I believe it, or I
20 don't believe it, or how much of it I believe, or
21 how much weight I give it?

22 A. Right.

23 Q. Okay. Can you do that?

24 A. I believe I can.

25 Q. Even knowing that he's the one person in the

1 courtroom with sort of everything at stake?

2 A. I think so.

3 Q. He also -- The flip side of this is that he has a
4 right under the American constitution and
5 Wisconsin constitution, for that matter, to say
6 I'm not going to testify. I'm not -- I'm not
7 going to testify. I'm going to keep my silence.

8 A. Right.

9 Q. What are some of the reasons somebody might do
10 that if he was accused of a crime?

11 A. I'm not really sure.

12 Q. Advice from lawyers?

13 A. I guess could be a possibility.

14 Q. A sense that he could get tripped up by lawyers
15 on the other side?

16 A. I suppose that could also be a possibility.

17 Q. Fear the jurors might not believe him because he
18 does have a lot at stake?

19 A. I suppose there's a lot of outstanding
20 circumstances that could make someone want to or
21 not want too. I guess it's up to the individual.

22 Q. Right. And the point of all that, I mean, you
23 are exactly right I think. And the point is,
24 that's why in the end, if a defendant does not
25 testify, a Court will tell you you can't even

1 consider it.

2 A. Mm-hmm.

3 Q. It's not evidence of guilt. It cannot be
4 considered by you. And the question is always
5 did the State prove the case beyond a reasonable
6 doubt?

7 A. Right.

8 Q. Precisely so people aren't engaging in guessing
9 about why he didn't testify if he does not.

10 A. Right.

11 Q. Is that a rule you can follow?

12 A. I believe so.

13 Q. When you say you believe so, talk to me about --
14 you're qualifying it just a little bit. I want
15 to hear about that.

16 A. I guess I understand that each person has
17 different feelings on, you know, how they say
18 things or the body language they use that maybe
19 they decide that they don't want to say something
20 because they don't want something to be misread.

21 I mean, I know for a fact, being a
22 supervisor where I work, I have been training a
23 new person to assist me and people say, well, I
24 don't like the body language she uses. And she
25 means totally nothing by it, but they interpret

1 it the wrong way.

2 Q. Right.

3 A. So I have to go back and clarify that with them
4 in saying, you know, she totally didn't mean
5 anything by that, that's just her personality,
6 that's just the way she expresses herself. And
7 once you get to know her, you will understand
8 that that's how she is. And then they get past
9 that.

10 Q. Right.

11 A. It can be interpreted the wrong way.

12 Q. Sure. And courtrooms are actually very, very
13 tough places to get to know someone.

14 A. Exactly.

15 Q. It's pretty formal and --

16 A. Mm-hmm.

17 Q. Yeah, so that's -- I mean, that's very helpful to
18 hear. And so, you said I believe so, that I can
19 follow that rule; and are you -- have you sort of
20 finished explaining to me why you think the rule
21 does make sense --

22 A. Right.

23 Q. -- and you would follow it if the Judge gave it
24 to you?

25 A. Right, because some things could be

1 misinterpreted.

2 Q. Okay. And you'll follow it if the Judge --

3 A. Correct.

4 Q. -- tells you that? Okay.

5 A. Correct.

6 Q. So understanding how you reacted and how you
7 felt, how pretty much everybody felt, when the
8 announcement came out about Teresa Halbach's
9 death and someone being arrested for it; what was
10 your reaction a few months later when you heard
11 that Brendan Dassey, a 16 year old boy, had also
12 been arrested?

13 A. I guess I really don't -- I really didn't hear.
14 That was probably even less than the previous
15 things. I really didn't hear anything about it.
16 Again, maybe in passing somebody mentioned that a
17 relative had also been arrested, but that's
18 basically all I heard.

19 Q. So --

20 A. And I didn't inquire any more. You know, I just
21 -- I just do my thing and I just really don't pay
22 attention to those things.

23 Q. Sure. Tell me about -- Tell me about work in
24 that respect. How many people are you
25 supervising?

1 A. About 30.

2 Q. Really? Okay. And are they on a line or are
3 they moving around?

4 A. We're all basically -- Well, I shouldn't say all.
5 Basically two different rooms depending on if
6 it's packaging or at the end of the day when
7 we're loading the semis. I interact with a
8 handful of them, basically working on a line next
9 to them, depending on the day. Like today, if I
10 had been at work I had meetings all day. So then
11 that really limits the amount of people that I'm
12 with.

13 Q. Right.

14 A. Usually if I have meetings all day today, that
15 means tomorrow I have got tons of paperwork to do
16 in my office. So then I really don't see a lot
17 of people in regards. That's where I have my
18 assistants to help me out running the floor.

19 Q. And I was going to ask you about that. Are
20 there -- Among these 30 people you supervise, are
21 there team leaders --

22 A. Yes.

23 Q. -- or foremen?

24 A. Yeah, I have an assistant supervisor that assists
25 me. I have a lead person that runs the floor

1 when I need to call her off on other duties. And
2 then I have another supervisor that works our
3 morning shift because we have a shift that starts
4 at 2 a.m. in the morning. And then I have
5 another supervisor that runs basically our
6 loading crew in the afternoon and she has an
7 assistant as well.

8 Q. And all those people report to you?

9 A. Correct.

10 Q. So you have an office away from --

11 A. Yes.

12 Q. -- the two rooms?

13 A. Yes.

14 Q. But also spend some time out in the room?

15 A. Yes.

16 Q. And are many of the 30 people you supervise folks
17 you actually worked shoulder to shoulder with
18 before you were promoted?

19 A. I would say a handful of them because in the last
20 few years we have had some turn over.

21 Q. Mm-hmm. Is -- Is -- Is there a packing machine
22 running --

23 A. Oh, yes.

24 Q. -- in one of those rooms?

25 A. Yes. It's loud in our room.

1 Q. Okay.

2 A. Oh, yeah. The inspector actually just came in
3 and we have to mandate ear plugs now because it's
4 too loud in there.

5 Q. Okay. So chitty chat is difficult for --

6 A. Oh, yeah.

7 Q. -- a number of reasons?

8 A. Me giving out directions a lot of times is
9 difficult, you have got to scream because they
10 can't hear you or I have to walk across the room,
11 or if somebody is heading that way, hey, do me a
12 favor -- tell so and so, you know --

13 Q. Tap them on the shoulder?

14 A. Yeah.

15 Q. That kind of thing?

16 A. Yeah.

17 Q. And then so, likewise, in that work place, radios
18 aren't something people can do to help pass time?

19 A. They want them on, but you can't hear them
20 anyway. Like on Sundays, when the football is
21 on, let's turn the game on, it's like all you can
22 hear is, oi, oi, oi. It's just more annoying to
23 me than anything so I'm just like I would rather
24 we didn't.

25 Q. Okay. Yeah, and where I was going was just, I

1 want to get a better feel for why, you know,
2 there's not water cooler talk, so to speak --

3 A. Oh.

4 Q. -- about this case --

5 A. Yeah, no.

6 Q. -- where you work?

7 A. No. And we do have a lunchroom that employees
8 can go in for their breaks, but my husband
9 doesn't drive, so I usually go and pick him up
10 for work. So my lunchtime is spent driving to go
11 get him and coming back. So I don't have the
12 off -- you know, like on break interaction with
13 my employees that most people do.

14 Q. Mm-hmm. Okay. You may -- You may, if you sit on
15 this jury, hear something about a confession or,
16 you know, statements that Brendan Dassey made, or
17 you may not. But if you do, there will be an
18 issue about whether, you know, he made those
19 statements and then took them back --

20 A. Mm-hmm.

21 Q. -- later. And there will be an issue about which
22 is it. Did he really do it like he said at one
23 time or did he really not do like he said at
24 other times. And so the question for lawyers is,
25 you know, the false confession, the possibility

1 of a false confession?

2 A. Mm-hmm.

3 Q. And I'm wondering whether anything in your
4 experience has opened you up to the possibility
5 that sometimes people, for any number of reasons,
6 admit doing something they really didn't do?

7 A. I guess I don't have any particular incident
8 that's happened to me personally, in regards to
9 that.

10 Q. When you are in there, when you have got your
11 disciplinary hat on --

12 A. Yeah.

13 Q. -- or, you know, work rule enforcement hat on as
14 a supervisor --

15 A. Uh-huh.

16 Q. -- have you ever had one employee take the fall
17 for another one?

18 A. Not that I'm aware of.

19 Q. Okay. Do you watch out for that?

20 A. I guess it's something that's never really
21 happened, so I guess I really can't say I do.

22 Q. Okay.

23 A. Usually, we'll hear both sides, you know, and
24 usually it's one saying one way. And usually the
25 person at fault will come around and say, hey, I

1 made a mistake. And, you know, because the end
2 result is hopefully getting them back on a level
3 where they have to work with each other for 8
4 hours or more so, you know, a day.

5 Q. Right.

6 A. So at least get them civil.

7 Q. Right. Yeah, exactly. And if you hear evidence
8 here in this case about what factors, what things
9 might cause people under the right circumstances
10 to admit something they didn't do, will you be
11 open to hearing that sort of testimony?

12 A. Yes.

13 Q. You mentioned girlfriends, neighbors. And I
14 think you said girlfriends, or maybe you just
15 said friends. I don't know. But do you have a
16 group of friends who you tend to see regularly?

17 A. Not really.

18 Q. You mentioned this when you were saying people
19 always tease you because you don't know what's
20 going on.

21 A. Oh, co-workers.

22 Q. Oh, okay.

23 A. Yeah.

24 Q. Just about not knowing what's going on?

25 A. Yeah.

1 Q. If you sat on this jury, at the end, you and 11
2 other people are going to have a huge
3 responsibility, which is what?

4 A. To decide if he's guilty or innocent.

5 Q. That's right. Guilty or not guilty, in any
6 event. And big decision either way it goes,
7 right?

8 A. Definitely.

9 Q. Regardless of what you do, are you worried at all
10 about the next workday when you come back after
11 this long trial is over and having everybody, you
12 know, all your co-workers who do know what's
13 going on, saying why did you find him guilty, or
14 why did you find him not guilty?

15 A. Am I worried about it, no. Are they going to do
16 it, probably. Because they're already, oh, did
17 you get selected, did you get selected. And I'm,
18 like, don't know any more than you do. And if it
19 happens it happens, if it doesn't, it doesn't.
20 You know, you just play it one day at a time.

21 Q. Mm-hmm. Can you stand up to that?

22 A. Oh, definitely, because people have already at
23 work, you know, if -- now that they know that I
24 potentially could be a juror, they're like, well,
25 da, da. I'll be like, no, I don't want to hear

1 your opinion. The Judge has instructed that I'm
2 not to listen to anything and that includes you.
3 Well, it's just my opinion. I said, but he said
4 I still can't take your opinion. Granted, what
5 it means to me is probably nothing more than
6 their opinion, but it was still something that
7 was told we're not supposed to do.

8 Q. Do you want to be on this jury?

9 A. I have always wanted to be a juror, maybe not
10 necessarily for a trial of this magnitude but,
11 yeah, I have always wanted to do it.

12 Q. Why?

13 A. Because I find the whole court process to be
14 intriguing. It's -- It would be interesting.
15 Basically that's what, you know, the country is
16 founded on. You know, it's just, I guess, in
17 that degree.

18 ATTORNEY STRANG: Okay. Thank you.

19 MS GOSZ: You're welcome.

20 THE COURT: All right. At this time, Ms
21 Gosz, we'll have the Clerk escort you from the
22 courtroom.

23 (Wherein the juror was excused.)

24 THE COURT: Any motion from either party?

25 ATTORNEY FALLON: No.

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ATTORNEY STRANG: No.

THE COURT: All right. This juror is in. At this time we're going to take our lunch break. We'll report back at quarter to one. I would like to see counsel for just 30 seconds in my chambers before you leave.

(Noon recess taken.)

THE COURT: At this time we will go back -- oh -- I will go back on the record. Will the parties state their appearances for the record, please.

ATTORNEY FALLON: Good afternoon, your Honor, the State continues in its appearance by Assistant Attorney General Tom Fallon and Ken Kratz, special prosecutors.

ATTORNEY STRANG: Good afternoon. Steven Avery in person; Jerome Buting and Dean Strang on his behalf. And we have some further joint motions if the Court wishes to entertain those now.

THE COURT: That would be fine.

ATTORNEY FALLON: Your Honor, the parties had a chance to more closely inspect the questionnaires of four additional jurors. I think we have reached agreement that these four jurors could likewise be struck for cause; most of them

1 subjective bias primary reason, although I think
2 No. 73 could be both subjective and objective bias,
3 perhaps even a statutory bias argument could be
4 made.

5 But in any event Jurors 61, 63, 70, I
6 think we're in agreement should be struck for
7 subjective bias reasons. And No. 73, I think an
8 argument could be made touching upon all three of
9 the forms of bias, statutory, objective and
10 subjective. And in any event, I believe there is
11 a joint motion to excuse those jurors.

12 ATTORNEY STRANG: That is a joint motion
13 for the reasons that Mr. Fallon has explained.

14 THE COURT: All right. The Court then will
15 excuse -- let's see -- it's Dean Schneider, James
16 Wagner, Andrew Wimmer and Jesse Gibas.

17 ATTORNEY FALLON: Gibas, right.

18 THE COURT: The Court will order, then,
19 that those jurors be excused. Counsel, I think the
20 next juror that's up is William Mohr.

21 ATTORNEY FALLON: That's correct, Judge. I
22 wanted to address one other matter and just for
23 convenience purposes or expediency, I'm not sure
24 which is the best terminology here, but the Court
25 asked us to look at No. 74.

1 THE COURT: Yes.

2 ATTORNEY FALLON: Ordinarily I'm not sure
3 that we would get to that juror today on our list,
4 but if need be we could. I have shared our copy of
5 the questionnaire with the defense. And on paper,
6 he looks fine. There's only one matter that is of
7 some importance that would require an inquiry. So I
8 don't know, you said he was already here, even
9 though we may not get to him, so I don't know how
10 you wanted to deal with him.

11 THE COURT: All right. Well, we'll simply
12 leave him here today then.

13 ATTORNEY STRANG: I think he's going to
14 wind up going, but I tend -- I tend to agree with
15 Mr. Fallon in the sense, if it's just on paper; I
16 don't know that cause appears --

17 THE COURT: Okay.

18 ATTORNEY STRANG: -- on the face of the
19 paper.

20 THE COURT: I would agree with that.

21 ATTORNEY STRANG: I think we're going to
22 lose him but ...

23 THE COURT: I will also let you know, and I
24 don't know that this appears on paper either, but
25 the next juror, William Mohr, his spouse, Alice

1 Mohr, is a recently retired employee of the Clerk of
2 Court's Office who is, during the pendency of this
3 trial, back working at the Clerk of Court's Office
4 to help fill in for the staff shortage down there
5 during the trial. That may speed things along for
6 your questioning. And -- But I did want to make the
7 parties aware of that fact.

8 ATTORNEY FALLON: Could we have a moment
9 just to --

10 THE COURT: Go ahead.

11 ATTORNEY FALLON: -- contemplate the
12 meaning of all that?

13 THE COURT: Yes.

14 ATTORNEY FALLON: We'll proceed.

15 THE COURT: Then we'll bring William Mohr
16 out as the next juror.

17 Mr. Mohr, please raise your right hand
18 and the Clerk will administer the oath.

19 (Juror sworn.)

20 THE CLERK: Please be seated.

21 THE COURT: Mr. Mohr, you have already
22 completed a written questionnaire in this case.
23 This afternoon we're moving on to the next phase of
24 jury selection which is voir dire.

25 The attorneys for each of the parties,

1 in a few minutes, will have a chance to ask you
2 some questions relating to your qualifications as
3 a juror. You should know that if you are
4 selected to serve as a juror in this case, that
5 the jury will not be sequestered. That means you
6 will be able to report home each day after the
7 trial proceedings are completed for that day.

8 The jurors will continue to be
9 prohibited from learning anything about this case
10 through the media; be it radio, television,
11 newspaper, the internet, or any other source.
12 And the jurors will be prohibited from discussing
13 the case, either among themselves, or with anyone
14 else, including members of their family.

15 The proceedings today are open, but
16 during voir dire we do not allow cameras in the
17 courtroom and the members of the media are not
18 permitted to disclose the names of potential
19 jurors or jurors in their news accounts of these
20 proceedings. In addition, if you're selected to
21 serve as a juror, the cameras will not be
22 permitted to show the jury during the trial.

23 At this time we will proceed to voir
24 dire questioning. Mr. Fallon.

25 ATTORNEY FALLON: Thank you.

1 VOIR DIRE EXAMINATION

2 BY ATTORNEY FALLON:

3 Q. Good afternoon, Mr. Mohr.

4 A. Yes.

5 Q. My name is Tom Fallon and I'm an Assistant
6 Attorney General with the Wisconsin Department of
7 Justice. I'm one of the prosecutors in this
8 case. To my immediate left is Mr. Ken Kratz.
9 He's a Calumet County District Attorney and
10 special prosecutor as well.

11 Thank you for coming in this afternoon.
12 The point of the afternoon session here is to
13 follow up on some of the information that you
14 provided in your questionnaire last Monday. And
15 that's where we'll begin.

16 Seems to me you have a few relationships
17 with which are of interest to the parties here.
18 And the Court has just advised us, we're under
19 the impression that your wife is an employee of
20 the Clerk of Court's Office?

21 A. Yes, a temporary employee.

22 Q. All right. And temporary at the current time as
23 I understand?

24 A. Yes.

25 Q. All right. And she previously worked at the

1 Clerk of Court's Office?

2 A. Yes.

3 Q. All right. Has she officially retired and is
4 just coming back to help out?

5 A. Correct.

6 Q. All right. Could you tell us when she retired?

7 A. Um, June of '05, I believe.

8 Q. June of '05. All right.

9 A. Yes.

10 Q. Okay. And how long did she work in the office;
11 do you recall?

12 A. 13 or 14 years.

13 Q. All right. Had she had other county employment
14 before she was in the Clerk's Office?

15 A. No.

16 Q. All right. And her current duties in the Clerk's
17 Office, if you know, are what?

18 A. Just the Clerk of Court.

19 Q. All right. Very good. And you said temporary,
20 is it for a period of time longer than the
21 expected length of this trial or is it ...

22 A. No, just about the six week period.

23 Q. Just to help out for the overload as a result of
24 the trial?

25 A. Right.

1 Q. Okay. More to the point, how well do you know
2 any of your wife's co-workers?

3 A. That was one of the questions I wanted to ask
4 about.

5 Q. All right.

6 A. I believe the question stated, do you personally
7 know, and then they went quite a lengthy list of
8 names.

9 Q. Right.

10 A. And that the word personally was, the more I
11 thought about it after I filled this out, I
12 wondered what they meant by personally.

13 Q. Okay.

14 A. I have been to parties with one or two
15 individuals on that list, like a graduation
16 party, a Christmas party, things of that nature.

17 Q. All right. Well, let's -- let's change the
18 adjective from personally or the -- and go to, of
19 the individuals in the office say, for instance,
20 do you know the woman here, Janet Bonin?

21 A. Yes.

22 Q. All right. Would you say that you are a friend,
23 a close friend, close acquaintance, casual
24 acquaintance; how would you describe your
25 knowledge of her?

1 A. Casual acquaintance.

2 Q. Okay.

3 A. By that I mean, once a year maybe I see her --

4 Q. All right.

5 A. -- out.

6 Q. In a setting other than the courthouse?

7 A. Right.

8 Q. All right. Who else in the office would you say

9 is in that category, casual acquaintance,

10 somebody that you would know?

11 A. Probably Mary Jo Murray.

12 Q. Mary Jo Murray?

13 A. Murray.

14 Q. Okay.

15 A. And under the same casual acquaintance.

16 Q. Sure. All right. Do you know the Clerk of

17 Court, Lynn Zigmunt?

18 A. About the same.

19 Q. Okay.

20 A. Acquaintance.

21 Q. Anyone else that you can think of that you have

22 at least some kind of casual relationship with?

23 A. Probably Brenda, she's been ... Brenda Smith.

24 Q. All right.

25 A. Actually, several of them, I mean they have all

1 been to the same Christmas party --

2 Q. Right.

3 A. -- or birthday or graduation party.

4 Q. Parties, right.

5 A. So, Nicole. I don't remember a lot of the other

6 names.

7 Q. All right. Are any of them -- Would you consider

8 any of them close friends, you know, somebody

9 that you see more often, more socially, than

10 these traditional Christmas gatherings or special

11 occasion events?

12 A. Brenda, we had a -- what you call a -- AA

13 meetings, alcohol --

14 Q. Right. Sure.

15 A. We used to gather, but we don't even do that any

16 more.

17 Q. All right.

18 A. That was like a once a month thing and we just

19 did that --

20 Q. Sure.

21 A. -- over the winter.

22 Q. Okay.

23 A. And we haven't done that this winter --

24 Q. All right.

25 A. So --

1 Q. Okay. Well, the reason we ask is, there's a
2 possibility that some of those individuals may
3 show up as witness in this case; it's still yet
4 to be determined if that occurs. And so the
5 question is, since your wife has worked in that
6 office for a number of years and is now
7 temporarily filling in, if that were to occur
8 would you have a problem, would you be
9 uncomfortable as a juror trying to assess the
10 credibility of these witnesses?

11 A. No.

12 Q. All right. You feel that you could evaluate
13 their testimony the same as you would any other
14 witness that might appear in the case?

15 A. Yes.

16 Q. All right. You feel pretty confident about that.

17 A. Yes.

18 Q. Even though your wife is now back working in the
19 office as a temporary clerk and should you be
20 selected as a juror in this case; do you have any
21 worries or concerns about the affect or any
22 feedback you would get from a verdict you reach,
23 whether it's a guilty verdict or a not guilty
24 verdict? Do you think that might cause some
25 problems at home, or any other issues for you and

1 your wife?

2 A. No, certainly not.

3 Q. All right. Okay. Now, there was one other
4 relationship that I wanted to clarify. In answer
5 to the question, do you know or are you
6 acquainted with any member of Steven Avery's
7 family or any of his relatives, you answered yes.
8 I think you said my wife's brother's wife is a
9 cousin. Would that be your sister-in-law is a
10 cousin of Mr. Avery?

11 A. My wife's sister-in-law.

12 Q. Your wife's sister --

13 A. Through marriage this is.

14 Q. Okay.

15 A. And it would be a distant cousin, like a third or
16 possibly a fourth --

17 Q. Okay.

18 A. -- cousin.

19 Q. You are sure that it's third or fourth degree
20 cousin?

21 A. Yeah.

22 Q. Okay. Not anything closer than that?

23 A. No.

24 Q. Do you have occasion at all to see the
25 sister-in-law at all?

1 A. Once a year maybe --

2 Q. All right.

3 A. -- Christmas time --

4 Q. All right.

5 A. -- possibly.

6 Q. Have you had any contact with her or any member
7 of her family since this case has grabbed the
8 headlines, as it were?

9 A. No.

10 Q. All right. The fact that you have this
11 relationship, does that make it uncomfortable for
12 you to be a juror in this case and to have to
13 render a verdict of either guilty or not guilty,
14 based on the evidence?

15 A. No.

16 Q. All right. You feel pretty confident that you
17 would be able to decide this case solely on the
18 evidence that's presented in the trial and
19 without deference to any association through
20 the -- your -- through marriage or through your
21 wife's work?

22 A. Yeah, that wouldn't have any impact on it.

23 Q. All right. And you are pretty confident of that?

24 A. Yes.

25 Q. All right. Okay. There's been a, as you are

1 probably aware, a fair amount of publicity about
2 this case, so I want to start with that. And
3 there's several questions of interest to both
4 parties, relative to the publicity. Now, when
5 you were asked the question in your
6 questionnaire, you indicated you haven't formed
7 any opinions based on the publicity; is that
8 correct?

9 A. That's correct.

10 Q. All right. And you say, have you discussed this
11 case at length with any other persons, you
12 answered yes. And in your explanation, you said
13 you have maintained that Mr. Avery could be
14 innocent; is that correct?

15 A. Yes.

16 Q. With whom would you have had that discussion?

17 A. Oh, my brothers and sisters and also on my wife's
18 side, her brothers and sisters.

19 Q. Okay. All right. So you have had some family
20 discussion regarding this particular case?

21 A. Yes.

22 Q. All right. In terms of that discussion, during
23 the course of it, was any of the expected or
24 anticipated evidence in this case part of the
25 discussion, the arguments, or the give and take?

1 A. What do you mean by expected?

2 Q. Well, for instance, when you discussed the case
3 with your brothers and sisters and your wife's
4 brothers and sisters, I would imagine, you know,
5 there would be some, well, I think he's guilty
6 because of X, Y and Z; somebody else say, well,
7 you know, I'm not so sure about that because of
8 A, B and C. I mean is that the kind of
9 discussion that you are having?

10 A. Mm-hmm.

11 Q. All right. So my question, then, to you, sir, is
12 what information do you have or that was
13 presented to you during the course of these
14 discussions; what kind of information did the
15 media provide you that was fueling the discussion
16 as it were?

17 A. That the evidence was found at the salvage yard,
18 the body, and it was in the burn barrel; there
19 was keys found in the trailer, that belonged to
20 the car, her car.

21 Q. Right. Any discussion regarding a fellow by the
22 name of Brendan Dassey and what he may or may not
23 have said as part of the family discussion?

24 A. Yes, his name was brought up. And it was just
25 kind of, yes, he could have been there; no, he

1 couldn't have been there. Just, nothing
2 definite. Nothing definitive. It was just ...

3 Q. All right. Was there any discussion from any of
4 the family members regarding the details of what
5 Mr. Dassey is reported to have described
6 happened?

7 A. If I remember right, just something said about,
8 he was physically there at the time it happened.

9 Q. All right. Do you recall any other details that
10 are attributed to Mr. Dassey's description of the
11 events?

12 A. None.

13 Q. All right. In terms of the coverage of this
14 case, did you recently receive a letter from
15 Judge Willis asking you to refrain from reading
16 and watching the news relative to this case?

17 A. Yes.

18 Q. All right. And have you been able to abide by
19 that?

20 A. Yes.

21 Q. What's the last thing you remember seeing, or in
22 the news -- or hearing about in the news,
23 regarding this case, before you stopped paying
24 attention altogether?

25 A. Just that the trial was going to take place this

1 week --

2 Q. All right.

3 A. -- as soon as they had the jurors picked.

4 Q. All right. So you haven't paid attention to any
5 of the recent news articles or any of the issues
6 that the lawyers have been arguing in court about
7 or any of that?

8 A. No.

9 Q. All right. And you are not familiar with any
10 discussion of any blood, or blood evidence, or
11 anything like that?

12 A. There was some vial, or blood vial found.

13 Q. Okay. What do you recall or remember about that?

14 A. It was supposedly tampered with.

15 Q. All right.

16 A. It was unsecured or in an unsecured area.

17 Q. All right. And do you have any recollection as
18 to where that area would be or any other details
19 about that?

20 A. I believe it was in the Clerk of Court Office.

21 Q. Okay. All right. And the fact that there's the
22 possibility of some evidence that's associated
23 with the police, where your wife works; is that
24 going to present any problems for you?

25 A. No.

1 Q. All right.

2 A. No, I believe that happened while she was not
3 employed there.

4 Q. All right. And what -- what do you believe
5 happened while she was not employed there?

6 A. I -- I don't know.

7 Q. Okay. I was just curious as to your choice of
8 words, when you said -- why you chose that choice
9 of words, in terms of whatever happened, or you
10 believe it happened when she wasn't employed
11 there. So I'm thinking that you must have
12 something in your head that something must have
13 happened?

14 A. Well, they said that blood had been tampered
15 with.

16 Q. Okay.

17 A. And I'm saying that must have happened sometime
18 prior to her going back there as a temporary.

19 Q. Okay.

20 A. That's all.

21 Q. Now, why do you say that?

22 A. I believe that evidence came out about -- it was
23 before she started there as a temporary. That
24 evidence must be a couple weeks old, for sure.

25 Q. All right.

1 A. And she just started working there this last
2 Monday.

3 Q. All right. Well, if it came to pass that the
4 evidence was in the possession of the Clerk's
5 Office for 10 years, would that change your
6 opinion and make it perhaps difficult for you to
7 sit on this case?

8 A. No.

9 Q. It would not?

10 A. It would not make it.

11 Q. All right. And why wouldn't it?

12 A. She didn't have accessibility to the sample.

13 Q. Okay.

14 A. So I feel it didn't affect her.

15 Q. All right. And how would you know that?

16 A. She told me that.

17 Q. All right.

18 ATTORNEY FALLON: Could I have a moment,
19 your Honor.

20 Q. (By Attorney Fallon)~ Just a couple more
21 questions. So I take it there's been at least
22 some discussion in your family, with your wife,
23 about this blood vial?

24 A. That was the only discussion --

25 Q. All right.

1 A. -- that she did not have accessibility to the
2 sample.

3 Q. Okay. Any other discussion as to who may have
4 had access to the blood vial?

5 A. I don't believe so.

6 Q. Are you reasonably sure or just nothing that
7 comes to your mind right now?

8 A. Nothing comes to my mind now.

9 Q. All right. Now, you indicated that -- that in
10 the discussions with the family members you
11 maintain that it's possible that Mr. Avery could
12 be innocent; is that correct?

13 A. That's correct.

14 Q. All right. And what was your thinking or how did
15 that come to pass?

16 A. Well, I believe every person is innocent until
17 proven guilty. And I will look at the evidence
18 presented and come up with the -- hopefully a
19 fair and just judgment on this.

20 Q. Okay. You feel pretty confident in your ability
21 to do that?

22 A. Yes.

23 Q. Okay. Also, I note from your questionnaire that
24 it looks like you had an encounter with an
25 individual who was not all that pleasant and was

1 attempting to fight with you; is that correct?

2 A. That's correct.

3 Q. And you made a complaint to the police
4 department?

5 A. Well, we were both taken into custody that
6 evening.

7 Q. All right.

8 A. And I never saw this person before in my life.
9 And in fact I tried avoiding him and when I
10 turned my back on him, he jumped me and that's
11 when the police showed up. It was right at the
12 intersection of Washington and 8th Street. So it
13 was a pretty prominent intersection in town.

14 Q. Sure.

15 A. And good thing they came along when they did
16 because they pulled him off of me and they kept
17 asking him what I done to make him want to fight
18 with me. And they asked -- they asked him that
19 three times and I wondered, does -- is there a
20 relationship there; why would they put it that
21 way.

22 Q. Mm-hmm.

23 A. And they asked me, do you know this person and
24 why do you want to fight with him. And I says, I
25 told you already, I don't want to fight with him.

1 I refused to fight. And when I turned my back,
2 that's when he jumped me --

3 Q. Mm-hmm.

4 A. -- and that's when you people showed up.

5 Q. Okay. So it was just happenstance that they
6 showed up right at that moment?

7 A. Right.

8 Q. Okay. And did you know the guy?

9 A. No, never saw him in my life.

10 Q. Never saw him before?

11 A. No.

12 Q. All right. So it was a mystery to everyone as to
13 why he decided to pick a fight with you?

14 A. Yes.

15 Q. Okay. And apparently there was no follow-up
16 report filed, or no charges filed, or any of that
17 sort?

18 A. No, the police said they would, after they
19 released us the next morning --

20 Q. Right.

21 A. -- they said that they would call to find out, or
22 to let us know if they are going to press charges
23 or not. And they never called.

24 Q. All right. Now, was that -- Did -- That other
25 guy had -- can you think of any reason, I mean,

1 did he have too much to drink? I mean, did he
2 mistake you for somebody else? Did -- Any idea?

3 A. I think he maybe thought my car should have been
4 going faster than what it was, because he was
5 right on my bumper.

6 Q. I see.

7 A. I had a '68 Camaro Rally Sport. It was a nice
8 looking vehicle.

9 Q. All right.

10 A. And he stayed right on my bumper. And it was
11 foolish of me to pull into the Pizza Garden
12 parking lot. I should have went right to the
13 police station.

14 Q. I see. So he was a traffic vigilante as we say.
15 All right.

16 A. Yeah, I couldn't shake him. I tried a couple --
17 going from north of town to the Pizza Garden,
18 which was right downtown. I tried a couple of
19 side streets and I couldn't shake him. I thought
20 I was in his way, you know.

21 Q. All right.

22 A. But he just kept right on me.

23 Q. Okay. Well, how did you feel about the fact that
24 the police didn't ask the D.A. to press charges?

25 A. I felt, at the time, that they didn't do their

1 job. But thinking back on it, I thought, well,
2 it was his word against my word and they just
3 came upon two people fighting, so I suppose I
4 could see their side of it too.

5 Q. All right. In retrospect, do you think it was
6 handled fairly or unfairly?

7 A. I would have to say fairly --

8 Q. All right.

9 A. -- just going by their evidence and what -- what
10 I told hem.

11 Q. All right. So, with the passage of time, you
12 have had the ability to reflect on it and have a
13 somewhat, I suspect, different perspective than
14 you had that night when it happened?

15 A. Right.

16 Q. Okay. All right. Well, the reason that's of
17 some importance to all of us here is that there's
18 going to be fair amount of testimony from law
19 enforcement officers of all sizes and shapes and
20 departments and what have you, police and sheriff
21 and the like. And one of the things as a juror
22 you will be asked to do is to evaluate the
23 credibility of witnesses.

24 And the Court will be instructing you
25 that you should evaluate the credibility, the

1 honesty, the believability of all of the
2 witnesses the same. In other words, just because
3 they are a police officer, or an expert witness,
4 or even a defendant, for that matter, you should
5 evaluate their testimony the same as you would
6 anyone else. Do you think you could follow that
7 instruction?

8 A. Yes, I do.

9 Q. All right. Is there any doubt in your mind,
10 based on this, you know, encounter with this
11 crazy guy that, you know, although you might have
12 wanted to see charges pressed years ago; is there
13 any way that would affect your ability to
14 evaluate the testimony of the officers the same
15 as you would any other witness?

16 A. No, that wouldn't affect it.

17 Q. All right. Now, apparently you have also had, I
18 take it, some good experiences with the Manitowoc
19 Sheriff's Department. You mentioned some work
20 they do with the fire department?

21 A. Yes.

22 Q. Have you an association with the fire department
23 at all?

24 A. No, I'm a volunteer fireman.

25 Q. Oh, you are a volunteer, that was what I was

1 getting at.

2 A. Yes.

3 Q. All right. So tell me about your encounters
4 working with the Sheriff's Department as a
5 volunteer fireman?

6 A. On certain accident scenes out in the country, we
7 would need traffic control. And at times they
8 would block intersections or block off parts of
9 the road, whatever we needed, when they had
10 personnel available to do that. But, now, most
11 of the time, it's just the fire departments
12 themselves that are doing the traffic control.

13 Q. I see. So when you -- So, did you have any
14 direct contact with members of the sheriff's
15 department for traffic control or firefighting
16 duties, as a volunteer.

17 A. I would have to say no.

18 Q. Okay. All right. But -- So your opinion or your
19 impression then comes from just your volunteering
20 and being on the scene. And it -- I take it, it
21 generally seemed to you that everything was
22 working smoothly and people were doing what they
23 were supposed to and getting along?

24 A. That's correct.

25 Q. Okay. Now, as a volunteer fireman, have you ever

1 participated, for instance, in any missing person
2 searches or anything like that?

3 A. A number of years ago there was a search in the
4 Town of Two Creeks, where I am a volunteer in, of
5 a missing person.

6 Q. In the town of -- I'm sorry?

7 A. Two Creeks.

8 Q. Two Creeks, okay. And what kind of role did you
9 have assisting in that?

10 A. We walked down the road, Highway 42, looking in
11 culverts for a possible body.

12 Q. Okay.

13 A. And places where a body could be dumped.

14 Q. Sure. Was there any -- was the person located at
15 all?

16 A. No.

17 Q. All right. How long were you involved in the
18 search?

19 A. Oh, part of an afternoon, I will say two, three
20 hours.

21 Q. All right. Were you part of a -- an overall team
22 or organized plan of searching, or were you just
23 more or less on your own?

24 A. Yes. It was through the fire department. It was
25 -- most of the department was involved.

1 Q. Okay. Who was coordinating the search, by the
2 way, overall; the sheriff or a local police, or
3 who was helping orchestrate the search, or was it
4 just some private citizens?

5 A. I believe it was under direction of the county
6 traffic department.

7 Q. County traffic department, okay.

8 A. They are the ones who page us out for any fire
9 calls or anything, so, I'm thinking that
10 direction would have had to come through them.

11 Q. Okay. Did you find that -- How did you like that
12 experience of participating in a missing person
13 search, only to find no person?

14 A. I was glad it turned out that way.

15 Q. All right. And why was that, almost afraid that
16 you would find somebody deceased?

17 A. Yeah. And wondered what the -- what the
18 condition would be --

19 Q. Right.

20 A. -- of that body.

21 Q. Now, in terms of the big picture perspective
22 here, was that person ever located, to your
23 knowledge?

24 A. I don't remember. That's quite a number of years
25 ago.

1 Q. Okay. Now, since this case, you might, if
2 selected as a juror, hear evidence that's how
3 this case started. The fact that you have
4 participated in one of those searches, does that
5 raise any question in your mind as to whether you
6 would be able to listen to the evidence in this
7 case and decide this strictly on what's presented
8 in this case?

9 A. That wouldn't bother me.

10 Q. Okay.

11 ATTORNEY FALLON: One moment.

12 Q. (By Attorney Fallon)~ I just have a couple last
13 questions. I see you served on a jury once
14 before.

15 A. Yes.

16 Q. Was that a -- a civil case or a criminal case?
17 And the reason I ask is you checked civil, but
18 you said you found a verdict of guilty, so I'm --
19 what kind of -- if you could tell us a little bit
20 about the case?

21 A. Yeah, I'm confused as far as civil or criminal,
22 it was a drunken driving charge.

23 Q. Oh, I see. Okay. All right. Well, that could
24 be either one. All right. So how long did the
25 trial last?

1 A. It was just one day.

2 Q. All right. And were you asked to make a
3 determination, based on reasonable doubt, or was
4 the burden for the prosecutor clear and
5 convincing evidence?

6 A. It was beyond a reasonable doubt.

7 Q. Okay. How long did the deliberations go? An
8 hour, two hours, three?

9 A. I'm going to say an hour.

10 Q. All right. Were you the foreperson?

11 A. No.

12 Q. Okay. Was there anything about the experience of
13 working with your peers, other community members,
14 in evaluating the evidence and debating the pros
15 and cons of each side's arguments; was there
16 anything about that experience that causes or --
17 any question in your mind as to whether you could
18 perform that role again, even in this case, where
19 the stakes are much higher?

20 A. No, that wouldn't bother me.

21 ATTORNEY FALLON: All right. I will pass
22 the juror for now.

23 THE COURT: Mr. Strang.

24 ATTORNEY STRANG: Thank you.

25 **VOIR DIRE EXAMINATION**

1 BY ATTORNEY STRANG:

2 Q. Good afternoon, Mr. Mohr.

3 A. Yes, good afternoon.

4 Q. I'm Dean Strang and this is Jerome Buting and
5 Steven Avery. We're the defense lawyers
6 defending Mr. Avery. Let me go to this incident
7 where the fellow jumped on you?

8 A. Okay.

9 Q. That was, I think you said that was right here;
10 it wound up at the corner of 8th and Washington?

11 A. Yes.

12 Q. Was it the Manitowoc Police Department who
13 happened on you?

14 A. Yes.

15 Q. It had nothing to do with the sheriff's
16 department?

17 A. Right.

18 Q. And if I under -- if I understood you correctly,
19 you come here today presuming Mr. Avery innocent?

20 A. Right.

21 Q. And you haven't made any further decision or
22 opinion about the case other than he, like anyone
23 charged with a crime, is presumed innocent?

24 A. Correct.

25 Q. What I -- What I need to know is that, then, if

1 you are asked in the end to be one of the people
2 who actually serve on the jury, that you would
3 consider any evidence that we offer just as you
4 would consider any evidence the State offers?

5 A. Right.

6 Q. That you would be willing to consider both sides?

7 A. Right.

8 Q. If we offer evidence?

9 A. Yeah.

10 Q. All right. You understand, first of all, that we
11 don't have any burden of proof, the accused in
12 this country has no burden to prove himself
13 innocent; rather the State or the government has
14 the burden to prove him guilty, beyond a
15 reasonable doubt?

16 A. Correct.

17 Q. And that's a rule you can follow?

18 A. Yup.

19 Q. However, if we would call witnesses for the
20 defense, maybe, for example, a witness to explain
21 why someone might confess to something he really
22 didn't do, if that became an issue in the case,
23 would you listen to that sort of testimony from
24 the defense, just as you would listen to the
25 State's testimony?

1 A. Yes.

2 Q. If we offered evidence tending to suggest that
3 law enforcement officers had a bias in the case,
4 or reasons to get out of line, cross a line,
5 would you at least listen to that evidence with
6 an open mind?

7 A. Yes.

8 Q. One of the things that's difficult in any
9 criminal case, both for the man or woman accused
10 and for the defense lawyers is to decide whether
11 the accused should testify in his own defense or
12 not testify. Do you understand that in this
13 country, a person accused of a crime has the
14 right to choose to do either; that is, to testify
15 or to decline to testify?

16 A. Yes.

17 Q. Is that a rule that you can live with if the
18 Court instructs you on it?

19 A. Yes.

20 Q. You can follow that?

21 A. Yes.

22 Q. And if Mr. Avery, with our advice, were to decide
23 to take the stand and testify, could you consider
24 his testimony just as that of any other witness?

25 A. Yes.

1 Q. You, of course, don't know, you can't know,
2 whether you would believe him or not believe him,
3 just like you couldn't know whether you would
4 believe or not believe any other witness?

5 A. That's correct.

6 Q. But you would hear him and consider the same
7 factors in deciding whether to believe him or
8 not?

9 A. Yes.

10 Q. Same with a police officer; regardless whether we
11 called the police officer or the State called
12 him?

13 A. Yes.

14 Q. What if Mr. Avery, again, on our advice, decided
15 not to testify, would you be able and willing,
16 you know, really to follow and embrace the rule
17 from the Court that the defendant's decision not
18 to testify is something you cannot consider as
19 any evidence of guilt and, in fact, cannot
20 consider at all in deciding whether the State has
21 proven him guilty beyond a reasonable doubt;
22 could you follow that rule?

23 A. Could you explain that again.

24 Q. It got long, I'm sorry. If he decides not to
25 testify --

1 A. Okay.

2 Q. -- in this trial, he does not take the witness
3 stand --

4 A. I wouldn't have a problem with that.

5 Q. -- could you follow a rule that says you can't
6 even consider it, cannot even consider that fact
7 in weighing the evidence and deciding your
8 verdict?

9 A. Yes, I could.

10 Q. Can you see, or do you agree, I guess I will ask
11 you, that the defendant faces the risk, if he
12 does testify, that people will think he's up
13 there going to say anything to try to save his
14 skin? Can you see how that might be a concern if
15 you are the defendant?

16 A. Yes, but I wouldn't -- that thought wouldn't have
17 entered my mind.

18 Q. Okay. Your mind, but you can see how it might
19 enter the accused's mind?

20 A. Right.

21 Q. And at the same time, can you see how the accused
22 might say, boy, if I don't testify, will the
23 jurors think I'm hiding something, or that I must
24 be guilty, otherwise I would get up and say I was
25 innocent? Can you see how he might -- he might

1 feel that way?

2 A. Mm-hmm.

3 Q. Yes, no?

4 A. Yes.

5 Q. Okay. But in the end, you are willing to live by
6 rules that say you can't speculate on those
7 reasons, you are just here to consider the
8 evidence and decide whether the State has proved
9 the case, beyond a reasonable doubt?

10 A. That's correct.

11 Q. Suppose that, at the end of all the evidence from
12 either side or both, you were left with the sense
13 that the defendant could be guilty, but that you
14 were not convinced of it, beyond a reasonable
15 doubt, and yet you didn't know who did kill this
16 young woman, if he didn't. Could you vote not
17 guilty if you just were not convinced, beyond a
18 reasonable doubt, that Mr. Avery was the one who
19 killed Teresa Halbach?

20 A. Yes, I could.

21 Q. And live with the uncertainty about who did it?

22 A. Yes.

23 ATTORNEY STRANG: That's all I have. Thank
24 you very much.

25 THE COURT: Anything else? If not, Mr.

1 Mohr, we'll have the Clerk escort you from the
2 courtroom at this time.

3 (Wherein the juror was excused.)

4 THE COURT: Counsel, is there a motion from
5 either party?

6 ATTORNEY FALLON: From the State there will
7 be, your Honor. I didn't move right away, I wanted
8 to hear Mr. Mohr's response to the rest of my
9 questions and to Mr. Strang's as well and think
10 about this. And I have come to the conclusion that
11 we believe that Mr. Mohr should be struck for cause
12 and would so move.

13 My concern is wholly related to the
14 potential that witnesses from the Clerk's Office
15 will be called to the stand in this case. I am
16 concerned by the fact that if he were selected as
17 a juror, he would have knowledge about the
18 workings of the office which may extend beyond
19 that which is introduced as evidence.

20 He's already had a discussion with his
21 wife regarding what she knows or does not know of
22 the existence of this vial of blood and whether
23 she had access to it. And based on what the
24 parties know, in terms of the circumstances of
25 the evidence, I'm not sure that he has all the

1 information.

2 Nonetheless, I think that what we have
3 here is an individual that -- I'm not sure if
4 it's best articulated as an objective bias or a
5 statutory bias, most likely objective bias for
6 his -- by his association with potential
7 witnesses. Admittedly, they are casual
8 acquaintances, but then again, his wife worked in
9 that office during much of the time in which that
10 vial of blood was part of a previous proceeding
11 and he's had those discussions. And quite
12 frankly, I think the possibility of -- of -- of
13 information extraneous to what is introduced is
14 too high to take that chance. And we move that
15 he be struck for cause.

16 THE COURT: Mr. Strang.

17 ATTORNEY STRANG: Thank you, your Honor.
18 There is not cause to strike Mr. Mohr. Let's go
19 back, for starters, to the case that Mr. Fallon
20 cited yesterday arising out of District 1, District
21 1 Court of Appeals, in which someone who actually
22 was an employee of the District Attorney's Office of
23 Milwaukee County, albeit in the Juvenile Section,
24 not downtown, herself served on a juror (sic).

25 And the law of Wisconsin was that that

1 was not cause for a strike, where she said that,
2 although employed by the same agency that was
3 prosecuting the criminal case, she could be fair
4 in the case. This is at least two steps removed
5 from that situation.

6 One, the Manitowoc County Clerk's Office
7 is not involved in this case, either as a
8 prosecuting party, a defending party, or an
9 investigating party.

10 Second, there is no claim by the
11 defense, certainly no claim by the State, of
12 which I'm aware, of any wrong doing by anyone in
13 the Clerk's Office to the extent that some member
14 of the Clerk's Office may be a witness in the
15 case. It would not be where his or her own
16 conduct is at issue at all. It would be to
17 establish a physical location of a box or a file
18 and what was known about it's condition if
19 anything.

20 So the casual acquaintance with Janet
21 Bonin, for example, who I think we have all
22 agreed we aren't going to call as a witness so
23 that she can continue to serve as the Clerk,
24 really would have no bearing at all on any claim,
25 defense, prosecution theory being offered in the

1 case.

2 And the familiarity with, let's say,
3 Lynn Zigmunt, who conceivably could be a witness,
4 a casual acquaintance, one time a year, maybe at
5 the Christmas party or the graduation party,
6 sounds to me ever so much like Jacqueline
7 Ungrodt's acquaintance with Mr. Kratz, the woman
8 who is married to the former Corporation Counsel
9 of Calumet County and sees Mr. Kratz annually at
10 the bar dinner, the bench bar dinner, whatever it
11 is.

12 Indeed, that sounds like a longer
13 standing annual renewal and more recently sharing
14 the same table over dinner during the pendency of
15 this case. It sounded like a closer connection
16 and that was not cause to strike Mrs. Ungrodt, in
17 the Court's view. So we're removed from that, I
18 think, considerably here with Mr. Mohr.

19 And I can't -- I can't think of any
20 other reason, nor have I heard one, that would be
21 offered to strike him for cause. So --

22 THE COURT: Let me help focus the
23 argument --

24 ATTORNEY STRANG: Sure.

25 THE COURT: -- for the parties a bit here.

1 Neither party is arguing, and I agree in terms of
2 subjective bias, it appears this would be a very
3 good juror. He seems to have a concept of what a
4 juror's duty is and be willing to fill it. And in
5 terms of familiarity with members of the Clerk's
6 Office, I'm not sure that that alone would give the
7 Court too much concern; although, I don't know what
8 evidence the parties intend to introduce.

9 What bothers me a bit is that because --
10 he mentioned in one answer that he spoke to his
11 wife and learned that she would not have access
12 to the -- to the disputed evidence, the blood
13 vial, that in the course of deliberations he may
14 know something about the operation of the Clerk's
15 Office that wasn't brought in in evidence, by
16 virtue of his wife having worked there. And
17 the -- if some juror asks a question, in the
18 course of their deliberations, the difficulty he
19 may have in disclosing, discussing, or taking
20 into consideration, just for his own
21 deliberations, knowledge about the operations of
22 that office that were not part of the evidence in
23 this case. That I view as a concern.

24 ATTORNEY STRANG: And here is why I think
25 it's not a concern. This Court was very clear in

1 it's written ruling on the admissibility of evidence
2 concerning the vial of blood that the only period of
3 time we're allowed to talk about is November 3,
4 November 4 and November 5, 2005.

5 Now, that's clearly a period of time
6 when his wife was not employed at the Clerk's
7 Office, either as a full-time person, because she
8 had retired some months earlier, or in the
9 temporary position that apparently she assumed
10 just -- I wasn't clear whether it was Monday,
11 February 5 or Monday, January 29, when he said
12 last Monday. But I took it as one or the other,
13 that she began her temporary employment here in
14 2007.

15 So given the limitation that the Court
16 has placed on evidence concerning possible access
17 to the blood vial, he just would not be in a
18 position to know anything from his wife.

19 THE COURT: Well, I understand that, but
20 what about the questions about how difficult it is
21 to get into the office, where those files are
22 typically kept, that type of thing. I mean, she
23 could have some background information that isn't
24 necessarily date specific that could --

25 And, again, I'm operating at a

1 disadvantage here; I don't know what evidence you
2 folks are going to be introducing. But it seems
3 to me that, my biggest concern, as I evaluate his
4 qualifications as a juror are, would be
5 information that he may possess that may be
6 difficult to point a finger to now, because
7 nobody knows the significance of it.

8 ATTORNEY STRANG: Well, that's right. And,
9 you know, the record we have, none of that was
10 brought out, but beyond that, you know, we had a
11 young woman yesterday whose boyfriend's aunt is
12 Kelli Tice with the sheriff's department. Now,
13 might she know something about the operation of the
14 Manitowoc Sheriff's Department that would cause her
15 to be considering that information in weighing
16 testimony about the operation of that department,
17 sure, but, you know, this is --

18 THE COURT: This is a little closer than
19 that, though, he's said he's already talked to her
20 about it, his wife, and she said that she didn't
21 have access to it.

22 ATTORNEY STRANG: She said that she had no
23 access to it, as I understood him, that's correct.

24 THE COURT: Yeah.

25 ATTORNEY STRANG: And I'm not saying it's a

1 perfect match. I'm just saying that we're going to
2 have these connections and we're going to have to
3 rely, in the end, on the instruction the Court will
4 give the jurors that they are to decide the case
5 only on the evidence before them.

6 I mean, goodness knows, we have been
7 concerned about that and up to this point the
8 Court hasn't been willing to do anything curative
9 beyond that. So I -- And, you know, I don't
10 think anything more would be necessary here.
11 This is someone who, at least I took him to be
12 comfortable following the rules, so to speak, as
13 the Court gives them.

14 THE COURT: Mr. Fallon.

15 ATTORNEY FALLON: Thank you. Just for the
16 record, the case to which I referred to the other
17 day and to which counsel refers again today is **State**
18 **vs. Dale Smith**, common spelling, 2006, Wisconsin
19 Opinion No. 74. It's a Supreme Court opinion.

20 I think I do see a difference between
21 the **Smith** case and the judicial -- or excuse me,
22 the administrative assistant who worked for the
23 District Attorney's Office out in juvenile court
24 who was then seated as a juror for a felony court
25 case downtown.

1 And the distinction is that she had no
2 other connection whatsoever with the case that
3 she sat as a juror on, other than through the
4 ranks, she worked for the same person as the
5 prosecutor, downtown. And the prosecutor, in
6 fact, if I recall correctly, did not know this
7 person well, if at all.

8 In the case at hand, we have a possible
9 juror here who knows several people in the
10 office. He has, again, as I said, asked
11 questions of his wife regarding this vial of
12 blood, which may or may not be introduced and may
13 or may not be a big factor or central focus of
14 the case. Its future remains to be seen.

15 But having said that, the Court made the
16 comments that I would make now, and that is,
17 there are other bits of information and that
18 includes access to the Clerk's Office who had --
19 who may or may not have had keys, who may or may
20 not have access to the cipher lock to get through
21 the second security door and the like.

22 And there's a variety of possible bits
23 of evidence which could be introduced, or for
24 whatever reason are omitted by the parties. And
25 that evidence, it may be omitted by error because

1 we overlooked it or there may be an intentional--
2 well, I don't want to ask that question.

3 And the possibility that that juror may
4 know the answer or could find out the answer,
5 raises a question relative to the possibility of
6 objective bias existing and/or developing during
7 the course of the trial. And that's why I think
8 it is different. And if we take the general
9 proviso of the *Lindell* case, I think the
10 appearance or the prospect of bias occurring is
11 at least real enough to justify an excuse for
12 cause. Thanks.

13 ATTORNEY STRANG: Well, although, by my eye
14 on the clock, Mr. Fallon's voir dire went well over
15 the 20 minutes the Court had described, the juror is
16 still here; I mean, we can -- we can ask these
17 questions. There's just nothing here suggesting
18 that he's got any extra knowledge of the procedures
19 of that office or any way to know what the access
20 was or what the procedures were --

21 THE COURT: Okay.

22 ATTORNEY STRANG: -- during the period of
23 time.

24 THE COURT: I think that's a valid
25 suggestion. I will note the defense that time

1 didn't come close to using their 20 minutes, so
2 that's a fair suggestion. Let's bring the juror
3 back in. I will give both parties an opportunity.

4 ATTORNEY STRANG: Does the Court want to
5 start.

6 THE COURT: I will let you start.

7 You may be seated Mr. Mohr. The parties
8 have a few more questions they would like to
9 address to you. I will let -- Mr. Strang, you
10 may continue.

11 **VOIR DIRE EXAMINATION**

12 BY ATTORNEY STRANG:

13 Q. Lucky you. Was your wife, Alice Mohr, employed
14 in any fashion at the Clerk of Court's Office
15 between November 3 and November 5, 2005?

16 A. Yes.

17 Q. I -- I'm sorry, I -- I understood you to say she
18 retired in June of 2005 was I wrong about that.

19 A. Maybe, Janet -- Can you help me with that, Janet?
20 I thought it was June 2005.

21 THE CLERK: I know the answer.

22 THE COURT: I'm told the Clerk knows the
23 answer. I don't know if the parties want that -- I
24 mean the juror --

25 ATTORNEY FALLON: I don't have any problem

1 with her providing the answer. We're just trying to
2 figure out the parameters of where we are.

3 THE COURT: It's not a question of a
4 witness at a trial so.

5 ATTORNEY STRANG: No, let's get the answer.

6 THE CLERK: No, she wasn't.

7 ATTORNEY STRANG: Okay. All right.

8 Q. (By The Court)~ Is that good enough for you?

9 A. Sure.

10 Q. Okay. Have you ever -- In connection with this
11 case, have you ever discussed with your wife the
12 specifics of who had access to what areas of the
13 Clerk's Office.

14 A. No.

15 Q. Was the discussion with her more simply that she
16 did not have access to whatever this file was
17 with the vial of blood?

18 A. Correct.

19 Q. Did she tell you anything at all about whether it
20 was possible or not possible for someone outside
21 the Clerk's Office to have obtained access to the
22 vial of blood between November 3 and November 5,
23 2005?

24 A. I don't remember if she did or not, if it was. I
25 don't know if it's possible.

1 Q. But in any event, I guess she wasn't working
2 there during those three days?

3 A. Which three days?

4 Q. November 3 to November 5, 2005.

5 A. Correct.

6 Q. And if -- if the Court instructs you, in the end,
7 if you serve on the jury, the Court instructs you
8 to decide this case only on the evidence you hear
9 in the courtroom, not anything you may know or
10 think you know from the media, or from your wife,
11 or from a neighbor, or any other source than
12 outside this courtroom; can you follow the
13 instruction scrupulously to decide this case only
14 on the evidence you heard in court?

15 A. Yes.

16 Q. Including if that evidence were to conflict with
17 something you think your wife might say if you
18 asked her; can you follow the Court's rule to
19 decide the case, only on the evidence you
20 actually hear in this courtroom?

21 A. Yes.

22 Q. Any question at all about that?

23 A. I wouldn't be asking my wife because if I would
24 be on the jury, I would be prohibited to talk to
25 her about it.

1 Q. And would you live with that rule too?

2 A. Yes.

3 Q. Thank you.

4 THE COURT: Mr. Fallon.

5 ATTORNEY FALLON: Thank you.

6 **VOIR DIRE EXAMINATION**

7 BY ATTORNEY FALLON:

8 Q. Mr. Mohr, when did you have the discussion with
9 your wife regarding the possibility of her having
10 access or not having access to the vial of blood?
11 When did that occur?

12 A. I'm not real good on dates here.

13 Q. Within the last month?

14 A. I would say yes.

15 Q. All right. Was there anyone else present other
16 than just the two of you?

17 A. No.

18 Q. As best you can, can you tell us what was
19 discussed. What did she tell you, everything
20 that you can recall of that conversation?

21 A. Just that the vial was in the office and that it
22 was in an unsecure area -- or maybe I picked that
23 up off the TV, I'm not sure now.

24 Q. Okay.

25 A. But that's all I remember.

1 Q. Okay. Did she describe to you how it was not
2 possible for her, or how she could not have had
3 access to the vial?

4 A. No.

5 Q. She just said, Bill, I didn't have any access to
6 it. Did you ask the question or did she
7 volunteer it to you?

8 A. She volunteered it to me.

9 Q. Okay. Any particular reason how that came up in
10 the conversation?

11 A. Probably since we heard it on the news.

12 Q. Okay. Do you recall what you heard on the news?

13 A. Just basically that, that it was a vial of blood,
14 old -- old sample of blood.

15 Q. Okay.

16 A. And that it had been tampered with. And I
17 believe the TV showed a security tape or
18 something that you could see was ripped or
19 something off of that sample.

20 Q. And how do you know -- Do you know if it's been
21 tampered with or is that just an impression you
22 have, or where does that come from?

23 A. Just took the media's word for it.

24 Q. Okay. Why would you take the media's word for
25 that?

1 A. That's the only source. And don't get me wrong,
2 I take everything that the media says with a
3 grain of salt.

4 Q. All right.

5 A. I don't necessarily believe it or not believe it.

6 Q. All right. So do you have an opinion right now
7 as to whether that sample was tampered?

8 A. No.

9 Q. All right. So you are just using that phrase
10 because that's how it was portrayed by the media?

11 A. Right.

12 Q. All right. So, it's your recollection that your
13 wife just volunteered that information?

14 A. Yes.

15 Q. Okay. One second. Where did your wife tell you
16 the vial was located, such that she did not have
17 access to it?

18 A. She just -- If I recall the words, it was in a
19 file. That's all she said.

20 Q. In a file.

21 A. In a file.

22 Q. So you don't know if it was in a secured or
23 unsecured area?

24 A. No, I don't.

25 Q. And if it's in an unsecure area, she would have

1 had access to it?

2 A. I suppose if she would have known that it was
3 there, maybe she didn't even know it was there.

4 I have no idea.

5 Q. All right. So you are just taking her at her
6 word when she says, I didn't have access to it?

7 A. Correct. Yeah. I don't know the office myself.
8 I don't know the layout, so I wouldn't even know
9 where it's stored. It was a surprise to me to
10 find out that something like that would be stored
11 in that office.

12 Q. Right.

13 ATTORNEY FALLON: That's all.

14 **VOIR DIRE EXAMINATION**

15 BY THE COURT:

16 Q. Mr. Mohr, do you recall getting the letter from
17 the Court a month or so ago notifying you about
18 your service in this trial and asking you not to
19 talk to anybody about it or watch any more news
20 media coverage?

21 A. Yes, I do.

22 Q. The letter?

23 A. Yes.

24 Q. Do you know if -- Did this discussion with your
25 wife; do you know if it happened before or after

1 you got the letter?

2 A. I really can't say for sure.

3 Q. Have you had any other discussions about this
4 case with your wife other than on that one
5 occasion.

6 A. No.

7 Q. And this question may have been asked already,
8 but just to clarify, did you, other than
9 remembering your wife's statement that she didn't
10 have access to this file, was there any other
11 discussion you had with her about this case and
12 the evidence in the Clerk's Office?

13 A. No.

14 THE COURT: All right. The Clerk will
15 escort you from the courtroom at this time.

16 (Wherein the juror was excused.)

17 THE COURT: Any further brief argument from
18 either party?

19 ATTORNEY FALLON: Quite frankly, I think
20 the responses helped the State both on this argument
21 and in -- with respect to the potential evidence of
22 this case. I think the information obtained --
23 possessed by Mr. Mohr is very helpful to the State
24 and it would be great to have him on the jury, quite
25 frankly. But I don't want to take a chance that

1 this conviction is reversed as a result of
2 information that he has that no other juror may
3 have.

4 And can you just possibly imagine the
5 discussion, let's just say, for instance, the
6 vial of blood was a central aspect of the case,
7 because we still don't know if it is. But let's
8 assume that it is. And let's assume there was a
9 question about who had access, or who would have
10 known where it was.

11 Can you imagine the discussion, I mean
12 after the arguments of counsel, and Mr. Mohr were
13 to say, well, geez, my wife works there and she
14 didn't even know where it was, how can we expect
15 one of these officers to perhaps have snuck in
16 there and gotten it.

17 I mean, it's powerful, great stuff,
18 helps us, but I don't want to take a chance of
19 this conviction being reversed because of a juror
20 has knowledge of the internal workings and the
21 viable possibilities or impossibilities of access
22 to that office. And as further evidence, he
23 can't separate right now whether it's in a secure
24 or unsecure area and he doesn't even know if he
25 got that from his wife or the media. In

1 fairness, this person should not sit as a juror.

2 THE COURT: Mr. Strang.

3 ATTORNEY STRANG: I disagree. I mean
4 there's no risk of the conviction being reversed on
5 this; we're the ones who are opposing the motion to
6 strike him for cause. And by the time -- Just if
7 the Court's rulings remain as they are and are not
8 reconsidered in any way, the jury in the end will
9 know a lot more from the evidence about where this
10 vial was, who may have had access to it, than
11 Mr. Mohr presently knows from the TV. And that,
12 what he knows from the television or the media,
13 sounds to me like more than he knows from Mrs. Mohr.

14 THE COURT: All right. The Court's
15 impression from Mr. Mohr when he came back is that
16 he does not remember -- well, he doesn't remember
17 much detail about what he was told. He doesn't
18 really remember whether the information he does
19 have, limited as it may be, came from his wife or
20 from the news media.

21 I -- I don't -- I don't believe he
22 claims or would claim to possess any specific
23 enough information that would impact this case
24 one way or another. He only had one discussion
25 with his wife and it appears to relate to just

1 her feelings, whether she had access to the
2 evidence.

3 And it does not appear to have been in
4 great detail, nor do I believe that it happened
5 after the Court's letter went out. It appears
6 to -- because it doesn't mention any testing of
7 the blood, but rather the existence of the blood
8 evidence, I believe that relates back to the
9 December hearing over in Chilton. So, I'm going
10 to accept Mr. Mohr as a juror in this case.

11 Counsel, because of the fact that we
12 were concerned about running short on jurors this
13 morning, they called some in slightly out of
14 order. I think these are jurors who would be
15 called in any event, so I'm looking at No. 66 as
16 the next juror to call, if you have got that
17 questionnaire ready. Because of the length of
18 time the jurors have been waiting.

19 ATTORNEY BUTING: So the other ones coming
20 up are not here yet?

21 THE COURT: No, they are here, but they got
22 here later than these. As a courtesy to the jurors.

23 The other thing I would note is, at the
24 break, I would like to address Juror 74, because
25 he falls into the same category, been here since

1 this morning; actually, I think it was earlier.
2 But let's take Juror 66, Mr. Pederson at this
3 time.

4 ATTORNEY STRANG: Let me -- Let me just
5 give the Court a heads up. We only grabbed the
6 questionnaires through No. 72, thinking we were safe
7 because only 12 were coming here.

8 THE COURT: Okay. We'll -- I will give you
9 a copy to look at at the break.

10 ATTORNEY BUTING: We have looked at 74
11 already, though.

12 THE COURT: You have?

13 ATTORNEY STRANG: Right, but --

14 ATTORNEY BUTING: We're ready for that one.

15 ATTORNEY STRANG: But in terms of being
16 ready, we --

17 THE COURT: I hope that's the last one.
18 But we'll take Juror 66 at this time.

19 Mr. Keehan, please raise your right hand
20 and the clerk will swear you in.

21 (Juror sworn.)

22 THE CLERK: Please be seated.

23 THE COURT: Mr. Keehan, you have already
24 filled out a questionnaire in this case, today we're
25 moving on to the next phase of jury selection which

1 is voir dire. The attorneys for the parties will
2 have a chance in a few minutes to ask you some
3 questions regarding the case.

4 Before we get to that, I want to let you
5 know that the jurors in this case will not be
6 sequestered. That means at the conclusion of
7 court proceedings each day the jurors will be
8 permitted to return home.

9 We're able to do that because of the
10 requirement that the jurors not learn anything
11 about this case from the media during the course
12 of the trial; either radio, television,
13 newspaper, internet, or anything else. And that
14 the jurors continue to be prohibited from
15 discussing the case with anyone, including other
16 jurors and members of their families during the
17 course of the trial.

18 Although the proceedings today are open,
19 no cameras are allowed in the courtroom during
20 voir dire and the media is prohibited from
21 disclosing the identity of jurors in reports of
22 these proceedings.

23 In addition, should you be selected to
24 serve as a juror, the cameras are not permitted
25 to show the jurors during the trial. In the

1 event you continue on in this case, you will be
2 notified in a day or two when you are to return
3 to court.

4 At this time, Mr. Fallon will ask you
5 some questions.

6 **VOIR DIRE EXAMINATION**

7 BY ATTORNEY FALLON:

8 Q. Good afternoon, sir.

9 A. Good afternoon.

10 Q. My name is Tom Fallon. I'm an Assistant Attorney
11 General with the Wisconsin Department of Justice.
12 I'm one of the prosecutors in this case. To my
13 immediate left is Mr. Ken Kratz, Calumet County
14 District Attorney and lead prosecutor in this
15 matter. Good afternoon and thank you for coming
16 back this afternoon.

17 Court and counsel, we have some
18 questions for you to follow up on some of the
19 information you provided in your questionnaire to
20 assist us in selecting a jury in this case.

21 I guess I would like to begin with, just
22 briefly, a little bit about your employment. How
23 long have you worked at your current paper
24 company?

25 A. 15 years.

1 Q. All right. And what duties have you performed
2 for the company?

3 A. I have been driving roll clamp truck for the last
4 11 years and then I was, like, general helping
5 between different jobs --

6 Q. Right.

7 A. -- wherever they needed me, until I took this job
8 that I'm on now.

9 Q. All right. All right. And one of the primary
10 purposes for inquiring about your work situation
11 is, as you have probably figured out from the
12 questionnaire and perhaps other sources, this may
13 be a rather lengthy trial.

14 A. Yeah.

15 Q. Might run six weeks?

16 A. Yeah.

17 Q. Is there any concern in your mind as to whether
18 you would be able to have sufficient income to
19 support yourself and your family if you were
20 selected as a jury -- juror during this time?

21 A. I don't think so. The only thing that would be
22 is because I run a small part-time business. We
23 would have weekends off, right?

24 Q. Right.

25 A. Okay. No, I wouldn't have no problem. My

1 company does pick up part of the -- of the money
2 for jury duty, so ...

3 Q. Okay. What kind of part time business do you run
4 on the weekends?

5 A. I chain saw carve part-time -- or everyday, I
6 should say. That's what I was doing this morning
7 when they called me.

8 Q. All right. I saw that from your questionnaire.
9 What kind of carvings do you do?

10 A. Basically everything you can think of. We have
11 done from bears, eagles, gnomes. The nativity
12 scene in Two Rivers by the park across from the
13 courthouse --

14 Q. Right.

15 A. -- I have done that.

16 Q. Okay.

17 A. The only other one would be along Memorial Drive,
18 that big bear by the Honey Pot and then the sign
19 I carved.

20 Q. All right. So you are pretty active with that
21 business?

22 A. Yeah, it's -- it's -- right now it's starting to
23 pick up again for spring and then into summer.
24 Fall, mostly is my busiest time.

25 Q. All right. Now is that the business that your

1 wife is involved in as well?

2 A. Yeah, she does most of the staining or painting
3 on it.

4 Q. Okay.

5 A. Yeah.

6 Q. Any other employees that might be dependent upon
7 you and your wife for that work, that you might
8 be letting down?

9 A. No, we just go by, basically by orders. People
10 call me. It's by word of mouth. No advertising,
11 no web pages or nothing like that, so ...

12 Q. Okay. Very well. Next thing I wanted to talk
13 about is your familiarity with some of the
14 potential witnesses in this particular case.
15 Apparently you recognize the names of Brendan and
16 Brian Dassey?

17 A. Yes. My -- I had noted on there too, that my son
18 went to school -- grade school at Reedsville.

19 Q. All right.

20 A. I don't know the exact date when it was. It was
21 -- God, I would have to say maybe third, second
22 grade, somewhere in that area.

23 Q. All right. And your son went to school with
24 which one?

25 A. Brandan (sic), actually, is the same age as my

1 son.

2 Q. Okay. All right. And how about Brian Dassey?

3 A. I wasn't quite sure on the age differences. I
4 know both boys did go to Reedsville at one time,
5 many, many years back. I -- Like I said, I don't
6 know for sure what year. I was thinking maybe it
7 was 15, 20, 17 years ago, something like that.

8 Q. Okay.

9 A. No, it would have to be less. It would have to
10 be maybe 10, maybe 12 years ago. I don't know
11 the exact date. I would have to ask my son. He
12 would know for sure, but I know it was grade
13 school.

14 Q. All right. Did you yourself have any
15 interactions with either Brendan or Brian?

16 A. No, never knew the kids.

17 Q. All right. Were they close friends of your son,
18 do you think?

19 A. No, no, he had them in maybe a class and that was
20 it.

21 Q. All right.

22 A. Like I said, he only knew him for maybe a year or
23 two and that was it.

24 Q. So, they weren't, like, close friends --

25 A. No.

1 Q. -- or acquaintances --

2 A. No.

3 Q. -- they just happened to be in the same
4 classroom?

5 A. Yeah, same class.

6 Q. All right. Well, since you happen to know them
7 and there's a possibility that one or both of
8 them may appear, it's still a very open question
9 as to that; the fact that they may appear as
10 witnesses in this particular case, would that
11 cause you any concern as to whether you could be
12 a juror in this case?

13 A. No.

14 Q. All right. Do you think you could evaluate their
15 testimony, their credibility, their
16 believability, their honesty, the same as you
17 would any other witness?

18 A. Yes.

19 Q. All right. As you are no doubt aware and from
20 some of the comments that you made in your
21 questionnaire, this case has received a pretty
22 fair amount of publicity?

23 A. Yes.

24 Q. All right. So we want to talk a little bit about
25 that, if we could. You indicated that you get

1 your news from a variety of sources; radio,
2 television, newspapers, neighbors, etcetera.
3 Given those sources, which one would you say
4 provides you with the greatest information
5 regarding this?

6 A. I would have to say the morning news. It's
7 basically I watch it for about an hour in the
8 morning until I get back outside; 6:30 get my kid
9 up for school, my son. And then it's probably
10 until about 7:30 when I flip it off, so ... And
11 then it's sporadic. It's when I'm here, while
12 I'm getting my son ready for school and getting
13 my stuff going for the day, so...

14 Q. So, it's on as background noise as it were --

15 A. Yeah, more or less. Yeah.

16 Q. -- for that first hour in the morning while
17 everybody is getting ready?

18 A. Yes.

19 Q. Okay. Do you read the newspapers regularly?

20 A. No, very seldom. It's maybe once or twice a
21 week. And if it is, it's at work and it's
22 usually a day late paper that we get --

23 Q. Okay.

24 A. -- that somebody just tosses on the table, so...

25 Q. Okay. So that's not a regular source of news for

1 you?

2 A. No. No. Usually weekend paper and that's about
3 it.

4 Q. All right. Weekend, Sunday paper?

5 A. Yeah, Sentinel, Press Gazette.

6 Q. Okay. Sentinel, meaning the Milwaukee Sentinel?

7 A. Yes, I'm sorry, yes, Milwaukee sentinel.

8 Q. And the Green Bay Press Gazette?

9 A. Yeah.

10 Q. Okay. Now, you also mentioned radio as a
11 possible source for your news. Tell us a little
12 bit about that, how much of that?

13 A. APL, I listen to, so it's very seldom. They have
14 a news thing in the morning, maybe five minutes.
15 And that's about it. And they really don't talk
16 a lot about it.

17 Q. So it's just a real encapsulated --

18 A. Yeah. Yeah.

19 Q. -- headline news for the day.

20 A. Yeah. I try to listen to more music than news,
21 so ...

22 Q. Okay. All right. All right. Given that -- And
23 how about your neighbors?

24 A. No, I don't. We live about a quarter mile off
25 the highway where I live now and our nearest

1 neighbor is about two miles away --

2 Q. All right.

3 A. So, there's -- And it's just an elderly women --
4 woman that we -- that is our neighbor, so ...

5 Q. And with this weather, I'm sure it's a long walk
6 up that driveway?

7 A. Oh, yeah. Just a little bit.

8 Q. All right. Based on that -- those sources of
9 information, what do you recall hearing about
10 this case? I mean, we're interested in knowing
11 how much you have heard about it.

12 What's your first -- Well, we'll start
13 with your first recollection of the case?

14 A. I knew two of the guys that were on the
15 Kellnersville Fire Department that were in the
16 search. But I really didn't talk to them. My
17 son goes to school with their kids. They had
18 said a few things about it.

19 Then, mostly from the newspaper,
20 television. When we would go out you talk to
21 people, people talked about it --

22 Q. Right.

23 A. -- stuff like that.

24 Q. So that's kind of the word of mouth source?

25 A. Yeah, it's -- that's basically the way it is.

1 Like at work, it's a lot of guys that work second
2 shift. We don't see a lot of news because
3 everybody is doing things in the morning before
4 you get to work. And then that's how, you sit
5 around the lunch table and a few people talk and
6 that's about it.

7 Q. All right.

8 A. So ...

9 Q. Have there ever been any extensive discussions
10 regarding the media coverage or the information
11 provided by the media?

12 A. No, just bits and pieces as people talk about it,
13 but that's about it.

14 Q. All right.

15 A. You know, other than, just general stuff, yeah.

16 Q. I'm sorry?

17 A. Just general stuff.

18 Q. All right.

19 A. Yeah.

20 Q. What's the next thing you remember after the
21 initial search and all that; what's the next
22 media bit of information you recall?

23 A. Just the arrest and stuff that, they had found
24 the body --

25 Q. Okay.

1 A. -- and things like of that nature.

2 Q. Okay. Any details stick out in your mind from
3 that earlier coverage?

4 A. No, not really. I really don't, anything on, you
5 know, top off my head, no, I can't think of
6 anything. Like I said, the way the finding and
7 then the arrest and stuff like that. But I
8 really didn't pay much attention to it. I'm just
9 finishing up building a log home, so I'm working
10 on that besides my other stuff, so, that's what
11 we've been doing.

12 Q. Just a little busy.

13 A. Yeah, I really don't pay a lot of attention to
14 the news --

15 Q. All right.

16 A. -- or politics, or the last election that's been,
17 so ...

18 Q. All right.

19 A. Try to turn it off so I don't have to listen to
20 it.

21 Q. All right. That's fair enough. There is one
22 thing that's of some interest, since your son
23 went to school with one or both of the Dassey
24 boys; did you pay any more attention to the case
25 when Mr. Dassey was arrested?

1 A. No, actually, I didn't even know about it until
2 my son had said that he had knew Brendan from
3 school. And we didn't even know he was at
4 Reedsville at that time.

5 Well, then close friends of ours that do
6 live in Reedsville, their -- would be his brother
7 -- friend of ours brother was on the school board
8 and then they were talking about it. And that
9 was the only thing that I knew about it. So I
10 never even knew that they were living in the area
11 at that time. So that was the only time that was
12 ever brought up.

13 Q. So you have -- you did not watch any of the media
14 coverage or -- regarding his arrest or any of his
15 involvement in the case?

16 A. No, just what people talk about at work. So I
17 did not -- I saw a little bit of it, but I really
18 didn't pay much attention to it.

19 Q. Okay. In terms of what people talked about at
20 work, can you recall any of that conversation at
21 this time?

22 A. No, just basically what they had heard on the
23 news, you know, like I said, when the arrest was
24 made and the other stuff that they had found, the
25 search that was going on. But that was about it,

1 the normal stuff people would usually talk about,
2 you know, when it's going on.

3 I mean, they are still talking about it
4 now, but like I said, I don't pay a lot of
5 attention to it. Because we take breaks at
6 different times. It's when you get a break or
7 when you can, that's when you go. And sometimes
8 there may be one person or there may be five in
9 there and there might be nobody in there at all,
10 so ...

11 Q. In the break room you are talking about?

12 A. Yes, in the break room, I'm sorry.

13 Q. Sure. Are there any details at all that stick in
14 your head from any of that break room
15 conversation?

16 A. When they had found the body I believe -- I know
17 there was a number of people that were talking
18 about it.

19 Q. Okay.

20 A. And then how they had found it. And then I know
21 a guy had said that he had talked to a friend or
22 a brother of his that was in the search and then
23 that, you know, that they were checking the cars
24 and stuff like that, but that was about it.

25 Q. All right. No other details as to how she died,

1 or what happened, or any of the those details,
2 none of that sticks in your head?

3 A. No, nothing. I know they had said something
4 about there was a rape, I believe.

5 Q. Okay.

6 A. But that was, you know ...

7 Q. That's only from what you heard in the break
8 room --

9 A. Yeah, that's only from what I heard, yeah, from
10 other guys talking and people, but nothing. I
11 don't remember reading anything about it. I know
12 I heard it on the TV. I know Channel 11 was
13 broadcasting it, but that was -- that was about
14 it.

15 Q. So it's all pretty fuzzy?

16 A. It's not fuzzy. I mean, I know what had happened
17 or what they had reported on TV.

18 Q. Well, that's what I'm trying to get at, if you
19 could tell us what you remember there?

20 A. I know they were searching for the body because
21 it's -- or searching for her. Then it went to
22 what I remember next is that they had found her
23 at the junkyard. And then the coverage on TV, I
24 know they had showed it from an aerial view,
25 roped off, where they found -- they thought they

1 found the body.

2 Q. Mm-hmm.

3 A. And then how they were coming up with some of the
4 evidence and stuff like that, so ... Like I
5 said, it was bits and pieces. It's not that I
6 was paying attention to it the whole time so ...

7 Q. Okay. All right. Well, we would like to ask you
8 some questions about, you know, as a result of
9 these various sources of information. You know
10 the break room chatter and some of the coverage
11 you saw on TV and the like. Right now, I mean,
12 as Mr. Avery sits here, do you have any opinion
13 as to whether you think he's guilty or not?

14 A. Yes, I do.

15 Q. Okay.

16 A. Yeah.

17 Q. All right. What is your opinion?

18 A. That he is probably guilty, yes.

19 Q. Probably?

20 A. Yeah, probably guilty. But like I said, we were
21 told by the Judge before and then in the letters,
22 that we have to keep an open mind and, you know,
23 until the evidence is brought in front --

24 Q. Right.

25 A. -- so...

1 Q. So that's just an impression you have based on
2 the break room chatter --

3 A. Yes.

4 Q. -- and what the media coverage is?

5 A. Yes. Yes.

6 Q. All right. Now, you -- Are you saying that's --
7 you have a real strong opinion on that, or that's
8 just the impression that is held by you or the
9 community?

10 A. Yeah, held by the community, the impression the
11 way people are talking.

12 Q. Right.

13 A. For me personally, I have no opinion right now,
14 you know.

15 Q. You don't know?

16 A. I don't know. I don't know the whole -- the
17 whole story. Like I said, I haven't been really
18 keeping up with everything. I do have other
19 things besides the TV, newspapers, so ...

20 Q. Right. So, in terms of whatever that information
21 -- or not whatever, but the information that you
22 have been exposed to; do you feel pretty
23 confident you can set that aside and follow the
24 Judge's advice and --

25 A. Yeah, I think so.

1 Q. -- if you were selected as a juror, you could
2 decide this case just based on what you hear in
3 the courtroom?

4 A. I think so, yes.

5 Q. All right. Now, you realize that Mr. Avery is
6 presumed innocent?

7 A. Yes.

8 Q. All right. And that he remains innocent unless
9 and until we can convince you with solid evidence
10 that he is guilty, beyond a reasonable doubt?

11 A. Yes.

12 Q. All right. And you accept that --

13 A. Yes.

14 Q. -- that he doesn't have to do anything?

15 A. No.

16 Q. All right.

17 A. Right.

18 Q. And that the only one with a burden of proof or
19 responsibility in this courtroom is the State?

20 A. Yes.

21 Q. All right. Okay.

22 ATTORNEY FALLON: I will pass the juror.

23 THE COURT: Mr. Strang.

24 ATTORNEY STRANG: Thank you.

25 VOIR DIRE EXAMINATION

1 BY ATTORNEY STRANG:

2 Q. And thank you. I want to start by asking you how
3 to pronounce your last name.

4 A. Keehan.

5 Q. Keehan?

6 A. Yes.

7 Q. Okay. And I'm Dean Strang, Jerome Buting, Steven
8 Avery. Jerry Buting and I are defending
9 Mr. Avery. Did I -- Did I catch, and I'm not
10 sure I did, but did I -- did I understand you
11 correctly that you work second shift at
12 Weyerhaeuser?

13 A. Yes, I do.

14 Q. So when does that shift run.

15 A. From 2 until 10. And usually by the time I get
16 home, it's 10:30. And then from 10:30, I have a
17 shop, so I work outside either on carvings or I'm
18 working on a Jeep right now, so ...

19 Q. You're not carving a jeep, presumably?

20 A. No, no, I'm doing fabrication work on it.

21 Q. Okay. You -- You asked a question about whether
22 we were going to go weekends?

23 A. Yeah.

24 Q. And I'm not so sure the lawyers really can answer
25 that.

1 A. Okay.

2 Q. It would be for the Court to answer, but let me
3 ask you a little bit about whether weekends would
4 change the balance for you on the hardship
5 question?

6 A. No, just that it would give me more time to do my
7 sideline job, Saturday it would be. I mean, I do
8 carve Saturdays now, because I work second. But
9 usually mornings is when I do carving to keep up
10 with my orders.

11 Q. Right. It was pretty clear, correct me if I'm
12 wrong --

13 A. Yeah.

14 Q. -- it was pretty clear to me that you produce
15 some income from these carvings.

16 A. Yes.

17 Q. It's not just pure hobby.

18 A. No. No. Actually, there was a meeting I had
19 gone to -- well, we were supposed to go to two
20 weeks ago in Wisconsin Dells. I do most of the
21 Chapters of Wisconsin Water Fowl. I don't know
22 if you're familiar with that. And then I sell
23 them at cost, carvings, and then they auction
24 them off at their banquets for --

25 Q. Sure.

1 A. -- money itself. And then I have a few churches
2 I have to do, Roncalli High School, I have an
3 order to do for their auction coming up, so ...

4 Q. So these are orders with firm delivery deadlines?

5 A. Yeah, I have April, March, I believe, is where I
6 have a few that I have. I have some stuff
7 already done and built up for inventory, so to
8 speak.

9 Q. Mm-hmm.

10 A. So ...

11 Q. Okay. I think this is going to be okay, but you
12 are the guy that has to say. And certainly at
13 the end of the case there would -- when all the
14 evidence is in and the lawyers, we have all had
15 our say, the jury gets the case to decide,
16 obviously?

17 A. Yeah.

18 Q. And at that point, it's entirely possible that,
19 you know, that it would not be an 8:30 to 5 kind
20 of --

21 A. Yeah, I understand that. Yeah.

22 Q. For however long the jury deliberations went on.

23 A. Right.

24 Q. Which none of us can control and you can't even
25 predict because that's up to the 12.

1 A. Yeah, I understand that. I'm just saying if
2 there wouldn't be working weekends kind of a --
3 So ...

4 Q. Okay. I mean --

5 A. Yeah.

6 Q. Look, there's no shame in saying this is a
7 problem.

8 A. Yeah.

9 Q. We just need to know now --

10 A. No, no.

11 Q. If it will --

12 A. It will not be a problem.

13 Q. Okay.

14 A. I will make it work. It is not a problem.

15 Q. All right. What high school does your son go to?

16 A. Reedsville.

17 Q. And you -- The connection to Brendan and Brian
18 Dassey is really just through your son?

19 A. Yes. And then, like I said, friends of ours that
20 do live in Reedsville and his brother was on the
21 school board at that time, they had mentioned it
22 a few times.

23 But like I said, I have never known
24 Brendan and never met Brendan or his brother.
25 Like I said, the only time I knew they were there

1 is when my son had said that Brendan had gone to
2 school with him, or he was in the same class.
3 And I don't know what grade it was, I really
4 didn't ask him, so ...

5 Q. What else did your son tell you about Brendan?

6 A. He was in the slow part of classes. He wasn't in
7 their class, but he had his own teacher --

8 Q. Mm-hmm.

9 A. -- with a few others kids so that -- He wasn't --
10 I don't know how to explain there. How do you
11 say that, not handicapped, but he was just a slow
12 learner.

13 Q. Right. Right.

14 A. So that was all that he had said about it. He
15 didn't know Brendan -- He knew Brendan, but he
16 didn't hang around with him. He wasn't friends
17 with him, so ...

18 Q. Okay. I mean, so did your son tell you that
19 Brendan was in some of our regular classes with
20 us --

21 A. Yes.

22 Q. -- and some of them he would be taken out --

23 A. Correct.

24 Q. -- with a small --

25 A. Yes.

1 Q. -- group of --

2 A. Yes.

3 Q. -- other kids?

4 A. Yeah.

5 Q. Just to help the slower learner?

6 A. Yes. Like I think it was Math class and -- I

7 don't what their class room was, but their was

8 two classes that he was in a different class for,

9 or with them, so ...

10 Q. Okay. All right. Anything else at all that he

11 told you about -- about, you know, more recent

12 stuff --

13 A. No.

14 Q. -- or what he thought about the allegations?

15 A. No, nothing.

16 Q. Okay. And in answering Mr. Fallon on something

17 when he was asking you about publicity after

18 Brendan got charged, you may remember that Steven

19 was charged back --

20 A. Yes.

21 Q. -- in November of 2005?

22 A. Yes.

23 Q. And then Brendan Dassey gets charged in -- right

24 at the beginning of March, 2006.

25 A. Yeah. I kind of remember a little bit on the TV

1 about it. But that was -- his involvement, I
2 really don't remember what was said about -- I
3 just know that he was arrested. My son had
4 brought it up and said that he went to school
5 with him, but that was basically about it.

6 Q. Okay. And you said you saw a little bit and I
7 understand you don't remember, necessarily, all
8 the details of that. But do you remember, was it
9 a news conference you saw, or a 6 o'clock news
10 report, or a court proceeding, since some of
11 those have been televised? Do you remember kind
12 of what it was you saw?

13 A. If it was anything, probably be in the morning
14 during the news at 6:30, 7:00. Just that they
15 were bringing him in to -- I remember seeing him
16 on TV, he was in handcuffs and then a jumper suit
17 and that they were taking him here at the
18 courthouse or the jail and then they were
19 transferring him to Sheboygan, I believe.

20 Q. Okay.

21 A. So that was about it and then that they were
22 charging him with helping out with the murder,
23 something to that affect.

24 Q. So probably more like a news report?

25 A. Yeah.

1 Q. Not so much a news conference?

2 A. No.

3 Q. Did you see Mr. Kratz, the gentleman closest to
4 you, in any, you know, news appearances or news
5 conferences?

6 A. No, seen his face on TV, but that was about it.

7 Q. Okay. All right. WAPL, that's your station so
8 to speak?

9 A. Yeah, I've listened to that and sometimes the
10 Razor on 94.

11 Q. Out of Milwaukee?

12 A. I believe so. I don't know for sure. It's
13 occasionally, my son flips my channels on me all
14 of the time so it's kind of whatever, if it gets
15 too head bang music, I have got to turn it off.

16 Q. Okay.

17 A. So ...

18 Q. And that was where I was going is WAPL is sort of
19 a classic rock --

20 A. Yes.

21 Q. -- or '70s rock --

22 A. Yeah.

23 Q. -- format?

24 A. Yeah, it's -- And that's occasionally I listen to
25 it in the morning.

1 Q. Are you a talk radio guy at all?

2 A. No, no, I really don't listen to any.

3 Q. Or call in?

4 A. No.

5 Q. Any of that?

6 A. No.

7 Q. Did your -- When your son told you this little
8 bit about Brendan, did he, that is your son, did
9 he, you know, sort of characterize this in any
10 way for you, like that he was surprised, or he
11 wasn't surprised, or he didn't think Brendan
12 could do something like this, or he could see
13 just how he could do it, any of that kind of
14 subjective stuff, if you know what I mean?

15 A. No, the only thing he had said, that he was
16 surprised that he seen Brendan on the TV and that
17 the kids at school were talking about it.

18 Q. Mm-hmm.

19 A. As to anything else, no he never said nothing.

20 Q. Are you -- You are, obviously, a member of the
21 paper workers, which is an AFL-CIO affiliate?

22 A. Yeah, we just joined steel workers through the
23 AFL-CIO.

24 Q. Okay. And you're in a union shop where you had
25 to join the union?

1 A. Yes, sir.

2 Q. Okay. And are you active in the union?

3 A. No, I'm not. Just a member, because where I

4 work, I have to be a member of the union.

5 Q. Right.

6 A. So that's -- that's ...

7 Q. You pay your dues?

8 A. That's right, yeah.

9 Q. Okay. Is that -- Is that something that you are

10 happy about, or sticks in your craw, or a little

11 of both depending on --

12 A. No, the union is good in some ways, and some ways

13 not, but the only thing is they just upped our

14 dues again, so, I'm not real happy about that.

15 Q. Okay. And you are no longer a foreman, but you

16 were for a time a foreman on the second shift?

17 A. Yes, that was at Valders' Stone and Marble when I

18 used to work there. I was there for nine and a

19 half years and I was a shift general foreman on

20 second, so ...

21 Q. Okay.

22 A. I didn't know if that pertained to anything so I

23 just wrote it down.

24 Q. Sure, that's good. And I'm not going to go

25 deeply into this, I have a specific reason for

1 asking this; I don't know what a clamp truck is?

2 A. In the paper mill I work it's -- we make
3 cardboard boxes, mostly tissue boxes, like you
4 see your Viva --

5 Q. Sure.

6 A. -- or stuff like that. And what I do is I bring
7 in 8,000 pound rolls of paper and it's a huge
8 forklift with a V-6 Chevy engine in it. And it
9 clamps the paper. And I bring it in, I lay it on
10 the floor, they run one off the roll and then I
11 take it back out.

12 Q. Okay. But it's an open cab --

13 A. Yes, yeah.

14 Q. -- and not something with a radio in it?

15 A. No, no. It's in the plant.

16 Q. Got it. I was -- I ended up a little bit
17 confused, which is probably me not you. But
18 on -- on opinions of Mr. Avery's guilt, or
19 possible, probable guilt, is this something that
20 you tend to think at this moment he's guilty or
21 your sense is that other people tend to think he
22 is guilty?

23 A. No. I kind of think he is, yes.

24 Q. Okay.

25 A. And a lot of people, I believe they do think he

1 is.

2 Q. And do you hear -- I mean, of the folks you are
3 hanging around with, do you hear anybody taking
4 the contrary position sort of saying, oh, you
5 know, I think -- I think he didn't do it or ...

6 A. Nothing -- nobody that I work with. My wife had
7 said that there were a few people she works with
8 in Green Bay that had talked about that they
9 figured he was set up in a way, so ...

10 Q. Where does Lois work?

11 A. De Leers Millwork in Green Bay. She's a cabinet
12 maker.

13 Q. Okay. So she's getting some chitty chat about
14 this too?

15 A. Yeah. Yeah. Yeah.

16 Q. And then you and she talk about it some.

17 A. Not too often, usually when I talk to her it's at
18 night, usually on my break I will call her from
19 the cell phone and then I talk to her. Because
20 by the time I get home, she's already in bed.

21 She's up at 4 to be at work at 5.

22 Q. She's a first shift?

23 A. Yeah, so we -- the only time we talk during the
24 week is on the phone or write a note.

25 Q. Okay. So where she's at, she tells you that

1 maybe there's some split opinion, where the
2 people you're around, they all think he is
3 guilty?

4 A. Yeah, pretty much. Yeah, Green Bay, they are
5 kind of different talk.

6 Q. Okay. Or apparently, that's your wife's
7 experience.

8 A. Yeah.

9 Q. And, you know, it looks like you don't have a
10 daughter or anything?

11 A. Yeah, she's -- actually goes to school in Fox
12 Valley and she works and lives in Fox -- in the
13 Fox Valley -- in Appleton I should say. She's
14 19.

15 Q. Oh, okay, so you do have --

16 A. Yeah, I have an older daughter and then my son is
17 17.

18 Q. Okay. I'm sorry, you didn't list the daughter,
19 is that just because she's out of the house?

20 A. Yeah, I didn't know if it pertained because she's
21 over 18, so I didn't know and she's pretty much
22 on her own.

23 Q. Sure. Sure. And I'm sorry, she's in the Fox
24 Valley somewhere?

25 A. Yeah, she goes to Fox Valley Tech. She lives in

1 Appleton, on the east side, so ...

2 Q. Right. She's a full-time student or something?

3 A. Full-time student and then she works part-time?

4 Q. And not married?

5 A. No, not yet, I hope.

6 Q. Well, I mean, so she's not that much younger than

7 Teresa Halbach was. And when this -- when this

8 all broke, so to speak, or came out, was this

9 part of your reaction as a dad?

10 A. More when she went missing, yeah, you know, it

11 kind of puts it in the back of your head, I would

12 believe, but, yeah, a little bit.

13 Q. Sure.

14 A. Yeah.

15 Q. Okay. So, I mean, I can ask this a number of

16 ways, but why would you not think Steven Avery is

17 guilty, given what everybody around you is saying

18 and the media and, you know, your daughter.

19 A. Why wouldn't I not think he is not guilty?

20 Q. Yeah, why would you not think he is guilty?

21 A. Yeah, I mean, automatically, it was the first

22 thought, but until I was given the letter by the

23 Judge that we should consider this a different

24 way, well, then it was, you know, trying to think

25 of it that way, so ...

1 Q. Right, I mean --

2 A. You know.

3 Q. -- everybody -- everybody gets to have their
4 opinion, but I guess if you are a juror, then you
5 have to take on a different role?

6 A. Yes, that's the way I had taken it. Yeah, and
7 then so trying to think of it as a different way,
8 I believe, so ...

9 Q. Yeah, and -- and I really -- I really do
10 appreciate that. I think that's -- that's right.
11 And by the same token, I need your -- I really
12 need your honesty in telling me whether you have
13 any questions about your ability to set aside,
14 you know, the perfectly understandable opinions
15 you have formed over a period of time, as you
16 come into the prospect, at least, of serving on
17 this jury. If you have any doubts about that,
18 you should tell us about those now.

19 A. If I have doubts of being on the jury or ...

20 Q. Your ability to set aside those opinions
21 entirely.

22 A. No, I think I can. Like I said, since before I
23 had not really thought about it until now, when
24 I'm actually -- I have to think about it. And I
25 have been thinking about it. And it's -- it's a

1 lot -- a lot of pressure, so to speak. But I
2 think I can if I was selected as a jury (sic).
3 So ...

4 Q. And where do you feel the pressure; what is
5 exactly the pressure you are feeling on that?

6 A. God, I don't know. It's more, if I'm going to be
7 on the jury and then having to -- if I have to,
8 can put somebody behind bars or, you know,
9 that -- that way, I guess.

10 Q. Sure.

11 A. I mean, in talking to people at work that have
12 found out that I am being selected for this,
13 telling me that, you know, we should be doing the
14 right thing. It's like, you know, I'm not
15 listening to what you guys are telling me, so
16 it's pretty much trying to keep an open mind --

17 Q. Okay.

18 A. -- is what I'm saying.

19 Q. Okay. But you are getting some pressure, in
20 other words --

21 A. Oh, yeah.

22 Q. -- from people saying --

23 A. Yes.

24 Q. -- convict him, do the right thing?

25 A. Oh, yeah. Oh yeah.

1 Q. Yeah.

2 A. Yes.

3 Q. So that's one kind of pressure you could be
4 feeling. Are you also feeling pressure about,
5 you know, stuffing down or quieting down the
6 little voice in your own head that says, gee, I
7 think -- I think he probably is guilty?

8 A. Yeah. Oh, yeah. Yeah.

9 Q. Okay. And I think I heard you say that in any
10 really serious case, you would probably feel a
11 lot of pressure about actually making a decision
12 that's a thumbs up or a thumbs down. It has a
13 huge impact on people.

14 A. Yeah, probably somewhat, yeah. Like I said, I
15 told them that it would be, as the evidence was
16 brought forth, I think then I could keep an open
17 mind on that, you know.

18 Q. Okay. So let's say you serve on the jury and you
19 go all the way through and, you know, you just
20 are not convinced, based on the evidence, that
21 the State has proven this, beyond a reasonable
22 doubt.

23 And I'm going to make it harder on you.
24 I'm going to ask you to assume that you say, you
25 know, he might have done it. Strang and Buting,

1 they didn't convince me that he didn't do it. He
2 might have done it, but I'm just not convinced,
3 beyond a reasonable doubt, that he did it. So,
4 under the law, I have to vote not guilty.

5 If you came to that, I don't know if you
6 will or won't, but if you did come to that, can
7 you take what you are going to get the next
8 morning or the next afternoon at work?

9 A. Yeah, I think so.

10 Q. Why?

11 A. It's something I would have to live with, not
12 them. So, I mean, whatever they say it's -- I
13 mean, I only work with these guys for eight
14 hours. It's not like I have to live with them,
15 so ... Yeah, I ...

16 Q. Well, they are going to make -- they might make
17 you feel like they have to live with it, if you
18 hear comments like, oh, you let him back out on
19 the street.

20 A. Mm-hmm.

21 Q. Can you do that?

22 A. Yeah, I don't see why not. Yeah. Yeah, I have
23 no problem with that.

24 Q. One thing that we'll have to decide at this
25 table, the three of us, is whether Mr. Avery

1 would testify in his own defense. And that's a
2 tough call because, you know, on the one hand, if
3 the defendant testifies, somebody could say,
4 well, of course he's going to get up and deny it,
5 you know, he's trying to save his skin. If he
6 decides not to testify, then people may say,
7 what's he got to hide.

8 (Loud noise.)

9 THE COURT: That's our signal that the
10 battery is going on the microphone. So, we'll take
11 a short break. It's very subtle.

12 Mr. Strang, you may continue.

13 ATTORNEY STRANG: Thank you.

14 Q. (By Attorney Strang)~ If you -- So, if he doesn't
15 testify, you know, has he -- has he got something
16 to hide or, you know, geez, if I was charged and
17 I didn't do it, I would get up and say that I
18 didn't do it. Are you likely to have either one
19 of those feelings or both?

20 A. I don't think so. Isn't it basically on what the
21 evidence you guys bring to us, that we have to
22 decide.

23 Q. What those guys bring.

24 A. I'm sorry, what they have to.

25 Q. Yeah. Now, that's not to say that we won't

1 cross-examine people or we may even call
2 witnesses. But the real bottom line on it is the
3 Judge, the Judge's instructions, which will be, I
4 think, to this effect: One, if Mr. Avery
5 testifies, you have to consider him like any
6 other witness. Consider the same things you
7 would in deciding whether you believe anyone
8 else.

9 A. Mm-hmm. Okay.

10 Q. Okay. He is just another witness. Or, two, I
11 think the Judge will tell you, in effect, if
12 Mr. Avery does not testify, you can't even
13 consider that. You can't speculate on why he
14 didn't. You can't consider it evidence of guilt.
15 You can't consider it at all in deciding whether
16 the State proved him guilty, beyond a reasonable
17 doubt. Can you follow those instructions?

18 A. Yes, I think I could.

19 Q. You may hear -- While we're talking about
20 witnesses, you may hear evidence tending to
21 suggest that police officers are not telling the
22 truth, one or more police officers are not
23 telling the truth in reports or on the witness
24 stand.

25 That can be a hard pill for people to

1 swallow. The police officers are sworn to uphold
2 the law. They generally do. They are people we
3 look up to often. But in the end, you have to
4 consider them as any other witness, too, and
5 weigh, do I believe this? What are the reasons?
6 Does this testimony make sense or not make sense
7 to me? Can you do that?

8 A. I think, so.

9 Q. Can you envision a circumstance in which a police
10 officer might lie under oath?

11 A. No, I don't.

12 Q. Can you envision a circumstance where any witness
13 might lie under oath?

14 A. Possibly, I don't know, it's ...

15 Q. Okay. And that's where I'm going at?

16 A. Yeah.

17 Q. Do you think the oath is so important to people
18 that no one ever violates an oath?

19 A. I would hope so. I would hope so, that it would
20 be.

21 Q. Well, we all hope so.

22 A. Yeah, but is it, I don't know.

23 Q. Okay. And other than if you have seen a robo cop
24 movie, have you ever met a police officer who
25 wasn't human?

1 A. No.

2 Q. Okay. So if the question really is, can you let
3 them be human too and weigh their testimony just
4 like you would weigh the testimony of any other
5 witness?

6 A. Yeah, I suppose I could.

7 Q. It sounded like -- If you have questions about
8 that, please just say so. There's no wrong
9 answer here.

10 A. No, I don't have any questions about that.
11 I'm -- I mean, if they swear the oath, then I'm
12 hoping that they are telling the truth.

13 Q. So am I.

14 A. Yes.

15 Q. But in the end, if testimony conflicts and you
16 have to make a choice ...

17 A. Can I make that choice?

18 Q. Yeah.

19 A. I think I can.

20 Q. You will probably hear a good deal of scientific
21 evidence in this case as well. And then you may
22 hear evidence about the absence of scientific
23 evidence. Is scientific evidence something that
24 you think you can pay attention to?

25 A. I think so, yes.

1 Q. How do you think it rates as compared to other
2 types of evidence, eyewitness testimony or other
3 witnesses?

4 A. I really can't answer that, I don't know the
5 difference. You mean, if somebody is telling me,
6 or if they are showing me on a slide show, is
7 that what you are saying?

8 Q. Yeah, it's a clumsy question. Do you put any
9 special stock in science as being especially
10 certain or one hundred percent black/white kind
11 of thing or no?

12 A. You mean like as in DNA evidence or stuff like
13 that?

14 Q. Sure.

15 A. I would think so, yes, it should be.

16 Q. Okay.

17 A. Yes.

18 Q. That is, if the science is good?

19 A. Yes. I would, yeah.

20 Q. But even if it's -- even if it's an expert who's
21 testifying to some specialized scientific
22 knowledge; do you understand that witness you
23 also have to weigh as just another witness?

24 A. Yes. Are you asking me to -- if I could
25 understand it, I would think so, yes.

1 Q. Okay. What do you know, if anything, about
2 Mr. Avery's background with being let out of
3 prison because of DNA showed that someone else
4 committed the crime he was convicted for?
5 A. It's what I know or what I heard?
6 Q. Heard.
7 A. What I heard. Basically a group of college
8 students had found something with the DNA, that's
9 about it. And that he was released after 18
10 years, I believe, or 13.
11 Q. Long time?
12 A. Yeah, it was a long time.
13 Q. Yes. Do you have any questions about whether he
14 really was innocent of that, it was a mistaken
15 conviction?
16 A. No, I have no questions about that.
17 Q. My last question, although I may ask you why, but
18 really my last question is, do you want to be on
19 this jury?
20 A. Kind of teetering, yes and no.
21 Q. So tell me why?
22 A. I don't know. It more is the length of the
23 trial, I believe, would be one of them. But I
24 don't know. I have never done it before, so I --
25 I'm kind of -- I'm kind of not sure if I want to

1 be. So ... It's hard to explain.

2 Q. Yeah, but you are doing all right. I mean, you
3 have never done it before, is that a pro or a
4 con?

5 A. Yeah. Yeah, I guess it would be a pro.

6 Q. Like a learning experience?

7 A. Yes. Yeah. People I have talked to that have
8 been on jury duty and said they were the same
9 way, but once they did it, it was -- it was a
10 good experience.

11 Q. Okay. And the length of the trial is something
12 new that I'm sort of hearing from you, I think.
13 That sounded like a minus.

14 A. No, just that it's -- I mean, I can do it. It's
15 not a problem, it's just that, you know, the
16 length of it, being off of work and stuff like
17 that, so, I mean, but it's not a problem. It's
18 -- If I have to, I have to; if I don't, I don't.
19 It's not ...

20 Q. Okay.

21 A. So, yeah, I don't know how else to explain it.
22 You know, it's just ...

23 Q. Nobody wants to be drafted?

24 A. Yeah. That's it, yeah, there you go. Yeah.

25 Q. Okay. Thanks.

VOIR DIRE EXAMINATION

1
2 BY THE COURT:

3 Q. Mr. Keehan, just a follow-up. I think I
4 understood most of your answers, but you
5 indicated that, based on what you have heard and
6 read so far in the media and from other people,
7 you think the defendant is guilty?

8 A. Yes.

9 Q. Based on what you --

10 A. Based on what I have heard and seen, yeah.

11 Q. But you also indicated that if you were selected
12 for the jury you could follow the Court's
13 instructions and base your decision only on the
14 evidence?

15 A. I believe I could, yes.

16 Q. You understand, if you're on the jury and we go
17 to trial, everybody starts from zero.

18 A. Yes.

19 Q. That's essentially what it means. Nothing's
20 proven, except the evidence that comes in at
21 trial, the State starts from scratch. You can
22 only base your decision on the evidence that
23 comes in. Even in light of what you heard before
24 today, do you feel that you can base your
25 decision on the evidence at trial if you're

1 selected to serve?

2 A. I think I could, yes.

3 THE COURT: All right. The Clerk will
4 escort you from the courtroom at this time.

5 (Wherein the juror was excused.)

6 THE COURT: Counsel, any motion from either
7 party?

8 ATTORNEY FALLON: None from the State.

9 ATTORNEY STRANG: I do. I do, and I
10 realize this is a tough one because it's -- so much
11 of it is -- is demeanor and a sense of ambivalence
12 of this gentleman. And I think you -- I would have
13 to cast it as subjective bias. I mean, he was
14 candid about telling us the opinion he is coming
15 into with. And I also took him at his word when he
16 said he, you know, he really would try to follow the
17 rules and set that aside.

18 So, you know, this is tough, because I
19 don't get to make the demeanor and the
20 credibility call, the Court does. But I -- I'm
21 left with a real sense of unease about the
22 understandable bias that he comes into.

23 And one thing that was -- that really
24 sort of crystalized this for me was his -- his
25 volunteered comment that he's getting some

1 pressure from co-workers saying, you got to do
2 the right thing here and convict this guy. I
3 mean, those weren't his exactly his words, but
4 that was -- that's what he -- he said in his own
5 words.

6 So this is one of these tough ones. I
7 understand that it's close and so much of it
8 turns on things that won't appear in black and
9 white on the paper. But I think there's cause to
10 let him go and we're hearing that with the
11 reluctance about the length of the trial and
12 weekends and feeling pressure in different ways.
13 So I'm going to move to strike him and I
14 understand why the State is not and not joining
15 that, but that's my motion.

16 THE COURT: All right. I also agree this
17 is a situation, as in many cases, where the Court's
18 decision is based on the demeanor of the witness.
19 However, I come to a different conclusion than the
20 defense did. I did ask a follow-up question or two
21 because I was concerned, based on the witness'
22 statement -- or the juror's statements, which I
23 believe were quite honest and forthright.

24 He frankly admitted, based on what he's
25 read and heard so far, essentially, if he had to

1 say something today, he would say, based on what
2 he knows, that the defendant is guilty. But he
3 also seemed to express a clear understanding of
4 the fact that if selected as a juror he would
5 have to set those opinions aside. I believe he
6 can.

7 He did not go into extensive detail of
8 any reasons why I think he could not set his
9 opinions aside; that is, he hasn't been following
10 the case so closely that his -- his mind is made
11 up. I also sat back and took notice when he gave
12 the answer to the question about, well, I, you
13 know, get pressure from my co-workers and they
14 are telling me to do the right thing.

15 But I was more impressed with his answer
16 where he said that, yes, if I didn't think the
17 State met its burden I would vote not guilty and
18 that's because I have to live with myself more
19 than I'm concerned about living with them.

20 That showed me that this is a juror who
21 I believe has the courage of his convictions and
22 I believe him when he says he can set his
23 opinions aside and follow the evidence at trial.
24 So I'm going to retain him as a juror in this
25 case.

1 ATTORNEY STRANG: Maybe the Court solved
2 the problem, but the Court was cutting in and out on
3 the microphone and it may have gotten better after
4 the Court adjusted the mike.

5 THE COURT: Yeah, I'm not sure, since I'm
6 not battery powered I'm not sure where the problem
7 is coming from. But I may have to take a look at
8 it.

9 At any rate, let's take our break at
10 this time. Counsel, what I would like you to do
11 is take a break and stop in at chambers at 3:15.
12 We still have a significant number of jurors back
13 there. I would like to cut some of them loose.
14 So we'll be talking about how far we're going to
15 go today.

16 ATTORNEY FALLON: Thank you.

17 (Recess taken.)

18 THE COURT: All right. At this time we're
19 back on the record, outside the presence of any
20 members of the jury panel. Mr. Strang, you
21 indicated you had a matter you wished to bring up.

22 ATTORNEY STRANG: I do, very briefly. I
23 wanted to clarify my comments about the demeanor of
24 Patrick Keehan, the last juror we spoke with. Just
25 out of fairness to him and -- and so that I really

1 am clear, it was a demeanor issue, but it was not
2 dishonesty I was hearing. It was discomfort that I
3 was hearing with him. I didn't have any honesty
4 issue at all. I just -- The ambivalence and the
5 discomfort was the demeanor point that I was
6 raising.

7 THE COURT: Okay. That's the way I
8 understood it as well.

9 We're dealing here with information from
10 jurors, rather than testimony. And I don't know
11 quite how to approach this, but I feel compelled
12 to tell the parties that there was a reference in
13 the statements from one of the jurors to AA
14 meetings and I only wish to point out to the
15 parties that AA doesn't always mean the first
16 thing that necessarily comes to your mind.

17 ATTORNEY STRANG: Oh, we need to know that.
18 Do we know what it does mean?

19 THE COURT: Well, Janet Bonin, the Clerk,
20 is the one that brought it to my attention. As we
21 know, I think some questions were asked of her
22 because she knew the juror. Janet, go ahead.

23 THE CLERK: They call them attitude
24 adjustment meetings, that's what the AA means.

25 ATTORNEY STRANG: Okay. That's great,

1 because we did jump to the -- not about Janet or
2 anybody else but ...

3 THE COURT: I don't think any questions
4 were asked that referred to Alcoholics Anonymous,
5 which is perhaps the most common usage. And so I
6 don't know at this point what to make of it or not
7 make of it, but it's also the type of information
8 that many times jurors would be asked to be kept
9 confidential.

10 ATTORNEY STRANG: Right.

11 THE COURT: And I don't want anybody to
12 draw any inferences from just the fact that letters
13 were used without any information about what it was
14 the juror was talking about. Obviously, at this
15 point, the juror is no longer here so there's
16 nothing further we can do about it.

17 ATTORNEY BUTING: Judge, speaking of
18 confidentiality, you realize that this next juror,
19 Question No. 75, he did answer yes. I don't know
20 that it's the kind of material or subject that you
21 would want or think should be discussed privately,
22 but he did ask.

23 THE COURT: All right. This is
24 Mr. Pederson.

25 ATTORNEY BUTING: Yes.

1 THE COURT: Let me briefly review that. I
2 think I can probably address his concern in my
3 opening comments as part of it. Thank you for
4 pointing that out to the Court, however.

5 All right. At this point we're going to
6 take one juror out of order who has been here
7 quite a while today. That is, Mr. Pederson,
8 Juror 66. So we will have him come in at this
9 time.

10 ATTORNEY KRATZ: I'll be examining him,
11 Judge.

12 THE COURT: Okay. Mr. Pederson, please
13 raise your right hand and the Clerk will administer
14 the oath to you.

15 (Juror sworn.)

16 THE CLERK: Please be seated.

17 THE COURT: Mr. Pederson, you pronounce
18 your name that way?

19 MR. PEDERSON: Yes.

20 THE COURT: Mr. Pederson, you have already
21 filled out a written questionnaire in this case.
22 Today we're moving on to the next phase of the jury
23 selection process which is known as voir dire.

24 During this portion of the process, the
25 attorneys for the parties can ask you questions

1 in order to follow up on some of your answers in
2 your questionnaire that address your
3 qualifications to serve as a juror in this case.

4 Before we get to those questions, I have
5 some information to pass on to you. First of
6 all, the jurors selected in this case will not be
7 sequestered. That means that at the end of the
8 court proceedings every day the jurors will be
9 permitted to return home. The prohibition on any
10 exposure to news media accounts of the case will
11 continue.

12 That means that the jurors will not be
13 permitted to obtain information about the case
14 from any newspaper, television, radio, or
15 internet sources and the jurors will continue to
16 be required not to discuss the matter, including
17 with any other jurors or with any family members
18 during the course of the trial.

19 I can also tell you that although the
20 proceedings today are open to the public, during
21 voir dire we do not allow cameras in the
22 courtroom and the jurors are not permitted to be
23 photographed.

24 I can also tell you that the law does
25 not allow the media to identify jurors in news

1 reports of these matters. And also, should you
2 be selected as a juror in this case, cameras are
3 not permitted to show the faces of the jurors,
4 such that any individual jurors can be
5 identified.

6 If you are retained on the jury panel
7 after questioning today, you will receive a
8 telephone call in the next day or two notifying
9 you when to report back to court.

10 I note, before I allow Mr. Kratz to
11 begin questioning, in your answer to Question 75
12 of the questionnaire, you indicated matters that
13 you regarded as personal and I think they related
14 to your possible identification as a juror. I
15 hope I have identified your concerns.

16 MR. PEDERSON: Yes, you have.

17 THE COURT: Thank you. All right.

18 Mr. Kratz, you may proceed.

19 ATTORNEY KRATZ: Thank you.

20 **VOIR DIRE EXAMINATION**

21 BY ATTORNEY KRATZ:

22 Q. Mr. Pederson, as the Judge has eluded, my name is
23 Ken Kratz. I'm the Calumet County D.A. and the
24 special prosecutor in this case, lead counsel.
25 Seated with me this afternoon is Tom Fallon. He

1 is an Assistant Attorney General who will be
2 helping not only in this process, but through the
3 presentation of the case. I would like to
4 welcome you for this part of the process.

5 Mr. Pederson, you have filled out a
6 lengthy questionnaire and we do have some
7 follow-up questions on that questionnaire. I
8 understand, based upon your response, that you
9 have learned quite a bit about this case through
10 various sources. Let me ask you first, would you
11 say that most of your news comes from radio, or
12 internet, or TV, or what source?

13 A. Yeah, I haven't followed it very closely. I have
14 seen headlines in some newspapers and there was
15 one article I skimmed in a newspaper. And I have
16 seen some headlines on TV and I have heard a few
17 things on the radio.

18 Q. When you say you haven't followed it very
19 closely; do you mean lately you haven't or even
20 back from when this case first started?

21 A. Even back. I can tell you the facts I know or --
22 well, shouldn't be considered facts at this
23 point, but I can tell you what I think I know.

24 Q. At least the news reports, what it is that you
25 have heard from news reports, why don't you go

1 ahead and start there and we'll have some
2 follow-ups.

3 A. Well, what I heard reported was that the body was
4 found on Mr. Avery's property. And I read some
5 comments Mr. Avery made about his nephew. And
6 there was a headline or something to the effect
7 of -- well, there was something about a vial of
8 blood and that's about what I know.

9 Q. All right.

10 A. So ...

11 Q. Mr. Pederson, based upon those news reports, your
12 questionnaire indicates that you may have formed
13 an opinion, or at least the media reports may
14 have directed you one way or another regarding
15 the guilt or innocence of Mr. Avery; is that
16 correct?

17 A. Yes, at this time I do have an opinion.

18 Q. And I think your opinion is that Mr. Avery may in
19 fact be guilty of the charges for which he faces;
20 is that correct?

21 A. Correct.

22 Q. You also indicate, however, in your
23 questionnaire, that if instructed by the Court to
24 set aside those opinions, which the Court
25 undoubtedly would do, that you believe that you

1 would be able to do that; is that still your
2 opinion today?

3 A. I believe I would be able do that.

4 Q. All right. Why don't we start there since that
5 is a extremely important topic. If the Judge
6 instructs you that that's what you have to do; in
7 other words, if the defendant sits in this
8 courtroom presumed innocent --

9 A. Correct.

10 Q. -- would you be able to follow that instruction?

11 A. I believe so.

12 Q. If the Judge instructs you that the only decision
13 that he wants any juror to make is based upon
14 information that comes from evidence, that is,
15 from witnesses, or documents, or other admitted
16 evidence in the case; would you be able to base
17 your decision solely upon that evidence and set
18 aside, perhaps, what you may have read, or what
19 you may have heard, or what you may have thought
20 that you knew coming into the case?

21 A. I believe so.

22 Q. All right. If the Judge instructs that you must
23 do that, Mr. Pederson, can you give us your
24 assurance that that is in fact what you will do
25 as a juror?

1 A. Yes.

2 Q. All right. You understand, I suspect, that the
3 difference between news reports, that is, what
4 the news may report some people may have said or
5 what may have been found and what actually might
6 be introduced in evidence of a case?

7 A. Correct, I do.

8 Q. Are you familiar with Mr. Avery himself, or his
9 history, or his connection with something called
10 the Project Innocence in Wisconsin?

11 A. Well, I understand that he had been previously,
12 apparently, falsely accused and convicted. And
13 based on DNA evidence, he was exonerated
14 eventually.

15 Q. All right.

16 A. So -- And I understand also that -- that there
17 was a civil case that he won against the County
18 of Manitowoc.

19 Q. All right. Would knowledge of those facts or, at
20 least what you think you know of Mr. Avery's
21 past, would that affect your decision making in
22 this case, or would you be able, again, to set
23 that aside and base your decision solely on the
24 evidence in this case?

25 A. I could set that aside.

1 Q. In your questionnaire, you mentioned that you
2 have some background in DNA evidence, at least
3 some general knowledge of it, and more
4 specifically in the area of chemistry; is that
5 right?

6 A. Well, yeah, I would say, perhaps some very
7 general knowledge. I have some knowledge of
8 chemistry. I'm by no means an expert, but I do
9 have some general knowledge.

10 Q. Let me ask you this, Mr. Pederson, do you hold an
11 opinion, at least generally, that DNA evidence is
12 reliable in what you have heard or what you have
13 come to understand about DNA analysis, that it
14 provide courts or provides other investigators a
15 good basis for making positive identifications?

16 A. Yes, I believe it's reliable. I understand it
17 is.

18 Q. In your questionnaire, you mention that you had
19 some knowledge of a woman by the name of Lori
20 Dassey. Can you tell me about that, please.

21 A. Well, I understand that she was the wife of
22 Mr. Avery and that's about all I know. And I
23 work with her.

24 Q. Do you work with her on a daily basis?

25 A. No.

1 Q. How well do you know Ms Dassey?

2 A. Just at a professional level. I have never
3 discussed anything about --

4 Q. Do you work in the same department or the same
5 area?

6 A. No, we work in separate buildings and in
7 different departments.

8 Q. Do you ever have occasion to speak with her
9 either about personal matters or anything other
10 than work related topics?

11 A. Not to date.

12 Q. Has Ms Dassey ever had an occasion to talk to you
13 either about Steven Avery, about her marriage, or
14 about any part of this case?

15 A. Not to date.

16 Q. If instructed by the Court, which I'm sure it
17 would occur if you were a juror in this case,
18 could you assure us that you would have no such
19 conversations with Ms Dassey, or anybody for that
20 matter, regarding the facts and circumstances
21 surrounding this case?

22 A. Yes, I could.

23 Q. Mr. Pederson, you appear to be the primary bread
24 winner within your home, would working for --
25 excuse me -- would serving for a six week trial

1 create a financial hardship for you or your
2 family?

3 A. No, it would not.

4 Q. Is there a reason for that?

5 A. Well, the policy at my place of employment, I
6 understand, is they would continue paying me my
7 nominal salary through the course of a jury
8 trial.

9 Q. All right. Have you had any contacts at all with
10 Manitowoc County law enforcement? I notice that
11 you mentioned there was a vandalism case that you
12 had reported. But did you -- have you had any
13 other more specific contacts with law enforcement
14 agencies?

15 A. There's one I forgot to mention on there, I have
16 a neighbor who is a police officer and I don't
17 know his name.

18 Q. Is he a Manitowoc County sheriff's deputy or work
19 for some municipality?

20 A. I believe he works for the Manitowoc City Police,
21 I believe.

22 Q. All right. Have you had any discussions with
23 your neighbor about this case or about the facts
24 or circumstances surrounding this case?

25 A. No, I have not.

1 Q. You say that you have an overall positive opinion
2 of the job that the Manitowoc County law
3 enforcement community is doing?

4 A. Yes, I do. I have no reason to not have that, I
5 guess.

6 Q. Mr. Pederson, is there any reason that I may not
7 have asked you that you believe disqualifies you
8 to sit on this case, or anything that we haven't
9 asked either in writing or from me orally today,
10 that you believe we should know that would
11 disqualify you as a potential juror?

12 A. None that I can think of.

13 Q. All right.

14 ATTORNEY KRATZ: That's all the questions I
15 have of this particular juror, Judge. Thank you.

16 THE COURT: All right. Mr. Buting.

17 ATTORNEY BUTING: Yes, thank you, Judge.

18 **VOIR DIRE EXAMINATION**

19 BY ATTORNEY BUTING:

20 Q. Good afternoon.

21 A. Good afternoon.

22 Q. My name is Jerome Buting and I, along with Dean
23 Strang, are defending Steven Avery here today.

24 A. Mm-hmm.

25 Q. Okay. I have, first, some background questions,

1 if you don't mind. Do you have a degree in
2 engineering?

3 A. Yes.

4 Q. What kind of engineering?

5 A. Well, I have a degree in electrical engineering
6 and also a degree in physics.

7 Q. Okay. And both of those are from the University
8 of North Dakota?

9 A. Correct.

10 Q. And you have four children?

11 A. Yup.

12 Q. And your wife is not employed outside the home?

13 A. Correct.

14 Q. And you are not originally from this area; is
15 that right?

16 A. That's correct.

17 Q. You are from Missouri?

18 A. Well, I was born in Missouri and then I also
19 lived there during high school for two years.

20 Q. Your father move around; your family move around?

21 A. No, I moved to Missouri and lived with my
22 grandparents for -- there's family issues, so I
23 lived with my grandparents for two years --

24 Q. I see.

25 A. -- during high school.

1 Q. During high school?

2 A. Yup.

3 Q. And where were you before that?

4 A. Before that, I was in North Dakota.

5 Q. Okay. So you were born in Missouri, then grew up
6 mostly in North Dakota?

7 A. Born in Missouri and I understand about six
8 months of age we moved to Connecticut and then
9 when I was probably second grade, moved to North
10 Dakota.

11 Q. Okay.

12 A. So ...

13 Q. Missouri kind of has the nickname of the "show me
14 state", right?

15 A. Yeah.

16 Q. Did you live there long enough to adopt that
17 yourself, that motto?

18 A. I don't think so.

19 Q. Well, in this case, you are going to have to, if
20 you're a juror. You are going to have to adopt
21 that motto that the State has to show you.

22 A. Okay. I understand what you are saying.

23 Q. Okay.

24 A. They have the -- They -- The burden is upon them
25 to present the evidence is what you are saying.

1 Q. Right. Now, as long as we're talking about that,
2 the defense may or may not present any evidence.
3 You know, in any criminal trial, we could just
4 sit here and do nothing and let them fail to
5 convince you, beyond a reasonable doubt. We're
6 not going to do that here. I will let you know;
7 we're not going to just sit here. We will
8 cross-examine their witnesses and we'll probably
9 put on some of our own.

10 A. Okay.

11 Q. Maybe, maybe not.

12 A. Mm-hmm.

13 Q. But if we do that, if we do put on any witnesses
14 and do put on a defense, are you going to say to
15 us, show me that Mr. Avery is innocent?

16 A. No, that's -- Yeah, I can see where you are
17 going, that can be -- I can see where that could
18 be a tough distinction to draw.

19 Q. It is. It is kind of unnatural for jurors
20 because --

21 A. Right.

22 Q. And sometimes, you know, they teach defense
23 attorneys, sometimes the best defense is to put
24 on no defense, because it forces the jury to look
25 at the State's evidence and the State's evidence

1 only. And if they --

2 A. Mm-hmm.

3 Q. -- are unable to convince you, then that's it,
4 you don't do any weighing. Now, on the other
5 hand, when the defendant puts on any evidence,
6 the natural tendency is, you kind of weigh one
7 side against the other.

8 A. Right.

9 Q. And you say, well, which one is more believable,
10 or which one is more credible and that tends to
11 get jurors away from their real function which is
12 to first decide, has the State convinced me,
13 beyond a reasonable doubt. That's what you would
14 have to do here. And it's really, I think, kind
15 of an unnatural way of doing things and probably
16 for a scientist it's very unnatural. But do you
17 think you could do that?

18 A. I believe so.

19 Q. Along those lines -- might as well deal with this
20 right now --

21 A. Uh-huh.

22 Q. -- is the question of whether or not a defendant
23 testifies at a trial. And for some of the same
24 reasons attorneys -- defense attorneys may advise
25 their clients not to take the stand, because they

1 are concerned maybe that the jurors are going to
2 start thinking, well, has he convinced me that
3 he's innocent.

4 And that's a real risk. And so
5 sometimes, that's one reason maybe defense
6 attorneys say, don't put the client on. There's
7 other reasons, the concern that if a defendant
8 does testify that jurors may not listen to what
9 he says, they may not believe him or her because
10 after all, they are the defendant.

11 A. Mm-hmm.

12 Q. They got everything -- They have got reasons and
13 motives to lie, right? Can you understand that
14 concern?

15 A. Yes, I can, yup.

16 Q. But if you're selected for this jury, the Judge
17 will, I'm sure, instruct you that if the
18 defendant testifies, you have to take his
19 testimony just like any other witness. You have
20 to weigh his testimony the same way as anybody
21 else. You can't just discount his testimony
22 by -- because of his status as a defendant. Can
23 you do that?

24 A. Yes.

25 Q. And on the other hand, if he -- if he does not

1 testify, the Judge will also instruct you that
2 you cannot consider that in any way. You can't
3 speculate on why he didn't testify. You can't
4 hold it against him. You can't think he must
5 have had something to hide, or whatever. You
6 really have to put that completely out of your
7 mind.

8 A. I understand.

9 Q. Will that be hard for you to do? I mean, are you
10 the kind of person that likes to hear both sides?

11 A. Well, generally, I think I am the kind of person
12 that likes to hear both sides.

13 Q. I think most people are.

14 A. So ... Yup.

15 Q. So, again, it's kind of an unnatural thing that
16 we ask jurors to do.

17 A. Right.

18 Q. But it's based on hundreds of years of law and
19 practice. And there are very, very good reasons
20 for it. And if you are selected for the jury,
21 you have to promise -- you have to promise the
22 Court and the attorneys and everybody that you
23 really will follow that instruction; do you think
24 you can?

25 A. Yes.

1 Q. Okay.

2 A. I think I can. It's a -- Yup.

3 Q. It's something you really have to just keep in
4 your mind and, you know, whenever those other
5 thoughts come in, you have got to say, wait a
6 minute, I have to -- I'm not supposed to do that.
7 Okay?

8 A. Right.

9 Q. Now, as a scientist, I mean, you are familiar
10 with the scientific method, right?

11 A. Yes.

12 Q. Which is, among other things, involves testing,
13 replicating those tests, having a peer review of
14 those tests?

15 A. Yup.

16 Q. And that until somebody is able to do that, just
17 because someone may -- Well, strike that. Let me
18 ask it this way. Have you ever heard of junk
19 science?

20 A. Oh, yeah.

21 Q. Do you think there is a lot of that out there?

22 A. There is.

23 Q. What is -- In your mind, what is that?

24 A. Well, people posit theories and -- and they --
25 they may, you know, back it up with evidence, but

1 they really haven't tested it and it's not
2 repeatable. And, typically, when they do that,
3 the facts, or supposed facts, sometimes they are
4 facts and true, but you don't see the whole
5 picture.

6 So they are telling you facts and
7 framing them in a way that supports a theory.
8 And they are not showing you other things that
9 aren't consistent with that.

10 Q. Okay. And -- So when -- when a -- sometimes
11 actual scientists with degrees come forward and
12 have those opinions and express those --

13 A. Correct.

14 Q. -- opinions. And -- But you, as a scientist, can
15 recognize that they are not always true?

16 A. Yes.

17 Q. They are theories. They may be true, but until
18 they have been replicated and studied by others
19 and reported on, they may not be, right?

20 A. Mm-hmm.

21 Q. You have to say yes or no for the court reporter.

22 A. Yes.

23 Q. Okay. Now, forensic science is a little bit in a
24 world of its own when it comes to that. And I
25 wonder how much knowledge you have about forensic

1 science and how much has been tested and
2 replicated and how much is not. Do you have any
3 knowledge about that?

4 A. Very little.

5 Q. Okay.

6 A. I don't think I have much knowledge of that.

7 Q. Okay. Well, in this case, you may or may not
8 hear some challenges to the basis of opinions
9 that are presented. That is, not -- not
10 necessarily the underlying science, but maybe the
11 -- the interpretations, the conclusions that you
12 can draw from things. Okay? Is that something
13 you would be able to listen to and discriminate
14 and consider?

15 A. I believe so.

16 Q. If -- So if an expert testifies here in this
17 trial and expresses an opinion, because that
18 person is an expert or scientist at some level,
19 are you going to just accept it more than you
20 would any other opinion?

21 A. Not necessarily. Even in junk science, in the
22 press, there's experts with sometimes widely
23 differing opinions, even in real science for that
24 matter.

25 Q. Okay. And even in -- in forensic science, crime

1 labs, have you heard of problems where crime labs
2 have been shown not to be reliable results -- or
3 not to have reliable results?

4 A. I haven't heard of that, but I can imagine that
5 happening.

6 Q. Have you heard even the FBI lab was examined in a
7 number of instances because of problems that they
8 were having with reliability with their results?
9 Had you heard that?

10 A. I hadn't heard that.

11 Q. You hadn't, okay. You mentioned that DNA, you
12 believe DNA is -- is reliable, right?

13 A. Yeah, generally. Yup.

14 Q. Is it infallible?

15 A. No, it is not infallible.

16 Q. Okay. And more importantly, do you look beyond
17 just the result, or will you look beyond just the
18 result to find out how the result was obtained in
19 the scientific process?

20 A. Yeah. That's what you -- Yes.

21 Q. Okay. And you have probably heard garbage in
22 garbage out?

23 A. Yes.

24 Q. And you are familiar with that?

25 A. Yup.

1 Q. And so, for instance, if evidence is not
2 collected properly and it's contaminated right
3 then and there --

4 A. Mm-hmm.

5 Q. -- no matter what the result is later, it's
6 garbage in, it's going to be garbage out?

7 A. Yeah. Typically, yeah, that's the way it is.

8 Q. Okay.

9 A. So ...

10 Q. Do you follow protocols in your ...

11 A. Yes, I do.

12 Q. Okay.

13 A. In my place of employment --

14 Q. Yes.

15 A. -- I think you're ...

16 Q. Yes.

17 A. Yes.

18 Q. Scientific protocols that are set out for testing
19 or whatever?

20 A. Yeah, I think it would be fair to call them
21 scientific, yeah.

22 Q. Okay.

23 A. You could look at it that way.

24 Q. Well, are you familiar -- I mean, in general,
25 with laboratory or scientific tests, certain

1 protocols are followed, are designed to, you
2 know, through the process.

3 A. Yes.

4 Q. Yes. Okay. And if someone doesn't follow that
5 protocol, deviates from that protocol; is that
6 something you would consider in terms of whether
7 to accept the reliability of the results?

8 A. It is a reason to question the reliability of the
9 results, yes.

10 Q. Okay. Do you ever watch CSI shows, those kinds
11 of things?

12 A. No.

13 Q. Cold Case, or any of those?

14 A. Uh-uh. I have seen -- I don't know if I have
15 even seen a whole episode, but I have seen them
16 on -- seen them on television. I don't even know
17 if I have sat through a whole episode, but ...

18 Q. Okay. All right. Let me switch here for a
19 minute, topics entirely, and go back to something
20 that Mr. Kratz asked you. Your contact with Lori
21 Dassey, sounds like you haven't really talked
22 personally with her about her marriage or her
23 relationship with Mr. Avery?

24 A. No, I haven't.

25 Q. Have you heard talk around the plant or, you

1 know, of other people maybe who have?

2 A. Yes, I have.

3 Q. And have you heard any negative things about that
4 relationship or about Mr. Avery?

5 A. Yes, I have.

6 Q. Could you please tell us what kinds of things you
7 have heard.

8 A. Well, I heard that she was divorced from him
9 because -- well, the words I heard were to the
10 effect that he wasn't a very nice individual.
11 That's what I remember hearing.

12 Q. Do you remember any details about what
13 allegations perhaps were made?

14 A. Yeah, actually there was -- recently I was
15 walking by a cubicle at my office and they were
16 chatting about the case. There's a number of
17 people who were up for jury duty where I work, or
18 potential jurors.

19 Q. Yeah, we have noticed that, seems to be a
20 productive pool, but go ahead.

21 A. Anyway, but -- but one thing I did overhear was
22 that he had sent some kind of threats or
23 something when he was incarcerated or something
24 to that affect.

25 Q. Were those other people who were -- who had also

1 gotten, you know, a summons like you and were
2 going to be in the pool?

3 A. No, they weren't. As far as I know, they weren't
4 people who had gotten summons.

5 Q. You -- You know people who have gone through
6 messy divorces?

7 A. Yeah.

8 Q. Do you know sometimes a lot of negative,
9 bitter --

10 A. Yeah.

11 Q. -- talk goes on?

12 A. Yeah.

13 Q. And can you imagine that someone who is wrongly
14 convicted and imprisoned and then also taken away
15 from his wife and kids and has his visitation cut
16 off might have some pretty strong feelings?

17 A. I can.

18 Q. Might even say some pretty nasty things.

19 A. Yeah, I can understand that.

20 Q. Would you be able to put -- put -- set aside any
21 of those -- any information you may have heard
22 outside of court about whatever bitterness or,
23 you know, nasty things there might have been in
24 that relationship?

25 A. Yes.

1 Q. And not let it influence your verdict at all
2 here?

3 A. Yes.

4 Q. Okay. And did anybody at the place where you
5 work, do they know that you were also one of the
6 ones who had gotten the summons?

7 A. Yes.

8 Q. And did anybody come up to you and talk to you
9 about it or ask you any questions?

10 A. Yeah, they have -- they have -- they have asked
11 me questions and mostly with regard to where they
12 are at in the jury selection process. Mostly
13 about that.

14 Q. Has anybody tried to talk to you about the case
15 or the facts?

16 A. Um, yeah, people have kind of ribbed me about it.
17 And I walked away a few times when I felt like it
18 was getting -- you know, things were being said
19 that I shouldn't hear.

20 Q. Sure.

21 A. Because I'm --

22 Q. When --

23 A. A potential juror.

24 Q. -- you say ribbed you, that's kind of like ...

25 A. Rib. Ribbed.

1 Q. Okay.

2 A. Like prod me, joke around kind of.

3 Q. What kind of things were they saying?

4 A. Well, some people would, you know, joke around
5 and say I'm going to let him off. Other people
6 would say go in there and tell them you're going
7 to hang him and you will get off the jury pool
8 and things like this, so ...

9 Q. So, you're getting some advice on how to get out
10 of this --

11 A. Ha, ha, ha, yeah.

12 Q. -- responsibility. Did any -- Did you take any
13 of that to heart?

14 A. No.

15 Q. Any concerns that no matter which way your
16 verdict is that maybe when you come back that you
17 might be -- you might get more ribbing or
18 something more serious, that people will be angry
19 at you if you voted one way as opposed to
20 another?

21 A. Well, that's crossed my mind. It's crossed my
22 mind. I haven't been terribly concerned about it
23 but, you know, I mean, it's a potential
24 ramification for a juror.

25 Q. Sure, in a high publicity case like this

1 especially, right?

2 A. Right.

3 Q. And do you think that you would be more likely to
4 get those kinds of comments if you returned a not
5 guilty verdict, than if you returned a guilty
6 verdict?

7 A. I think if I return a not guilty verdict, I may
8 be more likely to get those comments; that's my
9 opinion.

10 Q. And how does that make you feel, then, in terms
11 of whether you can really be a fair and honest
12 jury -- juror in this case?

13 A. Well, I believe I can be an honest juror in this
14 case. If I return a not guilty verdict and get
15 flak, then, I'd probably get kind of upset. But,
16 I mean, I -- I don't think it will influence my
17 decision.

18 Q. Can you ensure us, not just that you don't think;
19 can you say, I promise it's not going to
20 influence?

21 A. Yes, I can. I promise.

22 Q. Okay.

23 A. It won't influence my decision.

24 Q. Because you will have to live with it one way or
25 the other, they won't.

1 A. That's correct.

2 Q. Okay. You also mentioned some knowledge about
3 Mr. Avery's wrongful conviction. I think you
4 used the word, apparently he was wrongly
5 convicted; was there any doubt in your mind that
6 he was --

7 A. Well, based on what was said in the press, it's
8 pretty obvious he was wrongfully convicted.

9 Q. Right.

10 A. And that based on DNA evidence.

11 Q. Right.

12 A. I mean, that's the big thing there.

13 Q. And that it also matched someone else who was
14 actually a suspect all along?

15 A. Oh, I hadn't heard that part of it.

16 Q. You hadn't heard that part of it?

17 A. No.

18 Q. Okay.

19 A. But that's good that that -- anyway --

20 Q. Okay.

21 A. -- whatever. It's immaterial, I guess, in this
22 case, but ...

23 Q. It's immaterial unless there's some harboring --
24 unless you harbored some doubts like maybe he
25 somehow --

1 A. Okay.

2 Q. -- got off on a technicality or something like
3 that. If you had any doubts like that, then I
4 would like to know that.

5 A. Well, in my mind if the DNA evidence didn't match
6 Mr. Avery, then it's pretty certain that he
7 wasn't the perpetrator of the crime, so ...

8 Q. Okay.

9 THE COURT: Mr. Buting, you are going to
10 have to wrap it up.

11 Q. Well, I -- I really appreciate your candor, sir,
12 but there is something that is a little bit
13 concerning and that's mainly that you -- what you
14 wrote in your questionnaire, that at this time I
15 believe he's guilty, but I don't know this beyond
16 a reasonable doubt; is that still the way you
17 feel?

18 A. Yes.

19 Q. You see, if you're selected as a juror here,
20 you've got to -- you've got to change that
21 opinion. You can't have that opinion because you
22 have to presume that he is innocent --

23 A. Correct.

24 Q. -- right now?

25 A. I understand that.

1 Q. And that's different than saying I think he's
2 guilty, but I'm just not at a reasonable doubt
3 yet. You can't start off that way?

4 A. I understand, presumed innocent.

5 Q. And do you really think -- And, you know, I
6 really appreciate your honesty and the Court and
7 counsel does too. Do you really think that you
8 can put aside those feelings, because it's hard
9 for anybody to, and really give Mr. Avery the
10 benefit of the presumption of innocence, if you
11 are selected as a juror?

12 A. Yes.

13 THE COURT: All right. Mr. Pederson, at
14 this time I'm going to have the Clerk escort you
15 from the courtroom.

16 MR. PEDERSON: Okay. Thank you.

17 (Wherein the juror was excused.)

18 THE COURT: Are there any motions from
19 either party?

20 ATTORNEY KRATZ: Not from the State, your
21 Honor.

22 ATTORNEY BUTING: No motion, your Honor.

23 THE COURT: Okay. All right. Mr. Pederson
24 will be in the jury panel. Next is Mr. Dao.

25 Please raise your right hand, Mr. Dao.

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(Juror sworn.)

THE CLERK: Please be seated.

THE COURT: Mr. Dao, you are welcome to keep your jacket on if you wish, but if you want to take it off, you can as well.

Mr. Dao, you have already completed a written questionnaire in this case. Today we're moving on to the next phase of jury selection which is the voir dire process.

Each of the attorneys will have an opportunity to ask you some questions, most of them will probably be follow-ups to information that you gave on your written questionnaire.

Before we get to that point, I want you to be aware of a few things. First of all, the jury in this case will not be sequestered during the trial. That means that at the end of the trial proceedings each day, the jurors will be permitted to return home for the evening and then report back the next day for jury service.

The Court will continue the prohibition on learning anything about the case through the news media. That means that jurors cannot listen to reports on the radio, read things in the newspaper, watch television, check the internet,

1 or do anything like that to get information about
2 the case during the trial. And the jurors are
3 also not allowed to talk about the case with my
4 one, including other jurors or members of their
5 families.

6 The proceedings today are open to the
7 public, but we do not allow cameras in the
8 courtroom during voir dire, so the news media is
9 not here to film you. In addition, members of
10 the media cannot use your name in their reports
11 of the proceedings in this case. And, finally,
12 if you are selected as a juror, the cameras in
13 the courtroom at that time will not be permitted
14 to show the faces of the jurors.

15 If you are retained as a juror after the
16 questioning today, you will be given a telephone
17 call in the next day or two to let you know when
18 to report back to court.

19 Will it be Mr. Kratz or Mr. Fallon? Mr.
20 Fallon, you may proceed.

21 **VOIR DIRE EXAMINATION**

22 BY ATTORNEY FALLON:

23 Q. Good afternoon, sir. How are you?

24 A. Good afternoon.

25 Q. Could do you pronounce your name for us?

1 A. Hoang.

2 Q. And you're -- Very good. Mr. Hoang?

3 A. Yes.

4 Q. Very good. My name is Tom Fallon. I'm an
5 Assistant Attorney General. I work for the State
6 of Wisconsin in Madison. And I'm one of
7 prosecutors, that's one of the persons attempting
8 to prove this gentleman's guilt, Mr. Avery.

9 Working with me, right to my left, is
10 Mr. Kratz. He's the District Attorney in the
11 nearby county, Calumet County. And he is also
12 the lead special prosecutor in this matter. So,
13 again, good afternoon and welcome.

14 This is part of our jury selection
15 process and the attorneys, myself and Mr. Kratz
16 and Mr. Strang and Mr. Buting have a few
17 questions to follow up on some of the information
18 you provided in the questionnaire.

19 I guess I would like to begin with your
20 questionnaire and ask you a question about your
21 comfort in participating in the process, since I
22 guess English is not your first language,
23 correct?

24 A. Correct.

25 Q. All right. Let me just first say that I -- I --

1 I thought your responses to the questions were --
2 were accurate. They made sense, so. We -- I
3 just wanted to explore your answer as to how
4 comfortable you are with English. All right?

5 A. Okay.

6 Q. How long have you been in our country?

7 A. Um, in May will be 13.

8 Q. 13 years?

9 A. Wait, hold on. Let me think, let's see. I came
10 in U.S. May 22, 1992, so, actually, going on 15
11 years.

12 Q. Fifteen years. All right. So you would have
13 been about 10 years old at the time.

14 A. Yes.

15 Q. All right. So your education has been here in
16 America?

17 A. Yes.

18 Q. All right. And how long have you been speaking
19 English pretty comfortably?

20 A. I would say starting, probably, junior high --

21 Q. All right.

22 A. -- and high school years.

23 Q. And how far, again, did you go in school, sir?

24 A. I went to LTC for a year I was going to finish
25 it, but I guess work kind of interfered with my

1 education, so I kind of stop awhile.

2 Q. All right. So you take a little break from
3 education to make some money to work?

4 A. Yeah.

5 Q. All right. What were you studying at Lake (sic)?

6 A. I study accounting.

7 Q. Anything else in particular that struck you as
8 interesting?

9 A. Mostically (phonetic) just business, computer,
10 technology, things like that.

11 Q. Very good. Were you doing good in school?

12 A. I would say somewhat.

13 Q. Very good. Now, at any point in the proceedings
14 this afternoon, if I ask a question, or the
15 Judge, or either of Mr. Strang or Mr. Buting, if
16 whoever asks a question and you are not real sure
17 what we're asking, you know, please, tell us, you
18 know.

19 A. Okay.

20 Q. And believe me, it's more likely going to be our
21 fault than yours, the way the question is asked,
22 it could be just us lawyers goofing it up, so
23 bear with us. All right?

24 A. Okay.

25 Q. Okay. One of the important questions that we

1 wanted to ask you about is, this case has
2 received a great deal of publicity. Lots of news
3 coverage about it. And we just wanted to ask you
4 a few questions about what you may have seen on
5 the television, or heard on the radio, or read in
6 the newspaper. All right?

7 A. (No verbal answer.)

8 Q. I see you don't spend a lot of time watching the
9 news on television; is that...

10 A. No.

11 Q. All right. And would it be fair to say that you
12 get most of your information from the newspaper?

13 A. I would say somewhat --

14 Q. All right.

15 A. -- newspaper.

16 Q. Okay. And where else do you get, you know, some
17 news as to what's going on?

18 A. Sometime I run into, like, article on internet --

19 Q. All right.

20 A. -- if I got free time to search the web.

21 Q. Okay. So you do use -- you have a computer at
22 home?

23 A. No, I use the computer at work --

24 Q. All right.

25 A. -- or else library sometime.

1 Q. Okay. And what are some of the things that you
2 like to read up on, using the computer?

3 A. Honestly, anything, I guess.

4 Q. All right. Well, it could be sports; it might be
5 something about accounting or bookkeeping; it
6 might be news; world events; maybe what's going
7 on back in your home country; any of those
8 things?

9 A. I read, somewhat, sports, little bit news.

10 Q. Okay.

11 A. On how the world is going.

12 Q. Okay. Do you remember reading, for instance,
13 we'll start with the internet. Do you remember
14 reading anything about this case on the internet?

15 A. No, I haven't.

16 Q. All right. Have you seen anything on the
17 television at all about this case?

18 A. No.

19 Q. No, not any of the newscasts or anything?

20 A. Starting last week, we came here to do the
21 questionnaires. I did later, I went by my
22 girlfriend's workplace. And I accidentally saw,
23 like, you know, a title of article there, but I
24 didn't actually read it.

25 Q. Okay.

1 A. So other than that I have no idea.

2 Q. Okay. So you are not really familiar with any of
3 the facts about this case?

4 A. No.

5 Q. Okay. All right. Good. There's one other
6 question that I wanted to just touch base with
7 you on and that was toward the end of the
8 questionnaire. And then I will finish up with
9 some general principles of how our system works
10 to make sure that you understand those.

11 But one of the things that you did say
12 in the back of your questionnaire, in response to
13 the question, do you hold any religious or
14 philosophical beliefs that forbid you from
15 rendering judgment or, you know, basically
16 determining guilt or innocence; determining
17 whether somebody actually committed a crime or
18 not.

19 And you answered yes. And I was
20 wondering if you could explain a little bit
21 further your Buddhism and how that may impact
22 your ability to be a juror for us.

23 A. Well, in my family, we have very strong belief in
24 Buddhism.

25 Q. Okay.

1 A. And part of that is, like, we not supposed to
2 judge other people, or any objects, or person.

3 Q. Okay.

4 A. Also, it's always believe that if somebody done
5 something, we give them another chance to make it
6 right.

7 Q. Mm-hmm. Okay. Well, let me ask about that
8 judgment. Now, is that a judgment in the sense
9 of a spiritual judgment, or -- or does it also
10 include trying to decide whether something
11 happened or not, or whether somebody did
12 something or did not do something? Can you tell
13 me a little bit more about the judgment which is
14 contemplated in that Buddhist tenet.

15 A. From what I known and learned, mostically from
16 what we seen and what is appearing, somewhat
17 spiritual, but mostically, just, don't judge
18 anybody and until, you know, knowed all the
19 facts.

20 Q. Okay.

21 A. But majority of it, just -- just that we don't
22 judge anybody, no either they did something right
23 or wrong.

24 Q. Okay. Well, one of the purposes for a trial like
25 this in the United States is to try to determine

1 whether somebody actually committed a crime, did
2 something wrong. And that determination is
3 usually left to 12 people like yourself; 12
4 citizens who sit in the jury box and they listen
5 to all the evidence, as much facts as the
6 lawyers, that's lawyers here and at that table,
7 choose to present to the jurors. And they put
8 all that information in there and then the jury
9 decides whether the person committed the crime or
10 not?

11 A. Okay.

12 Q. Do you understand that?

13 A. Yes.

14 Q. Okay. Now, given that process, is this something
15 that you could do with your religious belief, or
16 do you think your Buddhism would say, you know,
17 that's not something we should do?

18 A. Honestly, from my point of view, I would think
19 it's more like probably not be able to do it.

20 Q. You don't think you would be able to do it?

21 A. No.

22 ATTORNEY FALLON: Okay. I'm going to stop
23 there.

24 THE COURT: Any questions from the defense?

25 ATTORNEY STRANG: I do.

1 VOIR DIRE EXAMINATION

2 BY ATTORNEY STRANG:

3 Q. I'm sorry. Mr. Hoang, my name is Dean Strang and
4 this is Jerome Buting and Steven Avery. We're
5 the defense. And let me just pick up where
6 Mr. Fallon left off with you, if that's all
7 right.

8 In your country, here in your country,
9 jurors are finders of facts. The Judge is the
10 finder of law, jurors are finders of facts, I
11 think you will learn. And 12 people in the end
12 will determine here what the facts are, at least
13 whether the State has proven, beyond a reasonable
14 doubt, the facts as it alleges. Is the process
15 of deciding facts something that you do in your
16 everyday life?

17 A. I will say, yes.

18 Q. I mean, in some sense, I suppose we all have to
19 decide facts, is the price on a gallon of orange
20 juice at Pick and Save lower than the price on
21 the orange juice at Copps, or something. But, of
22 course, the facts here are more serious than
23 that, but in the end, that's what you will be
24 asked to do, is to find facts and to apply a
25 burden of proof. And you understand that in your

1 country here, the burden of proof, to prove the
2 accused person guilty, beyond a reasonable doubt,
3 lies with the State, not with the defense?

4 A. I'm sorry.

5 Q. Sure, let me try it again. Mr. Avery is charged
6 with some crimes?

7 A. Okay.

8 Q. Right. Here, in America, in the country you and
9 I share, the government has the burden of proving
10 its accusations, beyond a reasonable doubt. They
11 have to prove him guilty under the facts and the
12 law. He does not have to prove himself innocent.
13 Is that something you understand and can accept?

14 A. Yes.

15 Q. If the Judge instructs you that the State has the
16 burden to prove guilt, beyond a reasonable doubt,
17 could you follow that instruction?

18 A. Yes.

19 Q. If the Court instructs you that, here in your
20 country, a person accused of a crime is presumed
21 to be innocent, unless and until the State can
22 prove him guilty, beyond a reasonable doubt;
23 could you follow that instruction?

24 A. Yes.

25 Q. In collaboration with 11 other jurors, if you

1 serve on this jury, do you think you can try to
2 reach a consensus about the facts and whether the
3 accusations here are proven, beyond a reasonable
4 doubt, or not?

5 A. I think I can.

6 Q. Can you follow the Judge's instruction on the law
7 of the United States of America and the State of
8 Wisconsin in doing that?

9 A. Yes.

10 Q. As he sits here now, do you have any opinion at
11 all about whether Mr. Avery is guilty or not
12 guilty of the charges he faces? Can you hold on
13 to that neutrality, that evenness, not having an
14 opinion one way or the other, until you have
15 heard all of the evidence in this case and have a
16 chance to decide the facts?

17 A. I think I can.

18 Q. Would you listen to any witnesses the State
19 called and give their testimony your fair and
20 honest attention?

21 A. Yes.

22 Q. And when one of the two defense lawyers asks
23 questions of those witnesses on
24 cross-examination, will you also listen to that
25 testimony and give it your fair and honest

1 consideration?

2 A. Yes.

3 Q. If we decide to present witnesses, and we don't
4 have to do that, but if we did decide to present
5 witnesses, would you listen to our witnesses and
6 give them the same fair and honest consideration
7 that you would give the State's witnesses?

8 A. Yes.

9 Q. Including when the prosecutors are asking
10 questions of our witnesses?

11 A. Yes.

12 Q. If Mr. Avery decides to testify, could you
13 consider him in the same way you would consider
14 every other witness in deciding the facts?

15 A. Yes.

16 Q. What if he decides not to testify, knowing that
17 he does not have to prove himself innocent and he
18 simply, with our advice, decides not to testify;
19 could you follow the Court's instruction that you
20 may not consider that as a mark against
21 Mr. Avery, or as any evidence of his guilt,
22 indeed, you may not consider that at all in
23 deciding the facts or whether the State has
24 proven guilt, beyond a reasonable doubt?

25 A. I guess I can do that.

1 Q. If this was asked, I apologize, and just stop me,
2 because I missed it if it was asked. But if you
3 had the privilege and the duty of serving on this
4 jury, which could go six weeks or something like
5 that, would it cause you or your family any
6 financial hardship so extreme that the Court
7 ought to consider that?

8 A. Honestly, at this time, yes, it would be.

9 Q. And tell me a little bit about that Mr. Hoang, if
10 you would?

11 A. Well, as of a year ago, I did had problem with
12 credit cards, so I filed bankruptcy and that.
13 And I still be able to keep my car and my truck
14 and continue payments on that. And plus, right
15 now, I been working at this one company for a
16 year.

17 Q. Yes.

18 A. Mostly all my earning incomes go toward the cars,
19 the insurance, somewhat toward the food and
20 rents. Right now I stay with my girlfriends.

21 Q. Mm-hmm.

22 A. And in household, she got three kids, so mostly
23 we're trying to help each other out.

24 Q. Right. And you work at Great Lakes Technical?

25 A. Technology.

1 Q. Technology. Do you know whether they will
2 continue to pay your salary if you are on jury
3 duty or not?

4 A. I did speak to the human resource about couple
5 days ago and notified them that I might be
6 selected for this. And according to the handbook
7 is only saying that it will pay up to eight hours
8 a day, or the max is 10 days. So that's why I
9 ask them, what happen if this trial take, you
10 know, six weeks or more. And I didn't hear any
11 answer back yet, according to that.

12 Q. Okay. They are checking on that or do you expect
13 an answer back on that?

14 A. Yeah, I expect an answer back from that.

15 Q. But you don't have it yet?

16 A. No.

17 Q. Okay. And it looks like you don't have a second
18 part-time job?

19 A. No.

20 Q. Okay.

21 ATTORNEY STRANG: Just one moment, if I
22 may, Mr. Hoang and your Honor.

23 Q. (By Attorney Strang)~ Do you have any way of
24 knowing when you may have an answer from your
25 employer on whether they would continue to pay

1 your -- your salary, beyond 10 days?

2 A. Honestly, I don't know, because the headquarters
3 in Plymouth, that's where everything is down
4 there. And here -- We have HR here, but
5 everything that I go to her, she have to confirm
6 with the owners down there.

7 Q. Okay. So, you don't know when --

8 A. So, honestly I don't know when.

9 Q. -- you'll have an answer. Okay. I think -- I
10 think those are all the questions I have. Thank
11 you.

12 A. Okay.

13 THE COURT: I have got a couple.

14 **VOIR DIRE EXAMINATION**

15 BY THE COURT:

16 Q. I want to refer back to your answers about how
17 your religion might affect your ability to serve
18 as a juror in this case.

19 A. Okay.

20 Q. If you are selected for the jury, you and the
21 other 11 jurors will have to determine whether
22 the State has proven, by facts beyond a
23 reasonable doubt, that the defendant is guilty of
24 this charge. And if the jury finds the State has
25 met its burden, then they are instructed to find

1 the defendant guilty. But if the jurors find
2 that the State has not met the burden, then they
3 find the defendant not guilty. Will your
4 religious beliefs affect your ability to make
5 that decision?

6 A. I would say no.

7 Q. That they won't affect it?

8 A. From what I learned, you know, we not supposed to
9 do it, but since I have been here long enough and
10 I did kind of understand somewhat the law, so I
11 would say I can put somewhat aside and make that
12 decision myself.

13 THE COURT: Okay. I just -- The legal
14 system doesn't make people give up their religious
15 beliefs in order to be jurors.

16 A. Okay.

17 Q. That's what I want to make sure of. I don't want
18 to be -- I want to make sure that the legal
19 system isn't putting pressure on you to do
20 something that you don't want to do. We -- The
21 legal system wants to honor your conscience and
22 let you exercise it as you wish.

23 Do you feel that in some way you would
24 have to sacrifice your beliefs, or do you just
25 feel comfortable that you could -- you could

1 serve as a juror and it wouldn't force you to
2 compromise your religious beliefs in any way?

3 A. Honestly, right now, I would say half and half.

4 Q. I can only ask you to give an honest answer. If
5 that's the most honest answer you have, I will
6 accept that answer. That's the way you feel?

7 A. Honestly, I don't think I should be able to do it
8 due to what I somewhat have very strong belief
9 in.

10 THE COURT: Okay. All right. Thank you.
11 The Clerk will escort you from the courtroom at this
12 time.

13 (Wherein the juror was excused.)

14 THE COURT: Is there a motion from either
15 party?

16 ATTORNEY FALLON: I think, reluctantly,
17 otherwise, I think the juror is suitable, although
18 the economic hardship issue developed by Mr. Strang
19 at the end is also a consideration. But there's
20 something about his approach that suggests to me he
21 really wants to participate in that process since
22 he's now in this country and wants to be part of the
23 system.

24 But I guess I was not entirely convinced
25 that he is comfortable with that, given his

1 religious upbringing. And I think we ought to
2 honor that. And even if he has some doubt and is
3 half and half, I just don't think we should put
4 him in that situation.

5 THE COURT: Mr. Strang.

6 ATTORNEY STRANG: This is a very, very
7 tough call. The Court's questions were appropriate.
8 And I understand the possible financial hardship
9 issue. And I understand the conscience issue. And
10 where civic duty collides with conscience, as people
11 express that through obligations to family, or
12 obligations to faith, it gets very tough.

13 And what I -- what I really would like
14 to do here and propose, is that the Court give
15 him an instruction that we want to hear, by
16 tomorrow night or by Friday morning, what the
17 employer's position is, if he's heard, he can't
18 force it, but if he's heard, on the wage
19 replacement issue.

20 If he has no assurance that he will be
21 paid beyond 10 days, or he's been told he won't
22 be, then I equally, reluctantly, would join the
23 motion and acknowledge he has to be struck for
24 cause. If the wage issue goes away, the hardship
25 issue goes away, I think it's worth asking him

1 there whether that affects the half and half
2 answer he gave on this conflict between duty and
3 privilege as a naturalized citizen of this
4 country to participate in the institutions of his
5 new country and honoring his faith. And so, in a
6 sense, I'm asking the Court to hold the motion in
7 abeyance; I may have to join it in the end.

8 THE COURT: I agree that if the only
9 outstanding issue were the financial issue I would
10 be inclined to consider the defense recommendation
11 here. But my primary concern and this is another
12 one of those demeanor cases, when Mr. Fallon
13 finished his questions the -- I got the impression
14 that the juror just felt uncomfortable and following
15 up what he wrote in his written questionnaire did
16 not feel he would be able to serve in this case.

17 When Mr. Strang asked a number of
18 questions specifically related to the duty of a
19 juror, he was giving answers that indicated he
20 could serve. And because of that ambiguity, I
21 asked him a few follow-up questions which I tried
22 to tailor as specifically I could to recognize
23 the balance between a juror who's interested in
24 serving with getting the opportunity to do so and
25 yet not asking a juror to sacrifice his religious

1 beliefs in order to be a juror.

2 I believe that the juror understood the
3 nature of the questions and my observation of his
4 demeanor suggested that he held, I guess, a
5 wrestling match in his own conscience with
6 whether or not he felt he could reconcile his
7 religious beliefs with the duties that would be
8 imposed upon a juror. And based on the last
9 answers that he gave, I felt that he genuinely
10 felt that his service as a juror would compromise
11 his religious beliefs.

12 He indicated he holds those near and
13 dear to him. And that serving as a juror could
14 well compromise those beliefs. And I think while
15 we ask a lot of jurors in terms of time, in terms
16 of attention and in terms of sacrifice, one thing
17 we don't ask them to do is give up religious
18 beliefs to serve as a juror. And for that
19 reason, I'm going to excuse this juror.

20 THE COURT: The next juror is Mr. Lafond.

21 All right. Mr. Lafond, please raise
22 your right hand and the clerk will administer the
23 oath.

24 (Juror sworn.)

25 THE CLERK: Please be seated.

1 THE COURT: Mr. Lafond, you have already
2 completed a written jury questionnaire in this case.
3 Today we're moving on to the next phase of jury
4 selection which is the voir dire process.

5 In a few minutes the attorneys will have
6 an opportunity to ask you some questions that
7 relate to your qualifications as a juror. Many
8 of them will follow up on answers that you gave
9 in your questionnaire.

10 Before we get to that, I can inform you
11 that the jury in this case will not be
12 sequestered. That means that members of the jury
13 will be permitted to return home each day after
14 court and then come back the next morning.

15 Because of that fact, we will continue
16 the requirement that the jurors not be exposed to
17 any information about this case from any news
18 media including newspapers, television, radio and
19 the internet. And that the jurors not converse
20 about the case with anyone including members of
21 their families or other jurors until it's time to
22 deliberate at the close of the case.

23 These proceedings today are open to the
24 public, but we do not permit cameras in the
25 courtroom during the voir dire process. And the

1 media is not allowed to disclose the names of
2 jurors in news reporting of this case.

3 In addition, if you are selected to
4 serve on the jury, cameras are not permitted to
5 film the jurors during the trial process itself.

6 If you remain as a juror after
7 questioning today, you will get telephone
8 instructions within the next day or two letting
9 you know when it's time to return to court.

10 Mr. Fallon.

11 **VOIR DIRE EXAMINATION**

12 BY ATTORNEY FALLON:

13 Q. Good afternoon. Is it Mr. Lafond?

14 A. Lafond, yes.

15 Q. Very good. My name is Tom Fallon. I'm an
16 Assistant Attorney General with the Wisconsin
17 Department of Justice. I'm a prosecutor in this
18 particular case. I'm working with Mr. Ken Kratz.
19 He is the gentleman to my left, the District
20 Attorney in Calumet County. And he's the lead
21 prosecutor in this prosecution.

22 We're here this afternoon to follow up
23 and ask some additional questions of you, based
24 on your responses that you provided in the
25 questionnaire last Monday. I wanted to begin

1 briefly, rather quickly, with a few questions
2 regarding your employment. I see by trade you
3 are a tool and die maker?

4 A. I was until Paragon Electric moved out of town.

5 Q. All right.

6 A. I have been a machinist for the last seven years.

7 Q. Okay. And you are currently with HMF
8 Innovations?

9 A. Yes.

10 Q. If you would help me out, I'm not from the area,
11 so what kind of business is that?

12 A. We make specialty machinery for people all over
13 the country, a lot of house testing equipment, a
14 lot of jobs for Caterpillar, a lot of jobs for
15 right around town here.

16 Q. Okay. So is it heavy equipment that you are
17 involved in producing?

18 A. It can be anything from real tiny stuff up to
19 machinery that's 100 and 150 feet long.

20 Q. All right. Very good. And how long have you
21 been with the new company here?

22 A. Seven years.

23 Q. Seven years, I see, okay. All right. Now, the
24 other thing I wanted to verify with you is a
25 response that you gave us to the very last

1 question in the questionnaire.

2 Recognizing the fact that this case may
3 very well go six weeks, in which case from most
4 likely Monday through Friday, for about nine
5 hours a day or so, you will be tied up involved
6 in the court proceedings if you are selected as a
7 juror. Would that cause any financial hardship
8 on you and/or your family if you were away from
9 work that long?

10 A. No.

11 Q. All right. So you have, I take it, some
12 assurances that you will be able to at least have
13 sufficient income during this period if you were
14 selected as a juror?

15 A. My company will pay for it, he said.

16 Q. All right. Very good. Okay. I see for some of
17 the civic groups that you are involved in you are
18 involved with the Knights of Columbus at your
19 local church?

20 A. Mm-hmm, yes.

21 Q. All right. And chairman of the spaghetti dinner
22 and the church bingo and the Men's Club and those
23 are all associated with your church?

24 A. Basically, yes, mm-hmm.

25 Q. And is -- The church that you belong to is St.

1 Peter, the Fisherman?

2 A. Yes, it is.

3 Q. Okay. Very good. All right. Have you been a
4 long time member of those various organizations?

5 A. Pretty much all my life, 25, 30 years, yeah.

6 Q. All right. Are you -- I take it, then, you are a
7 life long resident of this area, Manitowoc
8 County?

9 A. Yes. Yes, mm-hmm.

10 Q. Okay. All right. Well, a matter of concern to
11 all of us in selecting the jurors for this case
12 is how much they may have heard about the case in
13 the media and whether that's led to any really
14 strongly held or felt opinions about the case and
15 things of that sort. So that's what I would like
16 to talk about at this moment. All right?

17 A. Sure.

18 Q. First, it looks like you get your news sources
19 from a variety of sources, or radio, television,
20 and the newspapers and that you do read the
21 newspaper daily; is that correct?

22 A. That's correct.

23 Q. And you also apparently watch, fairly regularly,
24 the news broadcasts?

25 A. Yes.

1 Q. Okay. Now, do you get your news from any other
2 source, like say the internet perhaps; do you
3 have a computer at home that you might use,
4 or ...

5 A. We have got a computer, but I don't -- I don't
6 use it for news.

7 Q. Okay. Okay. Did you receive a directive from
8 the Court, oh, about three weeks or so ago,
9 asking that since you might be a juror in this
10 particular case that you would -- it would be
11 appreciated if you would refrain from reviewing
12 or listening to any of the news commentary
13 regarding this case? Did you get that?

14 A. Yes, I did.

15 Q. All right. And have you been able to honor that
16 request?

17 A. Not totally, the newspaper is the easy part, but
18 the place that I'm employed at is a small machine
19 shop and we have radios playing all day long in
20 every corner. The news is on all day long and so
21 I have heard some of it at work, you know --

22 Q. Okay.

23 A. -- different things. Mostly about jury selection
24 has been this week.

25 Q. All right. Well, let me ask you, then, just

1 figuring in the last three weeks, we'll work with
2 that bit of information. What do you recall
3 hearing either on the radio or from any other
4 news source about the case?

5 A. Well, I remember something last Friday about some
6 blood that's going to be tested, whether or not
7 it's got this preservative in or something.

8 Q. Okay.

9 A. That's the only thing that really pops into my
10 mind.

11 Q. Okay. What about anything involving the charges
12 in the case, or anything involving a fellow by
13 the name of Brendan Dassey, any of that ring a
14 chord with you?

15 A. Well, yeah, I wasn't real sure if it was in the
16 last three weeks, but I believe he's -- he had
17 confessed to helping out and now he's recanted
18 that story --

19 Q. Okay.

20 A. -- and taken it back.

21 Q. All right. Anything else that you recall now,
22 just from that in the last three weeks, that
23 you ...

24 A. No.

25 Q. All right. How about when the case first broke,

1 when the news story first broke about this woman,
2 Teresa Halbach's disappearance and within the
3 week, the arrest of the defendant here,
4 Mr. Avery. Did you follow those telecasts?
5 A. Very closely.
6 Q. You did?
7 A. Mm-hmm. Yes.
8 Q. All right. And did you follow the media coverage
9 with respect to the arrest of Mr. Dassey and --
10 and his statements regarding his involvement from
11 about 11 --
12 A. Yes.
13 Q. -- 11 months ago?
14 A. Sure. Yes, I did.
15 Q. All right. And do you recall any of the details
16 from either one of those media coverage?
17 A. Of his arrest, or of the reasons for his arrest?
18 Q. Yeah, whatever you can tell us that you recall.
19 A. Well, just that he was arrested. And then I
20 remember seeing pictures of a red house trailer.
21 And they had pictures of a burn pit and stuff,
22 where supposedly her body had been burned. And
23 they had found bone fragments. I'm sure -- I
24 can't think of a lot of things right now. I'm
25 sure if you jog my memory, there will be a lot

1 more things.

2 Q. Okay.

3 A. But I watched pretty much all of it.

4 Q. All right.

5 A. We were pretty much glued to the TV.

6 Q. Okay. So it would be fair to say that you
7 followed the case fairly closely up until you got
8 the directive from the Court?

9 A. Yes, mm-hmm.

10 Q. All right. Well, here's the reason we ask these
11 questions. And in the questionnaire, in response
12 to one question you said, have you formed any
13 personal opinions based on the publicity. And
14 you said, yes, based on the publicity, that he
15 may be guilty.

16 And then the next question was -- or the
17 two questions later, you were asked, have you
18 formed any opinion yourself, based on the
19 information that you had from any source, of his
20 guilt or innocence. And you said, yes and you
21 said, again, he may be guilty.

22 You followed that up with an answer to a
23 question that the Court will advise you that, if
24 you are selected as a juror, you would be
25 required to set aside that information that you

1 heard in the media and decide this case only on
2 the evidence which is presented during the trial.

3 And you answered that case -- or that
4 question yes. Do you feel -- still feel you
5 would be able to do that, or do you feel that
6 your opinion is pretty well set, based on all the
7 information that you have from following the case
8 so closely?

9 A. I guess I would have to say that my opinion is
10 pretty well set but, you know, if there was earth
11 shaking type evidence that would change my mind,
12 sure. But whether or not that happens, I don't
13 know, but my mind is pretty well -- pretty well
14 made up, sure.

15 Q. Yeah. So in other words, you know -- so your
16 answer to the question might be different, then,
17 today from last week; in other words, you don't
18 think you would be able to set aside that
19 information?

20 A. Like I said, if it was something that was -- that
21 really changed my mind, yeah. I mean, it would
22 have to be something really substantial that
23 everything that I have heard right now in through
24 the media, I formed an opinion that is fairly
25 strong and it would not be easy to change it,

1 but ...

2 Q. All right. Even though Mr. Avery is presumed
3 innocent?

4 A. Even though.

5 Q. Okay. One second, please.

6 ATTORNEY FALLON: We don't have any more
7 questions for the witness.

8 THE COURT: All right. The Clerk will
9 escort you from the courtroom at this time.

10 (Wherein the juror was excused.)

11 THE COURT: Counsel, do you have a joint
12 motion to make?

13 ATTORNEY FALLON: I think it's quite
14 apparent the witness is -- or excuse me, the juror
15 is fairly well set in his ways; although his
16 questionnaire didn't seem to read that way, I think
17 we have to take his comments at his word. And I
18 would just as soon see if there's -- I think there's
19 one last juror there we might be able to talk to,
20 but it didn't seem that this would be all that
21 productive. No, I think he would need to be struck
22 for cause.

23 THE COURT: Does the defense agree?

24 ATTORNEY STRANG: On this one, I have to
25 agree.

1 THE COURT: The Court agrees as well. We
2 will -- The Court will order the juror stricken for
3 cause and we'll take Tim Holsen as the last juror
4 today.

5 Mr. Holsen, please raise your right hand
6 and the Clerk will swear you in.

7 (Juror sworn.)

8 THE CLERK: Please be seated.

9 MR. HOLSEN: Thank you.

10 THE COURT: Mr. Holsen, you have already
11 completed a written questionnaire in this case. At
12 this time we're moving on to the next stage of voir
13 dire -- or the next stage of the jury selection
14 process which is known as voir dire.

15 The attorneys have a chance to ask you
16 some questions as follow-up to the information
17 you provided on your questionnaire.

18 Before we get to that, I have got a few
19 pieces of information to pass on to you. First
20 of all, the jury in this case will not be
21 sequestered. That means that the jurors will be
22 permitted to return home each day after the trial
23 and return the next morning.

24 The prohibition on learning anything
25 from the news media will continue throughout the

1 trial; that is, the jurors cannot consult the
2 television, radio, newspapers, the internet, or
3 anything else to learn anything about the case,
4 other than the evidence presented in court. And
5 the jurors are prohibited from discussing the
6 case with anyone, including family members and
7 other jurors until it's time to deliberate.

8 Although the proceedings today are open,
9 the Court does not allow cameras in the courtroom
10 during voir dire proceedings. And the news media
11 is not permitted to disclose the names of jurors.

12 In addition, if you are selected to
13 serve on the jury, any cameras at the trial will
14 not be permitted to show the jurors in anyway
15 that identifies who they are.

16 If you are continued as a juror after
17 proceedings today, you will receive telephone
18 instructions in the next day or two letting you
19 know when to return to court.

20 Mr. Fallon, will you be asking questions
21 for the State?

22 ATTORNEY FALLON: Yes, thank you.

23 THE COURT: Very well.

24 **VOIR DIRE EXAMINATION**

25 BY ATTORNEY FALLON:

1 Q. Good afternoon, Mr. Holsen, my name is Tom
2 Fallon. I'm an Assistant Attorney General with
3 the Wisconsin Department of Justice and I'm one
4 of the prosecutors in this case. I'm based in
5 Madison, helping out here. To my immediate left
6 is Mr. Ken Kratz, the District Attorney for
7 Calumet County. He's also a special prosecutor
8 and the lead prosecutor in this matter.

9 This is our opportunity, as attorneys,
10 to follow up and ask a few additional questions
11 of you, based on some of the information you
12 provided last week, to help us in selecting a
13 jury for this case.

14 First, had a couple of general questions
15 regarding your employment. As I understand it,
16 you are currently with the Kohler Company?

17 A. That's correct.

18 Q. And what do you do for them? You are into
19 supervising but ...

20 A. I'm a supervisor of materials, management,
21 shipping; actually about four departments.

22 Q. Okay. And how long have you been with that
23 company?

24 A. Twenty-two years.

25 Q. Just wanted to verify, one of the responses you

1 gave is a consideration for all of us here. On
2 the very last question of the questionnaire,
3 there is -- or there was a question regarding if
4 this case were, in fact, to take six weeks, as to
5 whether that would cause some particular hardship
6 for you.

7 And there's -- kind of looks like there
8 might be two angles here for us to explore. So
9 let me, first, take the obvious one. Would you
10 be allowed to take leave of absence, as it were,
11 from the Kohler Company to sit as a juror if you
12 were selected?

13 A. Yes, I would.

14 Q. Okay. So you would be able to have sufficient
15 income coming in?

16 A. Yes.

17 Q. Okay. And the second part of it is, one of the
18 things that was mentioned on page three of your
19 questionnaire and again at the end, and you're
20 involved in some online schooling?

21 A. Yes, I'm going to UW Stout for my Bachelor's
22 Degree, online. So I'm taking classes currently.

23 Q. All right. And this is all distance learning, I
24 guess --

25 A. Right.

1 Q. -- as they say?

2 A. Correct.

3 Q. How much time does that take of your day to
4 participate in that?

5 A. Twelve hours a week. Approximately twelve hours
6 a week.

7 Q. Twelve hours a week. And is that something where
8 you are actually participating in a class that's
9 live online, or is it something that's -- you
10 download the course assignments, for instance,
11 work on them and then complete them? How does it
12 work.

13 A. Correct. There's quizzes online and then papers
14 due online.

15 Q. All right.

16 A. So online time is probably, you know, three to
17 four hours a week; the rest is all study.

18 Q. Study, okay.

19 A. Correct.

20 Q. And when do you normally do that work?

21 A. Usually on weekends.

22 Q. Okay. All right. So, if -- Technically
23 speaking, then, if the Court were not in session
24 on the weekends and you got home at say 6 o'clock
25 every night, would you still be able to continue

1 with the online work?

2 A. I think so, yeah.

3 Q. Okay. All right. Well, the other matter of
4 concern to us is the -- any opinions or thoughts
5 you may have about the case as a result of quite
6 a bit of publicity. And it seems that at least
7 you are familiar with some of that publicity.
8 You get news from both radio and television; is
9 that right?

10 A. Correct.

11 Q. Of the two, which one would you say you get most
12 of your news from?

13 A. Probably the television.

14 Q. All right. And let's start there. How often do
15 you watch the local TV news?

16 A. Nightly.

17 Q. Nightly?

18 A. Mm-hmm.

19 Q. Okay. So my next question, then, is have you at
20 all been following this case since it's
21 inception?

22 A. Since it's inception, pretty much, yeah. See,
23 it's close to home. I live real close to
24 Mishicot, so it's close to home. Yes, I have
25 been following it.

1 Q. All right. And have you lived in Mishicot for a
2 substantial period of time?

3 A. Yes, since 2000.

4 Q. Since 2000. So you have been there the last
5 seven years and you were born in Manitowoc, in --

6 A. Right.

7 Q. -- the city here?

8 A. Correct.

9 Q. Did you live in the city before you moved to
10 Mishicot?

11 A. Yes.

12 Q. Okay. So, you have got a little bit of a commute
13 down to Kohler?

14 A. Yeah.

15 Q. Okay. All right. I will get back to the
16 television in just a second. I also see that you
17 read the newspapers fairly regularly?

18 A. Correct.

19 Q. Which papers do you read?

20 A. Mostly online, Herald-Times, Sheboygan Press and
21 sometimes the Green Bay Press Gazette.

22 Q. All right. Do you read all three papers pretty
23 regularly or is it one week you might read one
24 and the next week --

25 A. Yeah, it's intermittently --

1 Q. Okay.

2 A. -- during the week, yeah.

3 Q. Whatever seems to strike your interest?

4 A. Following sports a little bit and business.

5 Q. Would it be fair to say if one paper has a story
6 that kind of strikes your interest you might
7 follow that story in the paper for a couple
8 days --

9 A. Correct.

10 Q. -- and then switch back to one of the other
11 papers?

12 A. Correct.

13 Q. Okay. All right. Now, with respect to this
14 particular case, what coverage do you remember --
15 Well, first of all, I'm going to do this in
16 reverse order. A couple weeks ago, I believe you
17 may have received or should have received a
18 letter from the Court advising you that the
19 possibility of being a juror was rather imminent?

20 A. Correct.

21 Q. And that you were asked not to watch or pay
22 attention to any more media whenever you could
23 avoid it?

24 A. Correct.

25 Q. All right. And did you receive the letter?

1 A. Yes, I did.

2 Q. Okay. Have you been able to follow the Court's
3 advice?

4 A. For the most part. I mean, it's still on just
5 about every news channel every time you turn it
6 on. But I make an effort to leave the room when
7 it comes on, so.

8 Q. Okay. All right. In terms of any coverage of
9 the case, in say the last three weeks or four
10 weeks, within the last month; what, if anything,
11 or what do you remember seeing or hearing about
12 the coverage of the case during that period?

13 A. Basically, just some of the charges that were
14 brought against Mr. Avery.

15 Q. Okay.

16 A. That was a big thing. And, then, of course, a
17 little bit about the jury selection, until I
18 received that letter.

19 Q. All right. Any particular details of any of the
20 court proceedings in the last three or four
21 weeks? Anything strike your fancy, or catch your
22 interest, or do you happen to overhear at work,
23 or anything?

24 A. You know, it's pretty hard, everybody talks about
25 it everywhere. So I try to ignore it and not,

1 you know, make conversation about it. So I would
2 have to answer that nothing in particular strikes
3 me at this time.

4 Q. All right. All right. Well, let's take about
5 the -- the -- the one year period before that.
6 Would you say you followed this case closely
7 or ...

8 A. Yeah, I would say closely, yes.

9 Q. All right. And have you watched any of the --
10 any news conferences or just the news stories?

11 A. Mostly just the news stories.

12 Q. All right.

13 A. And the big part is when it was developing, you
14 know, everybody wanted to know what was going on,
15 what was happening. And being a small community,
16 it was, you know, of interest.

17 Q. So in November, December of 2005 and January,
18 February, March of 2006, you paid pretty close
19 attention?

20 A. Yes, very close.

21 Q. All right. How about through this past summer?

22 A. Tapered off quite a bit.

23 Q. All right.

24 A. The media got a hold of it and it became less
25 interesting, I guess.

1 Q. I'm sorry?

2 A. The mediate -- media became more interested. It
3 became more widespread and I guess my interest, I
4 withdrew a little bit.

5 Q. All right. Starting when?

6 A. Probably this summer.

7 Q. Okay.

8 A. This past summer.

9 Q. All right. Well, we wanted to talk to you about
10 some of the opinions you may or may not have
11 formed as a result of all that media coverage and
12 ask you this. I mean, you, first of all,
13 understand that as Mr. Avery sits here today, the
14 law presumes him innocent?

15 A. Correct.

16 Q. You understand that?

17 A. I understand that.

18 Q. All right. And do you accept that principle?

19 A. I do accept that, yes.

20 Q. Okay. Now, I know there's been an awful lot of
21 media coverage here, so we'll get right to the
22 point. Have you formed any opinion that he is
23 guilty, based strictly on what the media has told
24 you of the facts?

25 A. No.

1 Q. All right. Are you concerned about the manner --
2 Well -- All right. Let me ask it this way. Is
3 there anything about Mr. Avery, or his family, or
4 his past that has led to forming any kind of
5 opinions about his guilt or innocence?

6 A. I don't know the family.

7 Q. Okay.

8 A. But being from a small area, you do hear rumors
9 so, you know, I have heard some of those.

10 Q. All right. All right. Now, these rumors, can I
11 assume you are taking them for just what they
12 are, rumors?

13 A. Correct.

14 Q. All right. And has -- has that information all
15 led to any opinions of his guilt, based on rumor?

16 A. You know, let me give you a little background.
17 Coming from Manitowoc, it's just a little bit
18 bigger than where I live now, Francis creek. And
19 when you move to a small community like Francis
20 Creek, everybody knows everybody and everybody
21 talks. And a lot of that is just rumors. I try
22 not to get caught up in that; I really do.

23 Q. All right. So you don't pay much attention to
24 that.

25 A. No, sir.

1 Q. All right. Well, so just that I'm clear, as he
2 sits here today, you don't have any particular
3 opinion of his guilt or innocence?

4 A. No, sir.

5 Q. All right. And the Court did ask, in the
6 questionnaire here, is if you did have any
7 opinions or any thoughts regarding the crime or
8 his involvement or whatever, that if you were
9 selected as a juror you would be asked to set
10 that aside and decide his guilt or innocence
11 solely on the evidence which we present in the
12 courtroom?

13 A. To the best of my ability, correct.

14 Q. Right. And you answered yes?

15 A. Correct.

16 Q. Do you still feel that way --

17 A. Yes, I do.

18 Q. -- today? Okay.

19 A. Yup.

20 Q. I wanted to also follow up with a couple of other
21 questions regarding some experiences that you
22 have had with law enforcement, if I may?

23 A. Sure.

24 Q. I'm just struggling just a bit, as the light goes
25 down and my age goes up, my ability to read

1 without my reading glasses diminishes ever so
2 slightly. But it looks like you have had some
3 experiences with some of the county law
4 enforcement officers. So tell us a little bit
5 about that.

6 A. Sure. I was good friends with Tom Jansen, who
7 was a county officer for a number of years. And
8 our kids were very close, a lot of sporting
9 activities, camping, things like that. He has
10 since moved to the western part of the state and
11 really haven't had much contact with him.

12 Q. All right. And how long ago did he move away?

13 A. That was probably a year and a half ago.

14 Q. All right. But you were pretty good friends up
15 to that point?

16 A. Yes, we were, yeah.

17 Q. Okay. Did he ever talk about the business of law
18 enforcement with you?

19 A. No.

20 Q. All right.

21 A. No, we kept that separate. We really didn't talk
22 work, we just had more fun with family and
23 friends.

24 Q. Okay. So no plumbing and no law enforcement?

25 A. Exactly. No toilets and --

1 Q. Work and -- All right. Very good.

2 A. -- no law enforcement.

3 Q. Now, you also indicated that you did have -- was
4 it a friend or a friend's son was killed on an
5 ATV accident?

6 A. That is correct, yeah.

7 Q. Now, was that something that was a pure
8 accident --

9 A. Yeah.

10 Q. -- or was there something --

11 A. Pure accident.

12 Q. Okay. So there was no reason for any law
13 enforcement investigation?

14 A. No.

15 Q. Just a sad occurrence?

16 A. Exactly.

17 Q. Okay. All right. Now, because you were such
18 good friends with this former officer, Tom
19 Jansen, do you think your friendship with him
20 would have any impact on your ability to evaluate
21 a law enforcement officer's testimony the same
22 way you would evaluate any other person's
23 testimony?

24 A. I would still hold it in high regard, so.

25 Q. All right. All right. That's fair, you would

1 expect them to be credible, right?

2 A. Very credible, yes.

3 Q. Okay. However, when it comes to a court of law,
4 there's an instruction the Court will provide to
5 all the jurors and it tells you that we take all
6 witnesses as they are and that those witnesses
7 should be evaluated on the same standard; in
8 other words, treated the same. You look at them
9 and you determine their believability, their
10 honesty, their credibility, the same as you would
11 any other person; do you think you could do that?

12 A. Yes.

13 Q. Okay.

14 ATTORNEY FALLON: I will pass the juror.

15 THE COURT: Mr. Buting.

16 ATTORNEY BUTING: Thank you, Judge.

17 **VOIR DIRE EXAMINATION**

18 BY ATTORNEY BUTING:

19 Q. My name is Jerome Buting and I, along with
20 Attorney Dean Strang, defend Mr. Avery here,
21 okay?

22 A. Okay.

23 Q. Now, Mr. Holsen, you were here last week and
24 filled out one of these questionnaires, right?

25 A. That's correct, sir.

1 Q. And you took your time and carefully read all the
2 questions?

3 A. Yes, I did.

4 Q. And you answered them really from the heart?

5 A. Yes, I did.

6 Q. And, in fact, you signed it, swearing that it was
7 true; is that right?

8 A. That's correct.

9 Q. Under penalty of perjury?

10 A. Yes, sir.

11 Q. And last week, you were asked if there was any
12 reason that you could not be a fair and impartial
13 juror?

14 A. Correct.

15 Q. And you said, yes, there was. And you said that
16 this is so close to home and I have kids that go
17 to Mishicot and we have heard so much about it,
18 if I were selected I would do my best to be fair?

19 A. That's correct. I still feel the same way, yes.

20 Q. But, then, you also said, in answer to a question
21 Mr. Fallon asked, if you had any opinions that
22 had been formed --

23 A. Mm-hmm.

24 Q. -- today. And I don't know if you forgot what
25 you said last week, but when you were asked that

1 question, if you had formed any personal opinions
2 about the case based on publicity, last week you
3 said, yes, you had; do you remember?

4 A. Yes.

5 Q. And you had said that -- one of your opinions was
6 that the Avery family has problems?

7 A. That's, again, you know, what we hear as rumors
8 and it's hard when you are a small community like
9 we are, you hear everything.

10 Q. Sure, I know you do.

11 A. And, you know, I guess I'm just trying to balance
12 that, sir, so.

13 Q. Sure, but that's an opinion --

14 A. I understand.

15 Q. -- that's an opinion that last week, when you
16 filled this out, you had said you had formed,
17 correct?

18 A. Correct.

19 Q. Okay. And you also expressed some real concern
20 about the knowledge that you had gotten from the
21 coverage, right?

22 A. Correct.

23 Q. And you said that, when asked to describe what
24 you remember about it, you used these terms about
25 how sad and how savage it was and that it was so

1 close to home, that my kids -- and that my kids
2 saw it and that it -- it had ties with Mishicot
3 school with Branden?

4 A. Correct.

5 Q. Is that where your kids go?

6 A. Correct.

7 Q. They go to the same high school as Brendan
8 Dassey?

9 A. Correct.

10 Q. Were they in the same grade as him?

11 A. I believe -- Eric is 15 and my daughter is 13, so
12 they are a year younger, I believe.

13 Q. Okay. And you also said that you were concerned,
14 or you asked if you discussed this case at length
15 with any other persons and you said, yes, my
16 wife, as we are concerned about our kids?

17 A. Correct.

18 Q. As they go to the same school as some Avery's and
19 how close to home it is.

20 A. Mm-hmm. Correct.

21 Q. Right?

22 A. Mm-hmm.

23 Q. So, you're concerned that there could be some --
24 maybe some fall out if ...

25 A. Correct. It's a small community.

1 Q. It's a small community and if you -- if you voted
2 to -- for not guilty -- or if you voted Mr. Avery
3 guilty, you would be concerned about some
4 retribution?

5 A. Either way.

6 Q. Either way.

7 A. Either way.

8 Q. And it is a small community. And that's a pretty
9 hard thing to put aside, right?

10 A. Correct.

11 Q. And we're not asking you to be super human here.
12 I mean, you are a human being like everybody else
13 and, you know, you are not expected to be a
14 perfect juror in every case, right?

15 A. Understood, correct.

16 Q. You may be a perfectly fine juror in some cases
17 and others maybe not?

18 A. That's correct.

19 Q. And in this case, you also talked about how, if
20 you had formed any opinion whatsoever about
21 Mr. Avery's guilt or innocence and, again, last
22 week you said, yes, you had?

23 A. Correct.

24 Q. And that you mentioned the past history of
25 Mr. Avery and the gore of it, as covered by TV

1 news, papers, and radio, right?

2 A. Correct. Let me explain a little bit. Most of
3 this was directed at my children, you know, as
4 any parent, very concerned about them. So,
5 that's -- that's the answer.

6 Q. And did you -- Did you see a news conference
7 where Mr. Kratz, in fact, warned that any
8 children under the age of 15 should probably not
9 listen to it?

10 A. I do not recall.

11 Q. Or did your wife see that and talk to you about
12 it?

13 A. That's possible. I don't think I saw it. I have
14 heard about it a little bit but. I mean, it's
15 just -- it's a -- it's a -- Again, let me put it
16 this way, it's a sad case and you don't ever want
17 your children exposed to things like that that
18 happen in the world, unfortunately.

19 Q. Right. And so I'm wondering, you know, given all
20 of that and it's closeness to home and the way
21 that it's really -- really affected your feelings
22 and your -- about your children and your wife's
23 concerns --

24 A. Right.

25 Q. -- if you really think that you would be a good

1 juror for this case?

2 A. I would say no, but if -- if I was called to do
3 so, I would do so.

4 Q. Okay. Well, I mean, you are called to try and
5 be -- you're called to be a fair jury -- juror.
6 And if, in a particular case, if that's asking
7 too much of you, there's nothing to be ashamed
8 of, you understand that?

9 A. Understood.

10 Q. And that if this is really something that you
11 just think would be too difficult, there's no
12 shame whatsoever in telling the Court that you
13 really think you wouldn't be a good juror in this
14 case?

15 A. Okay. And I -- Actually, I probably wouldn't be,
16 being it's so close to home and that's why I
17 wrote it.

18 Q. Okay. I appreciate that. I just wanted to
19 clarify it --

20 A. Sure.

21 Q. -- because today it seemed like -- and sometimes
22 when jurors come in to Court, they feel like they
23 don't want to say that they can't be a fair juror
24 because that reflects on them. And it's not
25 really true. I mean, we all have different life

1 experiences and this one obviously hit very close
2 to you.

3 A. Correct.

4 Q. So I want you to -- It's important because,
5 Mr. Avery, despite what all you have heard,
6 Mr. Avery -- you haven't heard it all. And he
7 deserves the presumption of innocence and
8 deserves to start with jurors who have a clean
9 slate and can start, really, from zero?

10 A. Okay.

11 Q. And if you are not somebody who can do that, then
12 in all honesty, I wish you would please tell us
13 that.

14 A. Okay. I already have.

15 Q. That you can't?

16 A. Correct.

17 Q. Thank you. I appreciate that, sir.

18 A. No problem.

19 THE COURT: All right. We'll have the
20 Clerk escort you from the courtroom at this time.

21 (Wherein the juror was excused.)

22 THE COURT: Mr. Buting, does the defense
23 have a motion?

24 ATTORNEY BUTING: I do. I move to strike.

25 THE COURT: Anything from the State?

1 ATTORNEY FALLON: No, we'll join, based on
2 the last set of responses; I think it's evident.

3 THE COURT: The Court agrees. The Court
4 will order that Mr. Holsen be stricken for cause.
5 And I will see you at 8:30 tomorrow morning.
6 Anything before we go?

7 ATTORNEY FALLON: Just a quick question,
8 Judge, how far down the list should we prepare to
9 --in other words, how many do you think you will be
10 calling in tomorrow, so that we'll have all of the
11 information?

12 THE COURT: I would say, well, to be safe
13 14; hopefully, it won't take us that many.

14 ATTORNEY STRANG: And Mrs. Gonia is the
15 first one.

16 THE COURT: She is the next one, correct.

17 ATTORNEY STRANG: Okay. Thank you.

18 ATTORNEY FALLON: That comes up to, by my
19 count, Juror No. 87.

20 ATTORNEY BUTING: Pretty much finishes that
21 second page completely.

22 ATTORNEY FALLON: Right. That would take
23 us through the second page.

24 ATTORNEY BUTING: Yes.

25 ATTORNEY FALLON: That's what I had come up

1 with.

2 ATTORNEY BUTING: Okay.

3 THE COURT: The last juror is what number?

4 ATTORNEY STRANG: Eighty-seven maybe.

5 ATTORNEY FALLON: Juror No. 87 would be 14.

6 THE COURT: Okay.

7 ATTORNEY FALLON: That's what I come up

8 with.

9 THE COURT: Okay. Let's do that, prepare
10 up to 87.

11 ATTORNEY FALLON: All right.

12 THE COURT: All right. Just a second,
13 here's the jurors I have got left. I got No. 60.

14 ATTORNEY FALLON: Yes.

15 THE COURT: Sixty-five.

16 ATTORNEY FALLON: Correct.

17 THE COURT: Sixty-seven.

18 ATTORNEY FALLON: Yes.

19 THE COURT: Sixty-eight.

20 ATTORNEY FALLON: Yes.

21 THE COURT: Seventy-one.

22 ATTORNEY FALLON: Correct.

23 THE COURT: Seventy-two.

24 ATTORNEY FALLON: Yes.

25 THE COURT: Seventy-four.

1 ATTORNEY FALLON: Yes.

2 THE COURT: Seventy-five.

3 ATTORNEY FALLON: Seventy-five is excused.

4 THE COURT: Seventy-five is out.

5 ATTORNEY FALLON: They are excused.

6 THE COURT: Okay. Seventy-six.

7 ATTORNEY FALLON: Yes.

8 THE COURT: Seventy-seven.

9 ATTORNEY FALLON: Seventy-seven, oh, that's

10 the one that we kicked. That was already out.

11 ATTORNEY KRATZ: Did you?

12 ATTORNEY FALLON: Yes.

13 ATTORNEY KRATZ: I didn't have that written

14 down.

15 THE COURT: All right. So 78, 79, 81.

16 ATTORNEY FALLON: Right.

17 THE COURT: Eighty-six.

18 ATTORNEY FALLON: And 87.

19 THE COURT: Let's include 88. Oops, 88 --

20 ATTORNEY BUTING: Eighty-eight is gone. I

21 don't have 77 off.

22 ATTORNEY FALLON: That was --

23 THE COURT: To be safe, let's go through

24 91.

25 ATTORNEY BUTING: Okay.

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THE COURT: Okay.

ATTORNEY FALLON: Okay. So that's 90 and
91. That's fine.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
)ss
2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 10th day of September, 2006.

Diane Tesheneck, RPR
Official Court Reporter

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL
VOIR DIRE DAY 4

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.
8

9
10 **DATE:** FEBRUARY 8, 2007

11 **BEFORE:** HON. PATRICK L. WILLIS
12 Circuit Court Judge

13 **APPEARANCES:**

14 KENNETH R. KRATZ
Special Prosecutor
15 On behalf of the State of Wisconsin.

16 THOMAS FALLON
Special Prosecutor
17 On behalf of the State of Wisconsin.

18 NORMAN A. GAHN
Special Prosecutor
19 On behalf of the State of Wisconsin.

20 DEAN STRANG
Attorney at Law
21 On behalf of the defendant.

22 JEROME BUTING
Attorney at Law
23 On behalf of the defendant.

24 STEVEN A. AVERY
Defendant
25 Appeared in person.

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PARTIAL TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

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1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery. It's Case No.
3 05 CF 381. Uh, we are here today continuing with
4 the process of jury selection. Will the parties
5 state their appearances for the record, please?

6 ATTORNEY FALLON: Good morning, Your
7 Honor. May it please the Court, State appears by
8 Assistant Attorney General Tom Fallon, and Ken
9 Kratz, special prosecutors.

10 ATTORNEY BUTING: Morning, Your Honor.
11 Jerome Buting and Dean Strang appearing with
12 Mr. Avery.

13 THE COURT: All right. Before we
14 resume, uh, voir dire this morning, uh, I think
15 yesterday the Court was informed that the -- I'm
16 not sure that my notes are specific enough here,
17 but I had jurors 75 and 77 listed as
18 possibilities that the parties would be, uh,
19 jointly requesting that they be excused for
20 cause.

21 ATTORNEY FALLON: Um, I had Juror No. 75
22 as being previously excused by the Court and, uh,
23 77, I -- I thought that that may have been
24 discussed either Monday or Tuesday.

25 THE COURT: That does ring a bell about

1 Juror 75. I will, um, try to verify that with my
2 judicial assistant. Um, I don't have the reason
3 committed to memory but, um -- All right. We'll
4 address those issues later and bring in the first
5 juror at this time, which is Juror No. 60, Judith
6 Kania.

7 Ms. Kania, at this time I'll ask you to
8 raise your right and the clerk will administer
9 the oath.

10 (Juror sworn)

11 THE CLERK: Please be seated.

12 THE COURT: Uh, Ms. Kania, you've
13 already completed a jury questionnaire in this
14 case. Today we're moving on to the next step of
15 jury selection process which is called voir dire.
16 Uh, in this stage each of the attorneys, or the
17 attorneys for each side, will be permitted to ask
18 you some additional questions that relate to your
19 qualifications as a juror.

20 Uh, before we get to their questions, I
21 want to pass some information on to you. First
22 of all, if you are selected as a juror in this
23 case, I want you to know that the jurors will not
24 be sequestered. That means that the jurors will
25 be permitted to return home each day, uh, after

1 that day's proceedings in the trial, and, uh,
2 because of that fact, the Court will continue the
3 restriction that the jurors not be exposed to any
4 type of media information about the case, be it
5 radio, television, newspaper, the internet or any
6 other source, and jurors will continue to be
7 prohibited from discussing the case, uh, with
8 anyone, including members of their family or
9 other jurors until all of the evidence has been
10 received.

11 Uh, you should also know that, although
12 these proceedings today are open to the public,
13 the Court does not allow cameras in the courtroom
14 during individual voir dire and the media is not
15 permitted to identify the jurors by name in any
16 media reports of these proceedings.

17 In addition, should you be selected as a
18 juror, you should know that, uh, while cameras
19 are permitted in the courtroom during the trial,
20 they're not permitted to, uh, show the members of
21 the jury.

22 Um, in the event you, uh, continue on
23 the jury panel after today, uh, you'll get a
24 telephone call probably sometime today letting
25 you know when you will be reporting back for the

1 next step in the process.

2 Mr. Fallon? All right at this time

3 Mr. Fallon, uh, will ask you questions.

4 **VOIR DIRE EXAMINATION**

5 BY ATTORNEY FALLON:

6 Q Good morning.

7 A Good morning.

8 Q Um, my name is Tom Fallon. I'm an Assistant
9 Attorney General with the Wisconsin Department of
10 Justice and I'm one of the prosecutors in this
11 case. To my immediate left is Mr. Ken Kratz, the
12 Calumet County District Attorney and lead
13 prosecutor.

14 We're here this morning to follow up
15 with some, uh, questions regarding the
16 information you provided last week, uh, to help
17 us in, uh, selecting a jury for this case.

18 Um, first of all, is your last name
19 pronounced Kania?

20 A Kania. Right.

21 Q All right. Very good. Um, and do you prefer
22 Miss? Missis?

23 A Missis is good.

24 Q Very good. All right. Um, very good. Uh,
25 you're currently employed at the, uh, uh, Forder

1 (phonetic) Needle Company here in Manitowoc?

2 A Foster.

3 Q Or -- sorry?

4 A Foster Needle.

5 Q Foster? Okay. Very good. And, uh, how long

6 have you been employed there?

7 A Twenty years.

8 Q Uh, and you're a furnace operator?

9 A Yes.

10 Q What, exactly, does that entail?

11 A I take needles out of a box and put them on a

12 conveyor belt that goes into a furnace to heat them

13 up.

14 Q Oh, I see. Okay. And, uh, previously you worked

15 at, uh, the Mirro Aluminum Company?

16 A Um-hmm.

17 Q And what did you do for them?

18 A I worked in the Teflon department, spraying the

19 Teflon on the --

20 Q All right.

21 A -- pans.

22 Q And, um, how long did you, uh, work for them?

23 A I think it was four years.

24 Q Very good. Now, um, if you were, uh, selected as

25 a juror in this case, um, you've previously

1 indicated that, even if the case were to take six
2 weeks or, perhaps, a tad longer, uh, that
3 wouldn't, um, cause any financial hardship as
4 near as you can figure?

5 A I don't think so.

6 Q All right. So you feel pretty comfortable about
7 your ability to serve, uh, for that extended
8 period?

9 A I think so.

10 Q Okay. All right. Um, I want to talk, now, if I
11 may, about, uh, the, uh, pretrial publicity that
12 this case has generated. From my review of the
13 information you provided, it -- it appears that
14 you, um, at least watch the news somewhat
15 regularly?

16 A Um-hmm. Yes.

17 Q All right. And, um, you indicated you get your
18 news from the newspapers, television and, uh,
19 discussions with your neighbors?

20 A Right.

21 Q All right. Um, excuse me, of those, where would
22 you say you get the majority of your news?

23 A Television.

24 Q From television?

25 A Um-hmm.

1 Q All right. Uh, in terms of the television
2 coverage, how often do you watch the -- the news
3 on television?

4 A Every day.

5 Q All right. And, um, in addition to the -- the
6 news programs, do you watch any special news
7 events or special news channels?

8 A No.

9 Q All right. Um, with respect to the coverage of
10 this particular case, did you follow it closely,
11 somewhat closely or not at all?

12 A Somewhat.

13 Q Somewhat. Uh, about three weeks ago, uh, the
14 Court sent out a letter to prospective jurors,
15 uh, asking them to refrain from, um, reading or
16 listening to any of the coverage about this case.
17 Have -- Did you get that letter?

18 A I think I did. Yes.

19 Q All right. And have you been able to honor that
20 request?

21 A Not exactly. No.

22 Q Okay. Well, we'll talk a little bit about that.
23 And let's just start, say, from the last three
24 weeks or so. Uh, approximately -- well, tell us
25 what news coverage of the -- of this case that

1 you recall being, uh, exposed to.

2 A Well, I guess, general, most of the details, you
3 know. What all happened.

4 Q Okay. Well, tell us about that. Whatever you
5 can remember hearing about the case in the last
6 couple of weeks.

7 A Last couple weeks, huh? Okay. Um, oh, boy. I guess
8 the van, the way it was covered up in -- in the -- in
9 the salvage yard.

10 Q Okay.

11 A And the key found in the house.

12 Q All right.

13 A And I guess the nephew confessing that he helped
14 Mr. Avery kill, if he did, um, um --

15 Q All right. Any -- anything else stick in your
16 mind? Anything about blood evidence? Anything
17 about --

18 A Yeah. There was some blood evidence that --

19 Q What do you recall hearing about that?

20 A That it was put in the van, somehow. It was in the
21 van. Put it that way.

22 Q All right. Now, did that come from, um -- that
23 information, did that come from, uh, television,
24 from reading the newspaper, or your husband, or
25 friends, or how do you think you came upon that?

1 A I think maybe the newspaper.

2 Q From the newspaper?

3 A Uh-huh.

4 Q All right. Do you read the newspaper regularly?

5 A Yes. Uh-huh.

6 Q And, um, daily?

7 A Yes.

8 Q All right. Uh, have you been reading the news
9 coverage about this case, um, in the last three
10 or four weeks?

11 A Sometimes, yes.

12 Q Sometimes. All right. Um, well, based on the
13 information that you have read in the paper, you,
14 um, answered a question, um, first, that the only
15 person you really talk about this with, I take
16 it, is your husband?

17 A Um-hmm.

18 Q That's a yes?

19 A Yes.

20 Q Okay. Um, when asked if you had any specific
21 opinion as to Mr. Avery's guilt or innocence
22 based on what you've seen and heard, uh, you
23 indicated, uh, while just in general the news
24 media about the evidence found in the home and
25 the junk yard, and you seemed to indicate earlier

1 that, um, most of the evidence seems to point to
2 Mr. Avery but that's just what you heard.

3 A Right.

4 Q All right. Is -- is that your impression still
5 as you sit here today?

6 A I guess I still do feel he's guilty.

7 Q All right.

8 A From what I heard.

9 Q From what you heard?

10 A Right.

11 Q All right. Now, you do understand, um -- Well,
12 let me ask you this, because there are a couple
13 of questions that you, uh, forgot to answer here
14 and we want to ask about those. Uh, one of the
15 questions is, um, if you have formed any opinions
16 as to Mr. Avery's guilt or innocence, based on
17 information from any source, would you be able,
18 should you be selected as a juror, to set aside
19 those opinions and base your decision only on the
20 evidence presented in court?

21 A It would be quite hard.

22 Q All right. And why would that be?

23 A Because I guess I feel in my gut that he's guilty.

24 Q Okay. Even though you understand he is presumed
25 innocent?

1 A Right.

2 Q All right. You don't think you could accept any
3 ext -- instruction from the Court that you should
4 honor that presumption of innocence and decide
5 his guilt only on the evidence presented?

6 A I'm not really sure, but I don't think so.

7 Q You don't think so?

8 A No.

9 Q All right.

10 ATTORNEY FALLON: I have nothing else.

11 THE COURT: All right. Um, Mr. Strang, are
12 you willing to forgo your right to question this --

13 ATTORNEY STRANG: I -- I am. Thank you,
14 Your Honor.

15 THE COURT: All right. Uh, at this time,
16 Ms. Kania, we'll have the clerk escort you from the
17 courtroom.

18 (Wherein juror is escorted out)

19 THE COURT: The parties have a joint
20 recommendation with respect to this juror?

21 ATTORNEY FALLON: Uh, yes. I think the
22 answers are rather clear, and her inability to,
23 um, uh, refrain from the latest coverage I think
24 make her, uh, unsuited for this service.

25 THE COURT: Does the defense concur?

1 ATTORNEY STRANG: The motion's joint.

2 THE COURT: Uh, the Court feels there's
3 clear -- a clear basis here to excuse this juror
4 for cause and the Court will do so.

5 Uh, next bring in Mr. Mueller. Uh, Mr.
6 Mueller, please raise your right hand and the
7 clerk will administer the oath to you.

8 (Juror sworn)

9 THE CLERK: Please be seated.

10 THE COURT: Uh, Mr. Mueller, you've already
11 completed a written questionnaire in this case.
12 Today we're moving on to the next step in the jury
13 selection process which is known as voir dire. Uh,
14 during this process, the attorneys for each of the
15 parties will have a chance to ask you some follow-up
16 questions to the information that you provided in
17 your questionnaire. Before that questioning begins,
18 uh, there are a few pieces of information I wish to
19 pass onto you.

20 First of all, if you are selected as a
21 juror in this case, you should know the jury will
22 not be sequestered. That means you will be
23 permitted to return home at the end of the court
24 proceedings, uh, each day and then report back
25 the following day. Uh, because of that fact,

1 we're going to continue to require that the
2 jurors not, uh, be exposed to any news media
3 coverage concerning the case, whether it be from
4 radio, television, newspapers, or the internet.

5 In addition, the jurors are not
6 permitted to discuss the case with anyone during
7 the trial, including, uh, other jurors or members
8 of the jurors' families.

9 The proceedings today are open, but
10 during voir dire, the Court does not allow
11 cameras in the courtroom and you should also know
12 that members of the media are prohibited from
13 identifying the jurors by name in any news
14 reports concerning this matter.

15 Finally, if you are selected on the
16 jury, you should also know that the cameras,
17 while they're permitted in the courtroom during
18 the trial, are not permitted to show the jurors
19 in any way that identifies them.

20 Uh, in the event you continue to be
21 eligible as a juror after the questioning this
22 morning, you'll get a telephone call later today
23 letting you know when to report for the next step
24 in the process.

25 Mr. Fallon, go ahead.

VOIR DIRE EXAMINATION

1
2 BY ATTORNEY FALLON:

3 Q Good morning. My name is Tom Fallon and I'm an
4 Assistant Attorney General with the Wisconsin
5 Department of Justice. I'm one of the
6 prosecutors in this case. To my immediate left
7 is Mr. Ken Kratz, uh, Calumet County District
8 Attorney and special prosecutor as well. Good
9 morning and, uh, thanks for coming in, and is it
10 pronounced Mueller or Miller?

11 A Mueller.

12 Q Mueller. Uh, Mr. Mueller, we have a -- a few,
13 uh, additional questions for you based on some of
14 the information you provided last week in the
15 questionnaire and like to follow up on that if we
16 could.

17 Um, first, I'd like to simply ask, um,
18 you currently, uh, work at Riesterer and, uh,
19 Schnell?

20 A Yes.

21 Q All right. Uh, service technician, I take it?

22 A Yes.

23 Q And how long have you been with them?

24 A Seven years.

25 Q Um, and, uh, previous place you worked at, um,

1 Siemers Holsteins?

2 A Yes.

3 Q Is that a -- a dairy, uh --

4 A Dairy farm.

5 Q -- operation?

6 A Yes, that's correct.

7 Q All right. What did you do for them?

8 A Um, maintenance.

9 Q Okay. And how long did you work for them?

10 A Four years. And I still work part-time for them.

11 Q You still work -- I'm sorry?

12 A I work part-time in summer for them.

13 Q Part-time? Okay. If you could just speak up

14 just a little bit more because we're having a

15 little trouble hearing you, okay? Thanks. Um,

16 you've had some, uh, technical college

17 experience?

18 A Yes.

19 Q All right. And, uh, accounting and bookkeeping?

20 A No.

21 Q Hmm?

22 A No.

23 Q No? Um, let's see. Uh, you indicated, uh, in a

24 question, have you ever taken courses in or do

25 you consider yourself knowledgeable in any of the

1 areas, you checked accounting. Was that a -- an
2 error?

3 A Uh, no. With -- I do part-time farm work.

4 Q Okay.

5 A And I do run a small cash crop operation. So I do do
6 my books --

7 Q Ah.

8 A -- in my accounting that way.

9 Q Okay. So just, uh, the nature of your work --

10 A Yes.

11 Q -- gets you a little bit into that field.

12 A Yes.

13 Q Keeping track of the money and all.

14 A Yes.

15 Q Okay. I gotcha. Okay. Uh, the next, uh --
16 Well, let me ask one, uh, question related to
17 your employment. Uh, the last question of the
18 questionnaire asks, uh, a question about, um,
19 whether your selection as a juror would cause any
20 type of economic hardship or something for you,
21 and you indicated that, uh, no, that it would
22 not, even if the case were to last, say, six
23 weeks or, perhaps, a little bit longer. Uh, is
24 that still the case today?

25 A Yes.

1 Q Okay. So you -- you feel reasonably comfortable
2 you'll have sufficient income or you have
3 sufficient savings set aside to carry you through
4 the -- the six-week period?

5 A I should, yes.

6 Q Okay. All right. Well, I'd like to talk a
7 little bit about some of the pretrial publicity
8 that this case has, um, generated, and, uh, I
9 note, uh, from your questionnaire that, um, you
10 have a variety of news sources?

11 A Yes.

12 Q Okay. Um, radio, television, newspapers,
13 neighbors, and, um, you say other from
14 conversations at taverns or other social events,
15 I take it?

16 A Yes.

17 Q Okay. Well, when you look at all those sources,
18 where would you say you get most of your news
19 from?

20 A Mostly be from the newspaper and TV.

21 Q Newspaper and television? All right. And, um,
22 you read the newspaper pretty regularly?

23 A Yes.

24 Q All right. And television news you watch --

25 A Pretty much every night.

1 Q -- every night? Do you watch the, um, five
2 o'clock, six o'clock, ten o'clock news or --

3 A Mostly ten o'clock.

4 Q Ten o'clock? And, um -- and you do listen to the
5 radio?

6 A Yes.

7 Q All right. And, uh, is the radio on at work
8 wherever you're working?

9 A Yes.

10 Q All right. And what kind of station? Is there
11 a -- is it a talk radio? A news station? Or
12 music that's mostly --

13 A Pretty much music.

14 Q All right. Uh, so you don't listen to a news
15 station network that much?

16 A No.

17 Q No?

18 A No.

19 Q Okay. Um, you were asked, uh -- Well, let me ask
20 you this: Uh, about, well, maybe three weeks or
21 so ago, uh, did you get a letter from the Court
22 asking, uh -- letting you know that you were a
23 possible prospective juror and, uh, to refrain
24 from reading any of the newspaper coverage or
25 listening to any of the television coverage of

1 the case?

2 A Yes.

3 Q All right. And were you able to comply with
4 that?

5 A Not fully.

6 Q Okay. Well, what happened or was it --

7 A Basically being in a bar. You know, they have the
8 news on.

9 Q Okay.

10 A See it. Um, you know, just stopping by my folks and
11 they had a -- the paper out and you'd see something.

12 Q Right. Um, I realize that you would -- you know,
13 it's pretty hard to avoid headlines and something
14 coming over the -- the airways, but I guess
15 the -- uh, the question probably is more aptly
16 asked is, did you pay close attention to the
17 story on the television or did you read any of
18 the stories in the newspaper?

19 A Yes.

20 Q You did. All right. And, uh, what do you
21 recall, um, uh, seeing on the television or
22 learning about the case, say, just in the last
23 three weeks?

24 A Uh, about the vial of blood.

25 Q Okay. And what do you recall hearing or seeing

1 about that?

2 A That it was possibly tampered with.

3 Q All right. Uh, what else?

4 A Um, that was pretty much the last of it that I heard.

5 Q All right. Um, any details about that stick in
6 your head?

7 A Not really.

8 Q Okay. Um, how about the time period, say, in the
9 year before that? You know, uh, before you got
10 the letter going back to January or December.
11 January of '06 or December of '05, uh, November
12 of '05. Do you remember any of the coverage when
13 the case first broke?

14 A Yes.

15 Q All right. And, um, would you say you followed
16 the events as reported in the news closely or not
17 too closely?

18 A Uh, I followed them pretty closely.

19 Q You did. Um, how about, um, from, um, March, uh,
20 of last year through the summer and into this
21 fall? Were you still following the case closely
22 or not closely?

23 A Uh, I was following it pretty close.

24 Q Okay. All right. Well, um, the reason I ask is
25 that, uh, you indicated, uh, in answer to a

1 question, um, have you formed any personal
2 opinions about this case based on the publicity,
3 and you said, no. Is that your -- is that still
4 accurate today?

5 A Yes.

6 Q Okay. And, um, the other question was, uh, have
7 you formed any opinions whatsoever of -- of
8 Mr. Avery's guilt or innocence based on anything
9 you read or heard in the -- in the paper, the
10 television, or the tavern, or anywhere else, and
11 you indicated, no.

12 A Yes.

13 Q All right. Is -- is that still your, uh, opinion
14 today? You don't really have an opinion on his
15 guilt or innocence?

16 A Yes.

17 Q Okay. Now, do you -- The Court will, uh,
18 instruct you that, you know, just as Mr. Avery
19 sits here today, he's presumed innocent. He's
20 presumed not to have done one blessed thing. And
21 do you understand that?

22 A Yes.

23 Q Okay. And the Court will ask you to accept that
24 proposition and decide this case solely on the
25 evidence that's presented in the courtroom.

1 A Yes.

2 Q Do you think you can do that?

3 A Yes.

4 Q All right. Is there any question or doubt in
5 your mind that you would be able to do that?

6 A Little bit.

7 Q Okay. Well, let's talk a little bit. What
8 raises some concern in your mind?

9 A Well, there's a lot of talk there was, uh -- with the
10 police tampering, possibly.

11 Q Right.

12 A And that other stuff, um --

13 Q What's the other stuff?

14 A Uh, they had something that the cops or the police
15 had mishandled some evidence that was found in -- you
16 know, it's just hard to meet the -- you don't know
17 what was all tampered with or --

18 Q Or not?

19 A Or not.

20 Q All right. All right. So, in other words, you
21 really don't know what happened in the case as
22 you sit here today?

23 A Yes.

24 Q Okay. So the fact that you don't know about any
25 of the facts or what the evidence will be, um, do

1 you think that would make it easier for you to
2 accept the proposition that Mr. Avery is innocent
3 until he's proven guilty, or harder?

4 A Probably make it harder.

5 Q All right. Not knowing anything would make it
6 harder?

7 A Yeah.

8 Q Why would that be?

9 A Because you wouldn't know -- You're making a judgment
10 on, you know, stuff that he -- you don't know what
11 was all --

12 Q I'm sorry?

13 A Don't know what was all messed with.

14 Q Okay.

15 A Or what was -- what was there and what was added, and
16 so I got a feeling it would be hard for me to make a
17 decision that way.

18 Q Okay. Well, as you go through, um, your
19 experiences in life you make decisions every day
20 based on the information that you have in front
21 of you; right?

22 A Yes.

23 Q Okay. So if, um, the attorneys here, if we, um,
24 are presenting the evidence over the course of
25 the -- the trial -- and especially the State,

1 we're the ones that have the burden of proof, not
2 Mr. Avery, you understand that?

3 A Yes.

4 Q And we have to prove him guilty beyond a
5 reasonable doubt, and -- and if we don't, then
6 you must find him not guilty. Do you understand
7 that?

8 A Yes.

9 Q All right. So if after, um -- do you realize
10 that after six weeks of, uh, sitting as a juror,
11 you will have a -- a -- a far greater bit of
12 knowledge than you do right now?

13 A Yes.

14 Q All right. And, uh, because right now, I think
15 you said you really don't know what happened or
16 who did what; correct?

17 A Yes.

18 Q All right. So if we're both -- if the State is
19 starting from zero, from ground level, um,
20 wouldn't it seem easier for you to accept the --
21 the possibility that Mr. Avery is -- is innocent
22 until proven guilty?

23 A Yes.

24 Q I'm sorry?

25 A Yes.

1 Q Okay. All right. Okay. Now, you indicated
2 that, um -- I take it you watch some television
3 shows like, uh, *Crime Scene Investigation* or
4 *Bones* or --

5 A Yes.

6 Q Law enforcement type shows?

7 A Yes.

8 Q And you indicated that you found them, um, very
9 realistic?

10 A Yes.

11 Q All right. Tell us about why you think they're
12 realistic. Very realistic.

13 A Only pretty much kind of just sum up how the crime
14 scene processing and how just following evidence, um,
15 looking at different things that can factor in a --
16 in a case.

17 Q Okay. Um, do you think everything that you see
18 on the -- on these television shows, that the,
19 um, investigators can do on television, that
20 those things can be done in real life?

21 A Yes.

22 Q All of them?

23 A Yes.

24 Q Okay. Do you think it can be done as quickly as
25 it is done on the television shows?

1 A No.

2 Q I'm sorry?

3 A No.

4 Q No? Okay. Um, what else is, um, not as
5 accurately portrayed in those shows as, uh -- as
6 your understanding of what happens in the real
7 world on crime scene investigations?

8 A Uh, just the time, basically, that it takes for them
9 to, uh, I don't know, look at the evidence and all
10 that.

11 Q All right. Well, you don't really believe that
12 law enforcement has the ability to flash back to
13 when the crime occurred and try to figure out who
14 did what, do you?

15 A Uh, no.

16 Q Okay. So that would be a little somewhat
17 unrealistic?

18 A Yes.

19 Q Okay. And, um, do you think that there could be
20 mistakes made?

21 A As to?

22 Q Well, during the investigative process. I mean,
23 they don't seem to make any mistakes on the
24 television, do they?

25 A I'd like to think they don't.

1 Q Okay. You'd like to think who doesn't; the
2 television or the real world?

3 A The real world.

4 Q Okay. Um, are mistakes possible in your mind?

5 A Yes.

6 Q Okay. Okay. Um, I also noted from your, uh,
7 report that, uh, you, uh, at least know, I think,
8 uh, Deputy Jost?

9 A Yes.

10 Q All right. And how do you know Deputy Jost?

11 A Um, he was one of the officers at a traffic accident
12 I was at. And he is also related to one of my
13 friends.

14 Q He's related to one of your friends? Um, how
15 often do you, uh, speak with Officer Jost?

16 A Uh, maybe once a year.

17 Q Okay. So he's not really a close friend or an
18 acquaintance?

19 A Not to me, no.

20 Q Okay.

21 A Just through --

22 Q You just --

23 A -- friends I know.

24 Q Okay. You just know who he is.

25 A Yes.

1 Q Okay. So you haven't had any discussions of,
2 uh -- about law enforcement or investigations or
3 anything like that with him?

4 A No.

5 Q Okay. Now, you said he was at some, um, accident
6 scene that you were, uh --

7 A Yes.

8 Q -- at? Tell us about that.

9 A Uh, basically, it was a girl that was going to pull
10 out into the intersection and stopped kind of halfway
11 through it and I rear-ended her with my truck.

12 Q Okay. All right. And, um, he was the one that
13 responded?

14 A He was the one that responded, yes.

15 Q Okay. And, um, how did that -- how did that go?
16 Was that -- do you think it was all handled
17 fairly and appropriately?

18 A Yes.

19 Q Okay.

20 A It was --

21 Q Was there any complaints? Did you think anything
22 was not handled right or that, perhaps, you
23 weren't sure you did fairly or anything like
24 that?

25 A No.

1 Q No. Okay. But apparently you have had some
2 contacts, or you're at least aware of some
3 contacts where um, um, things did not go so well
4 with law enforcement?

5 A Yes.

6 Q All right. Well, tell us about that.

7 A Uh, my friend, who had a DWI probably six months ago,
8 was, um -- had a law enforcement that was supposedly
9 dropping off, uh -- I don't know if it was some
10 tickets or citation or something, and once in a while
11 there would be a police car sitting on our road. Um,
12 he would not call my friend telling him that he was
13 going to drop off the papers. He'd just more or less
14 pop in or stop in randomly.

15 Q Okay.

16 A Um, but he would be sitting on the road couple of --
17 uh, probably, say, three or four times just with the
18 car shut off, no lights on, just sitting.

19 Q Okay.

20 A Um, and once in a while he wouldn't even stop in.
21 He'd just be parked out there and neighbors would
22 drive through and see a police car sitting with no
23 lights on or nothing.

24 Q Just sitting -- just sitting on the side of the
25 road?

1 A Yeah. Parked. Waiting.

2 Q So, um, did you consider that some form of

3 harassment just because the officer was sitting

4 on the road?

5 A Yeah. We felt -- or at least I felt -- because it

6 was really -- he wasn't making any attempt to contact

7 my friend just to say, I'm going to be here, I'll

8 stop in at this time, or are you available at this

9 time to receive these citations or tickets, and more

10 or less just kind of felt like he was waiting or

11 trying to find something that was --

12 Q Something else wrong?

13 A -- that was wrong, yeah, or --

14 Q Okay. Um, is it possible that the officer was

15 monitoring traffic or -- or, perhaps,

16 investigating some other matter in addition to

17 dropping off these citations for your friend?

18 A Not on a small country road I don't think.

19 Q I'm sorry?

20 A We live on a small country road so it's not a --

21 Q Not very likely?

22 A All -- all the neighbors know pretty much everybody.

23 Q Okay.

24 A And --

25 Q All right. Well, given that experience, um, do

1 you think that, um, if there were a lot of, uh,
2 police officers and sheriff's deputies testifying
3 in this case, that you could evaluate their
4 testimony the same as you would any other witness
5 or do you think you would be much harder on them?

6 A I would --

7 Q I'm sorry?

8 A What do you mean by that? I'm --

9 Q Well, the -- the Court will -- will give you an
10 instruction, if you're selected as a juror, as to
11 how to evaluate the credibility, the
12 believability, the honesty of witnesses. And the
13 instruction the Court will give you will tell you
14 that you should evaluate all witnesses the same
15 way. You know, you consider how they look and
16 how they act on the stand, and how they talk, and
17 whether they're consistent or not consistent with
18 a previous statement.

19 In other words, you would evaluate all
20 the witnesses the same and you wouldn't hold
21 anything against one police officer, or a -- or a
22 scientist, or, uh, even Mr. Avery, if he were to
23 testify, and yet you would evaluate their
24 believability according to the same standard?

25 A Yes.

1 Q Do you think you could do that or do you think
2 you'd be harder on the police?

3 A No. I believe I could do that.

4 Q Okay. There's no doubt in your mind about that?

5 A Yes.

6 Q Okay. Um, my last question is, um, the Court
7 will be instructing you, uh, not to read, watch,
8 or listen to any accounts of the trial if you
9 were selected as a juror. Uh, and, uh, the
10 Court, uh, did note in the questionnaire here
11 that the rule would be strictly enforced. And
12 when asked if you would find it difficult to
13 follow such an instruction you indicated, yes.
14 Can -- can you tell us why you would have a hard
15 time following that?

16 A No. I -- like I said, you go out. I live a sociable
17 life, too, and if they got it on at a bar, or people
18 are talking about it, ain't going to go out of my way
19 to talk about it, but it will be still following or
20 seeing what's going on.

21 Q Well, do you think you'd be able to say to them,
22 hey, look, you know, I'm on this jury, I -- I --
23 we just can't talk about this. Do you think
24 you'd be able to tell your friends that?

25 A No.

1 Q You couldn't do that?

2 A No, I couldn't.

3 Q Um, do you think you'd be able to just turn off
4 the television and walk out of a room?

5 A Uh, probably be kind of hard. I live with three
6 other guys, so --

7 Q All right. So you don't -- you don't think you
8 could abide by that Court's instruction?

9 A It would be hard to.

10 Q All right.

11 ATTORNEY FALLON: Um, I don't have any
12 other questions for this witness, Judge.

13 THE COURT: All right. Mr. Strang?
14 Mr. Strang.

15 **VOIR DIRE EXAMINATION**

16 BY ATTORNEY STRANG:

17 Q Hi. Uh, Dean Strang, Jerome Buting, Steven
18 Avery. Um, this, uh, Deputy Jason Jost, um, do
19 you like the guy? Not like the guy?

20 A Yes. I have respect for him, yes.

21 Q Okay. Um, how about police officers in general,
22 just to cut right through it, do they -- do they
23 ever lie?

24 A I've never really dealt with any of them.

25 Q Do you think they might lie on oath just like

1 any -- under oath just like anyone else or no?

2 A Could be, yes.

3 Q Same as any other witness? Or more likely? Less
4 likely?

5 A Maybe less likely.

6 Q Okay. Um, I think that's all I have. Thanks.

7 VOIR DIRE EXAMINATION

8 BY THE COURT:

9 Q Um, Mr. Mueller, the, uh -- some questions were
10 asked about, uh, news accounts. You indicate
11 that if the Court told you not to, uh, see any
12 news accounts of this case that you could, uh --
13 you'd not be of -- you'd not be able to follow
14 that direction?

15 A It would be hard to, yes.

16 Q And tell me why again?

17 A Well, basically, I like going -- I go out like
18 everyone else, and, you know, if you're standing,
19 talking and there's a news flash or something, um,
20 you know, you got to respect other people for wanting
21 to see it. But -- I don't know. It's -- it's going
22 to be all around. It's going to be hard not to
23 notice it.

24 Q When you talk about when you go out, what --
25 going out where?

1 A Uh, I usually go out to taverns. Um, you know, I
2 like my fire -- Friday night fish fry. And through
3 the fire department, you know, a lot of people talk.
4 We usually get done with a meeting or a drill we --
5 downstairs we turn the news on, um, you know, see
6 what local fires have happened and what else is all
7 on.

8 Q Okay.

9 THE COURT: Any --

10 **VOIR DIRE EXAMINATION**

11 BY ATTORNEY STRANG:

12 Q When -- when -- when people talk or watch the --
13 the TV on this case around you, um, they talk
14 about whether Avery's guilty or not guilty?

15 A Yes.

16 Q What do they tend to think?

17 A Is -- If he's guilty or not?

18 Q Yeah.

19 A Um, majority of people think he's guilty.

20 Q And how about you?

21 A I'm undecided on it.

22 Q So to stay undecided, as -- as you would need to
23 be for a few weeks, can you stay away from that
24 kind of conversation with a court ordering you to
25 do it?

1 A I guess I'd have to if the Court's ordering me to do
2 it.

3 Q The Court would be ordering you.

4 A Yes.

5 Q Um, it would be just a few weeks. After the
6 trial was over, of course, you could do whatever
7 you wanted. But during this trial with a court
8 order, can you stay away from that kind of stuff?

9 A It's going to be hard. Probably not.

10 Q Okay. Thanks.

11 THE COURT: All right. The clerk will
12 escort you from the courtroom at this time.

13 (Wherein juror is escorted out)

14 THE COURT: Counsel, does either party
15 have a motion?

16 ATTORNEY FALLON: Uh, yes, Your Honor,
17 I -- I do. I think, um, the juror must be struck
18 for cause. Uh, one, he indicated that he really
19 didn't think he could abide by the Court's
20 instruction to refrain from media coverage and
21 discussing the matter and I think we have to take
22 him at his word, especially in light of the fact
23 that he continued to monitor news reports even
24 after receiving the Court's letter instructing
25 him otherwise.

1 And, um, I think based on that
2 information he has to be excused. It's just too
3 much of a risk.

4 THE COURT: Mr. Strang?

5 ATTORNEY STRANG: Uh, I -- I can't
6 honestly oppose that.

7 THE COURT: Okay. Uh, the Court agrees.
8 The juror will be ordered stricken for cause. We'll
9 move on to the next juror which I believe is, uh,
10 let's see, Mr. Gray. Mr. Gray, please raise your
11 right hand and the clerk will administer the oath to
12 you.

13 (Juror sworn)

14 THE CLERK: Please be seated.

15 THE COURT: Uh, Mr. Gray, you've already
16 completed a written jury questionnaire in this case.
17 Today we're moving on to the next phase of the jury
18 selection process which is known as voir dire.

19 The attorneys for each of the parties
20 will have an opportunity to ask you some follow-
21 up questions relating mostly to information that
22 you provided on the questionnaire. Uh, before we
23 begin that process, uh, there's a few pieces of
24 information I wish to pass on to you.

25 First, the jury in this case will not be

1 sequestered. That means the jurors will be
2 permitted to return home at the end of each day
3 following the conclusion of court proceedings.
4 Uh, because of that fact, we will continue to
5 require that the jurors not be exposed to any
6 media accounts of the case; whether it be by
7 television, radio, newspaper, internet, or
8 otherwise, and the jurors will continue to be
9 prohibited from discussing the case with anyone,
10 including the other jurors, during the trial, or
11 any family members.

12 You should know that although these
13 court proceedings today are open to the public,
14 Court does not permit cameras in the courtroom
15 during the jury selection process, and the media
16 is prohibited from disclosing the names of the
17 jurors in any media accounts.

18 In addition, should you be selected to
19 serve on the jury, uh, while cameras are allowed
20 to cover the trial, they're not permitted to, uh,
21 show the jurors during the trial.

22 If you remain on the jury panel after
23 questioning today, you'll receive a telephone
24 call later today to let you know when to return
25 to court. Mr. Fallon.

VOIR DIRE EXAMINATION

1
2 BY ATTORNEY FALLON:

3 Q Good morning, sir.

4 A Morning.

5 Q My name is Tom Fallon. I'm an Assistant Attorney
6 General with the Wisconsin Department of Justice.
7 I'm a prosecutor in this case. To my immediate
8 left is Mr. Ken Kratz, uh, the Calumet County
9 District Attorney and special prosecutor.

10 Uh, good morning and thanks for
11 returning, helping us out. Um, the attorneys
12 have a few questions for you to follow up on some
13 of the information you provided last week in your
14 questionnaire, and, uh, we appreciate your help.

15 I see, Mr. Gray, that you're currently
16 retired from, uh, GTE?

17 A That's correct.

18 Q Okay. And, uh, you were there 35 years?

19 A That's correct.

20 Q What -- what position or what did you do for GTE?

21 A A number of positions. Um, primarily in the, uh,
22 central office equipment, large systems. Um, I
23 installed, maintained, modified, changed.

24 Q Okay. All right. During your, uh, time there --
25 Excuse me. During your time there, did you have

1 any supervisory responsibilities --

2 A Yes.

3 Q -- or run any departments or anything?

4 A Yes.

5 Q Tell us about that.

6 A Uh, I was first level, um, um, supervisor at, uh,
7 Slinger -- in the Slinger area for awhile, uh, and
8 then transferred back up to Two Rivers from Slinger.

9 Q Okay. And how many people did you supervise or
10 oversee?

11 A I believe 11.

12 Q Okay. And how long did -- did you do the
13 supervisory -- or how long were you a supervisor?

14 A Couple years.

15 Q Couple years?

16 A Uh-huh.

17 Q Did you enjoy it?

18 A Yes.

19 Q You did. Okay. Uh, I also see that, uh, you,
20 um, served in the, uh, Air Force?

21 A Yes.

22 Q Uh, and what did you do in the Air Force?

23 A Communications.

24 Q And what did that involve? What type of
25 communication work were you involved in?

1 A Uh, communications at, uh, radar sites.

2 Q Okay.

3 A Uh, that would be tying a -- a -- radar units
4 together for communications to talk to each other and
5 that sort of thing.

6 Q Connecting a system, in other words, so that
7 everybody could talk?

8 A Yes.

9 Q I see. And you did that for, uh, four years did
10 I see?

11 A I served four years, yes.

12 Q Four years? All right. And what rank did you
13 achieve before retiring from that?

14 A E-4.

15 Q And -- what -- what is that?

16 A Well, that would be Airman First.

17 Q Airman First. Okay. Did you enjoy your, um,
18 time in the Air Force?

19 A Yes.

20 Q Yeah?

21 A Yeah. It was good.

22 Q Well, you seemed to hesitate a little. I just
23 thought I'd ask. You know, sometimes --

24 A Good and bad.

25 Q Yeah, I would imagine. All right. Um, okay. I,

1 um, see that, uh, you do, uh -- you like to
2 travel in your spare time. Um, what kind of
3 traveling do you like to do? Is that around
4 here? This country? Or do you travel overseas
5 much? Or --

6 A No, not overseas. Um, my family lives in Texas. We
7 go there a lot.

8 Q Okay.

9 A Um, and we -- we visit national parks and that sort
10 of thing.

11 Q I see. Okay. All right. Well, one of the
12 things of concern to, um, all of us here that
13 we'd like to talk to you about is, um, the news
14 coverage which has attended this trial, or the
15 prospect of this trial, and ask you some
16 questions about that.

17 And it appears that you obtain your news
18 from a variety of sources; radio, newspaper,
19 television, and magazines. And let me first ask,
20 where would you say you get the -- the vast
21 majority of your news? Or is it evenly split?

22 A The vast majority would be newspaper.

23 Q From the newspaper.

24 A Yeah.

25 Q All right.

1 A Various newspapers.

2 Q Okay. What papers, uh, do you read?

3 A Uh, the *Milwaukee Sentinel*, the *Green Bay Press*, and

4 the, uh, *Manitowoc Herald Times*.

5 Q All right. And do you read, uh, them, uh, daily

6 or regularly?

7 A Pretty much. Not all three but, um, I -- I read the

8 paper almost every day.

9 Q Okay. So you're reading one -- at least one of

10 those papers every day?

11 A Yes.

12 Q Okay. And, uh, how about, uh, television news?

13 A Very little.

14 Q Very little. All right. Um, and, uh, magazines.

15 What kind of magazines do you regularly read?

16 A *National Geographic*, that sort of thing.

17 Q All right. Uh, any news magazines like

18 *U.S. World Report*, or *Forbes*, or anything like

19 that?

20 A Many years ago but not anymore.

21 Q Okay. All right. Okay. I see from your

22 questionnaire that once you received your

23 notification from the Court you made a conscious

24 effort to avoid any news, um, about the case; is

25 that correct?

1 A That's very true.

2 Q All right. And, uh, as you sit here today you
3 can tell us that in the last three weeks you've
4 managed to pretty much avoid the news coverage?

5 A It's impossible to avoid all that --

6 Q Sure.

7 A -- but, yes.

8 Q Okay.

9 A Yeah.

10 Q You haven't read any detailed articles or --

11 A No.

12 Q -- anything? All right.

13 A No. I had my wife sensor the paper for me.

14 Q All right. And, um, any -- did you see anything
15 on television or hear anything on the radio?

16 A No. On television, not at all.

17 Q Okay.

18 A Um, the radio, just short blurbs.

19 Q Sure. Um, and as I see your, um, questionnaire,
20 you indicate you haven't formed any opinions at
21 all one way or another about this particular
22 case?

23 A No.

24 Q So as you sit here today you don't have any
25 opinion at all as to whether Mr. Avery is guilty

1 or innocent of what he's been charged with?

2 A No. That's what the trial is for.

3 Q Okay. So you have no problem at this time
4 presuming him innocent until or unless he's
5 proven guilty beyond a reasonable doubt?

6 A No.

7 Q Okay. And you think you can follow that and
8 accept that principle, uh, as this trial would
9 begin if you were selected as a juror?

10 A Yes, I believe so.

11 Q Okay. All right. I just have one, uh, last
12 question: You did indicate that you did have
13 some concern about possibly serving as a jury --
14 uh, as a juror. I understand your mother is, uh,
15 ill down in San Antonio?

16 A That's correct.

17 Q All right. Um, what -- how is she doing lately?

18 A I talked to my sister Tuesday and she's a little
19 better. Her attitude and, uh, will to survive is --
20 is much improved.

21 Q She's on the uptake, more or less, at least for
22 the time being?

23 A Yes.

24 Q Okay. Um, is she at home or is she hospitalized?

25 A Uh, she's -- hospital, therapy and nursing home for

1 the last four, five months.

2 Q Okay. But she seems to be relatively stable at
3 the current time?

4 A Yes.

5 Q Okay.

6 A Her, um -- she had an operation on her hip and it --

7 Q Sure.

8 A -- got infected and that sort of thing, and, uh, the
9 last time I talked to my sister, then she said the
10 wound was, quote, healing. Finally.

11 Q All right. So things seem to be getting better.

12 A Better, yes.

13 Q Okay. All right. Um, thanks. That's all I
14 have.

15 ATTORNEY FALLON: I'll pass the juror.

16 THE COURT: Mr. Strang?

17 ATTORNEY STRANG: Thank you, Your Honor.

18 **VOIR DIRE EXAMINATION**

19 BY ATTORNEY STRANG:

20 Q Um, good morning.

21 A Morning.

22 Q Uh, Dean -- Dean Strang, Jerome Buting, Steven
23 Avery. Um, Mr. Buting and I, uh, are defending
24 Mr. Avery. Um, and I -- I thought I would, um,
25 start by going back, um, just a little bit with

1 you. Um, you mentioned that you had been parish
2 president, or maybe you still are, um, parish
3 president.

4 A Yeah, that was '70's and '80's.

5 Q Okay.

6 A A long time ago.

7 Q And how long did you do that? You said two
8 terms, but I don't know how long the terms were.

9 A Each was a year.

10 Q Each was one year?

11 A Um-hmm.

12 Q Okay. And then sat on the parish school board as
13 well?

14 A For several years.

15 Q Uh, again, in the '70's and '80's?

16 A Yes.

17 Q When your -- when your boys were growing up?

18 A That's correct.

19 Q Are you still active in the parish?

20 A Um, not as much as I used to be but, yeah, I still do
21 some volunteer work.

22 Q And as -- as we come a little bit closer in time,
23 now, um, I'm -- I'm just sort of curious, um, how
24 much you and your wife followed, um, the
25 disappearance of Teresa Halbach, and then, um,

1 the discoveries, um, you know, on what people
2 have been calling the Avery property?

3 A Yes.

4 Q Uh, and then the arrest of Steven Avery?

5 A Yes.

6 Q Did you follow that pretty closely, initially?

7 A In the early days, yes.

8 Q Okay. And, um, what do you mean by "the early
9 days", Mr. Gray?

10 A In the first, uh, month, two months. That -- that
11 time period through there. Yeah.

12 Q Okay. And, uh, followed it pretty closely how?

13 A With the -- the news, the paper, that sort of thing,
14 but I -- I wouldn't say I followed it closely. I
15 knew it was going on, but, uh, I had other things
16 too.

17 Q Sure. Okay. And -- and even back then, um, I
18 guess where I'm going is were you -- were you
19 picking up most of what you did through the
20 newspaper --

21 A Yes.

22 Q -- as opposed to watching TV in the middle of the
23 day or something?

24 A Yes. I never watch television in the day.

25 Q Okay. Um, do you -- do you re -- remember a

1 young man named Brendan Dassey?

2 A The name, yes, um-hmm.

3 Q And what do you know about, um, young Brendan

4 Dassey?

5 A Personally, nothing.

6 Q Well, I mean, know from the paper or --

7 A Oh. That he was -- he's being -- he's implicated.

8 Q Okay. And any -- any understanding of how or why

9 he's implicated or --

10 A Yes. Uh, that was -- that came out very early.

11 Q Tell -- tell me a little bit about that. What --

12 what you've learned from the paper or TV or

13 wherever.

14 A That he was, uh -- was accused, arrested, uh,

15 questioned, that sort of thing. And, uh, that, uh,

16 he gave some sort of confession.

17 Q Um-hmm. Did you hear that he later took that

18 confession back or recanted?

19 A Yes, I did.

20 Q Um, do you remember how you heard about the

21 confession and then the recantation?

22 A Probably in the paper.

23 Q What do you suppose all of that has to do with

24 Steven Avery?

25 A I'm not sure.

1 Q Um, how about your wife? Have you -- you and
2 your wife discussed the case back in the early
3 days?

4 A No. The -- back then, yeah, we did to some extent.
5 Yes. Um-hmm.

6 Q Did -- does she have any opinion about whether
7 Mr. Avery did it, or didn't do it, or --

8 A She said she definitely wouldn't want to be on the
9 jury.

10 Q Okay. What did -- what did that mean?

11 A That she couldn't, uh, get the -- the details out of
12 her mind.

13 Q Oh. Okay.

14 A Um-hmm.

15 Q Uh, just that they -- all of the allegations
16 and --

17 A Yes.

18 Q -- the ugliness of it --

19 A Yes.

20 Q -- all? How about you? I mean, these are ugly
21 allegations. Um, uh, how -- how has that
22 affected you?

23 A I can, um, erase things in my mind so that they --
24 you know, if it -- they're not important, I pay no
25 attention to them.

1 Q And, I guess, are these important? Is it
2 important when a young woman goes missing and
3 then apparently --

4 A I'm not talking about the -- the act. I'm talking
5 about since I was in the, uh, jury pool.

6 Q Okay. And -- but I am talking about the --

7 A Is there a picture still in my mind?

8 Q Yes.

9 A Yes. Yes.

10 Q What -- what's the picture?

11 A That, uh, a young woman shouldn't be violated.

12 Q Um, violated meaning raped, or killed, or --

13 A Any --

14 Q -- her body mutilated or --

15 A Any of the above.

16 Q Any of that? Okay. Um, and do you react to that
17 in specific as a young woman shouldn't be or that
18 shouldn't happen to anyone?

19 A To a human being.

20 Q A human being? Um, do you -- do you have
21 grandkids?

22 A Yes.

23 Q And is there a level at which you're reacting to
24 this as a grandfather with grandkids who may be
25 about that age or in their 20's?

1 A No. No.

2 Q Okay. Um, what do you know about Mr. Avery's
3 background before that? Specifically, um --

4 A I'd --

5 Q (Unintelligible) -- or conviction.

6 A I -- I remember, uh, the first time Mr. Avery was --
7 was convicted, but, uh, had long since not thought
8 anything at all about it.

9 Q You actually remember the first trial involving
10 Mr. Avery?

11 A I remembered the first, uh, incidents and, uh,
12 conviction.

13 Q Okay.

14 A As far as the trial details, no.

15 Q Right. But the -- but the conviction, and then
16 do you -- do --

17 A That it occurred.

18 Q -- do you remember what eventually happened with
19 that conviction --

20 A Yes, I do.

21 Q -- many years later?

22 A Yes, I do.

23 Q What?

24 A It was thrown out. Um --

25 Q And do you have -- do you -- do you know why?

1 I'm just --

2 A Yes. Because of the DNA.

3 Q Okay. And what -- what was your reaction to that
4 when that conviction gets thrown out because of
5 the DNA?

6 A Honestly, I thought the Sheriff's Department bungled
7 the job.

8 Q Um, and that the State Crime Lab got it right
9 with the -- the DNA was -- Gregory Allen was the
10 guy who committed the rape and the assault, not
11 Steven Avery?

12 A That's my understanding, yes.

13 Q And do -- um, did -- did you then hear about the
14 lawsuit?

15 A Yes.

16 Q What was your reaction to that?

17 A I thought he had a right to it.

18 Q Um, now, you know, all of us, obviously, bring
19 the little bits and pieces of what we know and
20 think with us, and when you assemble all of that
21 together and then make --

22 A Um-hmm.

23 Q -- you know, whatever efforts --

24 A Um-hmm.

25 Q -- you can to take on the role of a juror --

1 A Yes.

2 Q -- um, are you quite comfortable that if you
3 served here, uh, you could view Mr. Avery as
4 starting with a -- a clean slate all together?

5 A Yes. Yes.

6 Q Uh, why?

7 A Because I feel that everybody has the right to a fair
8 hearing.

9 Q Um-hmm. Wouldn't -- mustn't he have done
10 something here if he's in the courtroom sitting
11 in that chair?

12 A My position is accused doesn't mean guilty.

13 Q Not even maybe guilty or probably guilty?

14 A No. Maybe, but not until after the trial.

15 Q Okay. And, um, who would you expect to prove him
16 guilty or innocent here?

17 A Mr. Kratz.

18 Q Or the people at this table at least?

19 (No verbal response)

20 Q Okay. Uh, beyond a reasonable doubt? Could you
21 hold them to that standard?

22 A Yes.

23 Q If the Judge instructed that was the standard?

24 A Correct.

25 Q Do you expect Mr. Buting and I to prove him

1 innocent?

2 A No. Just to refute their evidence.

3 Q Right. And -- and I expect we probably will, um,
4 attack or -- or try to show another side to some
5 of their evidence. Some of their evidence we
6 probably won't have any -- any dispute with. But
7 whatever we do, can you bear in mind and honor
8 the rule that we don't have to do anything? We
9 don't have to prove a blessed thing to you?

10 A Yeah.

11 Q Um, that is, Mr. Avery or any -- you know, his
12 lawyers acting for him --

13 A Yeah.

14 Q -- do not have to prove his innocence?

15 A Yes.

16 Q Is that something you can accept?

17 A Yes.

18 Q So the only burden of proof lies with the
19 State --

20 A Yes.

21 Q -- and its lawyers, um, to prove him guilty
22 beyond a reasonable doubt?

23 A Yes.

24 Q Now, uh, as I've said, I'm not -- we're not going
25 to sit here like bumps on a log. That's just not

1 what we do. Um, and if we cross-examine some
2 witnesses, you would listen to that evidence just
3 as you would to the direct testimony?

4 A Yes.

5 Q Or the direct examination of those witnesses?

6 A Yes.

7 Q Um, one of the decisions we would have to make at
8 some point would be whether to call witnesses of
9 our own in what's called the defense case --

10 A Um-hmm.

11 Q -- whether to put on a defense case at all.

12 A Yeah.

13 Q Um, if we put on a defense case, will you give
14 our witnesses, Mr. Avery's witnesses, the same
15 fair consideration you would give the State's
16 witnesses?

17 A Yeah. Yes.

18 Q Um, the toughest call in that respect is whether
19 to call Mr. Avery as a witness or not. Um, if --
20 if he's innocent, would you expect him to
21 testify?

22 A Not if he doesn't want to.

23 Q Why not?

24 A Because that's his right.

25 Q I understand. And that's -- you know, as a

1 matter of the American Constitution and, uh,
2 our -- our core values here, that's -- you know,
3 that's the correct answer everyone would say.

4 But, um, it's tougher to follow that
5 sometimes in real life. Why do you think you
6 could follow the Judge's instruction that
7 Mr. Avery has a right not to testify and you
8 can't consider that as any evidence at all?

9 A That's what I believe.

10 Q That is -- that is what you believe.

11 A What I believe. That's it.

12 Q That's why you spent your time in the Air Force?

13 A Well, no. It's just what I believe.

14 Q Yeah. Okay. Um, how about if he does testify?

15 If he were to testify, um, I would think it might
16 be natural for a juror to say, well, of course he
17 denies doing it. You know, he's not going to get
18 up and admit it. He's trying to save himself.

19 Um, would you come at it with that attitude?

20 A I don't know if you'd call it an attitude, but it's
21 true, he -- he doesn't want to -- he doesn't plead
22 guilty, he doesn't want to be guilty, so, yeah.

23 Q Right. Right. But, um --

24 A Uh, neither. I wouldn't take it either way.

25 Q Okay. And -- and, really, in the end, I think

1 that the -- the law that the Court probably would
2 give you is if he testified --

3 A Um-hmm.

4 Q -- um, he would be considered like any other
5 witness?

6 A I suppose.

7 Q You would weigh his testimony, listen carefully,
8 and decide whether you believe it or not believe
9 it --

10 A Yeah.

11 Q -- just like you would anybody else --

12 A Yes.

13 Q -- testifying?

14 A Yes.

15 Q Could you do that?

16 A Yeah.

17 Q Um, there are other witnesses, um, who present
18 similar problems for some people in evaluating,
19 but this is sort of the flip side from -- from --
20 at least for many people. Um, law enforcement
21 officers will testify here. Some of them will be
22 in uniform.

23 A Um-hmm.

24 Q Um, and, um, when you hear a law enforcement
25 officer testify, are -- are you willing and able

1 to look at him or her as just another human being
2 and just another witness?

3 A Yeah, I think so. Um-hmm. He's sworn an oath.

4 Q Who's like any witness who's taken an oath --

5 A Um-hmm.

6 Q -- to tell the truth. But what I'm getting at is
7 do you think there's anything about, um, going
8 into the profession of law enforcement that makes
9 you more likely or less likely than someone in
10 any other calling in life to tell the truth under
11 oath?

12 A No, I don't think so.

13 Q Um, you -- you would be able to listen to a law
14 enforcement officer's testimony and weigh it just
15 as you would Mr. Avery's or, you know, um, any
16 other citizen or witness who might be called?

17 A Yeah, I think so. Um-hmm.

18 Q Um, you sound just a little bit tentative about
19 that. Maybe you could -- maybe you could talk --

20 A No. A -- a witness is a witness. They're sworn.
21 Uh, they're -- they're not supposed to lie.

22 Q Right.

23 A So I would accept what they say.

24 Q But -- and -- and that's what we all want to do.
25 The -- the messy reality of life in trials is

1 that sometimes, um, in fact, not infrequently,
2 one witness is saying black and another witness
3 is saying white --

4 A Um-hmm.

5 Q -- on some point that matters.

6 A Um-hmm.

7 Q So they both can't be correct.

8 A Yeah.

9 Q Um, and the issue is whether you come into this
10 with some bias for or against --

11 A No.

12 Q -- a witness just because of the clothes they're
13 wearing or the job they have?

14 A No. No.

15 Q In the end, you may have to sort out conflicting
16 testimony?

17 A Correct.

18 Q And can you consider all witnesses evenly and
19 equally from the starting point in doing that?

20 A Yeah.

21 Q Did your, um, telephone installation, or, you
22 know, I guess it was larger systems you were
23 working with, did the installation and
24 maintenance of those systems require of you, um,
25 better than an average grasp of electrical

1 engineering or --

2 A Yes.

3 Q -- at least of electronics?

4 A Yes.

5 Q Did you acquire that in the Air Force or at least
6 get training in that?

7 A Started the air, but, uh, continued going to school
8 afterward. But, uh, through the company and that --
9 that sort of thing.

10 Q Okay. Um, did that, um, strike a cord with you,
11 um, in -- in terms of an interest in science at
12 all or --

13 A Uh, very much. Yeah.

14 Q Yeah.

15 A In electronics, um-hmm.

16 Q In electronics in --

17 A Yes.

18 Q -- specific?

19 A Um-hmm.

20 Q Okay. Um, do you -- and I'm -- I'm curious what
21 you bring of that interest or that bent, um, to
22 the courtroom in looking at or expecting
23 scientific evidence?

24 A Easy. It's, um, logic. Math, electronics is pure
25 logic.

1 Q Okay. And would you extend that to other, um,
2 physical sciences? Like the -- like biological
3 science?

4 A Um, yeah, somewhat. Uh, no. No. Uh, electronics is
5 math and math is straight. Yeah. It's pure logic.
6 No, um, biological -- you mean, human, animal. Yeah.
7 No, there are too many variations there.

8 Q Um, variations in terms of how the specimens are
9 collected, or preserved, or tested?

10 A Oh, specimens. Oh. No. That -- that I -- I -- I
11 don't know. I have no idea.

12 Q Okay. Um, but, again, what I'm -- what I'm
13 interested in is if somebody comes in and they've
14 got, let's say, expertise in ballistics --

15 A Um-hmm.

16 Q -- do you understand what I mean by --

17 A Yes.

18 Q -- ballistics? Um, looking under a microscope
19 at, uh, bullets, or fragments of bullets, or
20 cartridge casings --

21 A Um-hmm.

22 Q -- um, sometimes the boring of, uh, short or long
23 barrels on firearms. Um, so they come in with
24 this specialized expertise.

25 A Right.

1 Q Um, are you likely to give them much more credit
2 simply because of that expertise?

3 A Yes.

4 Q Uh, tell me a little bit about why?

5 A As an expert, they -- theoretically, they know what
6 they're doing. It's a science. It's what they do.

7 Q Um-hmm.

8 A So -- so, yeah, I respect -- I respect that.

9 Q Okay. And -- and are you willing and able to
10 probe on whether they've done good science in a
11 particular case?

12 A If the subject comes up, sure.

13 Q Sure. Okay. So even if the principles are
14 sound --

15 A Um-hmm.

16 Q -- you'd be willing to look at, well, was the
17 human part of -- of the process also sound?

18 A The human part of the evidence gathering? Is that
19 what you're saying?

20 Q Evidence gathering, evidence maintaining,
21 evidence testing, that kind of thing?

22 A I would want to make sure that there was a -- uh, an
23 unbroken train.

24 Q Look at the whole -- the whole series of
25 events --

1 A Um-hmm.

2 Q -- that lead to the scientific testimony?

3 A Yeah.

4 Q Okay. While we're on that, um, in more recent
5 weeks, let's say in the last, oh, eight weeks,
6 roughly, seven, eight weeks, um, have you heard
7 anything about a blood vial that --

8 A I heard --

9 Q -- referred to this case?

10 A I've heard about a blood vial, but I don't know what
11 they were talking about.

12 Q What the status is or what role, if any, it
13 plays?

14 A That's right.

15 Q Um, how did you hear about that?

16 A Before I could get out of the room when the
17 television was on.

18 Q Okay. All right. No. That -- Yeah. No.
19 I'm -- I hope that didn't sound accusatory --

20 A No.

21 Q -- you know. Um, do you remember about when?
22 Was it before or after Christmas?

23 A I think it was after Christmas.

24 Q Okay. Did that cause you to form any opinion at
25 all about the case?

1 A I wondered what they were talking about, but that's
2 all.

3 Q So more wondering than having an opinion?

4 A Beg your pardon?

5 Q More wondering than actually having an opinion?

6 A Yeah.

7 Q Um, last -- last area. Um, do you want to serve
8 on the jury in this case?

9 A Want to? No. Will? Yes.

10 Q Okay. Um, will, because it's a -- a civic duty?

11 A Yeah.

12 Q And why not want to?

13 A I would just as soon not. I would prefer not to. I
14 can't tell you why. I just would prefer not to.

15 Q Okay. And, um, I'm just -- I'm going to explore
16 that just a little bit, and if it gets
17 uncomfortable, tell me. All right?

18 THE COURT: I'm -- I'm sorry, Mr. Strang.
19 Time's up.

20 JUROR GRAY: Beg your pardon?

21 THE COURT: At this time, we'll have the
22 clerk escort you from the courtroom.

23 (Wherein juror is escorted out)

24 THE COURT: Is there a, um, motion from
25 either party?

1 ATTORNEY FALLON: There's no motion from
2 the State, thank you.

3 ATTORNEY STRANG: No motion.

4 THE COURT: All right. Mr. Gray is
5 accepted. Um, I think before we take our break,
6 the -- I know the next juror -- I'm not sure of the
7 reason why, but the next juror on the list was
8 scheduled to come in this afternoon. Perhaps we can
9 take Mr. Wardman, who might be a shorter questioning
10 than the -- the rest of them, and I know he waited
11 yesterday, so I'd like to get him in today.

12 ATTORNEY STRANG: I -- I will object,
13 um, Your Honor, to the truncation of my voir dire
14 of the preceding witness. Although I -- I did
15 not have a motion for cause, um, I had two, or
16 three, or four, or five minutes left of, um,
17 important voir dire of that juror about his
18 reservations, if any, about undertaking the
19 responsibility of deliberations.

20 THE COURT: All right. Your objection's
21 noted. Uh, Mr. Wardman, please raise your right
22 hand and the clerk will administer the oath.

23 (Juror sworn)

24 THE CLERK: Please be seated.

25 THE COURT: Uh, Mr. Wardman, you've

1 already filled out a, uh, juror -- written juror
2 questionnaire in this case. Today we're moving
3 on to the next step of the proceedings, which is
4 known as voir dire. The attorneys will each have
5 a chance to ask you some questions, which, for
6 the most part, will follow up on information that
7 you provided in your questionnaire.

8 Before we get to those questions, um, I
9 want to make sure you understand that the jurors
10 selected in this case will not be sequestered.
11 That means the jurors will be -- be permitted to
12 return home each day at the end of court
13 proceedings for that day. And because of that,
14 the jurors will continue to be subject to the
15 rule that, uh, they cannot have any media
16 exposure to this case either in radio,
17 television, newspaper, the internet.

18 Uh, and jurors will not be permitted to
19 discuss the case with anyone, including family
20 members or other jurors until it's time to
21 deliberate.

22 The proceedings in this case are open,
23 but during voir dire, the Court does not allow
24 cameras in the courtroom, and, uh, members of the
25 media are prohibited from using your name in any

1 court reports about -- or any news media reports
2 about this case.

3 If you are selected to serve as a juror,
4 uh, you should know that, uh, while cameras may
5 be in the courtroom for the trial, they're not
6 permitted to show the jurors.

7 Uh, in the event you remain on the jury
8 panel after today's proceedings, you'll get
9 another call, probably sometime later today,
10 telling you when to report back.

11 Mr. Fallon, you may begin.

12 **VOIR DIRE EXAMINATION**

13 BY ATTORNEY FALLON:

14 Q Good morning, Mr. Wardman.

15 A Morning.

16 Q My name is Tom Fallon. I'm an Assistant Attorney
17 General with the Wisconsin Department of Justice.
18 I'm one of the prosecutors in this case. To my
19 immediate left is Mr. Ken Kratz, the Calumet
20 County District Attorney, and lead special
21 prosecutor in this matter.

22 Um, thanks for coming in this morning.
23 We had a few questions we wanted to, uh, follow
24 up with, uh, based on the information you
25 provided last week. Sorry we didn't get to you

1 yesterday. I know you were here.

2 Um, I have a couple of, uh, preliminary
3 questions, then I just wanted to talk about one
4 area of concern, uh, to all of us here.

5 Um, my first question is, if you can
6 help me out because I'm not from the area, um,
7 you indicated you're not currently employed and
8 your principle occupation used the designation
9 E-C-K?

10 A Yeah. Eck Foundry.

11 Q Oh, Eck Foundry.

12 A Yeah.

13 Q Oh, I'm sorry. Okay. What kind of, um, work did
14 you do at the foundry?

15 A I was a lead man on the -- and worked on the bench in
16 the clean air room.

17 Q Lead man?

18 A Lead man.

19 Q Okay. Can you tell me a little bit about -- I'm
20 not quite familiar with that. What -- what does
21 that person do?

22 A It was my job to see that the castings were cleaned
23 right and shipped out.

24 Q Okay. Um, did that involve any supervisory
25 responsibilities?

1 A Yes, some.

2 Q Okay. Tell us about that.

3 A I had to watch the guys and -- and train them and

4 everything --

5 Q I see.

6 A -- so they knew what they were doing.

7 Q Okay. And how long were you a supervisor of

8 sorts?

9 A Um, I believe it was 21 years.

10 Q Twenty-one years. Okay. And how long did you

11 work at the, uh, factory?

12 A Twenty-eight.

13 Q Twenty-eight. So 21 out of the 28 years you were

14 in some responsibility as a supervisor for

15 others?

16 A Yes.

17 Q Okay. Okay. Um, you indicated in terms of, uh,

18 volunteer work two things of interest to us. Uh,

19 Union 301? That's associated with the -- the

20 foundries work --

21 A Yes.

22 Q -- that you did?

23 A Yes.

24 Q Okay. And what, uh, specific, uh --

25 A Oh, I -- I don't do -- dealing with the, uh, union no

1 more.

2 Q Okay.

3 A I didn't know if you meant now or --

4 Q Well --

5 A -- if ever.

6 Q Well, thanks for clearing that -- I was going to,

7 uh, get to that. But you're no longer in the,

8 uh --

9 A Union, no.

10 Q Okay. No -- Okay. So you don't even do any

11 volunteer work or currently --

12 A I do volunteer work but not for the union.

13 Q Not for the union. Okay. Very good. Um, how

14 long were you in the union?

15 A Twenty-eight years.

16 Q All right. So even as -- even though you had

17 some supervisory responsibilities, you were

18 still, uh, a member of the union at the foundry?

19 A Yes.

20 Q I see. Okay. Did you have any, uh, special

21 responsibilities as a member of the union like

22 maybe being a steward or anything --

23 A Yes.

24 Q -- like that?

25 A I was a steward.

1 Q You were. Okay. And how long were you a union
2 steward?

3 A Three years.

4 Q Okay. Uh, was that toward the end of your time
5 before retirement or was that earlier on in your
6 career?

7 A Earlier on.

8 Q Okay. Did you enjoy that union work?

9 A Yes.

10 Q You did. Okay. Were you -- were, uh, you
11 involved in representing any of your colleagues
12 in any, uh, labor disputes or, um, management
13 labor issues of any kind?

14 A One.

15 Q Just one. All right. And how was that process?

16 A Uh, he got some, uh, disciplinary action.

17 Q Okay. Um, do you think it was overall on balance
18 appropriately handled?

19 A Yes, it was appropriately handled.

20 Q Okay. Um, in your, um, work at the foundry, um,
21 were you responsible for drawing up any security
22 guidelines or, uh, safety guidelines for work at
23 the foundry of the people you were supervising?

24 A Uh, well, we had some insurance guys there that one
25 time, and we did -- yeah, a little bit.

1 Q A little bit. But it wasn't a big part of what
2 you were doing?

3 A No.

4 Q Okay. Um, in terms of problem-solving and -- and
5 dealing with, um, uh -- or -- or formulating
6 opinions, or speaking with people, trying to
7 understand a point of view, would you consider
8 yourself a -- a big picture person or more of a
9 detail-oriented guy?

10 A Detail, I think.

11 Q Okay. Um -- Okay. Tell me about the volunteer
12 work you do at the Sheriff's Department.

13 A Uh, we go on -- uh, out on patrol and we check, uh,
14 houses and that, if people have went on vacation, and
15 abandoned cars, and just keep our eyes open.

16 Q And how often do you do that?

17 A Uh, once a week.

18 Q Now, you're not a, um, licensed law enforcement
19 officer --

20 A No.

21 Q -- correct? All right. And you're not carrying
22 a weapon when you're assisting?

23 A No.

24 Q Okay. Um, but you do ride in the squad car with
25 other deputies?

1 A No.

2 Q Oh, you don't. Okay. Well, tell us how you work
3 then?

4 A It's both -- uh, both of us are volunteers and we --
5 we get four hour shifts.

6 Q Oh. So there's just you and one other guy who
7 help out?

8 A Correct. There's always two.

9 Q Okay. How do you get your assignments? Or how
10 do you know what to do?

11 A Uh, we have a, um -- I forget, now, what they -- how
12 they say it, but it's -- it's a book, and it tells us
13 which, uh -- where to go.

14 Q Okay. And these are people who may be out of
15 town and have apparently asked the Sheriff's
16 Department to keep an eye on things to make sure
17 that no one breaks in?

18 A Correct.

19 Q I see. Okay. So do you use a -- a county
20 vehicle or do you use your own car?

21 A County.

22 Q Okay. How long have you been doing that, sir?

23 A Uh, since November last year.

24 Q Okay. And, um, when did you retire, by the way,
25 from the foundry?

1 A Uh, '99. I crushed three vertebrae in my back. I'm
2 on disability.

3 Q Okay. I'll come back to the volunteer work in a
4 minute. But I just want to make sure, uh,
5 because of your disability and your back injury,
6 um, would serving on a juror -- on a jury, and,
7 you know, it might require sitting for an hour
8 and a half or two hours at a time, um, before you
9 get a break, would that cause any problems for
10 you in being -- as being a juror or do you think --

11 A No. If I get too much pain or something I just take
12 a pill.

13 Q Okay. And, um, does that affect your ability to
14 think and remember things if you have to take any
15 pain medication?

16 A No.

17 Q Okay. So it's pretty well under control then?

18 A Yes.

19 Q Okay. All right. Um, in terms of the, um -- the
20 volunteer work, then, for the Sheriff's
21 Department, during, uh -- I take it you're still
22 doing that today?

23 A Yes.

24 Q And once a week for four hours?

25 A Yes.

1 Q Okay. Um, while engaging in that work, have you
2 had an opportunity to, uh, meet or become
3 familiar with various members of the, uh,
4 Sheriff's Department?

5 A Not -- not right now, no.

6 Q Okay.

7 A Because I just started.

8 Q Oh, just started. So --

9 A Well, since November.

10 Q Was that November of '06 or November --

11 A Six.

12 Q Oh. So this is just for the last three months?

13 A Yes.

14 Q I see. Okay. All right. Um, I believe you said
15 in your questionnaire you do have, um, one son
16 that is a member of the Sheriff's Department?

17 A Yes, I do.

18 Q Okay. Now, um, how long has he been a member of
19 the Sheriff's Department?

20 A Oh, five -- five years I think.

21 Q All right. And, uh, do you ever have occasion to
22 talk shop with your son about law enforcement
23 work in general?

24 A Not much, no. He won't tell me much.

25 Q All right. Um, very good. Well, let me ask, uh,

1 because this is a -- a matter of interest to all
2 of us here, um, if you were selected as a juror
3 in this case, and since your son is a member of
4 the Manitowoc Sheriff's Department, and since
5 there will be a pretty fair number of police
6 officers, and sheriff's deputies, and state
7 patrol officers, and other law enforcement people
8 testifying, do you think you could evaluate their
9 testimony the same as you would any other
10 witness?

11 A Yes, I believe I could.

12 Q Okay. In other words, you don't think you'd be,
13 you know, more favorably disposed to believing
14 them than you would over any other witness?

15 A No.

16 Q Okay. And you realize they're human just like
17 anybody else? They can make a mistake? And they
18 might even lie as much as the next guy?

19 A Yes.

20 Q All right. So as a juror, your job is to listen
21 and evaluate their testimony the same as you
22 would any other witness?

23 A Yes.

24 Q All right. And you think you could do that?

25 A Yes.

1 Q You feel pretty confident about that?

2 A Yes, I do.

3 Q Okay. Um, um, just one last couple of questions.

4 Uh, have you ever had any other law enforcement
5 experience other than just the past three months
6 of -- of helping out?

7 A No.

8 Q All right. Uh, any law enforcement training at
9 all?

10 A No. None.

11 Q Okay. And -- well, do you think that you could
12 accept, uh, an instruction from the Judge that if
13 you were selected as a juror in this case, you
14 could presume that Mr. Avery is innocent unless
15 and until the State can prove him guilty beyond a
16 reasonable doubt?

17 A Yes.

18 Q All right. You accept that basic proposition in
19 our law?

20 A Yes, I do.

21 Q All right. And you feel comfortable that you can
22 abide by that?

23 A Yes.

24 Q All right. And, um, I take it from your
25 questionnaire that you don't have any opinions of

1 Mr. Avery's, um, guilt or innocence at -- at all
2 at this time?

3 A No.

4 Q All right. Um, so you feel that you can give
5 both the State and Mr. Avery a fair shake in this
6 trial?

7 A Yes, I believe I can.

8 Q And that you would decide his guilt or innocence
9 only on what the evidence is that is presented
10 during the course of the trial?

11 A Yes.

12 Q All right. Is there any concern in your mind
13 that if, you know, you thought and you listened
14 to all the evidence, you say, geez, I just don't
15 think the State, uh, convinced me. Do you think
16 you could, uh, be comfortable rendering a verdict
17 of not guilty?

18 A Yes.

19 Q All right. And do you think that would cause any
20 concern or any problems with, perhaps, talking to
21 your son who's a law enforcement officer? Do you
22 think that might hinder your relationship at all?

23 A No.

24 Q All right.

25 ATTORNEY FALLON: I'll pass the juror.

1 THE COURT: Mr. Buting?

2 ATTORNEY BUTING: Thank you.

3 VOIR DIRE EXAMINATION

4 BY ATTORNEY BUTING:

5 Q Good morning.

6 A Good morning.

7 Q My name's Jerome Buting, and this is Attorney
8 Dean Strang, and we represent Steven Avery.
9 Okay? I'd like to, uh, pick up on some things
10 that Mr., uh -- Mr. Fallon spoke about, but also
11 a few other things. But -- but let me first ask,
12 your volunteer work that you do with the Sheriff,
13 um, can you tell me why you decided to do that?

14 A I wanted something to do.

15 Q Okay. But, you know, there's lot of -- lots of
16 things you can volunteer for. Why that
17 particular --

18 A I kind of wanted to see what they -- what they did.

19 Q Okay. But why? I mean --

20 A I was curious.

21 Q Do you have a particular interest in law
22 enforcement though?

23 A No.

24 Q I mean, you could volunteer for, you know,
25 Habitat for Humanity or the --

1 A I don't have to do that much walking.

2 Q Okay. Um, your -- was it your son's involvement
3 with the Department maybe that piqued your
4 interest a little bit?

5 A Yeah, that was a little bit, too.

6 Q Had you ever wanted to be in law enforcement?
7 Thought, you know, be kind of interesting to do?

8 A No, not really.

9 Q How did the opportunity arise for you to do this?

10 A I heard that you could, uh, volunteer.

11 Q Um, and so who did you meet and what did you do?

12 A Uh, Peggy Holmes. I met her, and talked to her, and
13 she signed me up. They did a background check on me
14 and I got in.

15 Q Okay. And you -- you actually have a squad car
16 that you drive around?

17 A Yeah. It says "volunteer" on the side.

18 Q Okay. Um, and you work with another gentleman?

19 A Yes.

20 Q Or woman?

21 A Sometimes, yes.

22 Q And your son is -- what is his rank or what --

23 A He's a sergeant.

24 Q He's a sergeant?

25 A Yes.

1 Q Same last name?

2 A Yes.

3 Q Does he -- has he had any involvement in the

4 Steven Avery case?

5 A Yeah. He's standing outside the door.

6 Q Okay. So, um -- so he's had du -- duties here

7 in -- in the courthouse; right?

8 A Yes.

9 Q Um, did you ever talk to him about this at all?

10 A No.

11 Q Ever talk to him about the Avery case?

12 A No. But he had to take training or something for

13 some kind of gizmo they've used. Other than that,

14 no.

15 Q Stun belt?

16 A Yeah.

17 Q Okay. So he talked to you about the training he

18 had to do for that?

19 A Yeah. He mentioned it. That was about it. Because

20 I asked him why he had to go to school.

21 Q Do you think that, um -- do you think the police

22 officers would come into court and lie?

23 A Yeah.

24 Q Under oath?

25 A Yeah.

1 Q Why?

2 A Because they can get away with it.

3 Q How do they get away with it?

4 A Some judges believe them.

5 Q Okay. Um, and juries as well?

6 A Yeah.

7 Q Do you think that they have any more inclination
8 or likelihood of lying than -- than another -- any
9 other witness?

10 A No.

11 Q Would you think that they feel like they can get
12 away with it more easily than, say, another --
13 any other witness?

14 A It depends on the situation.

15 Q Do you think sometimes they're -- they're good at
16 lying under oath?

17 A Yeah.

18 Q Better than the average person?

19 A No.

20 Q So why do you think they're good?

21 A They get away with it.

22 Q Have you ever heard of that happening?

23 A Yeah.

24 Q When or where?

25 A When I went to court.

1 Q Okay. And you went to court on -- on a OWI case?

2 A Yeah.

3 Q Can you tell me a little bit about what happened
4 there?

5 A Yeah. They arrested me. I had one beer. I wasn't
6 drunk. But the reason I got into it with them is I
7 always keep three bucks over my sun adviser and they
8 took it. And I knew if I brought it up in court that
9 they would, you know, laugh it off and -- and think I
10 was pulling something. But I never said, boo. The
11 officer brought it up that I said I rob -- uh, that
12 he robbed me.

13 Q Okay.

14 A And the judge believed him.

15 Q Okay. So you were pulled over. Was this a first
16 offense OWI?

17 A Yes.

18 Q How long ago was this?

19 A Ten years.

20 Q And was this the Sheriff's Department?

21 A No. Police. I don't even think he's an officer
22 anymore.

23 Q Okay. Do you know what department?

24 A No.

25 Q Manit --

1 A Just city.

2 Q Manitowoc though?

3 A Yeah.

4 Q Okay. And you're saying that when you were
5 arrested, you had -- this -- this officer took
6 three dollars cash that you had in --

7 A Yeah.

8 Q -- your car? Um, and did you bring that up in
9 court?

10 A No.

11 Q But he brought it up and said that you claimed
12 he -- that he stole something from you?

13 A That he took the money, yeah.

14 Q Okay. And then did you respond to that in court
15 and say, no, it's -- I mean, he did, yes,
16 officer -- yes --

17 A I didn't say nothing because it ain't going to do me
18 no good.

19 Q So you actually sat there and saw him lie under
20 oath?

21 A Yes.

22 Q Right in front of your face?

23 A Yes.

24 Q And the judge believed him?

25 A Yeah.

1 Q In your opinion anyway. Um, how did that make
2 you feel?

3 A Mad, but there ain't nothing I can do about it.

4 Q You think it happens to others, too?

5 A I don't know. That I couldn't tell you.

6 Q Do you, uh -- do you think it's possible that in
7 this case, the Steven Avery case, that officers
8 would come in -- into court and lie?

9 A I don't know. I'd have to hear them.

10 Q Do you think officers could do -- or deputies,
11 or -- or any law enforcement officer, could do
12 more than just lie under oath, but maybe even
13 cross the line and falsify a report?

14 A Yeah.

15 Q What about crossing the line and actually
16 planting evidence or altering evidence in some
17 way?

18 A Depends if he didn't like him.

19 Q Depends what?

20 ATTORNEY FALLON: I'm sorry?

21 THE WITNESS: Depends if he didn't like
22 him.

23 Q (By Attorney Buting) Meaning the defendant?

24 A Yeah.

25 Q So if an officer just really didn't like a

1 particular defendant, you could see situations
2 where they might actually go to the -- to the
3 length of planting evidence or tampering it with
4 evidence in a case?

5 A Maybe.

6 Q Have you ever heard of that happening?

7 A No.

8 Q Do you have any reason to believe that people in
9 the Manitowoc County Sheriff's Department would
10 be capable of doing such a thing?

11 A I wouldn't think so.

12 Q Do you have any reason to believe that -- that
13 they could not? I mean, in other words, because
14 your son is there, and you're volunteering there,
15 do you think that it's just not possible that
16 anybody in that Department would do such a thing?

17 A It's possible.

18 Q What if you came to the conclusion that that
19 happened in this case, um, that somebody in the
20 very department that you volunteer for would do
21 such a thing such as tampering with evidence or
22 planting evidence? How would that make you feel?

23 A Mad.

24 Q Mad?

25 A Yes.

1 Q Would that affect your -- your verdict?

2 A Yes.

3 Q How?

4 A I don't know. I -- I would plead not guilty for him.

5 Q Do you think that there would be any

6 repercussions afterwards for you?

7 A No, I don't think so.

8 Q Do you think the people in the department that

9 you volunteer for would be unhappy with you?

10 A I don't think so.

11 Q If this involved, in this case, very high ranking

12 members of the department you work for,

13 sergeants, lieutenants, things of that nature, do

14 you think that, uh, they would be unhappy if you

15 would return a not guilty verdict?

16 A I don't think so, no.

17 Q Well, now your son is a sergeant. Um, what if

18 you came to the conclusion that another sergeant,

19 or even someone above him, had committed

20 misconduct in this case? Would you be capable of

21 rendering a not guilty verdict?

22 A Yes.

23 Q Do you think your son would be unhappy with that?

24 A No.

25 Q Why not?

1 A Because it's -- I'm being honest.

2 Q Has he ever told you anything about the Sheriff's
3 Department that would lead you to, um, think that
4 this, um -- that this kind of misconduct could be
5 possible?

6 A No. He don't talk about his work.

7 Q All right. Could you tell me what you know about
8 this case from publicity, media?

9 A They say he killed her and burned her up. That's
10 about it.

11 Q And what -- what's your view about that?

12 A I -- I hate to say it, but I ain't really got no
13 view.

14 Q Well, do you think --

15 A It's wrong, but --

16 Q Why do you say you hate to say it?

17 A I don't know. I just don't know what to tell you.

18 Q Well, do you think that the media's portrayal of
19 Mr. -- the things you hear in the media about
20 Mr. Avery, uh, makes it look like he's probably
21 guilty or probably innocent?

22 A I'm undecided with that, because I didn't get to see
23 that much and then he told me -- the Judge told me
24 not to watch. So I -- I ain't seen nothing.

25 Q Okay. Did you see any press conferences in this

1 case? By the --

2 A No.

3 Q -- the Sheriff?

4 A No.

5 Q Prosecutor?

6 A No. I seen it way in the beginning and that was
7 about it.

8 Q And can you remember any details about what
9 you -- you heard or saw?

10 A No. They just showed it -- I think it was his farm
11 and, um, trailer house, and the tape around the
12 barrel, and that was about it.

13 Q Okay. Do you know the name Brendan Dassey?

14 A No.

15 Q Do -- or if I refer to him as -- as Mr. Avery's
16 nephew, do you recall any reports about him?

17 A Uh, yeah. Uh, not really. Well, I knew he was
18 involved but that was it. I didn't real -- I really
19 don't watch the news that much I'm sorry to say.

20 Q Okay. Well, you -- you say you knew that he was
21 involved. Did you hear any news reports that he
22 had made any kind of statements admitting that he
23 was involved or --

24 A No.

25 Q Did you ever hear any reports that he had, uh,

1 later denied his involvement and recanting the
2 confession? Withdrawing the confession? Do
3 you --

4 A No.

5 Q -- remember -- you hadn't heard anything about
6 that at all?

7 A No.

8 Q Do you think that's possible that somebody might
9 confess to something that's -- that they didn't
10 really do?

11 A Yes.

12 Q Why?

13 A Under duress.

14 Q Pressure from the police?

15 A Well, anybody.

16 Q Okay.

17 A Family or something.

18 Q Um, did you hear anything in the news reports
19 about, um -- about a blood vial?

20 A No.

21 Q Have you heard anything at all about whether
22 there might be any kind of tampering with
23 evidence or planting of evidence?

24 A No.

25 Q Do you remember Mr. Avery's statements when he

1 was first arrested in which he denied any
2 involvement and claimed somebody was trying to
3 frame him?

4 A Yeah. Yeah, I think I did.

5 Q What's your thought about that?

6 A Nothing.

7 Q Do you -- um, do you think that -- I mean, as
8 you -- as you look at this case and what you've
9 heard about this case, do you think Steven
10 Avery's being framed?

11 A I don't know.

12 Q Think it's possible that he is?

13 A I -- I don't know. I can't answer that.

14 Q Okay.

15 A Couldn't even tell you.

16 Q You don't -- you don't know one way or the other;
17 right?

18 A Right.

19 Q You don't know whether he's guilty either?

20 A Correct.

21 Q What do you know about his past? Can you tell me
22 what you know about Mr. Avery?

23 A I seen it when he got out.

24 Q Out of prison?

25 A Yes.

1 Q Okay. So you knew that he was wrongly convicted?
2 A Yes. And I was surprised to hear him on the next
3 time on the news about him.
4 Q About him suddenly being charged with something?
5 A Yes.
6 Q Okay. Any doubt in your mind that he was wrongly
7 convicted and spent all that time in prison?
8 A The first time?
9 Q Yeah.
10 A Yeah. They were wrong.
11 Q They were wrong?
12 A Yes.
13 Q Okay. And, uh, how did you feel about that?
14 A I don't know how to say that. He's just -- be --
15 they were wrong, but I know it happens.
16 Q You know it happens?
17 A Yes.
18 Q Okay. How do you know it happens?
19 A They did it to him.
20 Q Okay. Um, were you also aware of a lawsuit that
21 he filed?
22 A Yeah.
23 Q Against the county?
24 A Yes.
25 Q Do you have any thoughts or opinions about that?

1 A I think he should get the money.

2 Q Okay. Let me just brief -- very briefly go over
3 a couple of other things here. Did you, uh -- in
4 your OWI case, uh, it sounds like you actually
5 had a hearing?

6 A Yes.

7 Q Um, did you go to a trial?

8 A Yes.

9 Q Did you have a lawyer?

10 A Yes.

11 Q Did you testify?

12 A No.

13 Q You didn't take the witness stand?

14 A No, I don't think I did.

15 Q Okay. Um, did your lawyer -- or did you
16 understand that you had a constitutional right
17 not to testify?

18 A No.

19 Q Uh, is there some particular reason why you did
20 not? Or you --

21 A I just didn't know. I didn't know until now.

22 Q That you had a right not to?

23 A Yes.

24 Q Um, did, uh --

25 ATTORNEY FALLON: Your Honor, I'm going

1 to -- can we approach the bench?

2 THE COURT: Sure.

3 (Discussion off the record)

4 Q (By Attorney Buting) The, uh -- the
5 questionnaire that you filled out I think, uh,
6 had a question that -- that told you about a -- I
7 don't recall the number right now, but I think it
8 told you that the defendant has a right -- a
9 constitutional right not to testify if he -- he
10 and his lawyer so choose?

11 A If you say so. I don't remember.

12 Q You don't remember?

13 A Sorry to say, no. I just filled it out to get out.

14 Q Okay. Um, well, just to quickly go over with
15 you, the -- the Judge will instruct you that if
16 Mr. Avery chooses not to testify under the -- you
17 know, if it's our advice that he not testify,
18 that you can't consider that against him in any
19 way. Um, in other words, some people might think
20 if a defendant doesn't testify, you know, he must
21 have something to hide?

22 A Yes.

23 Q Is that something you might be concerned about?

24 A No.

25 Q So if Mr. Avery chooses not to testify, will that

1 affect you in any way in thinking that -- that
2 he's still innocent?

3 A No.

4 Q And if he does testify, uh, will you be able to
5 consider his testimony just the same as any other
6 witness?

7 A Yes.

8 Q Or will you think that he's more likely to lie
9 just because he's the defendant in the case and
10 he's trying to get off?

11 A Possible.

12 Q Well, will you be able to consider his testimony
13 in the same way as any other witness though?

14 A Oh, yes.

15 Q Okay. You show -- you watch, uh, *C.S.I.* shows, I
16 think; right?

17 A Yes.

18 Q And, uh, it's your opinion that they are very
19 realistic?

20 A Some of them. Some of it, yes.

21 Q Do you think that the -- for instance, the
22 evidence that they can find at crime scenes is --
23 is -- all those tests, that that's pretty
24 realistic?

25 A Pretty much.

1 Q Maybe that --

2 A Surprised at what they find, yeah.

3 Q Okay. Maybe they can't do them as quickly as

4 they show on TV, but the tests, themselves,

5 you'd -- you tend to think they're realistic?

6 A Yes.

7 Q And so, uh -- I mean, most crime scenes you'd

8 expect there would be lots of evidence available?

9 A Yes.

10 Q And if there wasn't -- if there was a lack of

11 physical evidence at a crime scene, is that

12 something that would give you concern about

13 whether or not there might be reasonable doubt?

14 A Yes.

15 Q Let me ask you this final question: Uh, do you

16 want to be on this jury or do you not want to be

17 on this jury?

18 A It's a tossup. Maybe. I don't want to be.

19 Q You don't want to -- you prefer not to be?

20 A Yeah.

21 Q Why?

22 A I, um -- I like what I do for the Sheriff's

23 Department. I hate to miss it.

24 Q And -- and you think -- you really think that

25 you'd be able to sit back there in that jury room

1 and, um, not be in some way biased against
2 Mr. Avery just be -- I mean, because you work so
3 closely with that Sheriff's Department?

4 A No.

5 Q All right. Thank you.

6 THE COURT: All right. We'll have the
7 clerk escort you from the courtroom at this time,
8 Mr. Wardman.

9 (Wherein juror is escorted out)

10 THE COURT: Um, Counsel, is there a
11 motion from either party?

12 ATTORNEY FALLON: None from the State.

13 ATTORNEY BUTING: No, Your Honor.

14 THE COURT: All right. Uh, Mr. Wardman
15 will be considered in. And, um, we'll take a break
16 at this time. Report back at 5 minutes to 11.

17 (Recess had at 10:42 a.m.)

18 (Reconvened at 10:58 a.m.)

19 THE COURT: Before we bring in the next
20 juror, I just wanted to, uh, make a follow-up
21 response to defense counsel's objection on the,
22 uh -- uh, my imposition of the 20-minute time limit
23 on the questioning of Mr. Gray. Uh, as I think I
24 indicated yesterday, I allowed at least each of the
25 parties once to exceed the 20-minute time limit

1 because I thought the nature of the answers being
2 given by the juror warranted it.

3 In the case of, uh, Mr. Gray, uh, I did
4 not detect any answers that he gave to questions
5 along the way that would have indicated the
6 questions could not be handled within 20 minutes
7 and that is why I terminated the questioning.

8 Uh, I believe our next juror is, uh, No.
9 71, Nancy Steinmetz.

10 Uh, Ms. Steinmetz, please raise your
11 right hand and the clerk will administer the oath
12 to you.

13 (Juror sworn)

14 THE CLERK: Please be seated.

15 THE COURT: Uh, Ms. Steinmetz, you've
16 already completed a written jury questionnaire in
17 this case. Uh, this morning we're going to move on
18 to the next step of the jury selection process which
19 is known as voir dire.

20 The attorneys for each of the parties
21 will have a chance to ask you some questions
22 relating to your qualifications of a juror. For
23 the most part they will follow up on answers that
24 you gave in your jury questionnaire.

25 Before we begin those questions, I want

1 you to know that the jurors in this case will not
2 be sequestered. That means at the end of court
3 proceedings each day the jurors will be permitted
4 to return home.

5 Uh, because of that fact, we will
6 continue to require that the jurors not be
7 exposed to any publicity concerning this case
8 during the trial, whether it be from radio,
9 television, newspapers, the internet, or any
10 other source. And, in addition, the jurors will
11 be prohibited from, uh, communicating with anyone
12 about the case, including other jurors or members
13 of the jurors' family.

14 These proceedings today are open to the
15 public, but the Court does not allow cameras in
16 the courtroom during jury voir dire proceedings,
17 and the members of the media are not permitted to
18 use the names of the jurors in their reporting of
19 this matter.

20 In addition, uh, should you be selected
21 to serve as a juror, you should know that while
22 there may be cameras in the courtroom during the
23 trial, they're not permitted to focus on the
24 jurors in a way that discloses the identity of
25 the jurors.

1 Uh, finally, if you remain on the jury
2 panel after today's proceedings, you'll be
3 notified when to record -- report back to court
4 again. Uh, it will probably be a notification
5 sometime today.

6 JUROR STEINMETZ: Okay.

7 THE COURT: At this time, I believe
8 Mr. Kratz will be, uh, asking you questions on
9 behalf of the State.

10 ATTORNEY KRATZ: Thank you, Judge.

11 VOIR DIRE EXAMINATION

12 BY ATTORNEY KRATZ:

13 Q Ms. Steinmetz, good morning. My name is Ken
14 Kratz. I'm the Calumet County District Attorney.
15 I'm the lead prosecutor in this case. With me
16 this morning is Tom Fallon --

17 A Morning.

18 Q -- from the Department of Justice, Attorney
19 General's Office. He'll be assisting not only
20 this morning but also throughout the, uh -- the
21 case.

22 Uh, I note, uh, Ms. Steinmetz that you
23 currently work at the American Club; is that
24 correct?

25 A Correct.

1 Q And you are involved in, uh, some kind of, um, a
2 secretarial position? At least answering phones;
3 is that right?

4 A Telecommunications.

5 Q Okay. Could you describe that a little more in
6 detail? What is it that you do there?

7 A Um, I take the incoming calls and, uh, direct them to
8 the correct place of business.

9 Q It's a rather large facility so I suspect there's
10 a lot of incoming calls or places throughout
11 them; is that --

12 A Correct.

13 Q -- is that correct? You've done it for 22 years;
14 is that right?

15 A No, I've done that for about, uh, four years. About,
16 um, ten years prior to that I was still at the
17 American Club and I was in a supervisory position in
18 the, uh, banquet area.

19 Q Ms. Steinmetz, uh, where would you say that you
20 get most of your news from; the television,
21 newspapers, or some other sources?

22 A Um, not much of anywhere. Um, I was working night
23 shift so I didn't watch the news. Um, don't get a
24 newspaper. We do get a *Newsweek* which I read a
25 little bit once in a while, but that's about it.

1 Q Is -- could be more of a national or world
2 publication?

3 A It's a -- a world news. If we do see something, um,
4 I take my 20-minute break up in the break room and
5 they do have a TV, but it's set at world news, and
6 then I guess the *Newsweek* is kind of like more of a
7 world news.

8 Q Do I understand that you're still working, uh,
9 second shift, or a later shift, or has that gone,
10 uh, to a different shift?

11 A About six months ago I -- my -- my hours changed. I
12 do three days during the day and then I do two -- two
13 night shifts.

14 Q All right. Uh, your husband is involved in
15 farming?

16 A Correct.

17 Q And, uh, has that been for most of his life?

18 A All of his life.

19 Q All right. Ms. Steinmetz, if you do receive any
20 local news because of where you work, would it be
21 fair to assume that it, um, may be more centered
22 in the Sheboygan County area rather than
23 Manitowoc or is that not necessarily true?

24 A To be honest with you, I don't know much news about
25 anything I guess.

1 Q Not much about either, huh?

2 A No.

3 Q All right.

4 A No.

5 Q Have you, um, heard of, uh, the case for which
6 you are summoned here as a potential juror; the
7 Steven Avery case?

8 A About, oh, over a year ago maybe, um, around
9 Halloween time, um, just very little bit of it. Not
10 much of anything. And then day goes on as -- as
11 normal. I -- I didn't --

12 Q Are you gen --

13 A -- pay attention to it.

14 Q I'm sorry to interrupt you. Are you generally
15 aware of the allegations against Mr. Avery?

16 A I am at this point, yes.

17 Q Did you become aware of those because of your
18 involvement in this case and the instructions by
19 the Judge, or was that from, uh, either a news
20 source or out in the community somewhere?

21 A Um, that, um -- when I got my first questionnaire,
22 um, in October, and it said from this period to this
23 period, and I'm thinking, well, my husband just got
24 his jury duty, and it's only a month, and he has to
25 call in. And I've never been asked before, and I'm

1 thinking, well, this is a little strange.

2 And I mentioned it to, um, one of my,
3 uh, associates, and she says, oh, I bet I know
4 what it is, and she went on the computer, and she
5 says, I bet it's the, uh, Avery case, and I said,
6 no way. And that was about all that I got
7 involved on that, because then if it was, I
8 shouldn't be trying to see what I could find out
9 about it or anything.

10 Q About three weeks ago, or perhaps even a little
11 more, you received a letter from the Judge, uh,
12 instructing you not to watch any news accounts or
13 not to read anything about this case; is that
14 right?

15 A Correct.

16 Q Have you been able to do that?

17 A No. I see a flash, my ears close, my -- my eyes
18 close. I plug my ears, count to 50. So, no, I have
19 seen absolutely nothing.

20 Q All right. So you've done your absolute best --

21 A My absolute best.

22 Q -- to avoid any, uh, any influence. That's good.
23 Ms. Steinmetz, uh, do you watch, uh, much
24 television, uh, at home in the evenings or,
25 specifically, shows that, uh, may be a

1 crime-related *C.S.I.* or anything like that?

2 A Um, on occasion we will watch, um, *C.S.I.* Not very
3 often. Not very often at all. Um --

4 Q Let me just stop you there. Does that kind of
5 show or that topic, if you will, of show, does
6 that interest you?

7 A It -- not -- it's a little bit interesting but, um,
8 you know, I -- I -- it's not something that I have to
9 turn on to watch. It's just something that we turn
10 on because there's nothing else on at the time or
11 we've, uh -- just don't have anything else to do. We
12 just flip the stations and once in a while we -- we
13 watch it.

14 Q Do you watch any other, um, shows that are not
15 necessarily, uh, only entertainment but perhaps
16 more of a documentary nature? *Forensic Files* or
17 anything that --

18 A No.

19 Q -- are -- are, uh, depictions of what is supposed
20 to be real life kinds of cases?

21 A No. We watch, um, a lot of the Discovery Channel,
22 how do you make this, or how is this made. Um, I
23 watch, um, *Gray's Anatomy*. I like that. I watch
24 *Ugly Betty*. And that's about as late as I stay up.
25 And by the time you get home from work, and make

1 dinner, and clean up, you know, there's only a little
2 bit of time that we might sit in front of the tube.
3 And I'm in bed by nine.

4 Q All right. I suspect from *Gray's Anatomy* or any
5 of those kind of shows, uh, you don't necessarily
6 believe that you have a good grasp, of, uh, the
7 medical field or anything like that, do you?

8 A No. It's just entertainment. Kind of who's doing
9 what with who. A little soap opera.

10 Q Are you familiar with a -- a kind of evidence
11 called DNA evidence?

12 A Yes.

13 Q Tell me what you know about that.

14 A From what I know, it's just that DNA can be matched
15 up to fit another person's identity. That it's like,
16 um, a fingerprint where only one person has the
17 specific little things that show up in the DNA.

18 There are --

19 Q That it's unique to one -- one --

20 A Exactly.

21 Q -- person and nobody else has the same DNA?

22 A Right. It's like --

23 Q All right.

24 A -- a fingerprint. It can't be related to anyone
25 else.

1 Q And from what you've known or heard about that
2 on, uh -- on TV, would you suspect that to be,
3 um, relatively accurate kinds of information? In
4 other words, that that is an accurate way to, uh,
5 identify either evidence or individuals from
6 which DNA came?

7 A I would think it would be pretty darn close to
8 accurate.

9 Q All right. What I'm asking, though, is, is there
10 anything that you know about DNA evidence that
11 causes you pause or concern about that kind of
12 analysis or that kind of evidence?

13 A No, I don't think so.

14 Q Have you had any, uh, run-ins -- I -- I -- I note
15 that your answer was, no, but let me ask you this
16 a little broader. Experiences, perhaps, with the
17 Manitowoc County law enforcement, uh, officials
18 that in some way questions you, uh, either about
19 their integrity or about the job that they're
20 doing?

21 A No.

22 Q You have a generally positive or negative view
23 about how the Manitowoc law enforcement community
24 is -- is doing their job?

25 A I've only been in Manitowoc maybe a handful of times.

1 Q I meant the county. The --

2 A The county.

3 Q -- entire county law enforcement community. Do
4 you know -- uh, do you have an opinion about how
5 they're doing their job?

6 A None whatsoever.

7 Q Do you feel safe in your community?

8 A Yes.

9 Q Okay. Um, Ms. Steinmetz, uh, would you consider
10 yourself a detailed-oriented person that likes to
11 make lists and things like that, or do you
12 consider yourself more of a big picture kind of a
13 person?

14 A Uh, detail orientated. In fact, we just had a little
15 appreciation thing with all the employers two weeks
16 ago and I got a little plaque saying that the
17 detail-orientated, you know, team worker. That type
18 of thing.

19 Q All right. That's nice. Do you like puzzles?

20 A Somewhat. Not real difficult ones, but --

21 Q What kind of puzzles do you like?

22 A Um, I like the kind where you can just kind of like
23 find the words within. Um --

24 Q Word search?

25 A Yes. That's -- otherwise I don't do too much for

1 puzzles.

2 Q All right. Uh, not a jigsaw puzzle person or
3 anything like that?

4 A No.

5 Q Ms. Steinmetz, if you had to serve on this, uh,
6 perhaps six-week jury process, would that cause
7 any personal or financial hardship for you?

8 A No.

9 Q Let me ask you this, Ms. Steinmetz: Once you,
10 even several months ago, thought that you might
11 possibly be on this important jury --

12 A Um-hmm.

13 Q -- did you look forward to that? Do you look
14 forward to being a member of this jury or would
15 you kind of, uh, feel awkward or concerned about
16 that?

17 A I don't feel awkward. Um, I -- I -- it's probably
18 like a 50-50. Um, I -- I would, um, take it very
19 seriously. It would kind of -- if I knew that I was
20 part of it, it's like, okay, um, I'm -- was selected,
21 I'm a fairly smart person, I think, but it would
22 still have -- it's -- it's a major decision that
23 would be -- you'd have to be really sure --

24 Q Sure.

25 A -- about, you know. So it -- it's kind of like a

1 50-50.

2 Q So you would take your responsibilities very
3 seriously and you'd be able to listen to the
4 instructions that the Court would give you in
5 deciding this case; is that what --

6 A Yes.

7 Q -- you're telling us?

8 A Yes.

9 Q All right. And although, um, maybe not looking
10 forward to it, if asked to serve, you'd certainly
11 do that; is that right?

12 A Yes.

13 Q Now, you have all sons; is that right?

14 A Yes, I do.

15 Q No daughters?

16 A No daughters.

17 Q Um, are any of your sons married?

18 A One is married. My oldest.

19 Q And do you have any grandchildren?

20 A No.

21 Q Have either of your sons or your daughter-in-law
22 spoken to you about the Steven Avery case?

23 A No.

24 Q Do you know if they're aware of it?

25 A I think so, because when I, um, got my first notice,

1 I had it up on the refrigerator, and when they would
2 come home, you know, that it might be, but we haven't
3 talked about anything with it.

4 Q Okay. You've told us in your questionnaire --
5 and -- and -- and I'm almost through here -- but
6 you've told us in your questionnaire that, uh,
7 you have not formed an opinion about Mr. Avery's,
8 uh, guilt or innocence, and any opinion that you
9 may have, you'd be able to set aside deciding
10 this case solely on the evidence as presented.
11 Is that still true today?

12 A Very much so.

13 Q As Mr. Avery sits here, uh, today he is presumed,
14 uh, innocent, uh, and may or may not, um, testify
15 in, uh, this case. Uh, are you familiar at all
16 with those legal principles that we have in this
17 country?

18 A Uh, it's my understanding that a person's innocent
19 until proven, without a question, guilty.

20 Q And when you hear evidence, either from law
21 enforcement officers, scientists, or -- or
22 citizens, would you be able to listen to
23 everybody's testimony, giving that testimony such
24 weight as you believe it's entitled to receive?

25 A Yes.

1 Q Is there anything, Mrs. Steinmetz, that I haven't
2 asked you? Uh, any pause that you have about,
3 uh, sitting on this jury, or something, uh, that,
4 uh, perhaps wasn't in the questionnaire that you
5 feel would disqualify you as a potential juror in
6 this case?

7 A No.

8 Q All right.

9 ATTORNEY KRATZ: With that, that's all I
10 have, Judge. Thank you.

11 THE COURT: All right. Mr. Buting?

12 ATTORNEY BUTING: Thank you, Judge.

13 **VOIR DIRE EXAMINATION**

14 BY ATTORNEY BUTING:

15 Q Good morning.

16 A Good morning.

17 Q Um, how do you pronounce your name?

18 A Steinmetz.

19 Q Steinmetz. Okay. Spelled a little differently
20 sometimes.

21 A It is. I -- my first four years of marriage I
22 spelled it wrong. Until mother-in-law pointed it
23 out.

24 Q Well, my name's Jerome Buting, this is Dean
25 Strang, and we represent Steven Avery.

1 A All right.

2 Q Uh, we really appreciate you coming here today,
3 and, uh, I can tell you really, um, take this
4 seriously. You have, uh -- well, I'll talk about
5 your sons in just a minute, but your --

6 A Okay.

7 Q -- your husband's a -- a farmer. So you live --
8 what kind of a farm is it? Dairy farm?

9 A It's a -- a dairy farm. He's, uh -- he was raised as
10 a farmer. Um, he had his, um, own business. He was
11 an AI technician. And then, um, one of the farms
12 that he would do his breeding at, they were enlarging
13 and they had persuaded him to give his business up
14 and relocate to this other farm. And it's a very
15 large dairy farm, and he just -- he's just a farmhand
16 worker.

17 Q Oh, I see. So it's, uh -- it's not his farm --

18 A No, it is not. No.

19 Q Okay. Yeah, because I was wondering why none of
20 your sons decided to go into farming or work with
21 him, but I guess that explains it.

22 A One was going to college for veterinarian medicine,
23 but he made the decision, well, it -- it wasn't for
24 me, and I have to be happy, and so he went into a
25 different field.

1 Q I see one of them's in the Peace Corps.

2 A That's the one that was going to be a veterinarian,
3 yes.

4 Q Is he overseas then or --

5 A Him and his wife are in, um, Costa Rica.

6 Q Okay. So do you get to see them, uh, very often
7 or --

8 A No. I haven't seen them since they left in, uh,
9 first part of June.

10 Q Okay. Now, I know you've, uh -- sounds like
11 you've done a good job of trying to shield
12 yourself from any -- any information in the news,
13 but, um, every once in a while some blurb will
14 come on the radio, perhaps, or do you listen to
15 the radio when you drive?

16 A I have a CD in the car.

17 Q Okay. So let me just ask you: Are you familiar
18 with the name Brendan Dassey?

19 A No.

20 Q Okay. Have you heard anything about a blood
21 vial?

22 A No.

23 Q Okay. You've done very well.

24 A Thank you. I've tried really hard.

25 Q Um, you said that you've had no real, uh,

1 exposure to police, or you didn't -- you didn't
2 have any opinion one way or the other about kind
3 of job Manitowoc County Sheriff's Department is
4 doing?

5 A No. I just get aggravated when solicitation calls
6 from them, and they identify themselves, and I'm
7 thinking, oh, my God, what happened? Someone get
8 hurt in the family? And it's just a solicitation for
9 donation and --

10 Q Yeah.

11 A -- I just ask them, please don't call back.

12 Q Okay.

13 A That's about as close as I come to them.

14 Q Okay. Do you think that, um -- you're going to
15 be hearing from -- testimony from police officers
16 in this case --

17 A Um-hmm.

18 Q -- and one of the things you -- you have to do
19 when you're a juror, if you're selected, is to
20 determine the truthfulness or untruthfulness of
21 what people testify about. Do you think that if
22 somebody takes the witness stand and takes the
23 oath, anybody, that they're always going to tell
24 the truth?

25 A I would like to think they do.

1 Q Okay. But do you think -- in reality, do you
2 think they always do?

3 A Yes. I think so. I think if -- Yes, I do.

4 Q Okay. Well, what if in this case, as a juror,
5 you hear testimony from one witness that does not
6 seem to be true, that seems to be inconsistent
7 with what another witness has said, or maybe even
8 directly contrary to what they, them --
9 themselves, said at a different time --

10 A Um-hmm.

11 Q -- how are you going to deal with that?

12 A I'd have to think that somewhere someone wasn't being
13 completely honest and we would have to, um, probably
14 just continue to hear what others have to say, and be
15 a matter of putting the, uh, pieces together so that
16 if the person that wasn't being truthful would end up
17 somehow stumbling over things, because if you keep
18 saying untruths, you end up getting caught up into
19 something, and something would probably show up more
20 definite that they weren't truthful.

21 Q Okay. Um, what I'm getting at is that -- that,
22 you know, if you're selected as a jury -- juror
23 on this case, you're -- you're going to have to
24 do more than just assume or -- that everything
25 that's said on that witness stand is the truth.

1 A Um-hmm.

2 Q You're going to have to -- the Judge will
3 instruct you how to determine the credibility of
4 witnesses and what -- you look at their demeanor,
5 and what they say, and when -- what they said in
6 the past, and all of those factors you consider,
7 um, to resolve any -- any question about whether
8 the person's telling the truth. Do you think you
9 can do that?

10 A Yes, I do.

11 Q Okay. And, in particular, if law enforcement
12 officers, sheriff's deputies, or police officers
13 come up and take the witness stand, the Judge is
14 going to tell you that you have to also treat
15 them the same way as any other witness and judge
16 their credibility the same way. Do you think you
17 can do that?

18 A Yes.

19 Q You don't think that just because they're police
20 officers there's just no way they would ever lie
21 under oath?

22 A Um, I don't know. They probably could. They're just
23 like anybody else. If -- if a normal person lies
24 under oath, I mean -- but I -- I -- again, I would, I
25 don't know, be -- I would like to think they

1 wouldn't.

2 Q Sure. You -- you'd hope not. We'd all hope
3 that --

4 A Exactly.

5 Q -- of everybody. But, um, you may have to make
6 those kinds of determinations in this case, and I
7 want to be sure that you're -- you feel able to
8 do that.

9 A I do.

10 Q Okay.

11 A I do.

12 Q Okay. Do you think that if you heard evidence
13 that -- that gave you reason to -- to be
14 concerned that, perhaps, the police did even a
15 little bit more than lie under oath, but that
16 maybe even they -- they became so involved and
17 convinced that the person was guilty that they
18 crossed the line and either would alter their
19 reports or maybe even plant evidence against a
20 person, do you -- would you consider that?

21 A Well, it -- it would be -- wouldn't it be difficult
22 to know if they planted evidence or whatever for me
23 to assume that until several other people and
24 everything's coincided together?

25 Q Sure.

1 A I mean, I wouldn't be able to make that decision
2 knowing someone says, well, this, this, this. I have
3 nothing to base that --

4 Q Sure.

5 A -- that isn't the truth until, perhaps, other things
6 come together on it.

7 Q Right. And -- and, obviously, you've heard no
8 evidence at this point, so I'm not asking you
9 to -- to make any kind of decisions in -- at this
10 point, but I'm just wondering if you will be open
11 to listen to all of the evidence and to consider,
12 um, whether, you know, if -- if some evidence
13 tends to point that way --

14 A Um-hmm.

15 Q -- um, whether you would consider that as a
16 possibility or whether, because of some of
17 your -- your beliefs that you bring into the
18 case, you would just say, no, there's just no
19 way. I can't even accept that would ever happen.

20 A No. Um, I'm -- I'm completely open-minded. Um --

21 Q Okay.

22 A -- very open-minded.

23 Q Okay. I -- I -- I can see that. I appreciate
24 that. Um, and the, uh -- one of the questions in
25 the questionnaire, um, goes along with a -- an

1 instruction sometimes the judges give, and it
2 talks about a defendant's constitutional right
3 not to testify?

4 A Um-hmm.

5 Q And sometimes that's hard for people because
6 they -- they want to, you know, in their -- their
7 daily lives, when you try and find out -- make
8 decisions, you like to hear both sides. Are you
9 one of those kinds of people that like to hear
10 both sides before you make a decision?

11 A Um, yes. However, if, um, let's say Mr. Avery's, um,
12 side has all these witnesses and you feel comfortable
13 in that, I -- why would, um -- if -- and if Mr. Avery
14 isn't comfortable with going up there and having
15 someone try to tear him down a little bit, and it
16 wouldn't be to his benefit if he felt that the other
17 witnesses were positive for you, why would he go up
18 and possibly have it be a negative for himself?

19 Q Okay. And so -- so you could follow the -- the
20 Court's instruction that you're not supposed to
21 consider that decision against him in some way,
22 or speculate?

23 A Correct.

24 Q And, uh, because of the -- because the State has
25 the -- the burden of proof, um, if the defense

1 did put on any witnesses, would you hold us up to
2 some burden and say, well, you haven't proven
3 your case?

4 A I don't know.

5 Q Because what -- what you have to do is you have
6 to look only at -- at -- means you have to look
7 at the State's case and see if the State has
8 convinced you beyond a reasonable doubt.

9 A Correct.

10 Q And I just want to be sure that you -- you're not
11 going to impose some burden on Mr. Avery to prove
12 that he's innocent.

13 A No.

14 Q You can do that?

15 A I can do that.

16 Q Okay. All right. Thank you very much, ma'am.
17 Appreciate it.

18 A All right.

19 THE COURT: At this time, uh, the clerk
20 will escort you from the courtroom.

21 JUROR STEINMETZ: I think I need a glass
22 of water. Thank you, everyone.

23 ATTORNEY BUTING: Thank you.

24 (Wherein juror is escorted out)

25 THE COURT: Counsel, any, uh, motion from

1 either party?

2 ATTORNEY KRATZ: I've never had a juror
3 thank me before, Judge, but, uh, there's no
4 motion by the State.

5 ATTORNEY BUTING: No motion by the
6 defense, and, uh, for the record, if you would
7 note, I only took about 12 minutes, I think.

8 THE COURT: Right. I note that. Perhaps
9 that was why she was thanking you. I'm not sure.
10 But at any rate, we'll keep her on the panel and
11 move on to the next juror which is Mary Lou Salomon.

12 Uh, Ms. Salomon, I'll ask you at this
13 time to raise your right hand, please. The clerk
14 will administer the oath.

15 (Juror sworn)

16 THE CLERK: Please be seated.

17 THE COURT: Ms. Salomon, you've already
18 completed a written jury questionnaire in this
19 case. Uh, this morning we're moving on to the
20 next phase of jury selection which is known as
21 voir dire.

22 During this part of the process, the
23 attorneys for each of the parties will be
24 permitted to ask you some questions that relate
25 to your qualifications as a juror. For the most

1 part, they'll be follow-up questions to
2 information that you provided with your
3 questionnaire.

4 Before we get to those questions, I can
5 inform you that the, uh, jurors who are selected
6 in this case will not be sequestered. That is,
7 they will be permitted to return home each day at
8 the conclusion of each day of the court
9 proceedings and then return the next day.

10 Because of that fact, we'll continue to
11 require that the jurors, uh, not be exposed to
12 any news media accounts of the case, whether it
13 be from television, radio, newspaper, or the
14 internet, or any other source, and, in addition,
15 the jurors will be prohibited from, uh, talking
16 to anyone else, or communicating in any way about
17 the case. That would include other jurors or
18 members of the jurors' families.

19 The proceedings this morning are open to
20 the public, but the Court does not permit cameras
21 in the courtroom during the jury selection
22 process. Uh, and the, uh, news media are not
23 permitted to use the names of jurors in any news
24 accounts of the proceedings today.

25 If you are selected as a juror, you

1 should also know that while there may be cameras
2 in the courtroom during the trial, they are not
3 permitted to, uh, focus on or identify the jurors
4 in any way.

5 If you remain on the jury panel after
6 the questioning today, you'll get a call probably
7 later this afternoon, uh, letting you know when
8 to report back to court.

9 Um, Mr. Fallon, are you handling this
10 one?

11 (No verbal response)

12 THE COURT: Very well.

13 **VOIR DIRE EXAMINATION**

14 BY ATTORNEY FALLON:

15 Q Good morning, Ms. Salomon.

16 A Good morning.

17 Q My name is Tom Fallon. I'm an Assistant Attorney
18 General with the, uh, Wisconsin Department of
19 Justice. I'm one of the prosecutors in the case.
20 To my immediate left is Mr. Ken Kratz, uh, the
21 Calumet County District Attorney and lead special
22 prosecutor for this matter.

23 Good morning and, uh, thank you for
24 coming in today and helping us out. I'd like to
25 begin with a -- a few questions, um, about your,

1 um -- I guess your former work. Uh, you were,
2 uh, editor of a community newspaper?

3 A Yes.

4 Q All right. And, what kind of publication was
5 that? Is it weekly? Daily?

6 A It was monthly.

7 Q A monthly?

8 A Right. And, uh, it was basically homeowner's board
9 notes. Um, the sheriff would submit a report.

10 Q Okay.

11 A Library -- local library.

12 Q All right.

13 A That type of information.

14 Q Did you cover anything, as some people would say,
15 some of the hard news stories of the -- of the
16 time?

17 A No.

18 Q Okay. So this was just more, uh, community?
19 What's going on in the community?

20 A Right. Right.

21 Q Okay. Um, did you enjoy that work?

22 A Very much.

23 Q Yeah. And how long did you do it?

24 A Twenty-nine years.

25 Q Were you the editor for the entire time?

1 A Yes.

2 Q Okay. Uh, would it be fair to say you enjoyed
3 writing or was it more the whole --

4 A I didn't have to do a lot of --

5 Q All right.

6 A -- the writing.

7 Q Okay.

8 A You know, it was kind of an assembly process.

9 Q Oh, so you enjoyed putting the paper together?

10 A Yes.

11 Q Okay.

12 A Um-hmm.

13 Q I gotcha.

14 A But for want of a title, that's what they called me.

15 Q Fair enough. Uh, did you get to choose the
16 headline as the editor or did you leave that to
17 the writer of the article?

18 A No, it was all mine.

19 Q Okay. All right. Well, um, I also have to ask,
20 because I was struck by, um, two things, uh,
21 hobbies of yours that looked interesting. Um,
22 Civil War, uh, and blue grass music. Interesting
23 mix. I -- to me they wouldn't seem to go
24 together. Um, what is it about, uh, the Civil
25 War that you find interesting?

1 A Uh, there's a lot of family history --

2 Q Okay.

3 A -- with the county, which is basically what brought

4 my son and I here. Um --

5 Q Okay.

6 A The monument that's at the corner of the courthouse

7 property is ancestors and --

8 Q Oh, very good. All right. And, um, I see, yes,

9 you're originally from Lincoln, Nebraska, but you

10 spent some time in the state of Washington?

11 A A lot of time, yes.

12 Q All right. And then how long have you been in

13 Manitowoc County then?

14 A Two years.

15 Q I see. Oh, all right. So you're recent to this

16 area?

17 A Yep.

18 Q Um, so you have, um -- through, uh, generations

19 you have a family connection to this county then?

20 A Yes, um-hmm.

21 Q I see. Uh, is that -- that's directly connected

22 to, uh, Civil War service?

23 A Yes. All of it. Um-hmm.

24 Q All right. Uh, and, um, how about, uh, blue

25 grass music? What -- what do you find

1 interesting about that?

2 A Um, just the rhythm, I guess. I --

3 Q Uh, have you been a fan of blue grass for quite
4 some time?

5 A Uh, no, not really. Not really. Basically, we got
6 involved in the Two Rivers shows that -- that come
7 monthly and --

8 Q All right.

9 A -- find that it's, uh, very enjoyable.

10 Q Very well. Well, let me ask -- um, I see, from
11 your other pursuits you're a Sunrise Optimist
12 and, of course, the Civil War Roundtable, uh, and
13 other historical, uh, events. Um, in -- in your
14 involvement in those cases have you, uh, been
15 called upon to, um, offer, uh, opinions or
16 directions for the organization at all? I mean,
17 any kind of, uh, supervisory advise -- advising
18 that you might do with those volunteer groups?

19 A Not advisory, no.

20 Q Okay. All right. Well, let me ask then, as a
21 person who was, um, at least in the media, at
22 least in the print media business for, uh, some
23 time, um, do you, um, regularly get your news
24 from, uh, the newspaper, or television, or where
25 would you say you got most of your news from?

1 A Probably television.

2 Q All right. And, uh, how often do you watch, uh,
3 televised news casts?

4 A Basically, I have CNN on for company during the day.

5 Q All right.

6 A But, watch it, um, I can't say that I do.

7 Q So it's background information?

8 A Right.

9 Q Um, in terms of your news casts, do you prefer,
10 uh, a more, uh, national or global perspective
11 than the local news? Is that what I'm detecting?

12 A Yes.

13 Q All right. Um, have you paid -- Uh, I see you
14 get the local paper here just on the weekends?

15 A Right.

16 Q All right. Now, um, the reason we ask is we want
17 to get at least an understanding of -- of what
18 you may be familiar with or how much you -- you
19 have heard about the case through both, uh, the
20 newspaper and television coverage of it.

21 And, um, about three weeks ago or so,
22 uh, you, I believe, received a letter from the
23 Judge advising you that you were a prospective
24 juror in this matter, and I think it, uh, asked,
25 that, uh, among other things, that you refrain

1 and make any reasonable effort not to watch any
2 of the news coverage or the -- read any of the
3 newspapers and -- and the like. Did you get that
4 letter?

5 A Yes, I did.

6 Q All right. And have you been able to abide by
7 it?

8 A Yes, I have.

9 Q All right. Uh, prior to getting that letter, um,
10 had you followed the case at all in the media
11 coverage?

12 A Uh, I was aware of it, but, uh, not as a daily thing
13 or a -- or a -- no.

14 Q There wasn't anything particularly interesting
15 about it that -- that had you follow it closely?

16 A Uh, no, I don't think so.

17 Q All right. Um, well, one of the reasons we ask
18 these questions is that we're hopeful that
19 prospective jurors come in with -- without any
20 opinions about the case at all, and -- and that's
21 what we'd like to ask. Um, based on your
22 familiarity with, uh, the media coverage that you
23 have, uh, seen and/or read, do you have any
24 opinion today at all as to whether Mr. Avery is
25 guilty or innocent of the charges leveled against

1 him?

2 A Um, no, I wouldn't think that I do.

3 Q All right. Well, you -- you -- you answered no
4 last week, and I did detect a little bit of a
5 hesitancy. Um, do you -- do you have an opinion
6 as to whether you think he's guilty or not, or --

7 A No, I don't.

8 Q Okay.

9 A My hesitancy was basically for media coverage in
10 general, I guess.

11 Q Okay. So, in other words, you have some reason
12 to doubt whether you have all of the information?

13 A Yes.

14 Q All right. Fair enough. Um, you understand, uh,
15 that in this particular case Mr. Avery is
16 presumed innocent unless and until the State can
17 convince the jury beyond a reasonable doubt of
18 his guilt?

19 A Yes.

20 Q All right. And, uh, you would be instructed on
21 that principle by the Court here, and do you have
22 any problem in accepting it and following it?

23 A No, I do not.

24 Q All right. Um -- okay. Now, I just wanted to
25 touch base on, uh, one other, um, matter. Well,

1 two matters. Um, one of the last questions that
2 you were asked last week is, um, you were advised
3 that there's a possibility, in fact a pretty good
4 possibility, this case may last six weeks.

5 And, uh, we wanted to make sure that all
6 of the prospective jurors in this case wouldn't
7 suffer any kind of emotional or financial
8 hardship if they were selected to, uh, serve as a
9 juror. And you indicated, uh, at that time that
10 you didn't think that would pose any problem for
11 you. Is that still your opinion today?

12 A Yes.

13 Q Okay. Um, in terms of, uh, evaluating, uh,
14 witnesses and testimony, uh, that will be
15 presented during the course of the trial, uh,
16 you'll be instructed that you would evaluate the
17 believability, the honesty, or the credibility
18 of -- of witnesses according to the same
19 standard. In other words, you would look at and
20 treat all witnesses alike and evaluate them for
21 their truthfulness, their honesty, the same as
22 you would any other person, do you understand?

23 A Um-hmm.

24 Q All right. And that includes police officers?
25 So even if a police officer were, uh, to take the

1 stand, and there'll be quite a bit of law
2 enforcement testimony in this case, you would be
3 required to evaluate their truthfulness the same
4 as you would any other person regardless of
5 whether they were a police officer, or a
6 scientist, or a -- or a truck driver, you would
7 treat them all alike in evaluating their
8 believability. Do you think you can do that?

9 A I think I can.

10 Q All right. All right. Um, and, lastly, I just
11 had a question, uh, would you like to serve on
12 this jury or would you rather not?

13 A I don't really think I have a --

14 Q An opinion?

15 A -- an opinion on that.

16 Q Okay.

17 A I --

18 Q So you're a fatalist. Whatever happens, happens?

19 A Well, I don't know about fatalist, but --

20 Q Very good. Thanks very much.

21 THE COURT: All right. Uh, Mr. Strang?

22 **VOIR DIRE EXAMINATION**

23 BY ATTORNEY STRANG:

24 Q Morning.

25 A Morning.

1 Q I'm Dean Strang, and this is Jerome Buting, and
2 Steven Avery. We're -- we're defending
3 Mr. Avery. That is, Jerry Buting and I are. Um,
4 by starting in 1850 and moving forward, I don't
5 mean to suggest I'm going to take all that much
6 time with you, but, um, the, uh -- the, uh, mid
7 19th Century connections to this county, were
8 they on your husband's side of the family or on
9 your side of the family?

10 A My husband's side.

11 Q Okay. And, um, how long did you spend in
12 Lincoln, Nebraska as a little girl?

13 A Uh, probably year-and-a-half.

14 Q And then off to the state of Washington?

15 A Yes.

16 Q Um, is it Burien? Is -- I'm not sure I'm reading
17 your handwriting correctly on the town. I see
18 Reynold?

19 A Where I went to school.

20 Q Yes.

21 A Burien, um-hmm.

22 Q Burien. Um, is that western Washington or
23 eastern Washington? I don't -- I'm not familiar
24 with Burien.

25 A It's, uh -- it's basically south of Seattle.

1 Q Okay.

2 A Yeah.

3 Q Just south of Tacoma or well south?

4 A No, not south. No. It's -- it's closer to Seattle

5 than Tacoma.

6 Q Oh, okay.

7 A Yeah. It's not --

8 Q So it's --

9 A -- even halfway.

10 Q -- it's in the metropolitan area?

11 A Yes.

12 Q Okay. Um, and did you, um -- did you move -- two

13 years ago, did you move directly to Manitowoc

14 with your son from western Washington?

15 A No. Um, my husband had passed away about 12 years

16 ago --

17 Q Um-hmm.

18 A -- but, um, I had a big house that I got rid of, got

19 rid of my business, and, um, he said, my -- my son

20 was living in Appleton at the time, and --

21 Q Oh.

22 A -- he said, well, why don't you try Wisconsin? So I

23 said, well, I'd try a couple of winters here, because

24 they are different than the winters I think I was

25 used to.

1 Q Um-hmm.

2 A And, um, I think they were rather mild winters. So
3 that's -- basically, I've been in the state for four
4 years, but --

5 Q Okay. Um, you, um, paused a little bit and
6 confessed some hesitation, um, a few moments ago
7 and said that that was about media coverage. I
8 want to hear a little bit more about your
9 hesitation with respect to media coverage.

10 A Well, since I get almost all of my information from,
11 basically, television, I, uh -- I don't know, I guess
12 maybe I view it all as being edited to pull your
13 chain. Um --

14 Q Okay. Um --

15 A I know the programming is. That's the way I feel,
16 but I think sometimes the news is that way also.

17 Q Well, they're in a business?

18 A Right.

19 Q Right? I mean, it's -- most of the media are for
20 profit; right?

21 A Yes.

22 Q Um, was -- was the community newspaper that you,
23 you know, ran, published, edited, was that, um, a
24 for profit -- profit thing or was -- was that a
25 not for profit?

1 A It was a for profit run by a non-profit organization.

2 Q Was it part of a little chain of community
3 newspapers?

4 A No. No.

5 Q Independent?

6 A Yes.

7 Q Um, let's -- let's get into some stuff that, in
8 general, concerns the -- the relationship of the
9 government to the citizen, okay? A little bit?
10 Um, you'll be told, I think, by the Judge that
11 the lawyers at that table over there representing
12 the state of Wisconsin bear the burden of proof
13 in this case. Um, and that the lawyers at this
14 table, or Mr. Avery for that matter, do not bear
15 any burden of proof. Is that a system within
16 which you can function well? Rules you can
17 accept?

18 A I think I probably can, yes. I -- I have not had any
19 experience before with --

20 Q On a jury?

21 A On a jury, right.

22 Q Right. Um, but this is -- this is a -- a
23 criminal accusation rather than a civil
24 accusation, so in civil case each side may have a
25 burden of proof on this point or that point.

1 Here, only the State has the burden of proof the
2 Judge will tell you. And it's a very high
3 burden. Uh, it's proof beyond a reasonable
4 doubt.

5 Um, is there anything about that scheme,
6 if you will, that set of legal rules -- I don't
7 mean anything bad by scheme -- but that set of
8 legal rules, um, that you could not work with
9 him?

10 A I don't believe so.

11 Q Um, we may take an active role in the case.
12 We're -- we're entitled to do that, and I expect
13 that Mr. Buting and I won't sit like bumps on a
14 log, but, um, can you promise today that you
15 would not hold us to proving Steven Avery's
16 innocence?

17 A Yes.

18 Q Rather, you would hold them to proving his guilt?

19 A Yes.

20 Q Um, if we offer testimony or exhibits, um, will
21 you consider the defense offerings just the same
22 as you would consider the State offerings?

23 A Yes, I would.

24 Q One of the toughest questions in offering
25 evidence or not for the people at this table is

1 whether Mr. Avery should testify in his own
2 defense. Um, are you familiar with the rule in
3 America that a defendant has a privilege not to
4 testify in his trial if he chooses?

5 A Yes.

6 Q Um, are you also aware under American law and our
7 constitution that the defendant has an absolute
8 right to testify in his own defense if he
9 chooses?

10 A I would assume that, yes.

11 Q If Mr. Avery, in the end, testified, um, would
12 you be able to treat him just like any other
13 witness in deciding whether you believe him?

14 A I think I could, yes.

15 Q And if -- if the decision at this table was that
16 he was not going to testify, um, would you want
17 to know why?

18 A Possibly.

19 Q I -- I'm going to confess that was a bit of a
20 trick question, because you won't learn why, and,
21 uh, if he makes that decision, you'll actually be
22 told, I think, by the Judge, that you simply
23 cannot consider, um, the fact that the defendant
24 did not testify in deciding whether the State
25 proved him guilty beyond a reasonable doubt.

1 Um, but I -- it was a trick question. I
2 don't mean to be tricking you. Do you -- can you
3 understand why there might be a number of reasons
4 that someone who says he's innocent, nevertheless
5 does not take the witness stand and testify in
6 his own defense?

7 A Yes, I think so.

8 Q Um, I -- you mentioned some of them, I think,
9 that may be worried about being tripped up by
10 lawyers on the other side? That -- that may be
11 one reason?

12 A I don't know that that crossed my mind.

13 Q What does cross your mind?

14 A Well, basically, I guess the only case that I've ever
15 paid any attention to was the O. J. Simpson case.

16 Q Um-hmm.

17 A And whether that was also edited for the public, I
18 don't know.

19 Q And how do you link that up to a defendant not
20 testifying? As I recall, Mr. Simpson did not
21 testify --

22 A He did not. Right.

23 Q -- in that case, and what -- what connection are
24 you drawing there?

25 A Um, only that that's my only, I guess, frame of

1 reference --

2 Q Um-hmm.

3 A -- um, as to why a -- a defendant would or would not
4 choose to testify.

5 Q Well, and in the end, because there are so many
6 reasons that may go into it, some of them having
7 to do more with the defense lawyers than -- than
8 the accused himself, in -- because there are so
9 many reasons, you'll simply be told you -- you
10 can't speculate about that or even consider, um,
11 the fact that a defendant did not testify if
12 that's the choice in the end. Um, and I just
13 need to know whether you can follow that rule if
14 the Court instructs you that way?

15 A I think I could, yes.

16 Q You come here, um, without any opinion at all,
17 which is about guilt or innocence, which is what
18 a potential juror should be, um, saying sitting
19 today in your chair, um, and I -- I simply need a
20 commitment from you, if you -- if you can offer
21 it to me, that when the Judge instructs you that
22 the presumption of innocence stays with
23 Mr. Avery, not just today but through the entire
24 trial, right up to the time the jury begins to
25 deliberate its verdict at the very end of the

1 case, that presumption of innocence never
2 waivers, never changes, until you begin your
3 deliberations, and then you decide guilt or
4 innocence. Is that an instruction you can
5 follow?

6 A Yes, I can.

7 Q Some of the agents of the State, um, who may
8 testify -- uh, will testify, I'm sure, are law
9 enforcement officers from a variety of agencies.
10 You'll see law enforcement officers testifying
11 here. You've already answered in your
12 questionnaire that you could follow an
13 instruction that you would consider their
14 testimony just like the testimony of any other
15 witness who may be from any other calling or
16 vocation under the sun.

17 Um, and I'm -- I'm going to explore that
18 a little bit. Do you -- do you accept that under
19 the right circumstances a law enforcement
20 officer, just like anyone else, might violate the
21 oath and testify to something untruthful even
22 though sworn to tell the truth?

23 A Yes.

24 Q You don't think law enforcement officers have any
25 special proclivity to tell the truth under oath

1 or, for that matter, to lie under oath, do you?

2 A Uh, no.

3 Q Uh, you accept that they're human just like
4 everyone else who would take the witness stand?

5 A Yes.

6 Q Um, have you had any experience where you thought
7 a law enforcement officer was not honest?
8 Whether you've seen it on CNN or experienced it
9 in your personal life?

10 A No, I have no personal experience with it.

11 Q But you're open to considering their motives to
12 testify truthfully or falsely, um, their
13 potential biases or prejudices, their weaknesses
14 of recollection, just like anyone else's?

15 A Like anyone else's.

16 Q You're relatively new to -- to this area, and,
17 actually, just four years in Wisconsin. Have you
18 picked up anything along the way about
19 Mr. Avery's more distant past conviction in 1985,
20 um, that later, uh, was overturned when DNA
21 established that another man actually committed
22 the crime, not Mr. Avery?

23 A I -- I heard that story, yes.

24 Q Okay. Where did you pick that up?

25 A Uh, basically from television.

1 Q Okay. Um, do you -- do you have any questions
2 about that? Any -- any lingering doubt that
3 maybe Mr. Avery was guilty, or any belief that
4 because he wasn't guilty, he was really innocent,
5 that that somehow affects how you would look at
6 this case?

7 A No. I didn't have any other feelings on it either
8 way.

9 Q Well, did you hear about the lawsuit that
10 followed his exoneration and release?

11 A Yes.

12 Q What -- what were your opinions about that
13 lawsuit as a Manitowoc County taxpayer?

14 A Um, I think at the time I hadn't been in the state
15 for very long and, um, I don't know that I gave that
16 a whole bit of consideration either.

17 Q One -- one way or the other?

18 A Right.

19 Q Okay. I think that's all I have for you. Thank
20 you.

21 THE COURT: Mr. Fallon?

22 ATTORNEY FALLON: Yes. I have one
23 question for the juror.

24 **VOIR DIRE EXAMINATION**

25 BY ATTORNEY FALLON:

1 Q Um, I'm just curious about your reference to the
2 O. J. Simpson case. Does that have any impact on
3 you as you sit and possibly end up as a juror in
4 this case?

5 A I don't think so. No, I haven't.

6 Q I mean, do you have any opinion about that case
7 or anything that might, uh, affect your
8 deliberations here?

9 A Other than I'm probably one of the few that still
10 thinks that he might be innocent.

11 Q Okay. All right. Um, in terms of evaluating
12 this particular, um, case here, you would decide
13 this case, though, solely on what the information
14 is that we present?

15 A Yes.

16 Q Okay. Thanks.

17 THE COURT: All right. The, uh, clerk will
18 now escort you from the courtroom.

19 (Wherein juror is escorted out)

20 THE COURT: Counsel, any motion from
21 either party?

22 ATTORNEY FALLON: None from the State.

23 ATTORNEY STRANG: No, Your Honor. Thank
24 you.

25 THE COURT: Very well. Uh, Ms. Salomon

1 will be, uh, in the jury panel. We'll take our, uh,
2 lunch break at this time. Uh, how about 12:45
3 report back?

4 ATTORNEY KRATZ: That's fine. Thank
5 you, Judge.

6 ATTORNEY FALLON: Uh, Judge, did you
7 check on those two jurors? The, uh -- I think it
8 was 75 and 77? I had 75 already excused and --

9 THE COURT: Seventy-five was excused by the
10 Court. There was an illness question, actually. I
11 don't think that juror even completed the
12 questionnaire.

13 ATTORNEY FALLON: Okay. Right.

14 THE COURT: Um, seventy-seven, my, um, uh,
15 court reporter informs me that she could find
16 nothing in her notes except a mention late yesterday
17 about the fact that there was a question but nothing
18 to show that, uh --

19 ATTORNEY FALLON: All right. I thought
20 that was included in one of our previous
21 discussions. Thanks.

22 (Recess had at 11:58 a.m.)

23 (Reconvened at 12:48 p.m.)

24 THE COURT: At this time we'll go back on
25 the record. Um, Mr. Strang, I believe there was a

1 matter you wished to bring up before we call the
2 first juror?

3 ATTORNEY STRANG: Yes, thank you. I
4 received a letter by hand-delivery this morning
5 from the Manitowoc County District Attorney
6 who's, uh, named on the defense witness list, and
7 I think the, um, sensible thing to do here is
8 just to excuse him altogether from the
9 sequestration order.

10 I -- I don't think there's any realistic
11 concern that the order would be necessary in his
12 instance, so I suggest we simply exempt him from
13 it.

14 THE COURT: Any objection from anyone?

15 ATTORNEY FALLON: No.

16 ATTORNEY STRANG: No. Thank you.

17 ATTORNEY FALLON: No objection.

18 THE COURT: All right. The Court will, uh,
19 grant that request and excuse the district --
20 Manitowoc County District Attorney from the
21 exclusion order for witnesses in this case.

22 Um, Counsel, I was going to call the,
23 uh -- one of the next jurors out of order.
24 There's a Mr. -- I'm not sure how he pronounces
25 his name. It's No. 87, David Guckeisen or

1 Guckeisen. He's the only juror who's been
2 waiting around since this morning.

3 ATTORNEY KRATZ: All right.

4 THE COURT: Um, I'll give you a couple
5 minutes to, uh, take a look at his questionnaire
6 before we call him in.

7 ATTORNEY KRATZ: Thank you.

8 THE COURT: Please raise your right hand,
9 sir.

10 (Juror sworn)

11 THE CLERK: Please be seated.

12 THE COURT: And it's Mr. Guckeisen; is
13 that correct?

14 JUROR GUCKEISEN: That's correct, Your
15 Honor.

16 THE COURT: Mr. Guckeisen, you've
17 already filled out a written questionnaire in
18 this case. Today we're moving on to the next
19 phase of jury selection which is, uh, individual
20 voir dire. Each of the attorneys, uh, will have
21 an opportunity to ask you some, uh, questions,
22 relating to your qualifications as a juror. In
23 most cases, the questions will be follow-ups to
24 information you provided in your written
25 questionnaire.

1 Before we get to that, uh, part of the
2 proceedings, I can tell you that the jurors in
3 this case who are selected will not be
4 sequestered. That is, they will be able to
5 return, uh, home each day after the court
6 proceedings for that day.

7 Uh, and that although the proceedings,
8 uh, today in court are open to the public, the
9 Court does not permit cameras in the courtroom
10 during voir dire proceedings.

11 Uh, in addition, the media is not
12 allowed to disclose the names of the jurors in
13 reports of these proceedings.

14 Finally, if you are selected to serve as
15 a juror, the cameras that cover the trial will
16 not be able to, uh, show the jurors in any way
17 that allows identification of who they are.

18 Uh, I can tell you that if you remain
19 eligible as a juror after the questioning today,
20 uh, you'll get another telephone call from the
21 Clerk's Office probably later today letting you
22 know when to report back to court.

23 Mr. Fallon, are you going to handle this
24 one?

25 ATTORNEY FALLON: Yes.

1 THE COURT: Very well.

2 VOIR DIRE EXAMINATION

3 BY ATTORNEY FALLON:

4 Q Good afternoon, Mr. Guckeisen.

5 A Good afternoon.

6 Q Um, my name is Tom Fallon. I'm an Assistant
7 Attorney General with the Wisconsin Department of
8 Justice, and I'm one of the special prosecutors
9 in this case. Uh, to my immediate left is
10 Mr. Ken Kratz, the Calumet County District
11 Attorney and lead prosecutor. Um, thanks for,
12 uh, coming back this afternoon.

13 I wanted to ask you a few questions
14 about some of the information you provided in
15 your questionnaire last week, and, uh, if I may,
16 like to begin with, uh, a little bit about your,
17 um, employment history.

18 I see that you're, um -- I take it
19 you're currently working at, um, KMC Stamping and
20 Laser Form?

21 A Correct.

22 Q All right. What kind of business is that?

23 A It's a metal stamping-type business. Um, mostly
24 metals. Uh, parts for cars, tractors, trucks.

25 Q And what position do you hold with them?

1 A I am the CAD-CAM programmer. That's Computer-aided
2 Design, Computer-aided Manufacturing.

3 Q So what does it do?

4 A Actually, what I do is I'll take a formed up object
5 and metal and lay it out in the flat and then program
6 one of the three laser machines to cut it out.

7 Q I see. And how long have you been doing that
8 work, sir?

9 A Since 19 -- around 1978.

10 Q Okay. So quite sometime, 26, 7, 8 years?

11 A Approximately, right.

12 Q And that's in, um, Port Washington, Wisconsin?

13 A That's correct.

14 Q So you've got a little bit of a commute, do you?

15 A Yeah. Forty-four miles one way, every day.

16 Q Every day. And how many days a week? Five?

17 A Five. Sometimes six, but usually it's five.

18 Q Okay. And, uh, you've previously worked at a
19 location in, uh, Mequon?

20 A Um-hmm.

21 Q And, uh, what did you do for -- is it, uh,
22 Biersach and Neidermeyer?

23 A Right. It was the same thing.

24 Q Oh, same kind of work?

25 A Same kind of work, correct.

1 Q And, uh, I see, also, you did, uh, some work for
2 the, uh, Kiel Police Department?

3 A Right. Um-hmm.

4 Q And what kind of work is that, sir?

5 A I was there for approximately 11 years. That was,
6 uh, approximately seven years part-time, four years
7 full time.

8 Q Uh, seven full and four part? Or did I have that
9 the other way around? Seven part --

10 A Seven part-time and four full time.

11 Q Okay. And what did you do for them?

12 A I was a police officer.

13 Q Okay.

14 A And --

15 Q You were.

16 A The seven years part-time was reserve police, and
17 then part-time police officer.

18 Q All right. Now, what kind of duty did you have,
19 uh, when you were at the Kiel, uh, Department?

20 A Uh, just your normal patrolman-type of duty.
21 Checking doors, uh, making arrests, uh, speeding, you
22 know, domestics, which -- whatever came up, that's
23 what we would do.

24 Q All right. Now, I see, also, from your, um,
25 questionnaire you have some, uh, experience as a

1 fingerprint technician?

2 A Yes. That's when I was on the force.

3 Q Oh, you were.

4 A Um-hmm.

5 Q Okay. Well, tell us about that.

6 A I came down and had classes, uh, down in the
7 basement, across the street I believe it was, and to
8 learn how to categorize and to take fingerprints --
9 fingerprints the proper way, cat -- classify them,
10 and then make out the documents to send them in for,
11 you know, registration or classification.

12 And then try to, uh, take a fingerprint
13 and check on the parts we -- or the prints we had
14 at the time to see if there was any type of
15 matches with the certain criteria that was, uh --
16 at that time. Now they don't do that much
17 anymore but --

18 Q Okay.

19 A -- you know, when you did it physically --

20 Q Right.

21 A -- one at a time, and -- and try to find out --

22 Q Right. And are you referring to today the -- lot
23 of it is automated; is that --

24 A Right. Yeah. Today most of it is auto -- automated
25 with the checking to find out, you know, rather than

1 five or six different, uh, cards, now they just kind
2 of go through the database and find any matches and
3 then work that way.

4 Q All right. And then you start and check that
5 from there?

6 A Right.

7 Q Okay. Now, when you were with the Kiel
8 Department, was there anyone else on the
9 Department who, uh, shared those duties or were
10 you, uh, the fingerprint guy?

11 A Um, actually there was another which would be, um,
12 Rick Sloan. He was the chief at -- a few years back
13 and he did some fingerprinting, too. But, usually,
14 because of my shift being, uh, three to eleven in the
15 afternoon, evening, that's when the fingerprinting
16 was done for people that were going to go, like, uh,
17 for, serv -- uh, into, uh, service, or people that
18 were coming to be nationalized and go through their
19 procedures to become a American citizen, we'd have to
20 fingerprint them.

21 Q Sure.

22 A Children, so that in case they got lost we could find
23 them again.

24 Q Okay. Um, I take it from your history, then,
25 that you did that work, uh, or were doing that

1 job the same time you were doing your metal
2 stamping work?

3 A No, that --

4 Q No?

5 A -- was prior to metal --

6 Q Oh, that was prior to --

7 A Prior to metal --

8 Q I see.

9 A -- stamping. Correct.

10 Q So your, uh, uh, law enforcement experience, uh,
11 preceded your experience in the metal stamping
12 business?

13 A That's correct. Um-hmm.

14 Q So it's been, then, 28 years or so since you were
15 in law enforcement?

16 A Yeah, just about. Um-hmm. Approximately.

17 Q Uh, as a fingerprint analyst, did you have
18 occasion to go to crime scenes and -- and attempt
19 to lift prints from scenes?

20 A Yes. In fact, uh, there was a couple. One I recall
21 was a, um, car theft.

22 Q Okay.

23 A And we lifted the prints. Eventually going through
24 and sending them into the state of Wisconsin, the
25 crime lab for the FBI, we did find out whose they

1 were because they weren't on any records we had, of
2 course.

3 Q Right. Right. Uh, did you, uh, have occasion to
4 work any homicides, uh, for use with
5 fingerprinting?

6 A No. No.

7 Q Okay.

8 A Nothing in that. We've had, you know, dead
9 body-types things, or expired people calls, but this
10 was no homicides. These were natural deaths on all
11 of them.

12 Q I see. All right. Now, as a result of having
13 worked in law enforcement, I would imagine you
14 have, uh, some friends who are still in law
15 enforcement?

16 A Right. That's --

17 Q And --

18 A -- correct.

19 Q And --

20 A They are actually retired.

21 Q They are all retired?

22 A They're all retired, right.

23 Q However, I note from the questionnaire that you
24 are at least familiar with Investigator, uh,
25 Dedering?

1 A I'm not sure. That's why I circled it. What would
2 his first name be? Because I do know one. And I
3 don't know --

4 Q This is a John.

5 A -- if it's the right one. John?

6 Q This is a John Dederling, Calumet County?

7 A Yes, I would know who he was, but that's 20, 30 years
8 ago.

9 Q So you can't say that you're like close friends
10 or --

11 A No.

12 Q -- acquaintances --

13 A No.

14 Q You just recog --

15 A Not at all. No.

16 Q You just recognize the name?

17 A I just recognize the name. That's why.

18 Q All right. Who else, um, do you, um -- well, who
19 would you consider a close friend or a close
20 acquaintance, um, that is in law enforcement now
21 or has retired from law enforcement?

22 A I would say, uh, a retired detective from Manitowoc
23 County, which would be Larry Conrad, and, also, uh,
24 retired chief of police of the city of Manitowoc. I
25 mean, we get together couple times a year, but that's

1 not where once a week we're together or, you know, we
2 talk once a week. It's three or four times a year.
3 Basically, it's going to car swap meets. That's
4 about it.

5 Q All right. And what would, uh, that person --
6 the retired, uh, chief's name be?

7 A Rich Brey. Rich Brey.

8 Q All right.

9 A B-r-e-y.

10 Q Oh.

11 A Richard.

12 Q Thank you.

13 A Okay.

14 Q All right. Now, um, as you might -- as you might
15 imagine, there's, uh, going to be a -- a fair
16 amount of, um, law enforcement testimony
17 associated with a case like this.

18 A Um-hmm.

19 Q And, uh, the question that we all have in our
20 minds, uh, is that since you were a former law
21 enforcement officer, uh, do you think that you
22 could evaluate the testimony of a law enforcement
23 officer the same as you would any other witness
24 in determining whether they were telling the
25 truth or not?

1 A Yeah. That's the way I was brought up. I -- I would
2 have to answer yes to that.

3 Q All right. So you wouldn't give them any more
4 slack or any less slack than you would any other
5 witness in evaluating their credibility?

6 A No, I don't believe so.

7 Q All right. Now, I did want to touch base with
8 one, um, health-related issue, uh, just in case
9 you were, uh, selected as a juror. You mention
10 you -- uh, you have, um, some high blood pressure
11 which is, uh, treated by medication?

12 A Um-hmm.

13 Q Um --

14 A Exactly.

15 Q Okay. Uh, is that more or less under control
16 such --

17 A Oh, yes. Yes. It actually isn't really that high,
18 but they thought just as, you know, kind of a
19 preventive-type thing I take the medication, so --

20 Q And otherwise then your health is good?

21 A Correct.

22 Q Okay. Now, uh, I'm sure you recognize from
23 reading the last, uh, uh, question, uh, that, um,
24 this trial may very well go for, um, six weeks or
25 so. And I believe the Court has already answered

1 one primary question of yours, and that is the --
2 whether the jury would be sequestered?

3 A Correct. Yes.

4 Q Well, since -- assuming that the jurors are able
5 to follow the Judge's instructions that's not
6 likely to happen, um, is there any other reason
7 why you think you might not be able to serve as a
8 juror if you were selected?

9 A No, absolutely not.

10 Q All right. Um, the other -- or area of, uh,
11 two -- two other incidental questions, uh,
12 considering your law enforcement experience and
13 that you work with computers and in the stamping
14 business, would you consider yourself a -- a
15 detail-oriented person or more of a big picture
16 guy when it comes to forming opinions or solving
17 problems or the like?

18 A Probably more of a detail-type person.

19 Q Okay. Um, and, uh, you hate working on puzzles
20 or is that all right?

21 A I work on puzzles every day, I guess, so, yeah, I do
22 like it.

23 Q Okay. Um, very good. Let's talk a little bit
24 about, um, publicity, uh, with this, uh, case.
25 It looks like you get most of your news, uh, from

1 the television?

2 A Actually -- Excuse me. Actually, I very rarely watch
3 news.

4 Q Okay. Um, have you been following the events of
5 this case very much at all?

6 A Uh, when it first started, you know, when everything
7 came about, then I watched it, but, like I say, I
8 very seldom watch any news or anything. With working
9 full-time, and then I have two part-time, uh, uh, you
10 could say jobs, or whatever, and, uh, businesses, you
11 might say, so I very seldom get the chance to watch
12 news, so I haven't been watching anything in a long
13 time now.

14 Q All right. Um, did you recently receive a letter
15 from the Court about three weeks ago advising you
16 that there was a possibility you could be a juror
17 in this case and asking that you refrain from
18 watching or reading about any of the coverage of
19 this case?

20 A Yes, I did.

21 Q All right. And were you able to abide by that
22 request?

23 A Yes, I was. Uh-huh.

24 Q All right. All right. Um, so based on the
25 information that you had early on, you know,

1 going back a year or so ago, have you formed any
2 opinions about whether Mr. Avery is guilty or
3 innocent of the charge for which he's been, um --

4 A Actually, I have not.

5 Q No opinion?

6 A Because I didn't see both sides of the question or
7 the other side of the coin.

8 Q Right.

9 A In other words, like, you only hear one thing, you
10 don't hear both, so --

11 Q All right. So you're saying that there's just
12 not enough information for you based on your
13 little exposure to it to make any opinion list.

14 A Absolutely right. Um-hmm.

15 Q All right. Now, you understand from your
16 previous work, I would imagine, as a law
17 enforcement officer, that Mr. Avery is, uh,
18 presumed innocent unless and until the State can
19 prove him guilty beyond a reasonable doubt?

20 A Yes.

21 Q Now, as law a law enforcement officer, do you
22 accept that proposition?

23 A Yes.

24 Q All right. And, uh, when the Court instructs you
25 on that, that you would follow that instruction?

1 A Yes.

2 Q All right. And you understand, of course, that,
3 uh, as part of that whole process, Mr. Avery
4 doesn't have to present a defense at all?

5 A That's what his Honor told us, uh, when we -- about a
6 week or so ago. He expressed that to us.

7 Q All right.

8 A Um-hmm.

9 Q So you're aware of that and you realize that if
10 they presented no evidence at all, it's
11 entirely -- you'd have to evaluate his guilt or
12 innocence solely on the evidence that Mr. Kratz
13 and I would present to you?

14 A That would be correct.

15 Q All right.

16 A Um-hmm.

17 Q And if we didn't convince you beyond a reasonable
18 doubt, you'd have to find him not guilty even if
19 he didn't say a word?

20 A Yes.

21 Q All right. And do you think --

22 A That's correct.

23 Q Do you think you could do that?

24 A I believe I could.

25 Q All right. That's all I have.

1 ATTORNEY FALLON: I'll pass.

2 THE COURT: All right. Mr. Buting?

3 ATTORNEY BUTING: Thank you, Judge.

4 **VOIR DIRE EXAMINATION**

5 BY ATTORNEY BUTING:

6 Q Good afternoon.

7 A Good afternoon.

8 Q My name's Jerome Buting and this is Dean Strang.

9 We're the attorneys defending Steven Avery.

10 A Okay.

11 Q You mentioned that you had two part-time jobs in
12 addition to your job as a, uh, CAD programmer?

13 A Correct. These are actually two part-time
14 businesses. One is, um, auto cleaning and detailing
15 products, and I've just started a part-time locksmith
16 business.

17 Q Okay. And those part-time, uh -- the -- the auto
18 detailing thing, is that something you do in the
19 evenings?

20 A Actually, I don't do the detailing. I sell the
21 products. And it's -- this time of the year you
22 don't sell much of it because of being cold. But in
23 the summer I go to swap meets and sell it there. So
24 usually just products. I don't do the service,
25 actually, myself.

1 Q I see. Are these things like Armor All and --
2 or -- or similar types of products?

3 A It's a similar type, yes.

4 Q Not that name brand though?

5 A Right. Not that name brand.

6 Q And the locksmith, uh, business is something
7 that's, uh, recent?

8 A Right. I been doing it for about three years. But I
9 actually started a business as such just a little
10 over two years ago.

11 Q And how did you learn how to work on locks?

12 A I went to a class at, uh, Fox Valley Tech in
13 Appleton. It was a -- over a week class and we
14 became certified.

15 Q Okay. You have to have some kind of state
16 certification for that or --

17 A No, you don't, actually. And not in this state.

18 Q Okay. And so that's just something you do in the
19 evenings or weekends or --

20 A Correct. That's exactly right.

21 Q Your, uh, groups or organizations that you
22 mentioned in your questionnaire, um, Associated
23 Locksmiths of America? What -- what is that
24 exactly?

25 A That's actually a large group of locksmiths. You

1 belong to that and they give you information. You
2 can buy books or manuals through it. Um, they used
3 to have an online chat line where you could ask
4 questions, but they took care of that, so we can't do
5 that anymore. But it's a lot for information that
6 you might not know or lot of, uh, older locksmiths
7 will put on that you, you know, gain knowledge doing
8 it that way.

9 Q Okay. You also mention Wisconsin Law Enforcement
10 Officers Association? Are you still a member of
11 that?

12 A Yeah. I'm an inactive member. But I've been in that
13 since I was in the, uh, police department in Kiel,
14 which was 1977, around in that area.

15 Q Okay. So do you go -- go to any meetings or
16 anything like that?

17 A No.

18 Q Um, by being inactive, I mean, what -- what do
19 you -- do you get publications mailed to you or
20 what --

21 A Right.

22 Q -- do you do?

23 A We -- we do get a -- a publication, but it's -- they
24 call it "inactive." In other words, they'll send you
25 publications, but you don't go to meetings or

1 anything as such. You know, just -- I give them the
2 money and they send me a, uh -- a magazine once in a
3 while or, uh, you know, some information, but that's
4 about as far as that would go.

5 Q Now, how did you make the transition from being a
6 police officer to a CAD programmer?

7 A I was -- I started off just working with the sheet
8 metal after I had resigned from the Kiel Department,
9 and, uh, at that point everything was done manually,
10 and they started getting more updated technology with
11 computers, and I gradually worked into that. And
12 that's how I started, and -- and just continued on
13 going into this type of work.

14 Q So it wasn't something that -- that you started
15 before you left, uh, the police department? It
16 was --

17 A No.

18 Q -- something after?

19 A No.

20 Q May I ask why you resigned from the police
21 department?

22 A Uh, was a lot of small town politics. That's, uh,
23 what -- I got to the point where, finally, I didn't
24 believe I was doing the people or the citizens of
25 Kiel justice because I couldn't do my job because of

1 these politics that were going on. And I felt that,
2 uh, there was nothing I could do, so I ended up
3 resigning.

4 Q Were there, um, problems that -- that you were
5 having in -- internally in the police department
6 with supervisors or anything of that sort?

7 A Not so much internally but, uh, it had to do with the
8 city government you might say.

9 Q I mean, I don't mean to pry, really. It's --
10 it's, uh -- but I -- I need to know a little bit
11 about your background and how you have -- how you
12 come into the -- the situation you might find
13 yourself.

14 Were -- were they, uh -- I mean,
15 complaints of this -- that they were -- they had
16 against -- about -- about your job performance or
17 something that --

18 A It wasn't so much as a job performance. It was like,
19 uh, nit-picky little things like fuzz on your -- the
20 hammer of your gun. And we had cloth seats in the
21 squad car, so you're bound to get that.

22 But, um, they were to the point where
23 they would walk or ride their bikes at two, three
24 o'clock in the morning, and following me around
25 to see if I was checking doors, of what I was

1 doing, and it just got to the point where, you
2 know, it was more of a harassment-type thing.

3 It wasn't, they could say, well, you're
4 not doing your job, or you're not doing it well
5 enough, but all this other culmination of
6 nit-picky things and --

7 Q Um-hmm.

8 A -- I just --

9 Q Sure.

10 A -- didn't feel that I was serving the community to
11 the best I could.

12 Q And were these, um -- you said city government.

13 Was this like the city Mayor or the --

14 A Mayor and the -- and some of the councilmen.

15 Q Um, and were they harassing just you or others in
16 the department as well?

17 A Actually, it was me, because when I was hired, there
18 were two on the city council that wanted a relation
19 of their's hired at that time, and because he wasn't,
20 that's what started this all off.

21 Q I see.

22 A And it just kept getting worse so --

23 Q Sure. Okay. I understand. You also mentioned,
24 uh, that you knew a Mike Klaeser on the witness
25 list?

1 A What Mike Klaeser would that be? Because I do know a
2 Mike Klaeser, but if it's the right one or wrong one
3 I don't know.

4 Q I believe he's the Calumet, uh, coroner?

5 A No. No. The one I know is, uh -- runs a, uh, bait
6 shop in Kiel. That's Mike Klaeser, so --

7 Q Okay.

8 A Okay.

9 Q Thank you. Well, I don't think we'll be hearing
10 from him. Um, so you have an interest in, uh --
11 in terms of magazines, you seem to have an
12 interest in vehicles; *Vintage Trucks, Model T,*
13 *Tow Times*, those --

14 A Um-hmm. I -- I like older cars. I can't afford
15 them, but I like them.

16 Q Ever work on them? Uh, you know, kits or doing
17 mechanical work with engines?

18 A Yeah, on my own vehicles. I've got a -- an '88 Ford
19 Bronco, and that's a show truck, so I do all my own
20 work on that, but --

21 Q Sort of a hobby you like to do? Work on --

22 A When I --

23 Q -- with your hands?

24 A -- get a chance. Right.

25 Q Okay. Now, you said you remember some -- from --

1 well, if -- if -- in terms of your source of
2 knowledge of news, would it be more TV or, um,
3 newspapers, or internet, or what?

4 A Actually, if I do see any news, it's on the internet.
5 But I don't subscribe to a paper, I don't watch much
6 television, except maybe like the history channel, or
7 discovery, or learning. That's because a lot of
8 times I get home too late to be able to watch news
9 anyway, so --

10 Q Sure.

11 A -- it's something that you can get up for the next
12 day going back to work, so --

13 Q So when you say, "internet," what kind of sites
14 are -- do you get your news from on the internet?

15 A Actually, it would be like from the *Manitowoc Herald*
16 *Times* and --

17 Q Okay.

18 A -- *Sheboygan Press*. Just kind of local news.

19 Q Okay. So you do get some local news. It's just
20 through the -- the internet instead of --

21 A Right. And it's very, very seldom, unless there's
22 something that I really wanted to see or find out
23 about. But --

24 Q You remember when this case first arose, though,
25 is that what you said?

1 A Yeah.

2 Q You do recall?

3 A Yes. Last year sometime. I couldn't tell you when,
4 but --

5 Q And what do -- what do you recall about it?

6 A The only thing that I can recall about it was that
7 there was a lady that was missing, and that there was
8 being search -- or she was being searched for, and
9 that who was possibly being accused of this, and
10 where it was, which I have no idea where that was
11 taken place but -- and that's about as far as it
12 went, you know.

13 Q Do you recall seeing any news conferences or
14 seg -- excerpts from news conferences with
15 Mr. Kratz or Sheriff Pagel?

16 A No, I don't recall ever seeing that.

17 Q Does the name Brendan Dassey mean anything to
18 you?

19 A No, sir.

20 Q Um, do you know -- remember hearing anything
21 about the nephew of Mr. Avery?

22 A I've heard about a nephew, but I couldn't say what
23 the name was.

24 Q Well, can you tell me what you heard about that
25 nephew?

1 A Um, that he might have had something to do with it.
2 That's what I saw on the news and that's as far as it
3 went.

4 Q Okay. So you recall something about, um, uh,
5 statements that he may have made initially
6 admitting involvement?

7 A That's the only thing I do remember.

8 Q Any of the details of that story that he first
9 told?

10 A Not really. No, sir.

11 Q And did -- did you also learn about his later
12 recantations of that confession?

13 A No, sir, I did not.

14 Q Okay. Um, have you heard anything about a blood
15 vial involved in this case, potentially?

16 A No, sir, I have not.

17 Q Have you talked to any -- I'm sorry. Are you,
18 uh -- you're single? Okay. Um, do you have a
19 significant other that you confide in and talk
20 to --

21 A No, sir.

22 Q -- those things? Have you talked to other people
23 in the community about this case at all? Heard
24 their opinions?

25 A That would have been months ago. Lately, not. I --

1 I -- since we got the, uh, letter from the Judge, I
2 try to stay out of any conversations or anything like
3 that. If they start, I just tell them I ain't going
4 to talk about it as such, and that's --

5 Q Sure.

6 A -- about it.

7 Q Well, that's good. I appreciate that. But
8 months ago, when you would talk to people,
9 what -- what sort of opinions were you hearing?
10 That he was -- Mr. Avery was probably guilty? Or
11 that he was probably being framed? Or what were
12 you hearing?

13 A Actually, just about what you were saying. It's
14 both. That he was being framed; no, he was guilty;
15 um, no, he wasn't guilty. And this was personal
16 opinions from people. I have no idea, you know,
17 where they were basing them off of. I would assume
18 TV and rad -- and radio, or whatever, but, you know,
19 I have no clue where they were getting their
20 information.

21 Q And did you ever -- I mean, did you have any
22 leaning either way yourself when you would hear
23 and talk to these people?

24 A Not actually, because I don't watch that much about
25 it, and I didn't at the time either, so I really

1 wasn't up on it to say, yeah, okay, he was, or he is
2 guilty, or, no, he's not guilty, he's being framed,
3 and why he's being framed, I would have no clue,
4 so --

5 Q Okay. Do you know anything about his background?

6 A The only thing that I know about a background is
7 possibly because he have a junk dealership or junk
8 yard. That's about it.

9 Q Well, do you that -- do you know anything about
10 the wrongful conviction that he had? He was
11 in -- where he was in prison and there was, um --
12 exonerated when -- by DNA that matched somebody
13 else for the real crime?

14 A That I heard about.

15 Q You did hear about that?

16 A But I just heard, you know, bits and pieces that
17 that's what had happened, but that's as far as it --
18 it went with that, too.

19 Q And what do you think about that?

20 A It's hard to say. If that's the truth, okay, then.
21 But I haven't heard both sides of that story either.
22 And I kind of am one of these detail-type people.
23 Unless you tell me both sides, I can't make an
24 opinion on it.

25 Q So do you -- so you're not -- you're not sure, in

1 fact, whether he was actually innocent even of
2 that case?

3 A I don't know, because I don't know the circumstances.
4 Like you were saying, um, he was exonerated because
5 of something. Well, that's all I know about it. I
6 don't know what it was or what it -- you know, what
7 it entailed. That's just the part that you had
8 mentioned.

9 Q Do you also recall anything about a lawsuit that
10 was filed after that?

11 A No, sir.

12 Q You, uh -- just a few more things here. You --
13 you mentioned, uh, court TV, and then you put,
14 parentheses, "*Cops*." What -- what does that
15 mean?

16 A That's a show that they show once in a while on court
17 TV, uh --

18 Q Oh, I see.

19 A -- called *Cops* and --

20 Q So, you don't -- you watch that particular show.
21 Do you watch trials or any segments of trials?

22 A No. The only thing that -- and -- and I put it on
23 there, but I can't think the exact name of it. It's
24 got something to do with *48 Hours*, where it's
25 homicide, and then they go out and they think they

1 got the party. It's supposed to be a live-type
2 thing. Lot of times you get the wrong person because
3 of what you're expect -- expecting or suspecting, and
4 when it -- the real stuff comes out, then they wind
5 up that that's not the person anyway. But I get to
6 watch those maybe once, twice a month or so.

7 Q You mentioned that, uh -- actually, as I look at
8 the question, maybe it wasn't the best phrase.
9 It asks whether you've had any good or bad
10 experiences with Manitowoc County Sheriff's
11 Department. You checked, yes. But then your
12 answer -- I can't tell whether that's good or bad
13 experiences?

14 A Oh, it was good experiences, because at that time I
15 was, um, in law enforcement. So we would bring
16 people over to the -- the facility across the street,
17 or we'd have to come over here for court. But that
18 was only when I was on the police department. Other
19 than that, I've never had any bad experiences with
20 any law enforcement agency.

21 Q Either while you were a -- an officer or, uh --
22 either within your own department, or your
23 experience maybe with others, that -- have you
24 ever encountered a situation where police
25 officers maybe shade the truth a little bit?

1 A I hate to say this, but, yes, I did at one point.

2 Q To -- now, I'm not going to ask you to name any
3 names or anything of that sort, but did it
4 involve, uh, actually coming into court and
5 testifying under oath?

6 A It never got that far.

7 Q Okay.

8 A It never came to court.

9 Q Did it involve changing reports or something of
10 that nature, or monkeying around with the
11 evidence, or --

12 A Doctoring the report a little bit as to times.

13 Q Okay. And, uh, did anybody ever find out about
14 it?

15 A Uh, if I'm not mistaken, the police chief did find
16 out about it.

17 Q Okay. Now, would you be able to listen to police
18 officers testifying here and, uh, consider the
19 possibility that maybe something like that or
20 worse happened in this case?

21 A It's possible. You know, it, uh -- everybody's
22 human, and, you know, everybody can make a mistake
23 now and then or, you know, change their opinion of
24 something. So I can't say, you know, for certain
25 that because a law enforcement officer walked up here

1 right now and said, this is what happened, that
2 that's a hundred percent true.

3 Q But, realistically, uh, if you -- if you search
4 your heart of hearts, you know, as a former
5 police officer still involved with the
6 association and having that affinity to them, do
7 you really think that you would maybe be a little
8 bit partial towards officers coming in and
9 testifying?

10 A I'm sure, somewhat, you know, being human as I am, I
11 somewhat have that, but you have to listen to the
12 evidence and weigh that evidence of what is going on
13 at the particular time.

14 Q So it would be hard for you to, uh, consider the
15 possibility that -- that one or more officers in
16 this case may have even planted evidence?
17 Something that serious?

18 A I'd hate to think so, but, um, it could be possible.
19 Anything's possible nowadays.

20 Q And you'd be able to consider that?

21 A If it came to it, yes.

22 Q Would you --

23 A Or there was evidence as such.

24 Q Okay. And would you require that Mr., uh --
25 Mr. Avery actually prove that to you in order to

1 find him not guilty?

2 A I'd have to go with what, uh, the evidence did show.
3 If there was evidence that what this officer said was
4 true, then I would have to worry about somebody
5 saying, no, it isn't true, and explaining it to me
6 why it isn't. In other words, the two sides of that
7 story.

8 Q Well, if you, um -- if you heard evidence that --
9 that gave you a, um, sus -- reasonable doubt,
10 real concerns, maybe some suspicions that,
11 perhaps, this was done, but not conclusive
12 videotape evidence proving that this -- some
13 evidence was planted in this case, would you --
14 would you consider that as part of the overall
15 evaluation of the evidence of whether or not
16 there's reasonable doubt?

17 A Oh, certainly. Certainly, I would.

18 Q Or would you require that Mr. Avery actually
19 prove that conclusively to you before you could
20 even consider it?

21 A Excuse me. If I had doubts about something that I
22 heard, I would not have to have him prove otherwise.
23 I would, uh, weigh that with the rest of the
24 testimony that would come out and work it from there.

25 In other words, um, it would be maybe he

1 can't prove that it's wrong, but maybe I have a
2 real good suspicion it is. And then I would have
3 to weigh that with the rest of the things that
4 are being said and shown, etc.

5 Q Okay. And, uh, you mentioned last week his Honor
6 told you that you, um -- that Mr. Avery has a --
7 a right not to even testify or present any
8 defense at all; right?

9 A That's correct.

10 Q Is that a new concept for you?

11 A I don't think it is. I'd heard of it before. I've
12 never been involved in it, of course. But I've heard
13 of it.

14 Q Well, you mentioned that you'd -- you're -- you'd
15 like to hear both sides. Several times you've
16 said that in -- in other contexts. So you're the
17 kind of person who likes to hear both sides
18 before you decide something?

19 A I would like to, but if there is an overwhelming
20 doubt in my mind to where I could not say guilty or
21 innocent right there and then, I could make a
22 judgment then at that point, and then there would not
23 be a reasonable doubt to convict Mr. Avery.

24 Q Then there would not be or --

25 A There would be a reasonable doubt not to convict him.

1 That's what I was trying to say.

2 Q Okay.

3 A Not to convict.

4 Q And would you hold those two lawyers over there
5 to the entire burden of proof? Make them prove
6 Mr. Avery guilty beyond a reasonable doubt and
7 not require Mr. Avery to do anything?

8 A Well, as far as the Judge had mentioned, I guess
9 that's what is supposed to happen. We have to prove
10 him -- or I shouldn't say myself. But he has to be
11 proven to be guilty as he's assumed innocent right
12 now.

13 Q I understand the Judge is going to instruct you
14 of that. What I just want to understand is can
15 you -- I mean, for some people that's hard. Not
16 everybody is a perfect jury for every case.

17 Some cases are -- you know, you may be a
18 very good juror in one case, but not in another.

19 A Um-hmm.

20 Q And sometimes people come into a case and say --
21 and in their heart of hearts they think, you
22 know, I really just don't think this is right for
23 me. Um, I would have to hear from Mr. Avery
24 first, for instance. Is that something that --
25 that you might worry about or might have concerns

1 about?

2 A That would be hard to say, because I'm not in the
3 situation right now where Mr. Avery is not going to
4 testify or whatever. But, I'd still have to go with
5 the premise that he is innocent until he's actually
6 proven guilty. So if he doesn't want to testify,
7 that's his, uh, choice and his position.

8 Q Well, do you realize that there could be a lot of
9 reasons why someone -- a defendant may not
10 testify? In other words, can you imagine someone
11 to be innocent and still not testify?

12 A I can imagine it could be.

13 Q Okay. And so if the Judge instructs you, you
14 can't consider that if that happens, you have
15 to -- you'll be able to follow that?

16 A Right. Exactly.

17 Q And, on the other hand, if he does testify, and
18 he might, there's a whole lot of things that --
19 to be decided, would you be able to listen to his
20 testimony just like any other witness?

21 A Sure. Exactly. I would have no problem with that.

22 Q So having thought about all of this, and
23 understanding some of the issues, not a lot of it
24 is -- well, is this really -- is this really a
25 jury you think you can or should sit on?

1 A I believe I should. I believe I really should,
2 because --

3 Q Why?

4 A -- I don't have a bias one way or the other right
5 now. Um, I can't say whether he's guilty or innocent
6 because I don't know anything about the trial as
7 such, or about the accusations, or anything else,
8 being that I don't see very much news, etc., I don't
9 watch it, and, um, so I would be a -- a biased person
10 and have to weigh the evidence on both sides to find
11 out which was which, and whether he would be, in my
12 eyes, guilty or he would be innocent.

13 Q All right. Well, thank you, sir. Appreciate it.

14 THE COURT: All right. Thank you,
15 Mr. Guckeisen. The, uh, clerk will escort you from
16 the courtroom at this time.

17 (Wherein juror is escorted out)

18 THE COURT: Counsel, any motion from either
19 party?

20 ATTORNEY FALLON: None from the State.

21 ATTORNEY BUTING: Judge, I do have a
22 motion, actually, and it's not to -- to strike
23 this juror, yet, but it's to defer a decision on
24 it, because -- and I -- I -- as I look at the
25 computer-generated random list, um, taking jurors

1 out of order hasn't been a problem to now, but as
2 I look at it now, we're getting close to the end,
3 and it's possible that, um, there may be four
4 other jurors in line that we would end up
5 seating, or should end up seating before this
6 juror.

7 And, in fairness, to make sure that
8 there's completely random and that both sides
9 have a fair opportunity, I think we should go
10 back to that and, uh, if -- you know, if we need
11 to talk to Mr. Defore (phonetic), for instance,
12 out of line, he might -- let's see. I -- I see
13 that there's, um -- he would be the fourth in
14 line anyway, so, you know, we might be able to do
15 that, but, you know, it may very well be that
16 those next four would be seated as proper jurors,
17 in which case we would never get to this one.

18 THE COURT: Mr. Fallon?

19 ATTORNEY FALLON: Um, in -- interesting
20 argument, but we're in the same boat, I guess.
21 If we have a juror who passes, I think we ought
22 to seat them. Um, it -- sure, we have concerns
23 regarding the next, uh, several jurors being
24 called in as well. Uh, in fact, um, I have my
25 doubts as to whether a couple of them will make

1 the grade as it were.

2 Um, if he -- if he, uh, passes, he
3 passes. He should be seated. Um, the fact that
4 he happened to be here early or whatever, is --
5 is fine. Uh, you know, it works both ways as the
6 next several jurors will soon --

7 THE COURT: All right.

8 ATTORNEY FALLON: -- demonstrate here.

9 THE COURT: Well, um, it's probably a
10 reason for, uh, not taking any jurors, after
11 Mr. Guckeisen, on the list from here on out until
12 we've got them. Um, I think there's something to be
13 said for the defense's argument.

14 What I'm going to do at this time is
15 include him, or at least on a contin --
16 conditional basis, include him as a member of the
17 jury given the instruction that he may be called
18 back.

19 Uh, if we somehow do wind up with enough
20 jurors in front of him, uh, then, uh, we'll take
21 the ones in order in front of him.

22 ATTORNEY BUTING: Thank you very much.

23 THE COURT: So, next we're -- Uh, yes,
24 we'll take Mr. Defere next. And after that, we go
25 back in order.

1 Uh, before we begin with the
2 questioning, I can tell you that the jury in this
3 case is not going to be sequestered. That means
4 that at the end of the trial each day the jurors
5 will be permitted to go home. Um, we're able to
6 do that because there'll be a continuing
7 obligation on the part of the jurors not to learn
8 anything from the news media about the case.
9 That is, not to, uh, learn anything from radio,
10 television, newspapers, or the internet about the
11 case, and, also, not to discuss -- make sure you
12 don't discuss the case with anyone, including any
13 other members of the jury, until it's time to
14 deliberate at the close of the trial, uh, or
15 any -- anyone else, including members of your
16 family, during the trial.

17 These proceedings are open to the public
18 today, but the Court does not permit cameras in
19 the courtroom during the jury selection process.
20 Uh, in addition, the media is not allowed to
21 disclose the name of the jurors, uh, as we con --
22 conduct this process.

23 And if you are selected for the jury,
24 uh, you should know that during the trial there
25 may be cameras in the courtroom, but they're not

1 permitted to focus on the jurors in any manner
2 that individually identifies them.

3 Uh, if you, uh, remain on the jury
4 panel, you'll receive instructions before you
5 leave today, uh, as to, uh, when you may be
6 called back.

7 Mr. Fallon, are you handling this one
8 for the State?

9 ATTORNEY FALLON: I am.

10 **VOIR DIRE EXAMINATION**

11 BY ATTORNEY FALLON:

12 Q Good afternoon, Mr. Defere.

13 A Good afternoon.

14 Q My name is Tom Fallon. I'm an Assistant Attorney
15 General with the Wisconsin Department of Justice,
16 uh, and I am one of the prosecutors in this case.
17 To my immediate left is Mr. Ken Kratz, the
18 Calumet County District Attorney and lead special
19 prosecutor in this prosecution.

20 Um, thanks for coming in this afternoon.
21 Uh, we have some, uh, questions to ask, um, of
22 you based on the information you provided in your
23 questionnaire last week, all right?

24 A I understand.

25 Q All right. And if you could speak clearly so our

1 reporter here can take down what you're saying,
2 that would really help us out. Um, I want to
3 begin with, uh, you are currently not employed;
4 is that correct?

5 A Yes. I'm a student at LTC.

6 Q And what are you studying at LTC?

7 A My GED.

8 Q I'm sorry?

9 A My GED.

10 Q Okay. And that's, uh -- just so I'm clear,
11 you're working for your, uh, graduate equivalency
12 degree? Your high school degree?

13 A Yes, sir.

14 Q All right. How long have you been employed in
15 that capacity? Or, excuse me, going back to
16 school in other words?

17 A Since I've been laid off in late October.

18 Q And --

19 A Using time wisely.

20 Q I'm sorry?

21 A Use the time wisely.

22 Q All right. Where were you laid off from?

23 A Tower Tech.

24 Q Okay. And what did you do for them?

25 A Yard man.

1 Q How long were you employed by them?

2 A Three-and-a-half-months.

3 Q And why were you laid off?

4 A I believe they got slow. They -- they never really
5 gave me an answer. They laid several -- several of
6 us off at the same time.

7 Q Okay. They never gave you an explanation?

8 A No, not really. They left me a voicemail one morning
9 and just said they didn't need us no more.

10 Q Okay. Did you, uh, happen to call in and ask,
11 hey, what's up, or what's going on?

12 A Yes. And most I got from it was slow or nothing
13 really direct.

14 Q Are you collecting any unemployment?

15 A Yes, I am.

16 Q And how long have you been collecting
17 unemployment?

18 A Since, I believe, November 1.

19 Q All right. Uh, and your, uh, wife works I take
20 it?

21 A Yes.

22 Q All right. Now, um, if you were, uh, selected as
23 a juror in this particular case, there's a, uh,
24 good possibility that your service would last for
25 a period of six weeks. Um, would that cause any

1 economic hardship on you and/or your wife, uh,
2 during that time where you're, uh, here, uh --

3 A No, not really.

4 Q All right. You think you'd have adequate funds
5 to, uh, get you through this time frame?

6 A Yes.

7 Q All right. Very good. Prior to working at, um,
8 Tower Tech, where did you -- where were you
9 employed?

10 A Labor Ready.

11 Q And what did you do for them?

12 A That was a temporary service. I worked at Northern
13 Labs for awhile.

14 Q And what did you do in that capacity?

15 A Forklift driver.

16 Q All right. And how long did you work there?

17 A Um, probably about three months until I got hired at
18 Tower Tech.

19 Q All right. And, uh, prior to that, where were
20 you employed?

21 A Um, probably through Labor Ready, couple other
22 temporary services. Um, I couldn't tell you names
23 offhand right now. They bounced me around a little
24 bit.

25 Q All right. Well, tell us about the job that

1 you've held the longest.

2 A Mirro.

3 Q And how long did you work for them?

4 A Little over six years.

5 Q All right. And what did you do for them?

6 A Material handler, forklift driver.

7 Q And, um, how come you are not with that company?

8 A The place shut down and moved to Mexico.

9 Q Okay. All right. So has it been a little tough

10 finding steady work since then?

11 A Yes. Um, for about a year we moved down to Waukesha,

12 and there I went to school for ATS. That's how I

13 ended up back in Manitowoc, but --

14 Q All right.

15 A -- it was my goal. I want a house up here, too.

16 Q Now, uh, I understand you belong to one, uh -- a

17 motorcycle club?

18 A Yes, I do.

19 Q And what's the name of that club?

20 A Immortals --

21 Q All right. And what's --

22 A -- Motorcycle Club.

23 Q I'm sorry?

24 A Immortals Motorcycle Club.

25 Q And what type of club -- club is that?

1 A It's a motorcycle club. Just bunch of guys get
2 together. They ride together. We have charities, a
3 Wal-Mart charity. And just hang out.

4 Q All right. Now, is it, uh -- does it have a good
5 reputation? This motorcycle club?

6 A To be honest, some people have a bad reputation with
7 it, some people are hard workers and have families,
8 or --

9 Q Uh-hmm.

10 A -- upright citizens.

11 Q Uh, do some consider it a -- a gang, for lack of
12 a better term?

13 A I don't.

14 Q Well, I mean, how about others?

15 A I don't think so. We're considered a club.

16 Q All right. Uh, as a club, have you had any, uh,
17 encounters with law enforcement officers?

18 A Um, not me directly. As a club, you know -- club,
19 you know, oriented, but I'm sure there's other
20 members that have been.

21 Q All right. But has, uh, law enforcement had, uh,
22 problems with the club? The organization as
23 itself?

24 A Um, trying to think. Probably before I was in.

25 Q All right. How long have you been a member of

1 this club?

2 A Um, about four years.

3 Q And when did you join?

4 A Was it -- maybe 2001, maybe. I couldn't tell you
5 offhand.

6 Q All right. What were the initiation, uh,
7 responsibilities to gain admittance to the club?

8 A Um, just be around. Be a good member. Help people
9 out. Somebody was moving or something, they call you
10 up, go give them a hand.

11 Q Okay. All right. Now, in terms of your, um,
12 association with this club, uh, have you ever had
13 any direct contact with members of law
14 enforcement?

15 A Not with the club, but I have separately.

16 Q All right. And, in fact, you've had a number
17 of -- of contacts with law enforcement; is that
18 correct?

19 A Yes.

20 Q All right. Um, uh, a number of arrests; is that
21 correct?

22 A Yes.

23 Q All right. Uh, tell us about those, please?

24 A Where do you want me to start?

25 Q Uh, well, the beginning is always a good spot.

1 A I had a problem with drinking for a long time.

2 Q Okay.

3 A I've got several drunk drivings.

4 Q All right.

5 A I got a few disorderly conducts. I couldn't tell you

6 how many.

7 Q Okay. Um, how about a battery complaint?

8 A Yeah, I probably got one of them.

9 Q All right. And, uh, how many drunk drivings do

10 you think you've had?

11 A Three. Not proud of them.

12 Q All right. And how many disorderly conducts?

13 A I probably had a couple.

14 Q All right.

15 A You probably know better than me.

16 Q So you've had a -- a fair amount of contact with

17 the law enforcement system; is that correct?

18 A Yes, I do.

19 Q And when was the last time you were arrested and

20 convicted of an offense, sir?

21 A Um, December, maybe.

22 Q December of --

23 A Sheboygan County. December of this last year.

24 Q All right. December of '06?

25 A Yep.

1 Q All right. And what was that for?

2 A Um, I believe it was battery. It was altercation in
3 a bar.

4 Q Excuse me. Is, um -- is that matter still
5 pending, sir?

6 A No, that's closed.

7 Q It is? All right. Were you convicted of
8 battery?

9 A Yes.

10 Q Are you on probation?

11 A No.

12 Q Uh, what -- what was the penalty?

13 A I believe it was just a fine.

14 Q You believe or it was?

15 A That's all I paid. I was -- I didn't get nothing
16 else out of it.

17 Q I'm sorry?

18 A I didn't get nothing else out of it. It was just a
19 fine.

20 Q All right. So you've had a number of disorderly
21 conducts, at least two batteries, and three OWI
22 convictions?

23 A Yes.

24 Q All right. So, would it be fair to say that you
25 had, um, significant contact with law enforcement

1 officers in your life?

2 A Yes.

3 Q All right. And, uh, you are, uh, just so I'm
4 clear, 34 years of age?

5 A Yes.

6 Q Now, let's talk about your, uh, contact with law
7 enforcement. In those cases were you treated
8 fairly?

9 A Yes.

10 Q All right. You have no problem with the
11 activities of the law enforcement officers?

12 A Nope.

13 Q All right. Let's -- let's take those, uh, OWI,
14 uh, matters. Um, did you plead guilty to those
15 offenses or did you take any of those to trial?

16 A The last one I took to court.

17 Q All right.

18 A To trial.

19 Q All right. And, uh, where was that, sir?

20 A Uh, Manitowoc County.

21 Q All right. And, um, do you know, uh, which
22 branch of court or who your judge was?

23 A I think it was this courtroom.

24 Q All right.

25 A I couldn't tell you which judge it was anymore.

1 Q All right. And, uh, during the course of that,
2 uh, uh, trial, was there testimony from the law
3 enforcement officers?

4 A I believe so. Yes.

5 Q All right. You believe so?

6 A I -- it's been five years, Your Honor. Yes, I
7 believe -- or District Attorney. I'm nervous. Yes,
8 there was testimony.

9 Q All right. And, uh, how many officers testified
10 in that case?

11 A One, two. I couldn't remember. There was a couple.

12 Q All right. Uh, in -- in your own defense, were
13 any witnesses called?

14 A I believe so. I -- I don't remember.

15 Q You don't remember.

16 A I -- I believe so, but I don't remember.

17 Q Did you testify?

18 A I think -- yeah, yeah, I did. I did.

19 Q All right. And, uh, you were convicted?

20 A Yes, I was.

21 Q All right. Did the law enforcement officers tell
22 the truth?

23 A Best of their abilities, yes. Best of their ability,
24 you know, yes.

25 Q All right. And did you tell the truth?

1 A Yes.

2 Q All right. Um, if they were telling the truth
3 and you were telling the truth, both of you can't
4 be right, can they?

5 A Um, how do I explain? I was wrong for the drunk
6 driving. I did it. But circumstances happened
7 weren't quite accurate.

8 Q As reflected how, sir?

9 A The way things went. That -- when he entered my
10 house, when it all went down, I think there was
11 confusion. It was dark. I don't think things went
12 down the right -- everything was seemed.

13 Q All right. Well, what does that have to do with
14 whether you were driving under the influence or
15 not?

16 A My attorney, I think, was trying to get me off on a
17 technicality.

18 Q All right.

19 A And -- and that's where I think he was coming around
20 where the whole -- the whole situation wasn't right.

21 Q Well, did the officers, uh, testify truthfully
22 regarding your driving ability that night?

23 A Um, I wasn't in the car. I was in my house.

24 Q All right. But were you driving?

25 A Yes, but no one seen me.

1 Q Okay. Were you -- had you been drinking when you
2 were driving?

3 A Yes.

4 Q All right. And you were under the influence when
5 you were driving?

6 A Yes.

7 Q Okay. Did you -- and you testified that you were
8 not under the influence?

9 A I never said that. It -- it's -- what it was, was
10 the way they entered my house. It's not -- it's not
11 really about the officers being right/wrong. They
12 testified. I did. But some laws my lawyer believed
13 were broken when they entered my house.

14 Q All right.

15 A That's -- that was the -- what my lawyer had -- was
16 going across trying to get to the bottom of.

17 Q All right.

18 A It's been over, like, five years. Like I said, I
19 don't remember everything right now.

20 Q All right. Well, how about in this, uh, very
21 last case? The one you -- where you were
22 convicted of battery? Uh, what happened in that
23 case?

24 A We were out. I just got out of school -- AT -- ATS
25 School, Sun Prairie. Friend of mine wanted to take

1 me out. I got back, so we went out. He brought
2 another --

3 COURT REPORTER: Slow down, please.

4 JUROR DEFERE: Oh, okay. I apologize.
5 And he wanted to take me out for a couple of
6 drinks. We met up with a friend of his. Um, he
7 got in some trouble at -- at a bar, and we told
8 him, leave. Get away from us.

9 So we went on our merry way and did what
10 we had to do. And then we ran into him little
11 bit later on in the evening. We walked in. He
12 was -- he's a very mouthy person. He was getting
13 beat on about -- by about three, four people. I
14 noticed it right away and I went over to his
15 defense. I regret going over to his defense
16 because he never thanked me afterwards. And then
17 we all -- we got arrested.

18 Q (By Attorney Fallon) All right. And, uh, you
19 were convicted of battery?

20 A Yep.

21 Q All right.

22 A I didn't fight it. I -- I knew I was wrong. I
23 should have turned my head and let him get beat on
24 because he -- he had it coming.

25 Q Right.

1 A Maybe it sounds bad but it's true.

2 Q All right. Now, let me go back to something for
3 a minute. Um, how about your other, uh, drunk
4 driving matters? Uh, were the -- did you review
5 the police reports associated with your arrests?

6 A The other two drunk drivings?

7 Q Yes.

8 A Um, right. Them were like probably '94, '95. I
9 haven't look at them in years, but I was driving. I
10 got -- I was arrested, drunk drivings. No excuse,
11 but, actually, going into remembering the details of
12 the police report, I don't remember none of that no
13 more.

14 Q All right. Well, were you treated fairly by the
15 officers?

16 A Yes.

17 Q All right. And, uh, uh, they were truthful in
18 their representations in the reports?

19 A I would think so. Yes, I would think so. It's been
20 so many years.

21 Q All right. But you don't know?

22 A I don't remember.

23 Q All right.

24 A That's probably the correct way of saying it.

25 Q Well, there's going to be a fair amount of law

1 enforcement testimony associated with this case,
2 Mr. Defere, and, uh, the question of, uh, concern
3 to all of us, and especially the State here, is
4 whether or not you can evaluate the law
5 enforcement officers' testimony, uh, fairly and
6 impartially, and given your, uh, criminal
7 history, do you think you can do that?

8 A Yes, because if I can't, because this is a big case,
9 there's a lot of people on the line here, if I feel
10 that I can't be honest, I would tell you right now I
11 can't be honest about it.

12 Q All right. And what makes you think that you
13 will be, uh, comfortable in evaluating the
14 testimony of the police officers in this case?

15 A If I feel uncomfortable about anything that goes on
16 here, I will let whoever I need to know that I cannot
17 be on the jury no more.

18 Q All right.

19 A If I feel impartial towards anybody, or I don't
20 understand or anything, I'm going to come forward
21 because this is -- this is not a joke. This is not a
22 drunk driving case.

23 Q All right. All right. Appreciate that. Now,
24 have you been following this case at all?

25 A No, not really. We don't have local channels. We

1 got Sat -- Dish Network and we got no basic channels.
2 My wife tells me a little bit about it, but that's
3 about it. I told -- not since I had to come in here,
4 I -- anybody's talked to me, I told them, I don't
5 want to know anything about it.

6 Q All right. What have you heard about the case?

7 A Mr. Avery's -- Mr. Avery's been arrested for murder.
8 There's some blood stuff in a folder or something,
9 and didn't -- going to court back and forth. Like, I
10 haven't really been following this seriously.

11 Q All right. What else do you, uh, recall hearing
12 about the publicity in this case?

13 A I don't -- you can't believe everything you hear.

14 Q Right.

15 A It's --

16 Q Well, have you heard -- have you heard anything
17 about a -- a guy by the name of Dassey?

18 A Oh, the broth -- the cousin or -- the cousin of it?
19 Cousin of Mr. Avery? Yeah, I've heard -- yeah,
20 he's -- he's -- yeah, he's accused of the murder,
21 too.

22 Q All right. What do you remember hearing about
23 his involvement?

24 A He's party to a crime.

25 Q All right.

1 A I don't -- I don't know a whole great deal about it.

2 Q Well, do you recall any of the details which

3 were, uh, supposedly, um, described by Mr. Dassey

4 upon his arrest?

5 A No, I don't remember. And I've been purposely not

6 watching the news or paying any attention to it.

7 I -- before I really paid much attention to it. I

8 got enough things in my own life to really care about

9 anybody else.

10 Q I won't argue with that.

11 A I don't drink no more. If you're thinking of drunk

12 drivings.

13 Q My, um, question, um, is that, uh, can you tell

14 us a little bit about what your wife told you

15 about the case in your discussions with her?

16 A That's been well over a week ago. She follows it. I

17 don't.

18 Q She follows the case?

19 A Yeah. I don't.

20 Q Does she follow it pretty closely?

21 A Not really. She -- she hears something on the news

22 before she goes to bed. That's about it.

23 Q Well, then how would you know if she's been

24 following the case?

25 A She watches TV. She watches TV at night. I know she

1 watches it.

2 Q How do you know she watches it?

3 A She watched -- Well, she goes to bed at night, I'm in
4 the living room watching my shows, and she goes in
5 the bedroom and watches her TV every night.

6 Q Okay.

7 A So --

8 Q I guess if you haven't talked that much to her,
9 I'm just curious as to how you would know that
10 she's watching the coverage of this as opposed to
11 anything else?

12 A She'll watch the news in general. She watch --
13 whatever comes on, she watches it.

14 Q Okay. Including this?

15 A Yeah. See, in -- let me explain. In our bedroom, we
16 have no satellite, and she has a little TV, black and
17 white TV, that's where she watches our local stuff.
18 I sit in my living room, my 40-inch -- 40-inch TV and
19 I watch my shows. My sci-fi, my history channels,
20 that's what I get into. Public news and local stuff
21 like that don't trip my trigger.

22 Q Okay. All right. But, uh, so you've at least
23 had some discussions, I take it, with your wife
24 about what's going on with this case?

25 A Before I was -- I had to come in here.

1 Q All right?

2 A But not a whole lot, because don't -- stuff like
3 this -- this murder cases, or anything with -- or
4 forensics doesn't trip my trigger.

5 Q All right.

6 A It does my wife. I'll be honest about that.

7 Q Okay. Just a couple, uh, questions and I'll be
8 done. Do you have any opinion at all, Mr., uh,
9 Defere, as to whether, uh, Mr. Avery is guilty of
10 the offense for which he's charged?

11 A I can't make that -- I can't make assumption.

12 Q All right. Why not?

13 A The trial's not done.

14 Q Right.

15 A Haven't heard all the facts.

16 Q Right. And what if the only facts you hear in
17 the case are those presented by the State, and he
18 chooses to present no facts at all?

19 A Told me it's up to just go by the facts. Whatever is
20 presented to us is all we got to go on.

21 Q All right. And if the State fails to convince
22 you beyond a reasonable doubt, would you acquit
23 Mr. Avery?

24 A Would that be the -- would that be the -- what we'd
25 have to do? I don't understand what you're saying

1 right now.

2 Q All right. Well, you -- you've had, uh, a case
3 of your own where the jury was instructed that if
4 they were going to convict you of drunk driving,
5 they had to be convinced beyond a reasonable
6 doubt that you were, uh, driving under the
7 influence; right?

8 A Yeah.

9 Q All right.

10 A So -- so you're basically saying if the facts are
11 stated that if you brought the facts out stating that
12 he was guilty? Is that what you're saying?

13 Q Right. Well, what if -- what if we didn't quite
14 convince you beyond a reasonable doubt, but yet
15 you didn't hear anything from the, uh -- from Mr.
16 Avery and his lawyers? Would you find him guilty
17 or would you find him not guilty?

18 A I don't know what I would do.

19 Q You don't know what you'd do?

20 A I don't -- I don't know what I would do. I -- I
21 don't.

22 Q Well, if the score -- Court were to instruct you
23 that you don't have to, um, uh -- you can't hold
24 it against him if he chose not to put any
25 evidence in, if he chose not --

1 A Okay. Okay.

2 Q -- to testify?

3 A I follow you. Um, so basically is saying if he's --
4 if -- I guess I'd have to go with the evidence.
5 If -- if there's not enough to convict him, then
6 that's the way it would have to be.

7 Q All right. So what would you determine -- would
8 you vote guilty or not guilty then?

9 A Probably not guilty.

10 Q All right.

11 ATTORNEY FALLON: Um, I notice that my
12 time's about -- I'll pass this juror.

13 THE COURT: Mr. Buting?

14 **VOIR DIRE EXAMINATION**

15 BY ATTORNEY BUTING:

16 Q Good afternoon, sir. Um, my name's Jerome
17 Buting, and this is Dean Strang, and we're both
18 the attorneys representing Steven Avery here
19 today. I appreciate your coming here and being
20 so forthright.

21 A I'm nervous.

22 Q I can understand that. Almost everybody who sits
23 up there is. Really. You're not alone.

24 Um, Mr., uh, Fallon went through great
25 detail your background and your contact with the

1 police, but I take it that you can put aside any
2 of those instances and not let that affect you in
3 evaluating the testimony or the evidence in this
4 case; is that right?

5 A Yes.

6 Q And, in fact, in, uh, most of those instances it
7 seems like, uh, you admit you were in the wrong?

8 A I'm the -- yes, I'm no angel.

9 Q Okay. You've had some problem with alcohol and
10 you've been honest about that. We appreciate
11 that. Really. And you're trying to work on that
12 right now?

13 A Since I've been married and my wife don't drink, I
14 don't. Very seldom. I'll admit, I drink maybe once
15 a month, but it's better than what it used to be,
16 four times a week, but --

17 Q Okay.

18 A I got a good woman.

19 Q I'm glad to hear that. And you, um -- you feel
20 confident that if selected for this jury, you
21 could follow the Judge's instructions?

22 A Yes.

23 Q And that you would bring whatever life
24 experiences you have to this case just like any
25 other jury -- juror; right?

1 A Could you, um, explain what you mean?

2 Q All right. Let -- that may be a bad question.

3 But you're, uh -- despite whatever contacts you

4 may have had with the police, you're not going to

5 be un -- unduly favorable or sympathetic to the

6 defense; right?

7 A What's in my past has got no part with this.

8 Q Has nothing to do with Mr. Avery at all?

9 A No. This -- this is between right or wrong and --

10 and what happened. If I -- if anything that's my

11 life is going to affect me or affect anything going

12 on here, I -- I'd tell you -- I'd tell you right now,

13 I'm not the person to pick.

14 Q I appreciate that, sir. I -- I really do. Um, I

15 think you understand this is very serious matter

16 for both sides.

17 A It's -- it's also going to be a burden on all of us

18 jurors. It's going to be a burden on -- on us. We

19 got to put our life on hold for six weeks. It's

20 going to affect me looking for a job and, you know,

21 so on and so on, my wife, and daily -- daily things

22 to do around the house and --

23 Q Sure. But --

24 A It's not a joke.

25 Q And knowing all that, you're still willing to --

1 to serve and do your civic duty?

2 A It's my duty, just like there -- our soldiers are
3 overseas fighting for us. If we can't be proud
4 Americans like they're being proud over there, what
5 good are they -- are they fighting for? Got to be
6 that way.

7 Q All right. Thank you very much, sir. Appreciate
8 it.

9 THE COURT: All right. Uh, Mr. Defere,
10 the, uh, clerk will escort you from the courtroom.

11 (Wherein juror is escorted out)

12 THE COURT: Counsel? Mr. Fallon?

13 ATTORNEY FALLON: May I confer?

14 THE COURT: Go ahead.

15 ATTORNEY FALLON: Obviously, this juror
16 causes the State some concern, so we're
17 deliberating as to whether we want to make a
18 motion to strike for cause. And I guess on
19 balance, we are going to make that request. Um,
20 it's a close question in some respects, and in
21 others, a rather clear one.

22 We're going to move that the juror be
23 struck for cause on the, uh, theory of -- of
24 objective bias. Um, although the juror's actual
25 answers seemed adequate, some would say more than

1 adequate, to, uh, justify seating the juror, I'm
2 concerned that given the big picture here, that
3 those answers may not very well be credible.

4 We have an individual, um -- and he'd
5 like us to believe that he's turning his life
6 around and he's, uh, straightening himself out,
7 uh, apparently recently getting married, etc.,
8 but I guess even that does not ring true. After
9 all, he has a December, 2006 conviction for
10 battery in Sheboygan County, and by my account,
11 that is only, uh, six weeks ago, seven.

12 Uh, this is an individual with, uh,
13 three OWI convictions, several disorderly
14 conducts, and another additional battery
15 conviction, with numerous law enforcement
16 contacts.

17 I also, uh, have a question, uh, to
18 doubt the, uh, circumstances surrounding his
19 affiliation with the motorcycle club as being
20 entirely on the up and up.

21 I think that applying the objective bias
22 standard, uh, could a reasonable person hearing
23 all they have heard about Mr. Defere come to a
24 reasoned conclusion that he could give the State
25 a fair shake? I think one would have to say, not

1 withstanding his answers, that a reasonable
2 person would not come to that conclusion. And,
3 uh, as a result, given the extensive criminal
4 history and the recency of it, uh, 2005 and 2006,
5 uh, we'd ask the Court to strike this juror for
6 cause.

7 Um, like I said, the, uh -- the words
8 seemed good, but they don't match, I don't think,
9 the background and the recent history, and I --
10 I'm unconvinced by his demeanor. Uh, he strikes
11 me as somebody who's a little too anxious and a
12 little too willing to waive the flag.

13 And I know that may sound harsh, um, but
14 that's our assessment of this juror and would ask
15 that he be struck for cause.

16 THE COURT: Mr. Buting?

17 ATTORNEY BUTING: Judge, we object to
18 that. There's no -- no grounds for cause for
19 this juror. Yes, I can understand why the State
20 doesn't want him on the panel. Obviously, the
21 State will intend to use a peremptory given the
22 rather grueling cross-examination Mr. Fallon gave
23 this young man, but the fact of the matter is not
24 only did he answer the questions appropriately,
25 the -- the explanations were appropriate and his

1 demeanor was appropriate.

2 This is a man who, yes, he's had some
3 difficulties with the law and he freely admitted
4 it, but I didn't hear him blaming the State for
5 any of them. He's blamed himself. He admits he
6 had an alcohol problem. Even the most recent
7 one, he admits he was trying to help a friend and
8 he should have stayed out of it. He's not
9 blaming the State.

10 He's not somebody coming in here and
11 saying, you know, I've got a vendetta against the
12 police or against prosecutors. It's a young man
13 who's had difficulties, but there's no reason to
14 think that he can't put those aside like any
15 other juror who's -- former police officers, if
16 we want to believe his answers.

17 All jurors bring their life experiences
18 with them collectively to the jury, and this
19 gentleman has every bit as much a right to do his
20 civic duty, to sit on this jury, as anyone else.
21 So I -- I -- I think there's absolutely no record
22 to justify striking this juror for cause, and I
23 would move to deny the State's motion.

24 THE COURT: All right. Well, I -- I
25 understand why the, uh, State would be initially,

1 uh, concerned, given the juror -- or the juror's,
2 uh, record, um, but I have to say that based on not
3 only the content of his answers, but his demeanor,
4 uh, I found him to believable -- be believable.

5 It would have been, um -- I'm sure it
6 was difficult, in a courtroom of a number of
7 people, for him to, uh, discuss and admit his
8 criminal past, although it's misdemeanors and,
9 um, uh, drunk driving, and it didn't involve
10 felonies, but I -- I thought he was believable
11 and forthright.

12 He acknowledged his culpability, I
13 think, with respect to virtually every conviction
14 that he had. It's true that he did contest, uh,
15 his -- I believe it was his most recent OWI, but
16 he, frankly, indicated that it was based more not
17 on his own feeling that he was not guilty, but on
18 a theory of defense his attorney recommended, and
19 he pursued it.

20 He said on a couple of it -- and a -- a
21 couple of occasions he believed that he had been
22 treated fairly by officers, and I just didn't
23 detect anything in his answers to, um, suggest
24 that, uh, he was not being forthright with those
25 answers.

1 Um, he also seemed to have a solid grasp
2 on the fact that this case involves charges more
3 serious than any of the ones he was involved with
4 himself. And, um, I -- I think he is -- he is
5 aware of the fact, he recognizes the
6 responsibility, and, uh, has indicated that he
7 could, um, uh, safely face that responsibility
8 and be a part of the jury in this case. So I'm
9 going to deny the motion and make him part of the
10 jury panel.

11 Uh, let's see. Jenny, how are you
12 doing? Do you want a break or do you want to
13 take one?

14 COURT REPORTER: Let's do one more.

15 THE COURT: Okay. How about Mr.
16 Wichlacz?

17 THE CLERK: We have --

18 THE COURT: Well, no, we're taking them
19 in order now. Oh, oh, is he here yet?

20 THE CLERK: I don't know. There were
21 only three ladies in there when I was there.

22 THE COURT: Okay. How about -- well --

23 ATTORNEY FALLON: He's not -- No. 68
24 was, uh -- or is he not here yet either?

25 THE COURT: Well, for --

1 THE CLERK: I'll go check.

2 THE COURT: Yeah. See if he's here.

3 Let's start taking them in order.

4 Ms. Barber, please raise your right hand
5 and the -- the clerk will administer the oath.

6 (Juror sworn)

7 THE CLERK: Please be seated.

8 THE COURT: Uh, Ms. Barber, you've already
9 filled out a written jury questionnaire in this case
10 last week. Today we're moving on to the next phase
11 of jury selection, which is the voir dire process.

12 The attorneys for both sides will have
13 an opportunity to ask you some questions that
14 relate to your qualifications to serve as a
15 juror. In many cases those questions will relate
16 back to, um, answers that you gave on your
17 written questionnaire.

18 Before we begin the questioning, I can
19 let you know that the, uh, jurors selected to
20 hear this case will not be sequestered. That
21 means the jurors will be permitted to go home
22 each night after the day's proceedings. And, uh,
23 because of that fact, there will be a continuing
24 uh, ban on any juror exposure to news media
25 accounts of the case, whether it be on

1 television, radio, the newspapers, the internet,
2 or anywhere else.

3 In addition, the jurors will be
4 prohibited from discussing the case with anyone
5 during the course of the trial, including any
6 family members, or even the other jurors, until
7 all of the evidence in the case has been
8 received.

9 Today's proceedings are, uh, not closed
10 to the public, but during voir dices, uh,
11 proceedings, the Court does not allow cameras in
12 the courtroom. In addition, the members of the
13 news media are not permitted to disclose the
14 names of the jurors in their reports of the court
15 proceedings today.

16 Uh, finally, you should know that if
17 you're selected to serve as a juror in this case,
18 there may be cameras in the courtroom, but
19 they're not permitted to show the faces of the
20 jurors.

21 Uh, in the event that you remain on the
22 jury panel after questioning today, you'll
23 receive further instructions, probably by a
24 telephone call later today, as to when to report
25 back to court. Mr. Kratz, you may begin.

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ATTORNEY KRATZ: Thank you, Judge.

VOIR DIRE EXAMINATION

BY ATTORNEY KRATZ:

Q Good afternoon, Ms. Barber.

A Good afternoon.

Q I'm Ken Kratz, the Calumet County District Attorney, who will be serving as lead prosecutor in this case. With me this afternoon is Tom Fallon. Mr. Fallon's an Assistant Attorney General. He works for the Department of Justice. He'll be assisting me not just this afternoon, but also through the presentation of -- of this trial.

As the Judge has explained, there are some follow-up questions to your answers given, uh, in your questionnaire, uh, that we need to ask of you.

Um, first of all, you, um, still work at, uh, Worthington Cylinders; is that correct?

A Yes, I do.

Q And that's in Chilton --

A Yes.

Q -- is that correct? All right. How long have you, uh, worked at that position?

A Twenty-eight years. I had to try and think.

1 Q All right. You've indicated on the, um,
2 questionnaire that you had previous employment at
3 Chilton Products; is that correct?

4 A Yes. Um, Worthington Cylinders took over the Chilton
5 Products half of the cylinders, so altogether in that
6 company building I've been there 28 years.

7 Worthington -- I've been there with Worthington for
8 four, because they bought out --

9 Q All right. I know that, but probably nobody else
10 in this room does.

11 A Okay.

12 Q That -- that's why I -- I asked that, Ms. Barber.

13 A Okay.

14 Q The, um, connection with, uh, Chilton, that is
15 the connection with Calumet County, also, uh,
16 causes you to have some familiarity with
17 Mr. Pagel; is that right?

18 A Yes.

19 Q Can you describe that?

20 A Actually, Jerry and I went to school together.

21 Q All right.

22 A And that's how I know him. I know him enough to go
23 to him and say, hi, Jer, how's things, and --

24 Q All right. Have you had any discussions with
25 Mr. Pagel about this particular case?

1 A No, I haven't.

2 Q You were aware, however, early on of Mr. Pagel's,
3 uh, involvement in the investigation of this
4 case?

5 A Actually, not. The last time I saw him, none of this
6 had happened, so --

7 Q What I'm saying is, you realized early on in this
8 investigation --

9 A Oh.

10 Q -- that Mr. Pagel was involved in the
11 investigation?

12 A Yes. That's why I put it down.

13 Q And did you also realize early on that my office,
14 that is the Calumet County D.A.'s Office, uh, had
15 taken over responsibility of the prosecution in
16 the case?

17 A No, not really.

18 Q All right. Ms. Barber, where is it that you, uh,
19 most often receive your news?

20 A Most often, uh, television.

21 Q And, uh, had you recalled, and as you sit here
22 this afternoon, do you recall, uh, television
23 news stories regarding this case?

24 A Yes.

25 Q Let's go way back to the beginning of this case

1 in early November of 2005. Did you remember
2 reports of, uh, Teresa Halbach having been
3 missing and there was some missing persons or
4 search efforts for her?

5 A Yes.

6 Q You didn't participate in the search for Ms.
7 Halbach at all, did you?

8 A No, I didn't.

9 Q Do you know Ms. Halbach's family or, uh, anybody
10 that might be related to her?

11 A No.

12 Q You live in Valders; is that right?

13 A Yes.

14 Q Which would be just over the Calumet
15 County/Manitowoc County border; is that right?

16 A About seven miles in, yes.

17 Q All right. Now, uh, you don't know Investigator
18 Mark Wiegert?

19 A No, I don't.

20 Q Ms. Barber, uh, you mentioned in your report that
21 you've had some contact with law enforcement, uh,
22 officials. Uh, we're going to talk about your
23 son in -- in -- in just a moment, but --

24 A Okay.

25 Q -- um, have you personally had any contact with

1 law enforcement officials that in any way has
2 left a bad taste in your mouth about police
3 officers generally?

4 A No.

5 Q Have you had any contacts with law enforcement
6 that, uh, have been positive in nature? They've
7 helped you either, um, solve a crime for which
8 you may have been a victim or, uh, maybe just
9 helped on -- on some citizen call that you might
10 have made?

11 A I have to answer no to that. Um, if I could preface
12 some of it?

13 Q Sure. Go ahead.

14 A I'm a member of the Calumet County Fair Board. Every
15 Labor Day weekend I was in charge of cleaning the
16 restrooms for the fair. The police officers patrol
17 the grounds all night. My contact with some of them
18 have been through the course of the evening, sitting
19 and having a cup of coffee at three o'clock in the
20 morning when we were finished.

21 Q Okay.

22 A You know, all of those are positive things.

23 Q Would that be Calumet County Sheriff's, uh,
24 Officers, or city of Chilton officers, or both
25 that --

1 A Both.

2 Q -- would help with that? Are you familiar with,
3 uh, the former chief, uh, Mr. Albeyll, from
4 Chilton?

5 A Yes, I am.

6 Q And would those, uh, contacts have been positive
7 as well?

8 A Definitely.

9 Q Now, Ms. Barber, you had, uh, mentioned quite
10 candidly in your responses that your son had had,
11 uh, a legal problem or run-in with the law?

12 A Okay. I had two different sons.

13 Q Two different sons?

14 A Two different counties.

15 Q Two different counties, two different run-ins?

16 A Yes.

17 Q Let's talk about, uh, the one that you mentioned
18 here. There was a -- a burglary, uh, conviction?
19 Uh, which, uh --

20 A That was my youngest son.

21 Q Your youngest? And about how long ago did that
22 happen?

23 A Oh, I'm going to say 18 years.

24 Q So quite a long time ago?

25 A Yeah. He was -- he just turned 18 and you know how

1 stupid they can be at --

2 Q I do.

3 A -- 18.

4 Q I have a --

5 A Me, too.

6 Q -- 19-year-old son. What, uh -- what county did
7 that occur in?

8 A Calumet.

9 Q And the, um, prosecution, um, since it was 18
10 years ago, um, may have been actually just before
11 I became district attorney, Mr. Poppy was
12 probably the D.A. then?

13 A Yes, he was.

14 Q Is there anything about that prosecution, uh,
15 that you felt your son was treated unfairly or
16 anything -- anything like that?

17 A Um, well, I felt the kid that was in it -- it with
18 him should have gotten a little harsher. The kid
19 with him was only 17 and he got slapped on the hand
20 and --

21 Q Well, since I wasn't involved, I'm going to ask
22 you a very, uh, direct question. The fact that,
23 um, my predecessor, the former district attorney,
24 was involved in that case, would you in any way
25 hold that prosecution against our case here?

1 That is, against either me --

2 A No, not at all.

3 Q -- or our --

4 A I didn't hold it against the Court either. You know,
5 he -- he deserved what he got. I just felt it should
6 have gone a little further.

7 Q I understand. There was also, um, at least after
8 his conviction, you mentioned some, uh,
9 misunderstanding or some problem with his
10 receiving, um, Huber or --

11 A No.

12 Q -- work release privileges?

13 A Other son.

14 Q Oh, we're on the different case?

15 A Exactly.

16 Q All right. Let me just finish up with your
17 youngest son. Was there --

18 A All right.

19 Q -- anything else -- you'll have to wait until I'm
20 done talking. She can't take down both of us at
21 the same time.

22 A Okay.

23 Q Is there anything about your youngest son's
24 conviction, um, that, uh, was either handled
25 inappropriately, uh, or after his, um,

1 supervision or contact with law enforcement that
2 you feel was handled inappropriately?

3 A No, I don't.

4 Q All right. You said that there was another son
5 that was involved in something?

6 A Yes my --

7 Q And --

8 A -- second. That was Manitowoc County.

9 Q What kind of case was that?

10 A That was, um, drunken driving, fleeing.

11 Q About how long ago was that, Ms. Barber?

12 A Fifteen years.

13 Q Did that result in a conviction?

14 A Yes.

15 Q And did it result in any kind of a punishment for
16 your second son?

17 A He -- nine months in jail.

18 Q Is there anything about that investigation or
19 prosecution that you believe was inappropriately
20 handled?

21 A No.

22 Q By the way, each of these sons, have they, um,
23 for lack of a better turn -- uh, term,
24 straightened themselves out and doing well now?

25 A Yes, they have.

1 Q Okay. Any other law enforcement contacts either
2 positive or negative that you think that we
3 should know about to consider whether or not you
4 should serve on this jury?

5 A That would be the only --

6 Q Um, you consider yourself a -- a detail-oriented
7 person? Do you make a lot of lists?

8 A No.

9 Q So you're more of a big picture --

10 A Apparently.

11 Q Ms. Barber, are you aware -- and I think that
12 you've mentioned that you are -- at least
13 generally familiar with some TV shows that deal
14 with, uh, crime scene investigations; *C.S.I.*, or,
15 um, shows like that; is that correct?

16 A Right.

17 Q Do you enjoy that kind of topic?

18 A Yes, I do.

19 Q You must be familiar, then, with a kind of
20 forensic identification which is called DNA
21 evidence; is that right?

22 A Right.

23 Q From what you've read, or what you've known, or
24 what you've seen on TV, do you believe that to be
25 generally a, uh -- a -- a --

1 scientifically-accepted principle? In other
2 words, you think that that's an accurate way for
3 identification in crime scene-type cases?

4 A Yes, I do.

5 Q Anything that you've learned about DNA analysis,
6 uh, or DNA testing that you at all question those
7 results?

8 A No.

9 Q Are you familiar with Mr. Avery at all, and his
10 past?

11 A Um, from originally, that would be about it. Um,
12 when it first -- when he first got let out of jail
13 and --

14 Q Tell me about that. What do you remember?

15 A That, um, he was wrongfully convicted, spent 18 years
16 in prison, and then, finally, was able to be let out.
17 I'm not sure I remember what came up that -- I think
18 the person who identified him said he was the wrong
19 person or something. I'm not real familiar with -- I
20 just remember him going on the Channel 11's makeover,
21 and getting his hair cut, and --

22 Q All right.

23 A -- spruced up.

24 Q Do you remember that, uh, wrongful conviction, or
25 his exoneration, that is, his release in that

1 case, was the result of DNA evidence?

2 A Now that you mention it, yes.

3 Q All right. And, generally, at least that concept
4 of, uh, exonerating people that are wrongfully
5 convicted, do you believe that to be a good
6 thing?

7 A Yes, I do.

8 Q Are you familiar with something called the
9 Innocence Project?

10 A That's the group out of Madison that investigates
11 certain crimes?

12 Q Investigates, uh, people that they believe have
13 been wrongfully accused or convicted?

14 A Okay. Yes. I -- I have heard of it.

15 Q All right. Ms. Barber, since this would be a
16 six-week trial, do you have any concerns that
17 sitting on this jury would cause you some
18 financial or other kind of hardship?

19 A No.

20 Q Uh, would your company continue to pay you if you
21 had to sit on this jury?

22 A Oh, yes.

23 Q Last question, and this is, I guess, more a -- of
24 a general question than something specific, but
25 is this something -- something that you want to

1 do? Is this a jury you'd like to serve on?

2 A Yes, I would.

3 Q Can you tell me why?

4 A I just feel I'm open-minded enough, um, to hear all
5 the facts. I -- I feel I was fair with pretty much
6 everything I do.

7 Q So you believe that you'd be able to evaluate
8 both sides, you'd be able to evaluate the
9 evidence, listen to the witnesses' testimony,
10 attribute whatever weight you think it deserved,
11 and make a reasonable decision?

12 A Yes, I do.

13 ATTORNEY KRATZ: That's all the
14 questions I have, Judge. Thank you.

15 THE COURT: Mr. Strang?

16 ATTORNEY STRANG: Thank you.

17 **VOIR DIRE EXAMINATION**

18 BY ATTORNEY STRANG:

19 Q And thank you for coming in. My name is Dean
20 Strang, and --

21 A Hi, there.

22 Q -- this is Jerome Buting -- and --

23 A Hi.

24 Q -- Steven Avery, uh, after his makeover. Um --

25 A Yeah.

1 Q And, uh, I -- I, too, appreciate you coming in,
2 probably sitting around for a good bit of time
3 waiting for us.

4 Um, easy one first, and I'm probably
5 being way too cautious on this, but you're on the
6 Manitowoc side of the county line?

7 A Yes.

8 Q You live in Manitowoc County?

9 A Yes.

10 Q Okay. Um, and -- and yet, you're -- you --
11 you're clearly very involved, still, in civic
12 life in Chilton, uh, Calumet --

13 A Yes.

14 Q -- County? Uh, tell me a little bit about that.
15 How that came -- comes to be?

16 A The Calumet County Fair Board?

17 Q Um-hmm.

18 A Well, all you had to be was a stockholder in the fair
19 association to become on the board of directors, and
20 I just felt it was something I enjoyed doing. Taking
21 part in the fair, and --

22 Q Sure.

23 A -- putting my input in where I could -- I actually
24 thought I did a good job.

25 Q Okay. Any -- any particular responsibility on

1 the board for one aspect of the annual fair or
2 not?

3 A Well, I was in charge of the restroom cleaning.

4 Q Uh-huh.

5 A And, if -- my judge of going to other fairs, and
6 everybody has to use the restroom, half the time you
7 don't want to walk into them. I made it my point
8 that people weren't going to shy away because it was
9 not clean. So --

10 Q You got it. Um, and you graduated from Chilton
11 High School?

12 A Yes, I did.

13 Q How long did you spend living in the Chilton
14 area?

15 A I moved into the Manitowoc/Valders area in '89, so up
16 until --

17 Q Up until then --

18 A Right.

19 Q -- did you live right in Chilton or --

20 A Yes, I did.

21 Q Okay. Um, do you have any grandkids?

22 A Seven.

23 Q How old is the oldest?

24 A Nineteen.

25 Q And the youngest?

1 A She was a year in June.

2 Q Okay. Uh, is -- is the 19-year-old a -- a young
3 man or young woman?

4 A Young woman.

5 Q Uh, in the area? All -- all seven of them?

6 A She goes to, um, cosmetology school in Appleton.

7 Q Uh-huh. And, um, you noted here that your, um --
8 your husband has a chronic health condition that,
9 you know, often can be controlled by medication
10 or diet?

11 A Right.

12 Q Um, does that give you any concern about being
13 away from the home eight hours a day or nine
14 hours a day?

15 A No. No. In fact, Sunday he leaves for South
16 Carolina for a week. He's a construction
17 millwright --

18 Q Oh.

19 A -- so they send him all over the country. He pretty
20 much is okay.

21 Q Oh.

22 A Yeah.

23 Q Okay. I -- I just -- I just wanted to be sure.

24 A I'm sorry. I --

25 Q You know, we -- this can be -- I mean, being on

1 a -- on a jury is something of a hardship, but
2 there should be a limit to --

3 A Right.

4 Q -- just how much of a hardship. Um, active in
5 your union --

6 A Yes.

7 Q -- obvious, I think?

8 A Well, I was an officer in my union. I still am a
9 union member.

10 Q Um-hmm. Have you ever been a steward?

11 A I was the financial officer, and on the bargaining
12 committee, and safety committee, and I was -- well,
13 being on the bargaining committee, I was a steward,
14 so -- same --

15 Q One -- one in the same. Yeah. Okay. Um, so
16 when -- when this all first came up, when Teresa
17 Halbach disappeared, and they were looking for
18 her, and then they arrested Steven Avery, um,
19 did -- did you follow this pretty closely at the
20 time?

21 A No.

22 Q Okay.

23 A Not really. I -- the names were unfamiliar --

24 Q Sure.

25 A -- and I guess it wasn't something that I really took

1 an interest in.

2 Q Okay. And that -- that's sort of what I'm
3 exploring. I mean, some people might react to
4 this as a mom, or as a grandmother, others not
5 react to it at all if it's not connected, and I'm
6 just -- I'm just trying to gauge how much you
7 sort of plugged into -- into this?

8 A Well, pretty much not much.

9 Q Um-hmm.

10 A I mean, un -- unless it's, I guess, something that
11 directly involves me, I guess I -- I can hear it and
12 just -- no, it's -- it's nothing that I followed that
13 close.

14 Q Okay.

15 A I mean, I didn't go out of my way to grab a newspaper
16 article and read it or make it a point that that's
17 where I had to be, in front of the television, and --

18 Q Got it.

19 A -- usually had something better.

20 Q Okay. No, I -- I've got it. I just --

21 A Okay.

22 Q Um, now, by the same token, you know, here it is
23 more than a year later, he's here, we're in
24 court, do you assume he's probably guilty? Do
25 you assume he's probably innocent? Do you have

1 any --

2 A I really have no judgment on that at all. I -- I
3 never really looked at it in the way -- one way or
4 another. It's -- it's something that I guess needed
5 to be proved first.

6 Q Well, why is he here if he didn't do something
7 wrong?

8 A Well, that's what I'd like to know.

9 Q Okay. And, in finding that out, I mean, you
10 know, of course you'd like to know that --

11 A Right.

12 Q -- and finding that out, whose job is that to
13 show you? Their's? Mine? Both?

14 A I would think both. I -- I feel both sides really
15 should present everything.

16 Q Um-hmm. Um, very natural feeling. And you're --
17 now, you're walking into a legal system that has
18 some different rules for nearly ancient or at
19 least five or six hundred years worth of reasons,
20 I guess, um, and I think Judge Willis will tell
21 you, and I'm quite confident he'll tell you, that
22 in a criminal case like this it's actually just
23 the State that has the burden of proof. The
24 lawyers at this table. They -- they have the
25 only burden of proving anything, and they have to

1 prove Mr. Avery guilty beyond a reasonable doubt
2 if they can.

3 A Okay.

4 Q Um, we don't have to prove him innocent.

5 A Okay.

6 Q Can you accept that and live with those rules?

7 A Sure. It's a rule.

8 Q It -- it is a rule. And the question is whether
9 you would resist that or, in the end, not be able
10 to follow that for --

11 A No, I feel that's -- if that's the rule, and that's
12 what needs to be done, that's what should be done
13 then.

14 Q Right. And I'm -- I'm only predicting what the
15 Court's going to tell you. I mean, in the end,
16 the Court's going to give you the rules, not me.

17 A Okay.

18 Q Um, just trying to predict, since I've been doing
19 this for awhile. Um, and, um, you know, another
20 rule in that respect that we would have to know
21 that you can live with, and I think you've
22 already told me you -- you can and you do, is
23 that he's presumed innocent. That is, Steve
24 Avery is.

25 A Right.

1 Q Not just today, actually, but through this whole
2 trial, right up until the end when -- when you
3 folks, the jury, starts to deliberate.

4 A Right.

5 Q Okay. Only then do you decide what happened, but
6 you've got to presume him innocent right up until
7 you walk into the jury room and start
8 deliberating.

9 A Exactly.

10 Q Okay. Um, now, you know, there are two sides
11 here. He does have a couple of lawyers, and
12 we're not going to just sit here, although we
13 could, under the law. Um, so if we cross-examine
14 the State's witnesses, will you listen to their
15 answers when Jerry Buting or I are asking them
16 questions just as when the prosecutors are?

17 A Yes.

18 Q Weigh it the same?

19 A Yes.

20 Q How about if we actually call witnesses of our
21 own as defense witnesses? Will you consider
22 Mr. Avery's evidence just as you would the
23 State's?

24 A Yes, I would.

25 Q Um, and the same would be true if they

1 cross-examine our witnesses? Will you listen to
2 the answers given when they ask questions?

3 A Yes.

4 Q Okay. The toughest call on -- on a witness would
5 be Mr. Avery, himself. Uh, and here's, again, an
6 area where there's specific rules. Um, because
7 there are a whole variety of reasons, even an
8 innocent person might not testify. Um, if
9 Mr. Avery decided not to testify, I think the
10 Court will tell you that you can't consider that
11 at all as any evidence of guilt or even consider
12 it at all in deciding whether the State has
13 proven him guilty beyond a reasonable doubt. Can
14 you do that?

15 A Yes.

16 Q Even if you don't hear the other side of the
17 story straight from the horse's mouth, so to
18 speak?

19 A Yes.

20 Q Um, do you understand that there -- there may be
21 a variety of reasons why an innocent person would
22 not testify in his own defense?

23 A Yes, I do. I -- because I watch *C.S.I.* --

24 Q Um-hmm.

25 A -- any, really, court dramas, um, like *S.H.A.R.K.*, I

1 mean, he's a -- portrayed as an excellent D.A. They
2 bring out the fact that defendants do not need to
3 talk --

4 Q Um-hmm.

5 A -- or say anything. And I guess that's -- I accept
6 that.

7 Q Okay. Um -- And I don't -- I don't watch a lot
8 of these shows, actually, but the one I tune into
9 once in a while is *Law and Order*, and it strikes
10 me, and see if you share the same experience,
11 basically the storylines in *Law and Order* are
12 either the guilty guy gets convicted or the
13 guilty guy gets off somehow?

14 A Yeah.

15 Q I don't see a lot of storylines with innocent
16 guys. Um, I don't know about *C.S.I.* or --

17 A Well, the -- *C.S.I.* never goes into court. I was
18 trying --

19 Q Sure.

20 A -- to pick one out that I watch.

21 Q Ab -- absolutely. And I -- I just -- I guess is
22 there room in your mind for an innocent man being
23 wrongly charged?

24 A Oh, sure.

25 Q And in that regard, you paused for a little bit

1 when Mr. Kratz asked you, um, whether you think
2 exonerating wrongfully convicted people is a good
3 thing or not. You paused and you gave --

4 A Well, I had to think about that.

5 Q Yeah.

6 A You know, it's -- it's one of those, hmm, and then
7 you think about it a minute, and, yes. That's --

8 Q Is -- is -- I mean, would the concern be that
9 somebody not get out on just a technicality?

10 A Oh, definitely. It's --

11 Q But if -- if someone was truly, actually
12 innocent, I -- I take it you would not want them
13 sitting in prison --

14 A Right.

15 Q -- for a crime they actually didn't do?

16 A Exactly.

17 Q So, I mean, in his situation where the DNA proved
18 that a specific other man actually did the rape,
19 not him, it excluded him and showed who did do
20 the rape --

21 A Right.

22 Q -- you would want somebody like that, I assume,
23 to get out of prison that day; right?

24 A Yes.

25 Q Okay.

1 A And I -- actually, when it came out, I was -- I was
2 glad to hear it, you know, that everything was
3 justified, that they were able to do something like
4 this for him.

5 Q Right. Okay. And did -- did you hear about the
6 lawsuit that he filed after getting out?

7 A I -- I heard something about it. I -- it's probably
8 like the rest of the -- I wasn't involved. The
9 name's not familiar.

10 Q But did the -- did the sympathy stick with him or
11 go away when you found out that he filed a
12 lawsuit to try to get some money for that?

13 A Well, to me it would be only fair, that if he was
14 wrongly convicted of something, to -- to lose 18
15 years of pay. It's only fair that he gets the chance
16 to make it up.

17 Q I hear the union steward.

18 A I'm sorry.

19 Q No. No. Um, not at all. Um, um, you'll hear a
20 lot of law enforcement officers, um, testify
21 here, um, maybe for both sides, but -- but
22 regardless who calls them, you know, there are a
23 lot of law enforcement officers testify. I will
24 ask, and I think the Court will instruct you,
25 that in weighing the testimony of a police

1 officer or a law enforcement officer, um, to
2 consider that person's testimony just like you
3 would any other human being who took the witness
4 stand. Can you do that?

5 A Oh, yes. I mean they're human. They're human
6 beings.

7 Q Right. I --

8 A Okay.

9 Q Exactly.

10 A That's --

11 Q Any -- any witness here will be, and, um, I --
12 you would hope that every witness would tell the
13 truth under oath?

14 A Yes.

15 Q Um, but is a law enforcement officer any more
16 likely to honor that oath than anyone else who
17 does some other line of work?

18 A It shouldn't be. Everyone who takes an oath to tell
19 the truth should be telling the truth --

20 Q Right.

21 A -- no matter who they are.

22 Q And in -- can you look beyond the badge and --

23 A Oh, yes.

24 Q -- and decide, do I believe this? Does it make
25 sense? Is there a reason this person might or

1 might not lie? And consider every witness in
2 that way, including police officers?

3 A Oh, yes.

4 Q What -- what, if anything, have you heard about a
5 blood vial? A vial of blood that may be at issue
6 in this case?

7 A That -- if it came up, it came up after I got my
8 paper from the courthouse, and I -- I have a mute
9 button on my TV that's getting a real healthy
10 workout.

11 Q Okay. So you -- the answer is you just don't
12 know anything at all about it?

13 A No, I don't.

14 Q Okay. All right. Um, last sort of question or
15 two, um, you work with a number of people at
16 Worthington?

17 A Yes, I do.

18 Q Um, whatever your verdict would be, if you -- if
19 you serve on this jury, when you go back to work,
20 my guess is there are going to be people -- be
21 people who think you did the right thing, and
22 people who are not very happy with you.

23 A Right.

24 Q How are you going to deal with that?

25 A Well, I'll put it this way, I work the fifth shift at

1 either favorably inclined or unfavorably inclined
2 based on your acquaintance with him --

3 A Right.

4 Q -- which I gather is not close, but you know who
5 he is?

6 A Right.

7 Q Uh, if you're selected as a juror, would you give
8 any more or less weight to his testimony should
9 he be called to testify?

10 A I wouldn't give more or less.

11 THE COURT: Thank you. The, uh, clerk
12 will --

13 ATTORNEY STRANG: I -- I'm sorry. I --
14 I -- I had one followup --

15 THE COURT: Okay.

16 ATTORNEY STRANG: -- on that.

17 **VOIR DIRE EXAMINATION**

18 BY ATTORNEY STRANG:

19 Q I think you just moved to Valders in 1989?

20 A Yes.

21 Q Did you -- did you know former Police Chief
22 Wiegert?

23 A No.

24 Q Okay.

25 A No. Actually, I don't know my neighbors either.

1 Q Okay.

2 THE COURT: Um, Linda will escort you from
3 the courtroom at this time.

4 (Wherein juror is escorted out)

5 THE COURT: Counsel, any motion from either
6 party?

7 ATTORNEY KRATZ: No.

8 ATTORNEY STRANG: No, Your Honor.

9 THE COURT: All right. If not, the Court
10 will accept Ms. Barber as a juror. We'll take our
11 afternoon break at this time and resume at, uh, five
12 after three. Uh, in two minutes I'd like to see the
13 counsel in my chambers.

14 ATTORNEY BUTING: What time af -- after
15 three?

16 THE COURT: Five after.

17 (Recess had at 2:45 p.m.)

18 (Conclusion of reporting by Jennifer Hau)

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1 STATE OF WISCONSIN)
)SS.
2 COUNTY OF MANITOWOC)

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I, Jennifer K. Hau, Official Court Reporter for Circuit Court Branch 3 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this ____ day of _____, 2007.

Jennifer K. Hau, RPR
Official Court Reporter

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, JURY TRIAL
5 vs. VOIR DIRE - DAY 4
Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** FEBRUARY 8, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:**

12 KENNETH R. KRATZ
Special Prosecutor
13 On behalf of the State of Wisconsin.

14 THOMAS J. FALLON
Special Prosecutor
15 On behalf of the State of Wisconsin.

16 DEAN A. STRANG
Attorney at Law
17 On behalf of the Defendant.

18 JEROME F. BUTING
Attorney at Law
19 On behalf of the Defendant.

20 STEVEN A. AVERY
Defendant
21 Appeared in person.

22 * * * * *

23 **PARTIAL TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1 (Continued proceedings reported by Diane Tesheneck.)

2 THE COURT: All right. At this time we're
3 back on the record without any jurors present in the
4 courtroom. During the break, counsel informed me
5 they were -- they would be talking about one juror
6 for which there may be a motion.

7 ATTORNEY FALLON: Right. There may be one
8 other one that may roll into that, may be able to
9 take care of two here.

10 THE COURT: Okay.

11 ATTORNEY FALLON: Apparently, your Honor,
12 the parties have reached an agreement that two of
13 the upcoming jurors will be excused for cause. That
14 would be Juror No. 77 and Juror No. 78. Juror
15 No. 77 for statutory and objective bias reasons and
16 Juror No. 78 for subjective bias, based on the
17 answers to the questionnaire on Juror No. 78. And
18 on Juror No. 77, based on status of current arrest
19 history.

20 THE COURT: All right. Mr. Strang, is that
21 correct?

22 ATTORNEY STRANG: It is a joint motion as
23 counsel said.

24 THE COURT: All right. Based on my review
25 of the questionnaires in each of those cases, I

1 believe there's a basis for the party's motion. So
2 the Court will order that Jurors 77 and 78 be
3 excused for cause.

4 Janet, are there any other jurors up
5 till this point, in the number order, that have
6 not been called, but have not been excused
7 either? Were there any other jurors unaccounted
8 for, either questioned and excused or questioned
9 and accepted, that are open?

10 THE CLERK: No, not that I'm aware of.

11 THE COURT: Very well, then we'll bring in
12 Mr. Wichlacz. Just a second, Linda, hold on. Yes.

13 ATTORNEY FALLON: The parties have been
14 talking about the Juror No. 8, I think it was, from
15 Monday.

16 THE COURT: Okay.

17 ATTORNEY FALLON: Has developed a recent
18 issue regarding her potential hardship.

19 THE COURT: Yes.

20 ATTORNEY KRATZ: We thought before she
21 became No. 30 we should deal with that issue so that
22 there isn't a question as to --

23 THE COURT: Okay.

24 ATTORNEY KRATZ: That we did have somebody
25 in abeyance, if you will.

1 THE COURT: Yes, this is --Well, the 8th
2 juror selected, Juror No. 13 on the list.

3 ATTORNEY FALLON: Yes.

4 THE COURT: I can indicate for the parties
5 that this is Mary Whalen, that she was originally, I
6 believe on the first day --

7 ATTORNEY FALLON: Yes, she was the last one
8 seated on Monday.

9 THE COURT: Yes. Seated on Monday.
10 Indicated at the time that she initially claimed
11 hardship for a couple of reasons, financial and also
12 transportation responsibilities with respect to her
13 family. She, it turns out, is the sole source of
14 transportation for her husband. And recognized,
15 only after she left court, that while she could take
16 him to court, there was no one to bring him home.
17 And they live out in the country where there really
18 wasn't anybody else to provide transportation. So
19 she has requested that she be excused because of the
20 hardship on her family.

21 Does either party have any objection to
22 the Court granting her request?

23 ATTORNEY KRATZ: No, Judge.

24 THE COURT: Mr. Strang?

25 ATTORNEY STRANG: No, Judge.

1 THE COURT: All right. The Court, then,
2 will excuse Ms Whalen. And, then, we will at this
3 time move on to questioning Mr. Wichlacz, Juror 68.

4 ATTORNEY STRANG: As I have Mary Whalen,
5 she's No. 13 not No. 8.

6 THE COURT: Well, she was the 8th juror
7 selected and No. 13 in the order.

8 ATTORNEY STRANG: Sorry.

9 THE CLERK: Actually, she was the 9th
10 juror --

11 THE COURT: Oh, was she?

12 THE CLERK: -- is what I had her at.

13 THE COURT: Let me see.

14 ATTORNEY KRATZ: Yeah, but we had taken
15 somebody out of order.

16 THE COURT: Oh, that could be. Yes, that's
17 right, she was actually the 9th one selected, but
18 the 8th in order. Okay. All right. Are we ready
19 for Mr. Wichlacz.

20 ATTORNEY KRATZ: We are and this will be my
21 examination, Judge.

22 THE COURT: Very well. Mr. Wichlacz,
23 please raise your right hand and the Clerk will
24 administer the oath.

25 (Juror sworn.)

1 THE CLERK: Please be seated.

2 THE COURT: Mr. Wichlacz, first of all, am
3 I pronouncing your name correct?

4 MR WICKLASS: Wichlacz.

5 THE COURT: Wichlacz. Very well. You have
6 already filled out a written jury questionnaire in
7 this case. Today we are moving on to the next stage
8 of the jury selection process which is referred to
9 as voir dire.

10 In this stage, the attorneys for each of
11 the parties have an opportunity to ask you
12 questions that bear on your ability to serve as a
13 juror in this case. Many of the questions will
14 be follow-up questions to information provided in
15 the questionnaire.

16 Before we get to the attorney's
17 questions, I can tell you that the jurors who are
18 selected to serve in this case will not be
19 sequestered; that is, at the end of the trial
20 proceedings each day, they will be permitted to
21 return home.

22 Because of that fact there will continue
23 to be a prohibition on any exposure of the jurors
24 to information about the case in any form of news
25 media; be it radio, television, newspapers,

1 internet, or any other sources. And in addition,
2 the jurors will be prohibited from speaking to
3 anyone about the case. That would include family
4 members, as well as other members of the jury,
5 until it is time to deliberate.

6 Although the court proceedings today are
7 held in open court, no cameras are permitted in
8 the courtroom today during these voir dire
9 proceedings and the members of the news media are
10 not permitted to use the names of jurors in any
11 news reports.

12 If you are selected to serve on the jury
13 in this case, you should also know that while
14 cameras may cover the trial, they are not
15 permitted to show the jury in any way that
16 identifies any members of the jury.

17 In the event you are retained on the
18 jury panel after the proceedings today, you will
19 receive a notice, probably sometime later today,
20 letting you know when to report back to court.

21 THE COURT: Mr. Strang, at this point you
22 may begin your questioning.

23 ATTORNEY KRATZ: Mr. Kratz, but I will,
24 Judge.

25 THE COURT: Okay. Sorry, Mr. Kratz.

1 VOIR DIRE EXAMINATION

2 BY ATTORNEY KRATZ:

3 Q. Mr. Wichlacz, good afternoon. My name is Ken
4 Kratz, I'm the Calumet County District Attorney.
5 I represent the State in this case and will be
6 the lead prosecutor. Seated with me this
7 afternoon is Tom Fallon. Mr. Fallon is a
8 attorney with the Department of Justice,
9 Assistant Attorney General, will be assisting not
10 only today but also through the entire trial.
11 Good afternoon.

12 As the Judge explained this is our
13 opportunity to ask you some additional questions
14 and follow up on some responses that you gave in
15 your written questionnaire. Let me first start
16 with your most recent employment. I understand
17 that your principal occupation was manager of a
18 grocery store; is that correct?

19 A. Well, the grocery department at the -- well, it
20 was Sentry, now it's Piggly Wiggly.

21 Q. All right. And for how long had you engaged in
22 that employment?

23 A. Well, I'm still there part-time. It's going on
24 about 45 years.

25 Q. I understand, Mr. Wichlacz, that you have two

1 children, a son and a daughter; is that correct?

2 A. Correct.

3 Q. Your son is a member of the City of Manitowoc

4 Police Department; is that right?

5 A. Yes, that's correct.

6 Q. And your daughter is an attorney?

7 A. Yes.

8 Q. Could I ask your son's name, please?

9 A. Rob Barbier.

10 Q. I'm sorry?

11 A. Rob Barbier.

12 Q. And your daughter?

13 A. Katie Brown.

14 Q. Let's start with the obvious, your son being a
15 Manitowoc County law enforcement officer. Have
16 you had an occasion to speak with your son about
17 this case?

18 A. Just briefly. It was just that he was involved
19 in the search of the property.

20 Q. All right. Did your son --

21 A. That's about all he said.

22 Q. Did your son tell you what was engaged in those
23 search efforts?

24 A. Pardon?

25 Q. Did your son tell you what he did in those search

1 efforts?

2 A. Just -- just that they were looking around and
3 that's about all he said. He didn't say they
4 found anything or -- I guess that covers it.

5 Q. Your son is not on the witness list, but like
6 several other law enforcement and other
7 volunteers, he was involved in the search for Ms
8 Halbach; is that right?

9 A. For the car.

10 Q. All right.

11 A. Yes.

12 Q. Was he also involved after the car was found; do
13 you know if he was on the property?

14 A. I don't think so. I think he was just, once they
15 found the car I think he was done.

16 Q. All right. Now, Mr. Wichlacz, I'm going to move
17 directly to a -- an answer of interest, if not a
18 concern; that is, that based upon the publicity,
19 you had come into this case believing that
20 Mr. Avery was guilty, or at least the publicity
21 pointed in that direction. Do you still hold
22 that opinion?

23 A. Yes.

24 Q. You also indicate, however, more importantly,
25 that despite that initial opinion, that you would

1 be able to set that aside and base your decision
2 solely on the evidence in this case; do you still
3 hold that opinion?

4 A. Well, yes, to a point.

5 Q. Well, you better explain that. What does that
6 mean?

7 A. Well, from the news coverage, I would guess that
8 Mr. Avery is guilty. In fact, I would say he is
9 guilty from the coverage, from what I have heard.
10 Now, I guess if a bolt of lightening came down
11 and told me he was innocent, I might believe it,
12 but it's just kind of overwhelming.

13 Q. I understand that.

14 A. I'm sure from what I have heard from you, that
15 you passed out to the press, and I'm sure you
16 have more that we haven't heard about, so ...

17 Q. And --

18 A. I would -- I would -- I guess at this point I
19 would find it very difficult.

20 Q. And so as Mr. Avery sits here, although legally
21 he may be presumed innocent; that is, the Court
22 may instruct you that he is presumed innocent --

23 A. Yes.

24 Q. -- you don't come into this case feeling that at
25 all; is that right?

1 A. Right. I know that's backwards. I know he
2 should be innocent, but ...

3 Q. But you wouldn't be able to set that aside?

4 A. I don't believe so.

5 ATTORNEY KRATZ: That's all the questions I
6 have for this witness, Judge. Thank you.

7 THE COURT: Any questions for the defense?

8 ATTORNEY BUTING: No, your Honor.

9 THE COURT: All right. Mr. Wichlacz, at
10 this point Linda will escort you from the courtroom.

11 (Wherein the juror was excused.)

12 THE COURT: Do the parties have a joint
13 motion on this juror?

14 ATTORNEY KRATZ: Yes, Judge, the State
15 would acknowledge that this witness should be struck
16 for cause.

17 ATTORNEY BUTING: I join in that.

18 THE COURT: All right. Based on the
19 witness' answers, the Court will excuse Mr. Wichlacz
20 as a juror for cause in this case.

21 The next juror would be Donald Kickland.

22 ATTORNEY FALLON: Who is the next one?

23 THE COURT: Donald Kickland, Juror 81.
24 Mr. Kickland, will you stand and raise your right
25 hand, please.

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(Juror sworn.)

THE CLERK: Please be seated.

THE COURT: Mr. Kickland, you have already completed a written juror questionnaire in this case.

MR. KICKLAND: Yes.

THE COURT: This afternoon we're moving on to the next stage of the jury selection process which is called voir dire. The attorneys for each of the parties will have a chance to ask you some questions that bear upon your qualifications as a juror. For the most part, they will be follow-up questions to the information that you provided on the questionnaire.

Before we get to those questions, I can tell you that the jurors selected to serve in this case will not be sequestered during the trial. That means at the end of court proceedings each day the jurors will be permitted to return home and then report back to duty the next morning. Because of that fact, the Court is continuing the prohibition on any exposure of the jurors to any publicity regarding this case, whether it be from television, radio, newspaper, internet, or any other source.

1 And in addition, the jurors are
2 prohibited from discussing the case with anyone,
3 including members of the juror's family, or even
4 other jurors, until all the evidence has been
5 received.

6 Although the proceedings in court are
7 open to the public today, because this is part of
8 the jury selection process, the Court does not
9 permit any cameras in the courtroom today. And
10 the members of the media are not permitted to
11 disclose the identity of the jurors in any news
12 reports.

13 If you are selected to serve as a juror
14 in this case, I can also tell you that while
15 there may be cameras in the courtroom covering
16 the trial, they are not permitted to show the
17 jurors.

18 In the event you are chosen to continue
19 on the jury panel after questioning today, you
20 will receive instructions as to when to report to
21 court again. Mr. Fallon, you are handling this
22 one?

23 **VOIR DIRE EXAMINATION**

24 BY ATTORNEY FALLON:

25 Q. Good afternoon Mr. Kickland.

1 A. Good afternoon.

2 Q. My name is Tom Fallon. I'm an Assistant Attorney
3 General with the Wisconsin Department of Justice.
4 I'm one of the prosecutors in this case. To my
5 immediate left is Mr, Ken Kratz, the Calumet
6 County District Attorney. He's the lead
7 prosecutor. Again, good afternoon and thanks for
8 returning.

9 A. Okay.

10 Q. The attorneys have a few questions regarding some
11 of the information you provided in your
12 questionnaire last week and wanted to follow up
13 on those if we may. First issue, just somewhat
14 of a routine one. You indicate that you do wear
15 a hearing aide so --

16 A. Yes.

17 Q. -- is that -- am I -- Do you hear me comfortably?

18 A. I hear you well.

19 Q. All right. And when Judge Willis was talking to
20 you you --

21 A. Yes.

22 Q. -- could hear him well?

23 A. Yes. Mm-hmm.

24 Q. All right. I'm going to turn off my microphone
25 and see how that sounds.

1 A. Okay.

2 Q. I have a couple of questions for you?

3 A. You have a couple questions for me.

4 Q. All right. So you hear that just fine.

5 A. I hear that just fine. Just like wearing
6 glasses, I can't read without them, but it helps.

7 Q. I'm familiar with that. All right. Okay. You
8 are a retired barber by trade?

9 A. Yes, I barbered from 1954 until 1983.

10 Q. Okay.

11 A. Got out of school in '54.

12 Q. And from 1983 to 1990, Department of -- was that
13 Regulation and Licensing?

14 A. Yes, I worked for the Department of Regulation.
15 I was assigned to the Barber and Cosmetology
16 Academy Board and also the Pharmacy Examining
17 Board.

18 Q. I see. So -- Okay. So you kind of kept your hand
19 in the business, more or less.

20 A. Yeah. Yeah.

21 Q. All right. Did you enjoy that work?

22 A. Yes.

23 Q. All right. What did you like about it?

24 A. Well, when these people submit their application
25 for barber shop, or beauty shop, or school,

1 electrolysis, or drugstore, they needed to send
2 in also a floor plan. And my duties were to go
3 to these locations and inspect them and give them
4 their location license.

5 Q. All right. Did you -- Was that -- Were you
6 limited to the Manitowoc County area or did you.

7 A. No.

8 Q. -- range further?

9 A. At that time, in 1983, there were three of us.
10 We were given territories. My territory was -- I
11 had about 80 percent of Milwaukee County, Racine
12 County, Kenosha County, Rock County; in other
13 words, all the way to Prairie Du Chien. Grant
14 County, Madison. I had most -- I had the City of
15 Madison, and therefore south.

16 Q. So you had the whole south part of the state?

17 A. Yes.

18 Q. I imagine that kept you pretty busy?

19 A. Yes, it was a nice job.

20 Q. All right. And as a result of that, I see that
21 either from your work and your schooling, you had
22 some background in accounting and bookkeeping?

23 A. Yes, being a barber, I guess, at the time when I
24 was barbering, this was in the '70s I took some
25 night courses. Help with my doing my own book

1 work and also to know people, adjustment,
2 psychology, human behavior. I was interested in
3 that.

4 Q. Yeah, I was going to ask you how you got from
5 barbering to psychology, but the more I think
6 about it, it's probably not that great a jump, is
7 it?

8 A. No, you do listen to people.

9 Q. Right.

10 A. It helps with communication, gives you an
11 understanding.

12 Q. All right. And how long did you study your
13 psychology or human behavior?

14 A. Those were evening courses, like one semester of
15 the psychology and human behavior. And the
16 accounting was there for the same, one semester.

17 Q. Very good.

18 A. It was not to be a career. It was just something
19 I guess I wanted to do.

20 Q. All right. And I see for your spare time you
21 like to play golf and play cards?

22 A. Yes.

23 Q. Among other pursuits?

24 A. Yes.

25 Q. Well, how are you hitting 'em these days?

1 A. Well, it's kind of cold now, but last summer -- I
2 do quite well --

3 Q. All right. Good for you.

4 A. -- in golfing. And in the wintertime I go to the
5 senior center and play cards.

6 Q. All right. And what card games do you like to
7 play?

8 A. This morning we played some sheephead (sic).

9 Q. All right.

10 A. And occasionally some cribbage. I like the
11 numbers.

12 Q. All right. And you, I take it for some of the
13 organizations you belong to, in addition to the
14 church and bowling, you are a volunteer driver
15 for Red Cross?

16 A. Yes, I did that from 1992 until they terminated,
17 at December 31st of 2006. So I gave them over 14
18 years.

19 Q. Very well. And something, a Mason, past member,
20 tell me little bit about your Mason experience?

21 A. That's as a Mason, I'm an active Mason now.

22 Q. All right.

23 A. I'm a past member of maybe a Fish and Game and
24 Isaac Walton league.

25 Q. Oh, all right. I misread that.

1 A. Yeah, I was involved with Isaac Walton League for
2 many, many years.

3 Q. I see.

4 A. And past president, 1974. State director a few
5 years. And let's see, Fish and Game, just more
6 of a friendship.

7 Q. All right. Well, I would like to talk to you a
8 little bit more now about some of the things that
9 are more directly related to the business at
10 hand. And I see from your questionnaire, you
11 know a few people that may or may not appear as
12 witnesses in this case. You know Mr. Curt Drumm?

13 A. Okay. My wife is -- It's through my -- Basically
14 she's -- she's a teacher with the -- out at
15 Woodland Dunes. And I know he's a member there.
16 And they had a retirement party over here at the
17 Maritime Inn at that time for Bernie when he
18 retired. It's more -- more due to a social
19 thing. I have never went out with him or eat
20 with him, or this and that. Just know who he is.

21 Q. You just know who he is. Okay. Well, how about
22 Lieutenant Todd Hermann; how do you know him?

23 A. From 19 -- let's see 1992, approximately 15
24 years, Tom Kocourek came to the Isaac Walton
25 League soliciting for some money so they have a

1 place for rifles and that stuff here at the
2 county, across the street here at the County Jail
3 here.

4 Q. Okay.

5 A. I guess he was soliciting money. And we gave him
6 some money for that. And he also brought up that
7 they are having a volunteer program. And when I
8 heard that, I approached him on it at that
9 meeting, that I would be interested in
10 volunteering. And he told me I should contact
11 his secretary, Leist. I believe her name is
12 Leist. I don't quite remember exactly. So I got
13 a hold of her the next day. And I registered.

14 And then I think Mike Bushman and Rick
15 Torrington were the two people that trained a few
16 of us to be volunteers with the Sheriff's
17 Department. Basically, we took the cars to get
18 them washed, take them to like Maritime Ford and
19 to garages to have them repairs, take them to
20 Quick-Lube for oil changes. Did some escort for
21 funerals.

22 Oh, yeah, then we escorted a building to
23 the Historical Village. Deliver supplies. It
24 had nothing to do with enforcement or
25 investigation. Strictly -- It's mostly with the

1 cars and transportation escorts.

2 Q. Background support?

3 A. Yeah, that's basically it.

4 Q. Sure. And that's -- so that's your only
5 acquaintance?

6 A. Yeah, basically, yes. There were times maybe
7 Mike Bushman wasn't there, then Hermann was
8 there. He just told us to take this car and that
9 car. So nothing -- nothing outside of the
10 volunteer time.

11 Q. Sure. And how about Tom Kocourek?

12 A. Well, he was sheriff at the time.

13 Q. All right.

14 A. So there was always an appreciation. And there
15 was some certificates given out for volunteer
16 hours and, of course, you get to shake his hand.
17 He thanked us.

18 Q. All right.

19 A. In other words, nothing to do with investigation
20 or enforcement.

21 Q. All right. So it's just -- in other words, you
22 don't really know him well, you just met him
23 through your volunteer work and a couple of hand
24 shakes?

25 A. Yes. And then I do volunteer at Holy Family

1 Hospital for their network and occasionally I see
2 him walking through and we say hi.

3 Q. All right.

4 A. But that's about it.

5 Q. Just a casual acquaintance, then?

6 A. They do that with everybody as a courtesy.

7 Q. Casual acquaintance, then?

8 A. I -- If you asked me how many children he has, I
9 don't know.

10 Q. Okay. Fair enough. All right. Well, as you
11 might suspect, with a case like this, there's
12 been a fair amount of publicity. And in your
13 questionnaire, you report that you are at least
14 aware of some of the publicity associated with
15 this case?

16 A. Until I got the letter from Judge Willis' office
17 approximately January, I believe around the
18 middle of January, the 15th, I will say, not to
19 watch television, read the paper and things like
20 that and I abide by it.

21 Q. All right. And so, well, prior to receiving that
22 letter, were you at least aware of some of the
23 publicity in the case?

24 A. I read the paper.

25 Q. All right. So you have a general idea of what's

1 going on?

2 A. Yes.

3 Q. All right. And did you read the paper regularly,
4 daily?

5 A. Well, I subscribe to the Manitowoc Herald-Times
6 and I read it every day.

7 Q. Okay.

8 A. Except until the last three or four weeks now, I
9 kind of omit the trial, which we were asked to
10 do. So I had not read that. When I see the
11 headlines, that's as far as it goes.

12 Q. All right. Well, you were asked a question and
13 this is one of great interest to all of us here
14 and that is whether, based on all the information
15 that you had available to you, prior to receiving
16 the Judge's letter, whether you had any opinion
17 as to whether Mr. Avery is guilty or innocent.
18 And you answered no.

19 A. I learned one thing, you have to learn what the
20 facts are and see what the evidence are.

21 Q. All right. So you formed no opinion as you sit
22 here today?

23 A. I have no opinion.

24 Q. All right. Well, associated with that is, do you
25 think that if you were selected as a juror in

1 this case you could decide the guilt or innocence
2 of Mr. Avery solely on the information which was
3 presented during the course of these proceedings?

4 A. I will listen to all, everything. I will listen
5 to everything first and then after, when it's
6 done, I would then make my decision.

7 Q. Okay. And you are willing to work with your
8 other jurors in reaching that decision, I assume?

9 A. I will do my best.

10 Q. All right. Now, you realize that the State,
11 that's Mr. Kratz and myself and one of our other
12 colleagues, we're the ones with the burden of
13 proof; in other words, we have to prove that
14 Mr. Avery is guilty, beyond a reasonable doubt.
15 And if we fail to do that, then you must return a
16 verdict of not guilty; do you understand that?

17 A. Yes, I understand that.

18 Q. All right. And as part of that, Mr. Avery
19 doesn't have to say or do anything. The only
20 burden in this courtroom is on the State, the
21 prosecution, to try and convince the jurors that
22 he is guilty beyond a reasonable doubt; do you
23 understand that?

24 A. I would listen to both sides and make my
25 evaluation from that.

1 Q. But if they chose not to put on any case and the
2 only evidence you had was the evidence that was
3 presented by the State, and if after you saw it
4 and you thought and thought and thought and you
5 talked with your fellow jurors and you just
6 didn't think the State had proven his guilt,
7 beyond a reasonable doubt, would you vote not
8 guilty?

9 A. Yes, not guilty.

10 Q. All right. Now, I see you did serve on a jury
11 once before; is that correct?

12 A. Yes.

13 Q. All right. Can you tell me a little bit about
14 the case, as best you can remember, looks like it
15 was a while ago?

16 A. I don't remember the exact year. Seems to me 6,
17 8 years, late '90's, maybe 2000. I just don't --
18 I don't -- I didn't write it down, so. I -- I
19 was called in a couple times. And the time that
20 I sat on a jury, it -- it -- what the case was
21 about was forgery. It was a forgery and they had
22 the evidence. And they had -- it involved a bank
23 and all the proof was there.

24 Q. Okay.

25 A. They had witness forgery. It was a forgery case.

1 We reached a verdict on that case.

2 Q. And you found the person guilty?

3 A. Yes, the jury found the person guilty.

4 Q. All right. Now, during that case, did the person
5 who was accused of committing the forgery, did
6 that person take the witness stand or choose not
7 to, or do you recall?

8 A. I -- I will be honest with you, I don't remember.
9 I remember the witnesses being there. I do not
10 know if she was on -- no, I just -- just don't
11 remember if she was on the witness stand or not.

12 Q. Well, we ask that because that's of some interest
13 to all of us here and want to make sure that you
14 understand that a defendant need not take the
15 stand, doesn't have to take the stand, doesn't
16 have to say anything. And as the rules are, you
17 can't hold that against him or consider their
18 failure to take the stand in deciding whether
19 they are guilty or not guilty; do you understand
20 that?

21 A. Yes, I understand that.

22 Q. And you accept that principle?

23 A. When a person makes a decision not to go on the
24 stand that's -- that's -- that's their affair and
25 I understand that.

1 Q. Okay. So, and you can decide this case without
2 paying any mind to that?

3 A. Yes, I can do that.

4 Q. All right. Now, just a couple of other
5 questions. Based on your, you know, experience
6 in regulation and licensing and your experience
7 as a juror and just your general experiences in
8 life, as you go about solving a problem, as you
9 go about formulating an opinion or an idea, do
10 you consider yourself kind of a picture person or
11 more of a detail oriented guy?

12 A. I was a -- Myself and what I am and what I do, to
13 me is, I'm not a big picture person. I'm more
14 down to earth. I don't have a problem helping
15 people across the street, that's what we do with
16 the Red Cross. You need patience, you need to be
17 able to open up doors for other people, show a
18 little courtesy. It doesn't matter who it is, if
19 it's young or old.

20 Q. Right. Well, in terms of do you -- are you one
21 who pays close attention to details or not so
22 much?

23 A. Well, to help and assist other people you have to
24 be very tentative. You have to be able to pick
25 up what they -- without being asked to do, to go

1 in and pitch in and help them out. You can see
2 that.

3 Q. Sure.

4 A. Yes, you do pay attention to other people.

5 Q. Okay.

6 A. It's very, very important.

7 Q. In your spare time, do you ever work on puzzles?
8 Do you like to work on puzzles, or do you not?

9 A. Puzzles?

10 Q. Yeah.

11 A. No, I'm a reader.

12 Q. You're a reader.

13 A. Yeah, I'm reading Michener right now, Chesapeake.
14 It's a bay out on the east coast.

15 Q. James Michener novel?

16 A. I like novels.

17 Q. You said you were reading Chesapeake?

18 A. Yes, by Michener.

19 Q. By Michener.

20 A. That's what I'm reading now. I like to read. I
21 rather do that than set puzzles.

22 Q. All right. Do you dislike puzzles or just
23 don't --

24 A. No, I don't mind puzzles. I just rather read.
25 It's just a matter of choice.

1 Q. All right. I see that you do watch a show, like,
2 called Crime Scene Investigation, CSI?

3 A. I kind of watch it on Thursday night, yeah. I
4 got interested in it a couple of years ago and I
5 have been following that one.

6 Q. So, and you found that show somewhat realistic?

7 A. It's interesting. It's fun, some appears to be
8 real, yes.

9 Q. And some not so realistic?

10 A. Well, I'm not sure.

11 Q. Okay.

12 ATTORNEY FALLON: I'll pass the juror.

13 THE COURT: Mr. Strang.

14 ATTORNEY STRANG: Thank you.

15 **VOIR DIRE EXAMINATION**

16 BY ATTORNEY STRANG:

17 Q. Dean Strang, Jerome Buting, Steven Avery.

18 A. Good afternoon.

19 Q. Collectively the defense. And I want to go back
20 just a little bit on some background that
21 Mr. Fallon touched on. How long have you been a
22 Mason?

23 A. Late '70s.

24 Q. And --

25 A. 1970, late '70s.

1 Q. If you don't mind my asking, what degree have you
2 attained?

3 A. Well, I -- I took the ark (phonetic) right, so I
4 ended up at the Triple I Shrine down in
5 Milwaukee. Then, being out of town a lot and
6 then I took a demit from it so. From all the
7 bodies except a Mason. I'm retired so I took
8 demit from the Shrine.

9 Q. Okay. And you retired now?

10 A. I'm going to -- I'm 71. I will be 72 in April,
11 29th.

12 Q. The -- The work you did for the Department of
13 Regulation and Licensing, that was paid work, I
14 think, right, or were you volunteering there too?

15 A. Oh, no, I was employed by the Department of
16 Regulation and Licensing. I think I was about 48
17 years old when I made the change from my own
18 business as a barber here in Manitowoc. And
19 through a friend that encouraged me to apply for
20 it, they were looking for two people at that
21 time. He thought I would make a good State
22 inspector?

23 Q. Mm-hmm.

24 A. -- and investigator for the Cosmetology and
25 Barber Examining Board at that time. And I took

1 the test and got a pretty good score and got the
2 job.

3 Q. What -- Did you think of that in a sense as law
4 enforcement?

5 A. When I applied for it, it was the understanding
6 that I would investigate their complaints.

7 Q. Right.

8 A. And do their inspection for a new location and do
9 unannounced inspections.

10 Q. Right. Right.

11 A. And their complaints would involve like
12 unlicensed practice.

13 Q. Mm-hmm.

14 A. And also you need a little knowledge about hair.
15 People do, as far as being competent, people do
16 get burns in their skin from the perm burns --

17 Q. Right.

18 A. -- and stuff like that.

19 Q. Right.

20 A. And heat. And unsanitary practice like soiled
21 towels and things. You need to change towels on
22 every patient or customer, things like that.

23 Q. So what drew you to this sort of law enforcement
24 aspect of that work?

25 A. The law enforcement, well, they have the Barber

1 Cosmetology Examining Board. And I also, later
2 on, I did the Pharmacy Examining Board. They do
3 have Administrative Code, which was set up by
4 their examining board, which needs to be
5 enforced.

6 Q. But what -- And my question is, what drew you to
7 want to do that sort of law enforcement work?

8 A. Okay. There's a fellow by the name of Mr. Hansen
9 and he worked for social service. He encouraged
10 me to take this up. It was his idea. Actually,
11 I turned him down. And he approached me again on
12 it and asked me if I sent in that application. I
13 said, no, he said I have one with me, would you
14 sign it. I said, yes. So it was actually an
15 encouragement through another person.

16 Q. Okay. And, then, when you were looking for some
17 volunteer work, you have done a lot of volunteer
18 work over --

19 A. Yeah, fire department, Silver Creek Fire
20 Department, spent some years there. Yes, I did.

21 Q. Isaac Walton, Holy Family Hospital.

22 A. Yes, active right today. In fact, I was
23 scheduled at Harbortown from 12 to 4. And I left
24 there at 2:00 to meet my appointment with you
25 people.

1 Q. So what was the -- Since you have so many
2 volunteer activities and opportunities, what was
3 the attraction to doing volunteer work for the
4 sheriff's department in particular?

5 A. Oh, okay. As I explained, in 1992, it was in the
6 wintertime, like about this time of the year.
7 The sheriff, Tom Kocourek, came to the Isaac
8 Walton League and also he was there to raise some
9 funds to have a rifle range over here at the
10 jail.

11 Q. Right. Yeah, and I don't mean to interrupt. I
12 don't mean to interrupt. I heard the story --

13 A. Okay.

14 Q. -- of how you heard about it.

15 A. Mm-hmm.

16 Q. But what was attractive about doing that? Why
17 did you --

18 A. When I asked him --

19 Q. -- choose to do that?

20 A. When I asked him what it involved with, he told
21 me about the cars and transportation, escorting,
22 things like that. I said, good, that gets me out
23 in the county, get a chance to take things to
24 Mishicot. We made a couple trips to the nuclear
25 plant. Then he said, funeral things, well, I

1 like people, I like to get out.

2 Q. Okay.

3 A. Kind of get to know your surrounding area here in
4 Manitowoc County.

5 Q. And interact with people?

6 A. Yes, I like people best.

7 Q. Okay. When you first heard about the crimes
8 charged here, did they -- did they shock you?
9 Did they horrify you? What was your reaction?

10 A. You mean the crime, like?

11 Q. The crimes charged here, the accusations against
12 Mr. Avery?

13 A. I think any crime that I hear, as well as
14 Mr. Avery's, it's -- it's -- it's a shock.

15 Q. And did you react to that here? I mean this
16 isn't any crime. I mean, a young woman going
17 missing and then being found dead and someone
18 being arrested is unusual here?

19 A. Well, I don't know either one, but to me it is --
20 I have feelings for people.

21 Q. Right.

22 A. All people. And when something tragedy happens,
23 I mean, it's sad. I mean, it's something that
24 needs to be checked out, found out and just see
25 what's going on. Let's get the facts.

1 Q. Right. And here he is, this is the man the State
2 of Wisconsin has hailed into court, so to speak.
3 Do you think he's probably done something wrong
4 otherwise he wouldn't be here?

5 A. I don't know. I really don't know if he did
6 something wrong or not. I have -- It's what one
7 party says and what another party says.

8 Q. Okay.

9 A. I have to sort that out.

10 Q. Let's follow that up a little bit. You explained
11 to -- when Mr. Fallon was questioning you, that
12 you would listen to everything --

13 A. Right.

14 Q. -- here before deciding, making a decision only
15 at the end. And that's good, but I need -- we
16 need to go one step further on that. The -- the
17 essential further step is in hearing and
18 listening to everything here and deciding the
19 case after you have heard everything here, can
20 you also put aside everything you heard before
21 you came to the courtroom?

22 A. I was -- I was -- I should be able to handle
23 that. I think I can do that.

24 Q. So, in other words, I think the Court will tell
25 you, will instruct you at the end, that you get

1 to decide the case only on the evidence you have
2 heard in court?

3 A. That's correct.

4 Q. Is that something you can do?

5 A. That I can do.

6 Q. Now, he will tell you you don't set your common
7 sense aside or leave that at the door, but in
8 terms of evidence, you don't get to consider what
9 you heard before you came to court; do you
10 understand that?

11 A. Anything in the past is in the past, we start
12 today.

13 Q. Right. And you would not consider what you heard
14 in the past?

15 A. No, we will not use the past.

16 Q. Okay.

17 A. Only from today on, whatever we hear, that's what
18 we would make our decision on.

19 Q. Okay. And there's a natural inclination to want
20 to hear both sides of the story, I suppose,
21 right, to make a fair decision?

22 A. Yes.

23 Q. But you may not hear both sides, or both sides
24 equally, in a criminal case. Because only the
25 State has any burden of proving anything to you.

1 Do you understand that?

2 A. Yes, I understand that.

3 Q. And while we don't sit like bumps on a log,
4 neither will we necessarily try to prove to you
5 anything. In other words, I may not try to prove
6 that Steven Avery is innocent. I may concentrate
7 on showing that they have not proved him guilty.

8 A. Okay. I understand that.

9 Q. You understand the difference?

10 A. Yes, I do.

11 Q. And let's get at that a little bit. Let's
12 suppose at the end of all of the evidence, you
13 have heard their witnesses, maybe we'll call some
14 witnesses, maybe not, but you have heard all the
15 testimony, you have heard the arguments of the
16 lawyers on both sides.

17 Now you are back with 11 other people
18 and you are going to decide, okay. And let's say
19 you, personally, come to the decision that, you
20 know, Mr. Avery might be guilty. Maybe he --
21 maybe I even think he is probably guilty. But
22 I'm not convinced, beyond a reasonable doubt,
23 that he is guilty. I don't know if he's
24 innocent, because they didn't prove to me he is
25 innocent either. I think he may be guilty. He

1 is probably guilty. But I don't believe it
2 beyond a reasonable doubt. What verdict would
3 you vote to return if that's how you weighed out
4 all the evidence?

5 A. What verdict, would I give? If you don't give me
6 unreasonable doubt, then he would be not guilty.

7 Q. Okay. In other words, if he is maybe guilty,
8 your verdict would be not guilty; did I
9 understand you?

10 A. Well, I know, the way you explained it to me, you
11 have to prove that he is guilty. If he's not
12 proven, then he's not guilty.

13 Q. Beyond a reasonable doubt?

14 A. Reasonable doubt, correct.

15 Q. Okay. All right. Let's -- let's consider the
16 possibility that he does not testify. And I
17 think you said, well, that's his own affair?

18 A. Right.

19 Q. In some ways, though, it's your affair if you are
20 on the jury. And I think the Court would tell
21 you, if Mr. Avery chose not to testify, that you
22 simply could not consider that. It's not
23 evidence of guilt. It's not evidence of
24 anything. It's not evidence at all. Could you
25 work within that rule?

1 A. Yes, I can work with that rule.

2 Q. Now, suppose he does testify, let's suppose, for
3 whatever reason, we all here decide that he is
4 going to testify and he gets up on the stand.
5 Are you going to be sitting there saying, well,
6 how can I believe what he says, he is, you know,
7 he is the guy in the hot seat. He's the guy with
8 everything to lose. Are you going to say that or
9 will you be able to listen to him just like any
10 other witness?

11 A. I would listen to him. Because in the past, when
12 I went to a beauty shop or a barber shop, I
13 listened to everybody.

14 Q. Okay. Probably 29 years as a barber, my guess is
15 you heard a whole lot of gossip.

16 A. Well, everybody has things to tell me.

17 Q. Some of it turns out to be right?

18 A. And some is very interesting too.

19 Q. Right. Okay. And that's why we do what we do in
20 courtrooms?

21 A. I understand.

22 Q. To try to weed out some of the stuff that just
23 might be very interesting, but not so red hot in
24 it's reliability. That you can do?

25 A. Yes, I can do that.

1 Q. Okay. Having now worked in law enforcement with
2 the Department of Regulation and Licensing and
3 volunteered for six years or something at the
4 sheriff's department; do you tend to think that
5 law enforcement officers, people with a badge,
6 are more likely to be truthful than all of the
7 rest of us?

8 A. Okay. When I was with the sheriff's department
9 that was -- that's almost nine years ago since I
10 left them. And I would -- I would say the people
11 that I associated with, with the State of
12 Wisconsin, I will go back it up there with them
13 first. I worked with other -- other
14 investigators and therefore and inspectors and I
15 respect them.

16 And the same thing here, if it's a
17 voluntary thing, you go there in the morning and
18 they send you out with the cars and stuff so you
19 really don't get in depth with them too much.
20 They are not there to mislead us, just take the
21 car, do this, drop this and that off. So it was
22 very -- it was very -- congenial, I mean.

23 Q. Right.

24 A. It was more or less a fun thing. They made it
25 fun and made it easy for us. Our opinion, they

1 were very thoughtful of us volunteers.

2 Q. And my question is, with those warm feelings for
3 good police officers --

4 A. Yeah.

5 Q. -- does that carry over to where you would say,
6 you know, I trust police officers and their word
7 more than I trust other people, just because of
8 the job they have?

9 A. Well, I'm basing it on my experience with them,
10 yes. Same as at Holy Family Hospital. I respect
11 the coordinator of volunteer services.

12 Q. Mm-hmm.

13 A. You respect them and you trust them.

14 Q. But the rules here will be, I think as the Court
15 will tell you --

16 A. I understand.

17 Q. -- that all witnesses come on equal. It doesn't
18 matter what clothing they wear or whether they
19 have a badge?

20 A. No, doesn't matter.

21 Q. They are all human. You consider their testimony
22 all in the same sorts of ways?

23 A. Right. Yeah, being a Mason, you have to respect
24 everybody and your leaders.

25 Q. Okay. And that's something you can do here?

1 A. Yes.

2 Q. Do you think it's possible that a law enforcement
3 officer could lie under oath?

4 A. Yes, they can lie.

5 Q. Even under oath?

6 A. Some do.

7 Q. How do you know that?

8 A. Reading books.

9 Q. Okay.

10 A. Reading books, reading somebody's non-fictions.

11 Q. And I suppose other witnesses can lie under oath,
12 too, can't they?

13 A. It can happen, yeah. That's something that
14 doesn't end.

15 Q. What if it -- What if you heard evidence that
16 went beyond that and went to planting evidence?

17 A. I have to listen to it, I have to know what the
18 facts are.

19 Q. Okay. You are not just going to rule that out,
20 say that's ridiculous, could never happen?

21 A. No, no, no, I would not rule that out. I would
22 -- I like to hear about it. I like to know what
23 I'm talking about.

24 Q. Okay. Have you heard anything about a blood
25 vial, a tube of blood in this case?

1 A. That's about it. I know of it and then of course
2 I haven't followed up on it in the last almost
3 four weeks.

4 Q. And that's because of the letter you got from the
5 court or some other reason?

6 A. Well, I think it was -- I think it was on news
7 before I got the letter from the court.

8 Q. Right. And what did you learn about this tube of
9 blood?

10 A. Nothing, I don't know.

11 Q. Okay. In terms of planting evidence, how much
12 proof is it that you would want before you
13 decided something was or was not planted?

14 ATTORNEY FALLON: I object to that
15 question.

16 THE COURT: That objection is sustained.

17 Q. (By Attorney Strang)~ What -- What kinds of
18 things other than Mr. Michener and his books do
19 you like to read?

20 A. Oh, I read Liberia (sic).

21 Q. Other -- other than -- other than James Michener?

22 A. Oh, I see. Others. I was thinking of other
23 books that he wrote, I'm sorry.

24 Q. No, no. What kind --

25 A. My mistake, you said it right. I kind of like

1 Clancy, some of his non-fictions are pretty good.
2 Don (sic) Clancy, he wrote some nice --
3 especially *General Horner*, he was pretty
4 interesting over there, back in the '90s there.
5 Ended up running to space, pretty interesting.
6 Stuff like that.

7 Q. Okay. Two more quick things. What do you know,
8 if anything, about Mr. Avery's past?

9 A. None. Oh, well, I shouldn't say none. I don't
10 know him as a person, except that he was released
11 from prison. He was found innocent of a rape
12 charge.

13 Q. And is that something you accept?

14 A. Why, sure. It's public record. I mean, it shows
15 that he was not guilty. I except that fact.

16 Q. And last question, or maybe two if there's a
17 follow-up. But do you want to serve on this
18 jury?

19 A. I would be willing to do that.

20 Q. But do you want to?

21 A. Yes.

22 Q. Why?

23 A. Well, when I was a young fellow, I was drafted.
24 This was at the end of the Korean War, 1953. I
25 graduated, the Korean War ended shortly after I

1 was drafted. I wanted to serve my country. Of
2 course, they didn't have hearing aids like they
3 do now.

4 But anyway, they told me that, we're not
5 going to draft you. We're going to give you 4F
6 because you have a hearing problem. And I might
7 miss an assignment and cause some lives. Those
8 fellows served two, three years for their country
9 and more. And this gives me a chance to serve my
10 county, my community.

11 Q. And your country?

12 A. I want to do that. It gives me a chance to do
13 something. I'm going to be 72 and I would be
14 willing to do that.

15 Q. Thank you.

16 THE COURT: All right. Thank you,
17 Mr. Kickland, Linda will escort you from the
18 courtroom at this time.

19 MR. KICKLAND: Thank you.

20 (Wherein the juror was excused.)

21 THE COURT: Counsel, any motion from either
22 party?

23 ATTORNEY FALLON: No motion from the State.

24 ATTORNEY STRANG: I don't have a motion,
25 but because I got burned a few years ago in a case

1 in Richland County, I do have some residual
2 questions about his hearing. With both lawyers
3 there were some answers that were not responsive to
4 the questions. It was okay when we were up very
5 close to the microphones.

6 But I do have some concern about that.
7 And I also have a strong feeling that people with
8 a hearing disability ought to be able to serve on
9 juries, but as I say, I got burned on that. I
10 made that mistake before.

11 THE COURT: All right. Mr. Kratz.

12 ATTORNEY KRATZ: Thank you, Judge. Calumet
13 County is blessed with a system which allows for and
14 encourages individuals with hearing problems to
15 serve. We have hearing assistance devices for
16 jurors. And should Mr. Kickland be invited to serve
17 on this case, that would be available to him in
18 Calumet County.

19 THE COURT: All right. My own impression
20 was, I know Mr. Fallon turned his microphone off and
21 spoke to the juror and I had trouble hearing a
22 little bit. I mean could hear what Mr. Fallon was
23 saying, but I think without the benefit of the
24 microphone it was not that loud and I thought that
25 the juror heard it pretty well.

1 I think certainly with the benefit of a
2 hearing assistance device, which I also use in my
3 courtroom periodically, I think it should work.
4 And I also try to watch the witnesses myself to
5 make sure they get up to the microphone and
6 invite any juror who can't hear any answer to
7 raise their hand during the course of the trial
8 whether they have a hearing problem or not and
9 ask them to repeat it. So I agree that can be a
10 problem in some cases, but I thought he -- he did
11 well.

12 ATTORNEY STRANG: As long as we all keep an
13 eye on it, I think he would be fine.

14 THE COURT: Okay. Thank you. I know the
15 parties mentioned they may have some motions
16 regarding other jurors; how about Juror 86, she's
17 next on the list, are there any objections to her?

18 ATTORNEY FALLON: Well --

19 THE COURT: If she --

20 ATTORNEY BUTING: Question 74 and 69.

21 Question 74 and 69 are the --

22 THE COURT: Okay. Let me check.

23 ATTORNEY STRANG: The context would be --

24 ATTORNEY BUTING: And 43.

25 THE COURT: I'm sorry. I'm looking at

1 Question 74; what were the other numbered questions?

2 ATTORNEY BUTING: 43 and 69.

3 ATTORNEY FALLON: Okay. I'm sorry, the
4 questions for the next --

5 ATTORNEY STRANG: The questions for Debra
6 Nicholson.

7 ATTORNEY FALLON: Do we have one juror
8 after No. 86?

9 THE COURT: We have three more, actually.
10 Next juror would be 90.

11 ATTORNEY FALLON: 91.

12 THE COURT: Oh, 90 and 91.

13 ATTORNEY FALLON: Oh, yes. Okay.

14 ATTORNEY STRANG: We have some concern
15 about 91; although, I think that looks on paper like
16 a better bet than 86 -- No. 86.

17 THE COURT: Is the defense asking to have
18 86 excused for cause before questioning?

19 ATTORNEY STRANG: I would if it will speed
20 things up. I also -- I understand that this is an
21 on the bubble situation.

22 ATTORNEY FALLON: If you were to look off
23 paper, No. 90 might be the surest bet, but it all
24 depends on whether you want to deviate from the
25 order.

1 THE COURT: Well, we have 86, 90, 91, and
2 93 here.

3 ATTORNEY FALLON: I think two out of four
4 look pretty good. You might have three out four
5 depending on how you want to do it.

6 THE COURT: We need one by my count.

7 ATTORNEY FALLON: Right.

8 THE COURT: Will the parties stipulate to
9 passing over 86 and moving on to 90?

10 ATTORNEY STRANG: Sure, not striking her
11 but passing over her?

12 THE COURT: And if she gets selected, she
13 would be No. 30.

14 ATTORNEY FALLON: This next one would be
15 the last --

16 ATTORNEY STRANG: But does that include
17 Mr. Guckeisen?

18 THE COURT: Yes. He is in in any event
19 now, even if 86 -- 86 if accepted would be 29 and
20 Mr. Guckeisen is 87, he would be 30.

21 ATTORNEY STRANG: I see, okay. No, then I
22 don't have any problem with going to No. 90.

23 THE COURT: All right. So the parties are
24 not going to ask the Court to excuse 86 at this
25 time, but are you going to stipulate to taking the

1 juror out of random order and questioning Juror 90,
2 first?

3 ATTORNEY STRANG: I think to be very
4 technical, I am moving to excuse No. 86 for
5 subjective bias, but I have no problem if the Court
6 wants to hold that in abeyance and moot it out.

7 THE COURT: All right. With the
8 understanding that if 90 is in, the game is over.

9 ATTORNEY STRANG: If that's the count,
10 right.

11 THE COURT: Okay. All right. All right.
12 Let's have Ms Piaskowski in, then.

13 Ms Piaskowski, if you will please raise
14 your right hand, the Clerk will administer the
15 oath.

16 (Juror sworn.)

17 THE CLERK: Please be seated.

18 THE COURT: Ms Piaskowski, you have already
19 completed a written jury questionnaire in this case.
20 Today we're moving on to the next step in the jury
21 selection process which is voir dire.

22 The attorneys for each of the parties
23 will have an opportunity to ask you some
24 questions pertaining to your qualifications as a
25 juror. For the most part, they will be follow-up

1 questions to the information that you provided on
2 your questionnaire.

3 Before we get to those questions, I can
4 tell you that the jury selected in this case will
5 not be sequestered; that means that after each
6 day of the trial the jurors will be permitted to
7 return home. Because we're allowing the jurors
8 to return home, the prohibition on any exposure
9 to news media coverage will continue. That means
10 the jurors will be prohibited from being exposed
11 to any information about this case on the
12 television, radio, newspaper, internet, or any
13 other source.

14 And in addition, the jurors are
15 prohibited from discussing the case with anyone,
16 including members of the juror's family and even
17 the other jurors until it's time to deliberate at
18 the close of the case.

19 The court proceedings today are being
20 held in open session, but the Court does not
21 permit cameras in the courtroom during the voir
22 dire proceedings and the news media is not
23 permitted to disclose the identity of the jurors
24 in their news reports.

25 In addition, should you be selected as a

1 juror in this case, you should know that while
2 there may be cameras in the courtroom covering
3 the trial, they are not permitted to show the
4 jurors.

5 In the event you remain on the jury
6 panel after questioning today, you will be
7 notified shortly when you are to report back to
8 court. Mr. Fallon, at this time you may proceed.

9 **VOIR DIRE EXAMINATION**

10 BY ATTORNEY FALLON:

11 Q. Good afternoon, Ms Piaskowski.

12 A. Good afternoon.

13 Q. How are you?

14 A. I'm fine.

15 Q. My name is Tom Fallon. I'm an Assistant Attorney
16 General with the Wisconsin Department of Justice.
17 I'm one of the prosecutors in this case. And I
18 would like to ask a few questions to follow up on
19 some of the information you provided last week.

20 A. Okay.

21 Q. By the way, thank you for your patience. I'm
22 sure we have probably interrupted your
23 afternoon's activities. Let me first begin by
24 asking just a couple of questions. You currently
25 work at Lakeshore --

1 A. Cap.

2 Q. What kind of business is that?

3 A. It's Community Action Program.

4 Q. How long have you worked for them?

5 A. It will be two years. It was two years.

6 Q. And what kind of work do you do for --

7 A. I am --

8 Q. -- that program?

9 A. -- sub-contracted out at Human Services in

10 Manitowoc.

11 Q. All right.

12 A. I work in Child Protective Services.

13 Q. Okay. And since you are familiar with Child

14 Protective Services, what aspect of that do you

15 do?

16 A. I'm a family support worker.

17 Q. I see. Okay. Have you always been a family

18 support worker?

19 A. No, I haven't. I have worked as a nurse's aide

20 and still do casually. Also worked at a

21 Montessori School.

22 Q. Did you teach or were you just an aide?

23 A. Assistant teacher.

24 Q. Assistant teacher. Very good. How long -- Do

25 you still keep your hand in that, did I hear you

1 say?

2 A. No. No. They keep me pretty busy where I am.

3 Q. Okay. All right. Now, in terms of a number of
4 interests, or at least some schooling you have
5 had, you have checked off a number. I suspect
6 now from what you have told us that makes sense,
7 you have some background in law, some psychology,
8 some medicine, some corrections. Is that as a
9 result of the Community Action Program and the
10 people that you work with in that system?

11 A. Yeah, there was certain courses we had to take
12 and follow up on. My role at my job right now is
13 going into homes and helping parents to get their
14 children back. They are all usually under 10
15 years old.

16 Q. All right. So this activity, it's not so much
17 the investigative work as to determine whether
18 services are needed, but your job is to go back
19 in and help put the family back together and get
20 everybody back on track?

21 A. Exactly.

22 Q. All right. Have you ever been involved in the
23 investigative angle to determine whether or not
24 services are needed in the first place?

25 A. No.

1 Q. Okay. So you have been strictly a service
2 provider almost?

3 A. Right. I can make referrals if I walk into a
4 home and feel something is unsafe. Yes.

5 Q. All right. Okay. Can you tell me a little bit
6 about one of your hobbies, what is the
7 Mississippi Exchange Program?

8 A. It's a long story. I'll make it very short.
9 It's bringing up black children from the south
10 and they stay with a Wisconsin family from
11 anywhere, 10 days to the whole summer. And the
12 point of the whole program is to have black
13 children interact with white children. Where we
14 go is the Delta. Mississippi burning took place
15 there.

16 Q. Sure.

17 A. The Klan is still very prominent down there. So
18 it's -- a lot of children down there have never
19 touched white skin.

20 Q. So, this is a program to promote racial harmony?

21 A. Right. Exactly.

22 Q. Do you yourself get to travel down to the Delta
23 area?

24 A. All the time.

25 Q. You do?

1 A. Fourteen times I have been down there.

2 Q. I'm sorry?

3 A. Fourteen.

4 Q. Okay. How often do you get down there, once or
5 twice a year?

6 A. I go twice a year.

7 Q. Okay. I'm going to guess that you probably find
8 that pretty rewarding?

9 A. Oh, I love it, yes.

10 Q. What's the most -- the most fun about it? What
11 really trips your trigger? What really -- What
12 did you like?

13 A. Um, the friendships, you know. It's an
14 eye-opening experience, truly. Whites do not
15 talk to me when I'm down there.

16 Q. Really?

17 A. No, I get called a "nigger lover". I get called
18 lots of things. So, it's not Wisconsin, that's
19 for sure. It's like visiting family again. You
20 know, we had the same boy for nine years now. So
21 when I go down there, I live with his family for
22 the amount of time I stay there.

23 Q. Okay. And how often are you down there for, a
24 week or two at a time?

25 A. Usually -- Well, I just started going down

1 longer.

2 Q. Okay.

3 A. This year it will be two weeks I stay down there.

4 Q. All right. So I imagine you have developed a
5 fair amount of confidence in yourself and a fair
6 amount of thick skin.

7 A. Oh, yes, very much so.

8 Q. Very good. I would like to ask you a few
9 questions, if we may, about what you might know
10 about this case. You may or may not know there's
11 been a fair amount of publicity associated with
12 it. And we would like to ask you a little bit
13 about that. In terms of the news, where do you
14 get most of your news from; radio, television,
15 newspapers?

16 A. I will turn the radio on in the morning, usually,
17 before I get the kids up, so WOMT. It will be on
18 for maybe a half an hour or so. And then if time
19 permits I read the paper at night. But I do not
20 watch the news at night at all. I don't have
21 time. Usually my cases are at night.

22 Q. Right.

23 A. The kids are -- The cases I have, the children
24 are in school usually, so my visits are at night.

25 Q. All right. So do you work like a 3 to 10 kind of

1 hours?

2 A. I don't have set hours, it depends. Tuesday,
3 Wednesday, Thursday I have one family that I pick
4 the kids up from school and supervise the visit
5 with mom until 6:30.

6 Q. Right.

7 A. Something like that. Then I return them to
8 foster care. So I don't get home until 7, 8 --

9 Q. All right.

10 A. -- and then I spend time with my family and ...

11 Q. Hit the sack?

12 A. Hit the sack.

13 Q. All right. In terms of publicity, associated
14 with this particular case, do you have any
15 recollection at all; do you know much about
16 what's going on?

17 A. Well, of course, you know.

18 Q. You are aware he's been charged with murder --

19 A. Yes.

20 Q. -- right?

21 A. Yes.

22 Q. But beyond that, are any of the details -- do you
23 know much about any of the details?

24 A. Not the nitty gritty details, no. Of course,
25 when it first happened, you know, everybody was,

1 you know. But I was not by any means glued to
2 the TV watching it.

3 Q. Right.

4 A. I was at work. Steven Avery, as far as I know,
5 has never been involved with Human Services or
6 anything. I have never heard the name before all
7 of this happened so.

8 Q. Okay. Never heard the name before any of this
9 case came up?

10 A. No.

11 Q. All right. We'll get back to that in just a
12 moment. But I would guess about maybe three,
13 four weeks ago, you might have gotten a letter
14 from the Court advising you that you were a
15 prospective juror and asking that you refrain
16 from any of the media coverage that might be
17 attending to the trial. Did you get that letter?

18 A. Yes.

19 Q. And were you able to comply with its request.

20 A. Um, you're going to think this is -- Well, what
21 happened was, I didn't even read that bottom
22 paragraph.

23 Q. Right.

24 A. And so I just saw the top part if it and
25 everybody is saying, are you sure it's not this

1 case. I go, I don't think so. No, I didn't get
2 a separate letter. And, then, maybe a week ago I
3 read -- or read the bottom. I went, oh, oh,
4 yeah, it is -- it is Steven Avery's case.

5 So, no, I did not discuss it or talk
6 about it, because I didn't even finish reading
7 the whole letter, unfortunately. I read when I
8 needed to be here and what time and that was it.

9 Q. Okay. Did you read any -- see any of the news
10 coverage lately on the case?

11 A. Uh-uh.

12 Q. Not a thing?

13 A. I don't watch the news at night --

14 Q. Okay.

15 A. -- so. If it's in the paper, I happen to see it.
16 And, of course, I do a jail visit here, so I do
17 see the cameras out here --

18 Q. Right.

19 A. -- quite a bit.

20 Q. And according to the information you provided,
21 you have no opinion, whatsoever, about anything
22 in this case. In other words, you don't have any
23 opinion as to whether he is guilty or innocent at
24 this particular time?

25 A. Truthfully, I think I did until, like, I did hear

1 about one instance that I kind of changed my mind
2 a little bit so kind of put me more neutral.

3 Q. Okay. Well, tell us -- Well, let's start with --
4 We'll start with how you feel right now. I mean,
5 do you have an opinion?

6 A. Now I'm more neutral than I was in the beginning,
7 yes.

8 Q. Okay. All right. And so when you say neutral,
9 does that mean you have no opinion or it could go
10 either way or what do you think?

11 A. I think it could go either way.

12 Q. Okay. What was the event that brought you to
13 neutral or ground zero as it were?

14 A. I started out at neutral, too. But at first I
15 thought, no way, no, he couldn't have did this.
16 He just got out. There's no way.

17 Q. Right.

18 A. And then the specific event that made me kind
19 of -- after I heard all -- hearing what people
20 are saying and what not, I think, oh, my gosh,
21 yes, he did. And then the vial of blood that
22 they were talking about.

23 Q. What did you hear about that?

24 A. Just that it was unlocked or available to the
25 public.

1 Q. Okay.

2 A. Something to that sort.

3 Q. Is that something from the media or just you
4 picked up?

5 A. Word. Word. Word of mouth.

6 Q. Word of mouth. Okay.

7 A. Yeah.

8 Q. Okay. Okay. Excuse me, one moment, I managed to
9 run out of ink. And when did that come to your
10 attention?

11 A. Probably was shortly when it came out in the
12 news. I mean, I don't know exactly.

13 Q. All right. Recently or way back when?

14 A. Couple weeks ago, talking about it.

15 Q. All right. And that somehow brought you back to
16 neutral?

17 A. I don't want to say neutral but, you know, placed
18 some doubt in my mind, you know.

19 Q. Okay. So would it be fair to say you don't
20 really have a strong opinion either way as to his
21 guilt or his innocence, you just don't know?

22 A. Yeah.

23 Q. All right. Well, one of the things that you will
24 be instructed here by the Court -- and defense
25 counsel will talk a little bit about this as

1 well, but you will be asked, if you were selected
2 as a juror in this case, to decide this case
3 solely on the evidence which is presented during
4 the course of the trial and not based on anything
5 anybody would have told you at work or any other
6 friend, or family member, or anything like that;
7 that any decision reached by the jury in this
8 case would have to be just on the evidence
9 presented in court. Do you understand that?

10 A. Mm-hmm.

11 Q. All right. And is that a yes?

12 A. Yes.

13 Q. Okay.

14 A. Yes, I do.

15 Q. Do you think you could do that, follow that rule?

16 A. Yes.

17 Q. Okay. Is there any doubt in your mind that you
18 would be able to base your decision solely on the
19 evidence that's presented?

20 A. I truly hope so, yes.

21 Q. Okay. Now, a part of that, also, is the fact
22 that the State has the burden of proof here. I
23 would imagine you are familiar with that from
24 your work in protective services. But the State
25 is the one who has to prove that someone is

1 guilty, beyond a reasonable doubt. Correct?

2 A. Right.

3 Q. And if they can't do that, then the jury must
4 come to the decision of not guilty?

5 A. (No verbal response. Nods head.)

6 Q. All right. You accept that?

7 A. Yes.

8 Q. All right. And that would include, even if for
9 instance Mr. Avery and his attorneys chose not to
10 put any evidence in at all and the only evidence
11 that you had to consider was that presented by
12 the State. And if they didn't convince you, if
13 we didn't convince you, beyond a reasonable
14 doubt, of his guilt, you would have to vote not
15 guilty?

16 A. (No verbal response. Nods head.)

17 Q. All right. And you would -- you understand that?

18 A. Yes.

19 Q. And you could do that if that's what you felt in
20 your heart-of-hearts, after all the evidence is
21 in you say, geez, maybe he is, or he might be,
22 but I'm not convinced beyond a reasonable doubt,
23 so I have got to vote not guilty?

24 A. Yes.

25 Q. You understand that?

1 A. Yes.

2 Q. And you could do that if that was what you -- the
3 decision you came to?

4 A. Yes.

5 Q. Okay. All right. Math is never a favorite
6 subject.

7 A. I was going to say what are you laughing at.

8 Q. Well, I share your pain.

9 A. Yes, my children do too.

10 Q. You have a friend who's a detective in the
11 Juvenile division, I see, or not?

12 A. Yes, I do, but he got a promotion so -- and I
13 never got a chance to even -- can I say his name?

14 Q. Oh, sure, please. We were going to ask who he
15 might be.

16 A. Oh, Larry Ledvina.

17 Q. Larry --

18 A. Ledvina.

19 Q. Ledvina. Okay. Does he work for the sheriff's
20 department, police department or ...

21 A. He's with the -- I have to look at somebody for
22 help.

23 ATTORNEY BUTING: Sheriff.

24 A. Sheriff. Is that where he is? You can tell we
25 don't talk work when we do go out. His son and

1 my son are very, very good friends.

2 Q. Are good friends.

3 A. And I work with his wife so.

4 Q. Okay. But you don't talk any law enforcement
5 shop as it were?

6 A. No, no. I get told I don't park in the white
7 lines sometimes, you know, in front of the
8 building, but no we don't talk shop.

9 Q. So you don't talk -- So you have a deal, you
10 don't talk child support services and he doesn't
11 talk law enforcement?

12 A. No, not too often. When he was with juveniles
13 and we did respite, I would say, do you know this
14 kid, oh, yeah, you know, that kind of thing, but
15 otherwise, no, we don't.

16 Q. Okay.

17 A. We stick to basketball, football.

18 Q. All right. Well, it may turn out, in fact, I'm
19 pretty sure, that there will be a fair amount of
20 law enforcement witnesses who will be asked to
21 testify in this particular case. And one of the
22 jobs of the jurors in this case will be to
23 evaluate their credibility.

24 And having been at least somewhat
25 involved in the system, do you think you can

1 evaluate the credibility of a law enforcement
2 officer or -- the same way you would evaluate the
3 credibility of any other witness?

4 A. Yes.

5 Q. All right. In other words, you wouldn't hold
6 them to any higher standard, or any lesser
7 standard than you would any other witness that
8 would appear?

9 A. No, no. I would expect them to tell the truth.

10 Q. All right. Well, we would all hope so. But you
11 may be called upon to make a decision as to
12 whether some officers are being truthful or
13 untruthful during the course of the trial; do you
14 think you could do that?

15 A. Yes.

16 Q. Sure. All right. Now, I just want to verify a
17 couple of things. If you were selected as a
18 juror, the trial may very well go six weeks,
19 maybe a little longer, maybe a little less. Kind
20 of hard to guess, as you might know. Is there
21 any hardship that you think that might cause?
22 You answered no last week, but we just wanted to
23 touch base with you on that issue, make sure
24 there wouldn't be any problem if you were
25 selected as a juror.

1 A. Not that I can foresee, no.

2 Q. Okay. Just a related question. I forgot to ask
3 about your work. In working with families in
4 need and providing services, do you consider
5 yourself kind of a big picture person, bottom
6 line approach to things, or are you more of a
7 detail oriented, step-by-step approach to problem
8 solving or opinion forming?

9 A. People I work with, I -- I do have formed my
10 opinions on them, until I get to know them. We
11 work -- We do work step-by-step. It is a
12 step-by-step process for some of my families --

13 Q. Okay.

14 A. -- you know, to get unsupervised visits --

15 Q. Sure.

16 A. -- to get their children back.

17 Q. Right. So when you are trying to orchestrate
18 that and you're trying to put a family back
19 together, are you one who really pays a lot of
20 attention to the details, or are you thinking,
21 you know, big picture, what's going to work best
22 for this group? How do you go about it? If you
23 were to assess your own approach.

24 A. Well, right now, I'm in the middle of doing that
25 with a family. And we got the oldest child; we

1 have a date to go home. And we are doing the
2 step-by-step process. We are looking into the
3 future.

4 Q. Sure.

5 A. You know, we do a little bit of both, I guess.

6 Q. Okay.

7 A. It's a very hard question.

8 Q. Well, may not be an easy answer.

9 A. Depends, yeah, depends what kind of case I have
10 at the moment or ... There's was, you know,
11 little baby steps --

12 Q. Sure.

13 A. -- that grew bigger.

14 Q. All right. That may be it. Just one moment.

15 Oh, yes. The one area I forgot to follow up on,
16 you were asked if you had any positions of
17 leadership and you indicated you were on the
18 Board of Directors for Project Self Help and
19 Awareness?

20 A. That's the Mississippi program, yes.

21 Q. Oh, that's the Mississippi program.

22 A. Yes. Yes.

23 Q. I see. So you have a fairly prominent role in
24 setting up the program and setting some of the
25 policies?

1 A. Yes, yes. Right now we're doing newspapers and
2 sending articles out to get more families, so.

3 Q. Sure.

4 A. That would be my hardship, yes.

5 Q. Okay.

6 A. At home, but.

7 Q. So you might have to put a little of that on the
8 back burner for awhile?

9 A. Yes.

10 Q. Do you do that during the daytime or is that
11 something you do at night after you get home?

12 A. I don't do much of anything at night when I get
13 home, I'm pretty tired so.

14 Q. Okay. Fair enough.

15 ATTORNEY FALLON: I guess that's it. I
16 will pass the juror. Thank you.

17 THE COURT: All right. Mr. Buting.

18 ATTORNEY BUTING: Thank you.

19 **VOIR DIRE EXAMINATION**

20 BY ATTORNEY BUTING:

21 Q. Good afternoon.

22 A. Hello.

23 Q. It's almost evening.

24 A. Yes.

25 Q. My name is Jerome Buting. This is Dean Strang.

1 And we're, obviously, the defense attorneys for
2 Mr. Avery here today. I appreciate your candor.
3 And your questionnaire had some very interesting
4 background things, most of which Mr. Fallon has
5 covered.

6 But I want to talk a little bit about
7 this Mississippi Exchange Program. Maybe some
8 day I will be able to talk to you more about it,
9 but I won't get into it in great detail today.
10 But it seems like a very interesting program I
11 have never heard of. And I wonder some of the
12 lessons you may have learned from that, how you
13 apply that in your job and in your life and how
14 you may come to this jury with that.

15 You talked about how when you go down
16 there many -- or some of the whites really
17 ostracize you. Apparently don't like you, or
18 maybe even the young black kids that you are
19 trying to help?

20 A. It's not necessarily just the children. I could
21 be walking with the grandmother of the boy that
22 stays with us and I have gotten told to walk
23 behind him.

24 Q. You have gotten told by someone else?

25 A. A white man.

1 Q. Okay. So, I mean, that's a pretty --

2 A. Because I'm walking with a black woman, yes.

3 Q. That's a pretty snap judgment that somebody is
4 making, right?

5 A. Oh, yeah, yeah.

6 Q. And I guess so you have had some real hard,
7 sometimes cruel examples of what happens when
8 people judge too quickly?

9 A. Yes.

10 Q. And that, you know, if sometimes they don't take
11 the time to look deeper and more carefully at a
12 situation, they can completely misread you or the
13 situation entirely?

14 A. Correct, yes.

15 Q. Unfortunately, way too many people in this day
16 and age still have closed minds I guess, right?

17 A. Yes, especially, yeah.

18 Q. Do you think there's people up here in Wisconsin
19 like that too?

20 A. I don't notice it so much in Manitowoc because so
21 many people know my family and know Eric. We did
22 have one issue with, actually, a law officer. We
23 have a lake and Eric and my husband were putting
24 the pier in -- or the raft in, which is something
25 that floats so many feet from your pier. And my

1 husband had yelled, go get the wrench, or
2 whatever, so Eric just hopped on the paddle boat
3 and took it over there. And the DNR was out and
4 saw him on the paddle boat without a life jacket.
5 And the first thing the law officer said was
6 where's that's black boy, find that black boy.

7 So needless to say, they both got
8 tickets for \$250 for not having ... But when we
9 brought up the black boy situation, we did get it
10 dropped. So I do find that, yes, you know.

11 Q. Even up here, sure.

12 A. Yeah.

13 Q. That, of course, is sort of a racial bias --

14 A. Mm-hmm.

15 Q. -- or snap judgment. But there could be other
16 ways that people are biased as well and make snap
17 judgments and, you know, make the wrong
18 judgments, right?

19 A. Of course.

20 Q. Now, going to your knowledge or the information
21 that you got when you -- it wasn't clear to me, I
22 think you said it wasn't really the news so much
23 that you -- the TV news that you so much heard
24 about, it was what came on the radio and word of
25 mouth, is that more how you have heard about this

1 case?

2 A. Yes.

3 Q. And --

4 A. Of course, the beginning of the case, like I
5 said, was on the news constantly. I mean, if the
6 TV was on, it was interrupted or something by --

7 Q. Right.

8 A. -- by that, but ...

9 Q. And the news conferences, did you see those?

10 A. I saw a few of them, I believe.

11 Q. Okay. Now, it sounds like, though, even when you
12 first heard it come up -- come out, did you also
13 hear any of Mr. Avery on the news or saying that
14 he was framed, this isn't true?

15 A. I don't believe ever hearing him speak. I have
16 seen pictures of him being released.

17 Q. Okay. What about, did you hear from word of
18 mouth from other people that, the other side, he
19 was saying right from the beginning, that I was
20 framed or I'm being framed?

21 A. Yes, I have heard that.

22 Q. Okay. And it sounds like, at least initially,
23 your sort of gut reaction was maybe that's right
24 because I can't imagine him doing this, he just
25 got out, right?

1 A. Right.

2 Q. And then as you heard a little bit more evidence
3 that was being leaked out into the media, you
4 started to question that?

5 A. Exactly.

6 Q. Okay. But it's only recently, now, that you
7 started to reconsider that, now that you heard,
8 well, hey, there is a blood vial of some sort,
9 right?

10 A. Mm-hmm, yes.

11 Q. Okay. So, are you even open to the possibility
12 that maybe he is being set up or was set up,
13 framed?

14 A. I don't know. I don't know how to answer that.
15 I don't know enough.

16 Q. It's not something that you completely wouldn't
17 even consider, or is it?

18 A. Possibly. I mean, I guess, that's what put that
19 little bit of doubt in my mind --

20 Q. Mm-hmm.

21 A. -- you know, when I first heard it, yes.

22 Q. Perhaps, if somebody was so biased against him
23 that they would go to such a step?

24 A. I hate to think that would happen but ...

25 Q. Mm-hmm. Now, you -- you actually work in the

1 court system; it wasn't entirely clear to me
2 what? You work with CHIPS cases, is that it;
3 child in need of protection and services?

4 A. Some of them are.

5 Q. Okay. Some are, some aren't, some you get in
6 without actual ...

7 A. The majority of them are CHIPS.

8 Q. Okay.

9 A. Some like us so much that are voluntary, they
10 want that.

11 Q. Okay. But it sounds like you have had some
12 exposure to the court -- a courtroom setting and
13 the rules of court and all of that?

14 A. I do not go to court.

15 Q. Oh, you don't.

16 A. No, very rarely, unless a client wants me there
17 for support. I will get a court order that says
18 they need to comply with their weekly visits with
19 me and follow through with, you know, whatever
20 the judge may say at the time, you know.

21 I have had to -- I was court ordered to
22 go to every doctor appointment, that kind of
23 thing. But not necessarily do I come to the
24 courtroom, no.

25 Q. Okay. But you do understand, it sounds like,

1 some of the basic principles of burden of proof?

2 A. Yes.

3 Q. And beyond a reasonable doubt?

4 A. Mm-hmm.

5 Q. And that the State has to prove everything?

6 A. Yes.

7 Q. If -- On the other hand, if the defense --

8 Mr. Fallon asked you, if -- if we just did

9 nothing and didn't put on any kind of case or

10 evidence at all, would you be able to look at the

11 State's case and still decide if you have a

12 reasonable doubt and if they haven't proved it to

13 you, beyond a reasonable doubt, come back not

14 guilty, right?

15 A. Mm-hmm. Yes.

16 Q. Okay. If, on the other hand, we -- we did

17 present some evidence, some witnesses, or

18 cross-examination of the State's witnesses,

19 presenting evidence to you, would you start

20 thinking, well, okay, now I've got to see whether

21 they have convinced me, whether the defense has

22 proven to me that he is innocent?

23 A. Of course, yes, I mean --

24 Q. See --

25 A. I would have to take --

1 Q. Okay.

2 A. Am I reading you wrong when you ...

3 Q. No, I think what you're doing is perfectly

4 natural. Most people want to hear both sides.

5 A. Right.

6 Q. And want to kind of weigh one against the other.

7 A. Right.

8 Q. But when you come into court, the instructions

9 tell you -- the Judge will tell you that the

10 State has the entire burden of proof and that

11 even if we present any evidence, you don't shift

12 the burden to us and say, oh, okay, now did the

13 defense prove their case?

14 A. Mm-hmm.

15 Q. You still have to keep your focus on, you know,

16 your eye on the ball, which is, did the State

17 prove their case, beyond a reasonable doubt --

18 A. Right.

19 Q. -- while considering the defense evidence, but

20 not actually requiring us to prove anything?

21 A. Right.

22 Q. It's a little bit hard to do, but do you think

23 you can do it?

24 A. I believe I could.

25 Q. Okay. Let me ask it this way. If -- If

1 Mr. Avery, with us, through us, was not able to
2 prove who did this crime, would you still be able
3 to find him not guilty, if you had a reasonable
4 doubt whether he did it?

5 A. I believe that to find him not guilty I would
6 have to have no doubts in my mind at all.

7 Q. Okay. But to find him not guilty --

8 A. You would have to prove I would have no doubt. I
9 would have to be 100 percent --

10 Q. Okay.

11 A. -- without a doubt.

12 Q. And that's even if -- even if we couldn't show
13 who did kill her, let's say, even if we couldn't
14 show the real person who did this crime, as long
15 as you -- you still had doubts about whether he
16 did it, you could -- you would come back not
17 guilty?

18 A. If I had doubts that he still -- I guess I'm
19 still not understanding.

20 Q. That's my fault. I guess I'm not being clear.
21 Go ahead.

22 A. The State would have to prove to me that there is
23 no doubt in my mind that he did not do it; that
24 is what I feel. I'm not, like, maybe, maybe not,
25 you know, that kind of person. But you would

1 have to, also, prove to me that there's no way he
2 did it.

3 Q. We would have to prove that?

4 A. Well, yeah. I would like, you know, by your
5 testimony, or whatever you show me, I would like
6 to be able to walk away with a good conscience
7 thinking Steven did not do this, or Mr. Avery did
8 not do this.

9 Q. Okay. Well, let's --

10 A. I believe in my heart either he was set up,
11 someone else did it, or something.

12 Q. So what if --

13 A. I'm not asking -- I'm not thinking you would have
14 to give me a name and an address, that kind of
15 thing. If that's what you mean.

16 Q. Yes, of the real killer.

17 A. Right. Right.

18 Q. Okay. All right. So what if after hearing all
19 the evidence, including the defense evidence --

20 A. Okay.

21 Q. -- you thought, well, gosh, I don't know, maybe
22 he did it, maybe probably Steven Avery did it
23 but, gosh, I just don't know, there's these real
24 serious doubts I have. I'm not 100 percent
25 convinced that he is innocent, on the other hand,

1 I have some reasonable doubts about whether he is
2 guilty. Do you think you could come back with a
3 not guilty verdict if you felt that way?

4 A. I guess it's hard to answer that right now. I
5 would like to think that, in my heart, if I was
6 100 percent.

7 Q. See, what you -- what you have to focus on is --

8 A. The facts, I know. And, you know, I would have
9 to be fairly confident in my answer. I mean,
10 it's a -- it's a man's life --

11 Q. Right.

12 A. -- on the line. I would do my best, yes, I
13 guess.

14 Q. Okay. So, if the Judge instructed you that what
15 you really have to focus on is to be sure you
16 have no doubt --

17 A. Mm-hmm.

18 Q. -- whether he is guilty; the focus is not whether
19 you have no doubt whether he's innocent?

20 A. Mm-hmm.

21 Q. Do you understand the difference?

22 A. Yes.

23 Q. Because otherwise you would be making him prove
24 that he's innocent.

25 A. Mm-hmm.

1 Q. Do you see the difference?

2 A. Right.

3 Q. And you can do that?

4 A. I can try.

5 Q. Okay. I appreciate that. Now, since you have a
6 friend in the sheriff's department, although, you
7 didn't even know he was in the sheriff's
8 department?

9 A. Well, I -- shows how much we talk work, yeah. I
10 knew he was in the sheriff's department and he
11 was in juvenile -- he worked with the juveniles.
12 I did not know where his promotion led him to. I
13 know where his office is, I know how to get to
14 him, but I don't know.

15 Q. Okay. All right. Do you -- Do you think you
16 would have trouble facing him at your son's next
17 basketball or football game if you came back not
18 guilty?

19 A. No.

20 Q. Even if part of the defense was that somebody in
21 his department crossed the line and was really
22 trying to frame or set up Steven Avery?

23 A. No. I don't know whose in his department. No.

24 Q. That would not bother you?

25 A. No.

1 Q. Okay. Now, I can tell that you are very
2 dedicated to your job and your work, that's very
3 important, right?

4 A. It is, yes.

5 Q. And that's fine. Can you look at your jury
6 service the same way, that for the next six weeks
7 this would be -- if selected, this would be your
8 job and you would want to do just as good a job
9 and just as thorough a job at this responsibility
10 as your own job?

11 A. I would like to think so, yes.

12 Q. Okay. I'm almost done, but there's one last
13 thing --

14 A. That's fine.

15 Q. -- I forgot, on what your prior knowledge would
16 have been. You mentioned hearing a news
17 conference when the case was first charged; do
18 you -- do you know the name Brendan Dassey?

19 A. Yes.

20 Q. The nephew?

21 A. Yes.

22 Q. Okay. And have you heard some information about
23 him and can you tell me briefly what that is?

24 A. What I know about him?

25 Q. Yes.

1 A. Is that what you are asking me?

2 Q. Yes.

3 A. I know, probably what everybody else knows that,
4 you know, he said he got off the bus. He heard
5 some noise. He went to Mr. Avery's trailer, that
6 part. And that he participated in Teresa's
7 death.

8 Q. Okay.

9 A. Then a few weeks later, I heard that he said he
10 did not do that.

11 Q. Okay. Can you -- Are you familiar with the --
12 with anybody who has ever falsely confessed to
13 something they didn't do, before?

14 A. No. No, usually it zaps them. The people I work
15 with.

16 Q. Sure. Can you conceive of any reasons why
17 somebody might, a 16 year old in particular?

18 A. I probably -- and this wasn't really touched on
19 with you, sir, but he -- Branden?

20 Q. Brendan.

21 A. Yeah, my son is 16 so, of course, you know he
22 knows friends from Mishicot. And when all this
23 happened he said, someone he knew said that he
24 was so quiet they couldn't imagine him doing
25 that. He was just a quiet boy that they couldn't

1 imagine him doing that. And I can vividly
2 remember my son coming home and saying that.

3 Q. Okay. What if -- what if the State didn't call
4 Brendan Dassey at all in this case; would that be
5 a problem for you?

6 ATTORNEY FALLON: Object to that question.

7 THE COURT: Based on the form of the
8 question, I will sustain the objection.

9 ATTORNEY BUTING: Okay. Let me rephrase
10 this.

11 Q. (By Attorney Buting)~ What if, since you have
12 heard that whole story, what if --

13 A. Which whole story are you talking about?

14 Q. The one you --

15 A. My son, or the first one.

16 Q. The one that you said you heard Brendan Dassey
17 say about getting off the bus --

18 A. Right.

19 Q. -- and all of that?

20 A. Okay.

21 Q. Since you have heard all of that, what if you had
22 -- had to sit through this trial and never hear
23 any of that, never hear that story at all; would
24 you be able to put that out of your mind and
25 decide the case only on the facts here?

1 A. Apparently I would have to if it wasn't brought
2 up. If it wasn't --

3 Q. If for some reason he didn't testify in this case
4 and you never heard that story and any of it, or
5 you heard some -- some of it, but maybe not all
6 of it, whatever, the point being, could you block
7 out any of that outside information you had heard
8 and focus only on the evidence that you hear in
9 court?

10 A. I would do my best.

11 Q. Okay. Well, knowing all of that, is this a case
12 you think you would like to be on the jury? Do
13 you want to be on this jury?

14 A. I don't know if anybody wants to be on a jury. I
15 guess I'm very -- I'm like -- my friends are
16 asking me that too. I'm very much, if it's meant
17 to be, it's meant to be, you know.

18 Q. Okay.

19 A. I will do my best to abide by the law and, you
20 know, do what I have to do. But, no, I don't
21 want to give up going to State. I'm sure
22 Roncalli is going to State this year. No, I
23 would rather be doing that with my family, if
24 that's what you are asking me. But if I get
25 picked to serve, I will serve and do it to the

1 best of my ability, yes.

2 Q. Okay. That's fine. Thank you. Very much.

3 THE COURT: Mr. Fallon.

4 **VOIR DIRE EXAMINATION**

5 BY ATTORNEY FALLON:

6 Q. Yes, I want to clarify something.

7 A. Okay.

8 Q. And I don't want you to have the wrong
9 impression.

10 A. Okay.

11 Q. And I'm not sure what you have. You keep saying
12 if I'm not 100 percent sure, or the State would
13 have to prove -- you said the State would have to
14 prove that there's no doubt of his guilt?

15 A. Right.

16 Q. All right. Now, you understand that the State's
17 burden of proof is to prove beyond a reasonable
18 doubt?

19 A. Reasonable doubt.

20 Q. Not beyond all doubt.

21 A. Okay.

22 Q. Not to the exclusion of any doubt. It's not a
23 hundred percent.

24 A. Okay.

25 Q. So, in other words, can you give the State a fair

1 shake. I don't want you to hold the State to a
2 standard that the Court is going to instruct you
3 is --

4 A. I think I'm thinking more in my mind, you know.
5 I want to be -- be able to sleep at night too.

6 Q. Right.

7 A. You know, and -- but...

8 Q. Well, do you understand there's a --

9 A. Yes.

10 Q. A difference --

11 A. A reasonable doubt.

12 Q. Beyond all doubt --

13 A. Yes.

14 Q. -- no doubt and a reasonable doubt?

15 A. Right.

16 Q. All right. And you have that squarely in your
17 head. And, well, if Judge Willis were to say,
18 when it came time to start deliberations, you
19 would have to determine whether he is guilty,
20 beyond a reasonable doubt. In other words, you
21 are not going to hold the State to a standard
22 higher than that?

23 A. Okay. Yes.

24 Q. Do you accept that?

25 A. Yes.

1 Q. Okay. And do you have an idea in your head where
2 that all lies out?

3 A. Yes.

4 Q. Okay. The Court will describe it much -- in more
5 detail later on but ...

6 A. And that's a lot of what, you know, I have never
7 been on a jury before so some of that you will
8 have to pinpoint for me and clarify.

9 Q. The Judge will take care of that.

10 A. That's his job?

11 THE COURT: I'm actually going to do some
12 of that right now. I have a few questions to ask
13 you.

14 MS PIASKOWSKI: Okay.

15 **VOIR DIRE EXAMINATION**

16 BY THE COURT:

17 Q. I'm going the try to phrase the questions as best
18 I can, along the lines of the instructions that
19 the jury would get at the close of the trial.

20 A. Okay.

21 Q. First, and the parties on voir dire, as they are
22 permitted to do, you know, ask you for attitudes.
23 But one of the things that -- one of the
24 commitments we have to get out of jurors is that
25 they are able to follow the instructions given by

1 the Court even if they might judge things
2 differently in the absence of any instructions.

3 So, first of all, with respect to the
4 burden of proof, the burden of proof is for the
5 State to prove, beyond a reasonable doubt, that
6 Mr. Avery is guilty of any of these particular
7 charges. Mr. Avery does not have a burden to
8 prove anything. And at the end of the trial, the
9 Court will instruct you that you can only find
10 Mr. Avery guilty of any charge if you are
11 convinced, beyond a reasonable doubt, that he's
12 guilty. Do you understand that?

13 A. Yes.

14 Q. Is that an instruction you think you can follow?

15 A. Yes.

16 Q. And that means, for example, if you get in the
17 jury room and you are thinking to yourself, well,
18 you know, the State introduced some evidence to
19 show that he is guilty. And, you know, I think
20 there's a chance that Mr. Avery is guilty, but I
21 have also got some serious doubts.

22 And while I know in your answers you
23 said you would like to be 100 percent sure, you
24 might not be 100 percent sure, either of guilty
25 or not guilty. But unless you are sure, beyond a

1 reasonable doubt, that he is guilty, you would
2 have to vote not guilty; is that an instruction
3 you can follow?

4 A. Yes.

5 Q. If I instruct you at the end of the case that
6 those are the rules, can you follow those?

7 A. Yes.

8 Q. One other thing I wanted to mention related to,
9 you, like many of the jurors, have been exposed
10 to some publicity concerning this matter. And as
11 Mr. Buting explained, if you're selected to serve
12 as a juror, another important instruction will be
13 that you have to base your decision only on the
14 evidence that you hear in court.

15 Some of the information that's been on
16 the news may not be brought forward as evidence
17 at court. And you can't be speculating, well,
18 did that not come in because it didn't happen, or
19 because of some other reason.

20 You just have to base your decision only
21 on what you hear in the courtroom. And you can't
22 wonder why other evidence that you may have
23 thought you were going to hear didn't come in.
24 And you can't speculate about why it didn't come
25 in.

1 I know you have indicated today that you
2 have heard some things in the news that tend to
3 make you feel both ways. But if you're selected
4 as a juror, you have to commit to make your
5 decision only on the evidence that does come in
6 and what you do hear; that is, what you do hear
7 in the courtroom. Do you feel that you can do
8 that if you are selected as a juror?

9 A. Yes. Yes.

10 Q. Do you have any questions about it that you want
11 to ask?

12 A. No. No. I have a 12 year old that is very good
13 about, if it's on the radio, he will turn it off.
14 He says, mom can't hear that, or the paper, gets
15 rid of that ever since, so.

16 THE COURT: All right. At this time,
17 Linda -- we'll have Linda escort you out of the
18 courtroom.

19 MS PIASKOWSKI: Okay. Thank you.

20 (Wherein the juror was excused.)

21 THE COURT: Now, counsel any motions from
22 either party?

23 ATTORNEY FALLON: None from the State.

24 ATTORNEY BUTING: None from the defense.

25 THE COURT: All right. Ms Piaskowski will

1 be made a part of the jury panel. And I believe
2 that brings us to 30; is that the count of everyone?

3 ATTORNEY FALLON: That's what I have.

4 THE COURT: Janet, I will ask you first.

5 THE CLERK: That's what I have.

6 THE COURT: Okay. Now, with respect to
7 proceedings from this point forward, the parties
8 made a suggestion earlier today to the Court that
9 was on a tentative basis, I believe, depending on
10 events today, which we have done that; we have 30
11 jurors. The parties would be prepared to exercise
12 their peremptory challenges tomorrow morning at
13 9:00; is that correct?

14 ATTORNEY FALLON: Yes.

15 THE COURT: That works for both parties?

16 ATTORNEY STRANG: I think 9:00 is fine if
17 we're out of here pretty soon.

18 THE COURT: Well, we're going to be out of
19 here pretty soon.

20 ATTORNEY STRANG: That's fine.

21 THE COURT: We're not dealing with anything
22 else today. So ... All right. We'll meet back in
23 this courtroom, then, at 9:00 tomorrow for
24 peremptory challenges.

25 And it's also my understanding, the

1 parties suggested to the Court and as I think
2 about it, I think it's a good suggestion, that we
3 address the defense motion regarding the State's
4 demonstrative exhibits that it wishes to make
5 part of its opening statement, tomorrow afternoon
6 in Chilton. 1:00?

7 ATTORNEY STRANG: Sure.

8 THE COURT: Does that work for the parties?

9 ATTORNEY STRANG: Sure.

10 ATTORNEY BUTING: Yes.

11 THE COURT: I also would like to address
12 any comments that the parties have regarding my
13 opening instructions, at that time.

14 ATTORNEY STRANG: In Chilton?

15 THE COURT: In Chilton. And I will ask the
16 parties at this time, is there anything else they
17 feel should be on the agenda for tomorrow afternoon?

18 ATTORNEY BUTING: Just a little
19 clarification, are we doing the peremptories with
20 the jurors here in the courtroom or are we doing
21 that --

22 THE COURT: No, they will be here in the
23 courtroom.

24 ATTORNEY BUTING: Okay. They will be here
25 in the courtroom and then we'll be back and forth

1 and when we get -- we have exercised all of them,
2 the Clerk will read them off and the rest will go.

3 THE COURT: Right. Normally, the attorneys
4 sit at counsel table and pass the sheet back and
5 forth.

6 ATTORNEY FALLON: That's fine.

7 ATTORNEY BUTING: I just wanted to be sure
8 we're still doing it that way.

9 ATTORNEY FALLON: Right. That was my
10 concern as well, to make sure that all 30 were here.

11 THE COURT: They will be here.

12 ATTORNEY FALLON: Okay.

13 THE COURT: Now, because of seating, some
14 of them will be in the front row or the front two
15 rows of the audience behind you. We can't fit 30
16 jurors in the jury box. But I know the parties like
17 to be able to see their faces, so you will be able
18 to do that.

19 ATTORNEY FALLON: Good.

20 THE COURT: Anything else on the agenda for
21 tomorrow afternoon?

22 ATTORNEY STRANG: No. And it's at least
23 possible that I may be flying solo at that hearing;
24 we haven't decided that entirely.

25 THE COURT: Okay. For the benefit of the

1 news media here, that means that the no camera rule
2 will still be in effect in the morning for the jury
3 selection. However, I think the parties, and
4 perhaps the media as well, may want to use tomorrow
5 afternoon's proceedings in Chilton as a dry run.
6 Those proceedings will be open to the public and
7 cameras are permitted. So I think that addresses
8 media concerns. Anything else before we adjourn
9 today?

10 ATTORNEY FALLON: I can't think of
11 anything, but for whatever reason I just -- I seem
12 to be -- I just have this gnawing feeling that there
13 is something we're omitting, but not of any great
14 consequence that we can't deal with tomorrow.

15 THE COURT: All right. We will see you at
16 9:00 tomorrow.

17 (Proceedings concluded.)
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1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 10th day of September, 2007.

Diane Tesheneck, RPR
Official Court Reporter

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05 [1] 1/5	9:00 [2] 95/13 95/16	answered [2] 25/18 69/22
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11 [1] 39/17	abide [2] 24/20 88/19	anyway [1] 47/4
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13 [3] 5/2 6/5 6/7	absence [1] 92/2	Apparently [3] 3/11 73/17 88/1
14 [1] 20/17	Academy [1] 17/16	appear [2] 21/11 69/8
15 [2] 2/7 21/23	accept [4] 28/22 46/13 66/6 90/24	APPEARANCES [1] 1/11
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, JURY TRIAL - DAY 5
5 PEREMPTORY STRIKES &
6 MOTION HEARING - MANITOWOC COUNTY
7 MOTION HEARING - CALUMET COUNTY
8 vs. Case No. 05 CF 381

9 STEVEN A. AVERY,

10 DEFENDANT.

11 **DATE:** FEBRUARY 9, 2007

12 **BEFORE:** Hon. Patrick L. Willis
13 Circuit Court Judge

14 **APPEARANCES:** KENNETH R. KRATZ
15 Special Prosecutor
16 On behalf of the State of Wisconsin.

17 THOMAS J. FALLON
18 Special Prosecutor
19 On behalf of the State of Wisconsin.

20 NORMAN A. GAHN-Present in Manitowoc only.
21 Special Prosecutor
22 On behalf of the State of Wisconsin.

23 DEAN A. STRANG
24 Attorney at Law
25 On behalf of the Defendant.

JEROME F. BUTING-Present in Manitowoc only.
Attorney at Law
On behalf of the Defendant.

STEVEN A. AVERY
Defendant
Appeared in person.

* * * * *

TRANSCRIPT OF PROCEEDINGS

Reported by Diane Tesheneck, RPR

Official Court Reporter

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1 THE COURT: At this time the Court calls
2 the case of State of Wisconsin vs. Steven Avery,
3 Case No. 05 CF 381. Will the parties state their
4 appearances for the record, please.

5 ATTORNEY KRATZ: Good morning, your Honor.
6 The State of Wisconsin appears by Calumet County
7 District Attorney Ken Kratz appearing as lead
8 special prosecutor in this case. Also appearing on
9 behalf of the State is Tom Fallon, Assistant
10 Attorney General with the Department of Justice and
11 Norman Gahn, Assistant District Attorney from
12 Milwaukee County, also appearing as special
13 prosecutors.

14 ATTORNEY STRANG: Good morning, Steven
15 Avery is here in person, your Honor. Jerome F.
16 Buting represents him, to my right, and Dean A.
17 Strang.

18 THE COURT: Very well, we are here this
19 morning to complete the process of jury selection.
20 The remaining members of the jury panel are now in
21 the courtroom. At this time the Clerk will call the
22 jury panel members by name and the jury bailiff will
23 show the panel members where to be seated.

24 THE CLERK: Daniel Slaby, Diane Free, Terri
25 Temme, Jacqueline Ungrodt, Cherri Haskell, Barbara

1 Schmidt, Sharon Thorne, Julie Dorn, Paul Nelesen,
2 Nathan Klein, Philip Saari, Michael Stonebraker,
3 John Lawrence, August Schuette, Marian Flint, Kevin
4 Brotski, Richard Mahler, Tami Gosz, William Mohr,
5 Patrick Keehan, Melvin Pedersen, Henry Gray, Nancy
6 Stienmetz, Mary Lou Salomon, Carl Wardman, Laura
7 Barber, Scott Defere, Donald Kickland, David
8 Guckeisen, Patricia Piaskowski.

9 THE COURT: Members of the jury panel, as I
10 explained last week, now that 30 qualified jurors
11 have been identified, the parties will be exercising
12 what are known as peremptory challenges. Each side,
13 on an alternating basis, is permitted to strike
14 seven members of the jury panel.

15 The 16 remaining jurors will hear the
16 evidence in this case. At the conclusion of the
17 trial, the names of the alternate jurors will be
18 drawn by lot and 12 jurors will deliberate and
19 render verdicts in this case. The parties will
20 now begin the process of exercising their
21 peremptory strikes. The courtroom is to remain
22 quiet until that process has been completed.

23 (Peremptory strikes made.)

24 THE COURT: At this time the Court will
25 read the names of the persons who have been selected

1 to serve on the jury in this case. When you hear
2 your name read, please stand.

3 Daniel Slaby, Diane Free, Terri Temme,
4 Barbara Schmidt, Sharon Thorne, Julie Dorn, Paul
5 Nelesen, Nathan Klein, August Schuette, Marian
6 Flint, Richard Mahler, William Mohr, Henry Gray,
7 Nancy Steinmetz, Carl Wardman, Laura Barber.

8 Those of you who are still seated will
9 not be serving on the jury in this case and your
10 jury service in this matter is complete. On
11 behalf of Manitowoc County, I want to thank you
12 for your service. I do have one final
13 instruction to read to you before excusing you
14 this morning.

15 Your service in this case is completed.
16 You do not have to answer questions about the
17 case from anyone other than the Court. There is
18 no requirement that you maintain secrecy
19 concerning your participation in this case, but
20 you do not have to discuss the case with anyone
21 or answer any questions about it.

22 At this time the Court will ask that the
23 jurors who are currently seated -- those of you
24 who are standing can sit; the rest of you can
25 stand at this time and the bailiff will escort

1 you to the jury room.

2 ATTORNEY STRANG: Your Honor, there will be
3 a motion that should be addressed before anyone is
4 excused.

5 THE COURT: Do you wish to do that in the
6 presence of the jurors?

7 ATTORNEY STRANG: I do not.

8 THE COURT: Pardon me?

9 ATTORNEY STRANG: I do not.

10 THE COURT: Oh, okay. All right. Take
11 them to the Branch 1 jury room on the other side.
12 You can follow the bailiff.

13 (Excused jurors taken to the Branch 1 jury room.)

14 THE COURT: All right. As soon as the
15 bailiff gets back we will have the other jurors
16 retire to this room.

17 At this time those jurors who have been
18 selected to serve on the jury in this case may
19 rise and the bailiff will escort you to this jury
20 room. They will be coming back out, Shirley.

21 JURY BAILIFF: Okay.

22 (Chosen jurors taken to Branch 2 jury room.)

23 THE COURT: The Court will note for the
24 record that the jurors are now in the jury room,
25 outside of the courtroom. Mr. Strang.

1 ATTORNEY STRANG: Thank you, your Honor.
2 Outside the presence of the jury now, given the
3 demographics of those approximately 90 jurors we saw
4 physically from the panel and the State's use of one
5 of its seven peremptory strikes to strike
6 Mr. Lawrence, I feel bound to make a motion to
7 reverse that State peremptory strike under -- on
8 authority of ***Batsen vs. Kentucky*** and cases that
9 follow.

10 I will make the following record as a
11 matter of prima facie showing. The highest
12 sequenced numbered juror whom we examined was
13 No. 90, by my count. Of course, there were a
14 number of jurors struck by joint motion before we
15 got to 90, so we didn't see 90 human beings here.

16 But of those we did see over the last
17 four days one and one only appeared to be at
18 least partly of African/American heritage, and
19 that was Mr. Lawrence. I noticed one other
20 person who appeared clearly, at least to my eyes,
21 to be not of European ancestry and that was
22 Huang (sic) Dao, first name, H-u-a-n-g, last name
23 D-a-o.

24 Of -- Of those two people, only
25 Mr. Lawrence was in the final pool of 30. As I

1 say, I can't comment, I don't know his ethnicity
2 or his parentage, but to the eye he looks to have
3 at least one parent of -- ultimately African
4 heritage, describe him as a light-skinned black
5 man with a relaxed curl for his hairdo.

6 The other jurors in the final 30 appear
7 to me to be of -- what I will call European
8 ancestry; that is, Caucasian or white-skinned, in
9 the vernacular. So I -- I think there's a prima
10 facie showing.

11 I note as well that although the Court
12 ultimately found cause for striking Huang Dao,
13 Mr. Huang was a juror we sought to keep and,
14 indeed, I think I wanted him held in abeyance if
15 nothing more. The motion to strike Mr. Dao was
16 the State's.

17 Again, that's a different matter in the
18 sense that the Court found cause. And I believe
19 I acknowledged that, you know, there were --
20 there was a basis for the State's motion for
21 cause and I recognize the potential issues there.

22 I add that only for the full context in
23 moving to set aside the State's use of its
24 peremptory strike against Mr. Lawrence as a
25 matter of due process under the Fourteenth

1 Amendment to the United States Constitution and
2 the correlative provisions of Article 1 of the
3 Wisconsin Constitution.

4 THE COURT: Who will be responding on
5 behalf of the State?

6 ATTORNEY FALLON: I will, your Honor.

7 THE COURT: Mr. Fallon.

8 ATTORNEY FALLON: Yes. Thank you.

9 Actually, I find the motion rather stunning from
10 counsel very accomplished as Mr. Strang.
11 Nonetheless, I have several responses, both legal,
12 practical, and the like.

13 First and foremost, the first step in
14 any **Batsen** challenge is that the defendant must
15 show that he or she is a member of a cognizable
16 group and that the prosecutor has exercised
17 peremptory strikes to remove members of the
18 defendants race from the venire. So unless
19 counsel is suggesting that Mr. Avery is of
20 African/American descent that would be a new
21 revelation to the State.

22 And even if that were the case, I would
23 indicate for the Court that we seriously thought
24 yesterday that we were going to move to strike
25 Mr. Lawrence for cause. We were not -- We

1 weren't as quite certain as we are this morning,
2 but we believe that Mr. Lawrence lied on his
3 questionnaire.

4 In fact, if the questionnaire is to mean
5 anything, it's a significant question. We were
6 uncertain because we wanted to verify as best we
7 could and we think we have, although nothing is
8 100 percent certain. But he, in answer to
9 question, I think it is Question 54, Have you,
10 any members -- any family members or anyone close
11 to you ever been a suspect and arrested for or
12 charged with a criminal offense?

13 First, we thought it was Mr. Lawrence
14 himself who had been arrested and has a pending
15 drug offense. But it turns out there is a John
16 O. Lawrence, Sr., age 44, whom we believe to be
17 this juror's father, with pending offenses; in
18 fact, he has a number of pending drug offenses.

19 And he indicated no. And I believe he
20 indicated there was no contacts with law
21 enforcement of any kind. And that caused us some
22 great concern. We were, last evening, working on
23 the CCAP program and trying to verify as much as
24 we can. But we believe this John O. Lawrence,
25 Jr. to be the son of the John O. Lawrence, Sr.

1 with a criminal history.

2 Would also indicate for the Court that
3 another matter concerned the State and that is
4 the youth of this man. And, obviously, at the
5 young age of 20, it's very hard for someone of
6 that age to distinguish themselves in the
7 community, but he did not impress us with a
8 significant work history, for any of that to
9 suggest to us that he had a claim or a sufficient
10 stake in the community relative to the
11 deliberation process.

12 But primarily, we are under the
13 impression, based upon our information, that he
14 was not truthful in his questionnaire and, quite
15 frankly, he should have been struck for cause.
16 We wanted to do our best to try to verify as best
17 we can. Lots of phone calls late into last
18 night. And we believe that he is, in fact,
19 related, as best we can, given the name and same
20 middle initial and the junior and what have you.

21 As a result of which, so we have a legal
22 basis, this is not a **Batsen** issue. Two, we have
23 a juror who we believe lied. And three, we have
24 the demographics of he did not distinguish
25 himself; he did not look to us like he would be a

1 responsible dedicated juror, notwithstanding the
2 responses he gave. And those are our reasons.
3 Hold on. Is there a concession that Mr. Avery is
4 not a member of the cognizable class?

5 ATTORNEY STRANG: Mr. Avery, is not
6 African/American. And it has been established since
7 1990 or 1991, by the United States Supreme Court, in
8 ***Powers v. Ohio***, that one need not be a member of the
9 same ethnic group or other cognizable class as the
10 struck juror to raise a ***Batsen*** challenge; ***Powers vs.***
11 ***Ohio***, United States Supreme Court, if my memory
12 serves even closely.

13 So I think that lays to rest entirely
14 the first defense the State offers, which is the
15 legal one. As to the factual defense, the jury
16 questionnaires will be part of the record, but I
17 recall nothing in which Mr. Lawrence offered his
18 middle initial or his middle name.

19 Now, whether there's a John O. Lawrence,
20 Sr., who is in fact his father, I don't know. My
21 recollection is the juror made a comment about
22 not knowing much about his father or not having
23 much contact. And I don't really -- don't
24 remember exactly what he said and I could be a
25 mile wide there. But the transcript would --

1 would bear that out. I do recall him listing Jr.
2 on his questionnaire. I do not recall a middle
3 initial.

4 THE COURT: All right. The Court does not
5 have the **Batsen** test committed to memory; it's not
6 something that gets raised very often. Mr. Fallon.

7 ATTORNEY FALLON: Well, there is a recent
8 Wisconsin Supreme Court case. I'm aware of **Powers**.
9 There is a 2003 Wisconsin Supreme Court case **State**
10 **vs. Lamon**, L-a-m-o-n, setting forth the three step
11 process, as well, that could be examined.

12 THE COURT: All right. I'm going to take a
13 short recess. And then we'll go back on the record.

14 Before I do that, let me ask, as long as
15 we're on the record, something I meant to ask
16 earlier: Subject to the objection raised by the
17 defense, are the 16 jurors that the Court has
18 identified, the jury that each party selected
19 based on their peremptory strikes.

20 ATTORNEY FALLON: I believe the panel left
21 reflects the -- accurately those which were struck
22 by the State.

23 ATTORNEY STRANG: So do I.

24 THE COURT: Thank you.

25 (Brief recess taken.)

1 THE COURT: At this time we are back on the
2 record outside the presence of both the at least
3 tentatively excused jurors and the jurors who have
4 been tentatively selected to serve on the jury
5 panel. The defense has made a motion challenging
6 the State's decision to exercise one peremptory
7 challenge for the purpose of removing a juror who
8 appears to be of a minority race in this case.

9 I'm not sure that that fact is disputed;
10 that is, I believe that both parties recognize
11 Mr. Lawrence would fall into the category of
12 somewhat of a minority race.

13 ATTORNEY STRANG: And I -- I think so, but
14 I also -- I was going to add one further factual
15 agreement that we were able to come to, I think,
16 during the break. I think when we went back and
17 checked, Mr. Lawrence did not list his middle
18 initial on his handwritten questionnaire, but the
19 middle initial O. is listed on the computer printed
20 voir dire list in its various sorts from the Court.
21 That's -- the one the parties have is dated
22 January 26, 2007.

23 So the name as given on the
24 questionnaire is John Lawrence, Jr. The name on
25 the computer voir dire list is John O. Lawrence,

1 without a Jr. or Sr. designation and that's at
2 least agreed on the defense part.

3 THE COURT: All right. The first issue is
4 whether or not a defendant wishing to raise a **Batsen**
5 challenge has to be a member of a minority class
6 himself in order to do so. Based on the Court's
7 reading of the case law, specifically, the **Powers**
8 case, to which the Court was referred and which is
9 actually cited in a footnote in the **Lamon** case at
10 page 762, where the Wisconsin Supreme Court
11 recognizes that a defendant of whatever race is
12 entitled to a jury selected without discrimination
13 by the authority of **Powers**.

14 So I don't believe the fact that
15 Mr. Avery himself may not be a minority -- may
16 not be a member of a minority race is sufficient
17 to preclude the defendant raising a **Batsen**
18 challenge to the dismissal of Mr. -- or the
19 striking of Mr. Lawrence in this case. The Court
20 believes, then, that it is required to apply the
21 **Batsen** analysis to this case.

22 The first step of a defendant raising a
23 **Batsen** challenge is to make a prima facie showing
24 that the prosecution has exercised a peremptory
25 challenge on the basis of race. As I indicated a

1 minute ago, I don't believe that there's a
2 dispute in this case that that part of the test
3 has been met. Mr. Lawrence appears to be the
4 only remaining minority member on the panel. And
5 the State did exercise a peremptory challenge to
6 remove him from the panel.

7 The next part of the test goes on to
8 provide that if the defendant satisfies this
9 threshold, the burden then shifts to the
10 prosecution to articulate a race neutral
11 justification for the disputed challenges, or in
12 this case, the challenge. In this case, the
13 State has offered two explanations, as I
14 understand it, for the removal.

15 The first one and the primary one is
16 that the State believes that the juror was not
17 truthful on the juror questionnaire, specifically
18 Question 54 relating to whether or not --
19 Actually, I don't have a questionnaire in front
20 of me; can somebody read me, for the record, the
21 exact question?

22 ATTORNEY FALLON: Sure. Have you, any
23 family members, or anyone close to you ever been a
24 suspect in, arrested for, or charged with a criminal
25 offense? He checked no.

1 THE COURT: Okay. So the question required
2 the juror to indicate not only whether the juror
3 himself fell into that category, but whether or not
4 any family member fell into that category. The
5 prosecutor, Mr. Fallon, indicates that the defendant
6 -- or the juror answered that question no. That is
7 not disputed.

8 It does also not appear to be disputed
9 that a gentleman with the same name, except Sr.,
10 as the juror in this case who is identified as
11 Jr. on his questionnaire, has a record of a
12 number of convictions, in addition to a pending
13 charge at this time. The State indicated that
14 they attempted to conclusively determine whether
15 or not the John Lawrence with the criminal record
16 was John Lawrence, Jr.'s father.

17 The age appears to match. And we now
18 know that the middle initial also appears to
19 match. The fact that one is a Sr. and one is a
20 Jr. adds additional support to the argument that
21 it appears he may well be the father.

22 And because of that fact, the State
23 argues it had a valid reason to -- non-race
24 related to exercise a strike against
25 Mr. Lawrence. The State also argues that, based

1 on his young age and lack of employment that his
2 commitment to the community may also be an issue
3 in this case. So the Court is satisfied that the
4 State has articulated a legitimate race neutral
5 reason for challenging Mr. Lawrence.

6 The application of the third part of the
7 test was a point of dispute in *Lamon*. There were
8 some dissents in that case, or least one that I
9 know for sure, by the Chief Justice. And I
10 attempted, during the break, to review not only
11 the majority decision, but the dissent as well.
12 And the Court is satisfied that under the
13 approach of either the majority or the dissent in
14 *Lamon*, that the State in this case has met its
15 burden.

16 Specifically, I believe that while there
17 is not conclusive evidence, or the State did not
18 come up with conclusive evidence, it came up with
19 some fairly compelling evidence to strongly
20 suggest that the juror in this case was the -- or
21 is the son of the John Lawrence, Sr. who has the
22 criminal record and that the answer given by the
23 juror may well not have been truthful. The Court
24 cannot say conclusively it was not truthful, but
25 there was certainly a good faith reason for

1 coming to that conclusion that is not related to
2 the race of the juror.

3 Part of the test outlined by the
4 dissent, which would apply -- require courts to
5 engage in more thorough analysis or a stricter
6 test, however you like to phrase it, indicates
7 that the part of the Court's duty is to assess
8 the credibility of the prosecutor and the reasons
9 given for the striking of the juror.

10 In this case, I can find nothing, based
11 on what the Court recalls to be the demeanor of
12 the State in questioning the juror, or the reason
13 given for the strike, that would suggest that
14 anything was motivated by race. I believe that
15 the reasons given by the State, under the
16 totality of the circumstances, and I'm not really
17 aware of any other circumstances that would call
18 their decision into question here.

19 While it's true that under the **Powers**
20 decision the -- a defendant who's not even a
21 minority can raise the challenge, it's a little
22 difficult to see, applying the totality of the
23 circumstances, why the race of the juror in this
24 case would have any special significance. There
25 is no reason why, to the extent a minority juror

1 would be more sympathetic to a minority
2 defendant, that that would be a reason -- an
3 improper reason for the State to attempt to
4 remove him from the jury. We don't have a
5 minority defendant here.

6 But I'm certainly not basing my decision
7 entirely on that. As I recognize -- or as the
8 case law dictates, the defense can raise the
9 issue here. But to the Court, it adds additional
10 credibility to the State's argument that it made
11 the request it did, or made the decision it did,
12 on a race neutral basis.

13 I believe in the State's argument it
14 emphasized the criminal record element of the
15 father more than the second reason, but that's an
16 additional reason which the State could have
17 used. I'm focusing more in my decision on the
18 reasonable grounds to suspect untruthfulness on
19 the questionnaire.

20 So, the Court will deny the defense
21 motion in this case. With that, is there
22 anything else either party wishes to raise before
23 bringing the jurors back?

24 ATTORNEY BUTING: Judge, just -- just one
25 thing, real quickly, I want to put on record. In

1 speaking with Mr. Gahn today, it appears there may
2 be some confusion over what the Court's order on the
3 test -- the test of the samples for this EDTA, or
4 whatever. My understanding was that the State would
5 preserve sufficient sample of the vial of blood for
6 any defense testing and that we would get sufficient
7 sample of the actual RAV 4 stains that were being
8 tested by the FBI.

9 Mr. Gahn was under the impression that
10 any other stains in the RAV 4 that had not been
11 tested or that would be -- would satisfy that
12 part of it. I just want to put on the record
13 that I disagree with that. I think the defense
14 needs to have half of the actual stains that are
15 being tested -- actual stains from the RAV 4 that
16 are being tested and about which any opinion
17 might be given by the FBI.

18 And I believe that was what we discussed
19 in court. It's not clear in the hand -- or the
20 written order, which was handed to me in the
21 middle of jury selection, but I think that's what
22 we anticipated.

23 THE COURT: Mr. Gahn.

24 ATTORNEY GAHN: I will just state that I
25 don't know if I'm disagreeing with Mr. Buting at

1 this point or not. All I know is that I do recall
2 that we talked about splitting the blood vial
3 evidence. But there are five blood stains from the
4 RAV 4.

5 Three of them were -- And of those 5,
6 DNA testing was done and each of the five showed
7 to be the blood of Steven Avery. Three of those
8 five have been sent to the FBI. The FBI may be
9 taking one of those and I will find that out
10 hopefully before noon. They may be consuming one
11 of them. They don't know.

12 But I do know that my understanding of
13 the order was we would preserve sufficient sample
14 of blood stains from the RAV 4. I know for sure
15 we have got four that are preserved. Whether one
16 of them maybe consumed, that's kind of up to the
17 tester. So I, whatever, if it is, then I will
18 ask them to find a larger stain, see if we can
19 cut it in half and then I will ask them to test
20 that one too. I mean, I don't know if there is
21 disagreement here yet or not.

22 THE COURT: The focus at the argument was
23 on splitting the blood vial sample; I recall that.

24 ATTORNEY GAHN: Right.

25 THE COURT: I -- All I will say is, I think

1 it's important if this line of examination is
2 pursued, for the defense to also have an opportunity
3 to perform testing on blood that was found in the
4 vehicle. Sitting here as the judge and not an
5 expert in the analysis of blood, I'm not going to be
6 issuing orders about whether or not a blood stain
7 can be split -- a particular blood stain can be
8 split because, frankly, I don't know if that's
9 scientifically possible.

10 The Court's ultimate concern would be
11 the element of fairness. And I think its
12 important that in some scientific fashion that
13 both parties get a chance to analyze the blood
14 sample in the car to the extent that's feasible.

15 ATTORNEY BUTING: Well, Judge, I just want
16 to be very clear on the record, because it is my
17 understanding and I think it was clear before, that
18 in order for fairness to be preserved here, we -- it
19 is not enough to say we get some other sample. We
20 need half of these stains that the FBI is going to
21 be testing, because the EDTA levels will vary
22 depending upon where in the car, what the substrate
23 is, fabric, medal, whatever. And that was a big
24 issue in the **Cooper** case and so that's why I want to
25 make sure that that's clear that that's a concern

1 for us here.

2 THE COURT: All right. Let's do this.
3 Mr. Gahn, you check with your folks at the FBI and
4 see if it's feasible to split a sample of a stain or
5 stains in the vehicle. If the parties still have an
6 agreement, you can come back to court, but I just
7 don't feel I have enough information in front of me
8 to address a difference of opinion if there is one.

9 Is there anything else before we bring
10 back the jurors who have been selected? And I
11 take it, that based on the Court's decision
12 denying the defendant's **Batsen** motion, the jurors
13 who are not selected can now be released?

14 ATTORNEY STRANG: Yes.

15 THE COURT: Okay. Very well. Janet, can
16 you have them bring in the jurors? You can let
17 Linda know the other jurors can be released.

18 THE CLERK: They are not going to be in any
19 order.

20 THE COURT: They don't have to, we can put
21 14 in the box and then the extra two in front.

22 (Wherein the jury panel was brought in.)

23 THE COURT: You may be seated. Members of
24 the jury panel, and I'm going to address you that
25 way because you have not been sworn as jurors yet,

1 that will happen on Monday. I will be giving you
2 some preliminary instructions on Monday and one of
3 them will include what you just experienced, which
4 is, from time to time the jurors may be excused from
5 the courtroom for the Court to hear arguments from
6 the parties.

7 For purposes of this morning's
8 proceedings, in just a minute the Court is going
9 to excuse you for the day. But while you are
10 back in the jury room you will be receiving
11 instructions concerning transportation
12 arrangements for Monday, when the trial is
13 scheduled to begin. If you have any questions
14 concerning any of those arrangements, please pass
15 them on to the bailiff. And if necessary, they
16 will be addressed by the Court.

17 Before I excuse you today, I want to
18 again stress that you are to make certain that
19 you have no exposure to any media coverage of the
20 trial until you reach your verdicts in this case.
21 As I have previously informed you, the jury will
22 not be sequestered during this trial, but that
23 decision is dependent on your commitment that you
24 will not listen to, watch, or read any news
25 accounts of the case during trial, nor discuss

1 the case with anyone, including members of your
2 family or other jurors.

3 For these reasons, I'm going to order
4 that for the duration of the trial, you simply
5 not watch the local news on television. Do not
6 listen to the local news on the radio. And do
7 not read the newspaper unless you first have
8 someone remove any articles about this case from
9 the paper. That is of vital importance.

10 In addition, and I think one of the
11 jurors brought this up in voir dire, using the
12 mute button should a promo or something come on
13 TV while you are watching another show or
14 anything regarding this case. Please take those
15 type of steps to consciously avoid any exposure
16 to the case that may inadvertently be presented
17 to you during the course of the trial.

18 If you are inadvertently exposed to any
19 information about this case during the trial,
20 please notify the jury bailiff. At this time,
21 I'm going to excuse you for today, subject to the
22 transportation instructions you will be receiving
23 shortly.

24 ATTORNEY FALLON: Your Honor, one other
25 reminder about the internet access as well.

1 THE COURT: Oh, I did not include internet
2 access, but that would also be exposure to the case
3 which is prohibited. Do not look on the internet
4 for any information about this case. Thank you, Mr.
5 Fallon.

6 (Jury panel not present.)

7 THE COURT: Counsel, is there anything else
8 before we adjourn to Chilton this afternoon.

9 ATTORNEY STRANG: One brief thing, which
10 is, given how long this ran this morning, I'm
11 wondering if we could push back to 1:30 this
12 afternoon; I have to get the materials for that
13 hearing back in Appleton.

14 THE COURT: Okay. I do have one request;
15 do the parties have any idea how long they think the
16 proceedings may take this afternoon? I know -- I
17 assume there's going to be -- or I was led to
18 believe there would be some evidence regarding the
19 motion about the materials the State wishes to
20 present during the opening.

21 ATTORNEY KRATZ: That's the smallest part,
22 Judge, the admissibility hearing on the
23 demonstrative evidence. And Mr. Austin from the
24 State Patrol will be available for live testimony in
25 that regard.

1 We do have some other matters that --
2 both as to opening statements and some other
3 evidentiary matters. With -- with my best guess,
4 Judge, we should be out of there by, if we start
5 at 1:30, by 3:30 or 4:00, if that would please
6 the Court.

7 ATTORNEY STRANG: I'm guessing a little bit
8 longer. I would have guessed the computer generated
9 animation hearing, between testimony and argument
10 might go an hour and a half or even two,
11 conceivably. And there will be some substantial
12 discussion on the preliminary jury instructions.

13 And I will try to catch up with counsel
14 for the State before -- if I can, before we get
15 to that, just to see whether there's areas of
16 agreement on the substantive part of the
17 preliminary jury instructions.

18 THE COURT: Okay. All right. We'll see
19 you at 1:30 in Chilton.

20 (Noon recess.)

21 (Proceedings reconvened at Calumet County Courthouse.)

22 THE COURT: At this time the Court calls
23 State of Wisconsin vs. Steven Avery, it's Case No.
24 05 CF 381. This matter is scheduled for a motion
25 hearing this afternoon. Will the parties state

1 their appearances for the record, please.

2 ATTORNEY KRATZ: State appears by Calumet
3 County District Attorney Ken Kratz, also by Tom
4 Fallon with the Department of Justice.

5 ATTORNEY STRANG: Good afternoon. Steven
6 Avery in person and Dean Strang on his behalf.

7 THE COURT: All right. And we're here this
8 afternoon I believe, first, to hear a motion filed
9 by the defendant to exclude the use of computer
10 generated animations in the State's opening
11 statement, for purposes of today; is that correct?

12 ATTORNEY KRATZ: Judge, the issue is the
13 admissibility of the animations, generally. There
14 is a second issue that needs to be decided regarding
15 images that would be used in opening statements both
16 by the State and the defense. They are related in a
17 sense, but the admissibility hearing regarding the
18 demonstrative evidence generally, and the computer
19 generated scene images, as well as animation,
20 specifically, will need to be ruled on by the Court
21 this afternoon.

22 THE COURT: All right. Mr. Strang, it's
23 your motion I will let you add to that if you wish.

24 ATTORNEY STRANG: Well, I agree with
25 Mr. Kratz and, indeed, it is simpler than that.

1 What we ought to deal with is just the admissibility
2 of the computer generated animations. Because if,
3 or to the extent they are admissible, then, of
4 course, there is no objection to Mr. Kratz using
5 images from them in his opening statement.

6 I say of course, I mean, I guess that
7 doesn't necessarily follow, but it is a fact here
8 that if the underlying animations are admissible,
9 I don't have a quarrel with him using a few
10 slides from them in his opening statement. And
11 he already has shown me those that he wishes to
12 use.

13 ATTORNEY KRATZ: I'm sorry, Judge, just to
14 complete that point, there is the more global
15 question, though, if there are any other objections
16 to images that I have proposed in openings, I just
17 simply wanted to make a record of that before
18 Monday, otherwise we're ready to proceed.

19 THE COURT: All right. You may proceed.

20 ATTORNEY KRATZ: Judge, I have heard at
21 least from one member of my staff that at least the
22 Court's microphone isn't picking up very well in the
23 house. This is probably a good opportunity to set
24 volume levels and the like. We can do that during
25 the hearing, of course, but I at least wanted to

1 alert the Court that it's a little quiet, at least
2 for the house, the people behind us, not being able
3 to hear very much.

4 THE COURT: My recollection is that
5 somewhere there is a remote control device around
6 here that allows me to control the volume, but I'm
7 not sure where it is.

8 SHERIFF PAGEL: One should be yours, two,
9 the clerks, three is the -- four and five should
10 be --

11 ATTORNEY KRATZ: One is the bench.

12 THE COURT: Number one is the bench.

13 ATTORNEY KRATZ: That's much better
14 already.

15 THE COURT: Is that satisfactory?

16 ATTORNEY KRATZ: Perfect.

17 THE COURT: Wonderful.

18 ATTORNEY KRATZ: Thank you, Judge. The
19 State will call Tim Austin to the stand.

20 ATTORNEY STRANG: While Mr. Kratz is
21 setting up, there was an issue Mr. Fallon suggested,
22 which is keeping media cameras off of the laptop
23 screens of counsel for both sides. I don't know if
24 that's already covered by the media order or if we
25 need to address it.

1 THE COURT: I don't have a copy of the
2 media order in front of me, but I know it referred
3 to materials that counsel use on their table. And I
4 will indicate today that if the order as written
5 does not specify images on laptop computers it's
6 meant to apply to all materials on the table, and
7 that specifically includes laptop computers.

8 ATTORNEY KRATZ: Tim.

9 THE CLERK: Raise your right hand.

10 **TROOPER TIMOTHY AUSTIN**, called as a
11 witness herein, having been first duly sworn, was
12 examined and testified as follows:

13 THE CLERK: Please be seated. Please state
14 your name and spell your last name for the record.

15 THE WITNESS: My name is Timothy Austin,
16 A-u-s-t-i-n.

17 ATTORNEY KRATZ: Mr. Austin, if you could
18 pull the microphone down towards you. Would you
19 once again state your name for the record.

20 THE WITNESS: Yes, sir. My name is Timothy
21 Austin.

22 **DIRECT EXAMINATION**

23 BY ATTORNEY KRATZ:

24 Q. Mr. Austin, how are you employed?

25 A. I'm employed as a trooper with the Wisconsin

1 State Patrol.

2 Q. How long have you been a state trooper?

3 A. I have been with the patrol since July of 1996,
4 about 10 1/2 years.

5 Q. And do you have any specific responsibilities
6 with the State patrol?

7 A. Yes, I'm assigned to the Wisconsin State Patrol
8 Academy, to the Technical Reconstruction Unit.

9 Q. Mr. Austin, have you brought with you here a
10 document which is known as a curriculum vitae?

11 A. Yes, sir, I have.

12 Q. And for lack of a better term, is the common
13 knowledge of this kind of a document called a
14 resume, or something like that?

15 A. Yes, they are. Essentially outlines my training
16 and experience in the field of reconstruction
17 activities.

18 Q. I have handed you what's been marked for
19 identification as Exhibit No. 1; could you tell
20 us what that is, please?

21 A. Yes, sir, this is the document you referred to.
22 It's my curriculum vitae that goes over my
23 education, training, certification.

24 Q. And at least for purposes of this hearing, if you
25 could just briefly indicate whether or not you

1 have a specific education, training, and
2 experience that permits you, on behalf of the
3 State Patrol, to create images for use not only
4 for investigative purposes, but for use in court
5 proceedings?

6 A. Yes, sir. I hold certification as an instructor
7 in the field of forensic mapping and the use of
8 Total Station technology for collecting
9 measurements at scenes.

10 Q. Mr. Austin, in this case, were you asked on
11 behalf of the State of Wisconsin to assist in
12 creation of images at or near a property known as
13 the Avery Salvage Yard?

14 A. Yes, sir. I was contacted to provide forensic
15 mapping services ultimately leading to the
16 creation of scale diagrams and three dimensional
17 models.

18 Q. When did you first become involved in this case?

19 A. Without referencing my notes, I believe it was
20 November 5th, 2005.

21 Q. The same day that the law enforcement personnel
22 took control of the Avery property, executed
23 search warrants, and otherwise began their search
24 efforts; is that right?

25 A. Yes, sir. That's correct. It was late in the

1 afternoon on that day when I was contacted.

2 Q. Mr. Austin, did you then spend time on the Avery
3 salvage property itself and did you in fact take
4 some measurements and perform other duties which
5 allowed you to create these images?

6 A. Yes, sir. For the next approximately seven days,
7 myself and a team of law officers forensically
8 mapped and measured the entire Avery Salvage Yard
9 property.

10 Q. To assist the Court and counsel in providing your
11 testimony today, I'm going to have you refer to
12 the image that has been portrayed on the screen.
13 Can you tell us what we're looking at, please?

14 A. What you are looking at is an aerial photograph
15 that I believe was taken by State Patrol Pilot,
16 Trooper Dennis McConnell. It shows the Avery
17 salvage yard property referred to before and some
18 of the surrounding properties and landscape.

19 Q. Now, so the Court understands where some of these
20 images are going to be coming from, you provided
21 counsel, that is the prosecution and the defense,
22 as well as a copy for the Court, of some figures
23 or images that ultimately have made it's way into
24 a binder of yours; is that correct?

25 A. Yes, sir, that's correct. This is one of many

1 images that I put in a document entitled a
2 Forensic Mapping and Scenery Construction Report.

3 Q. To complete the record, Mr. Austin, I have handed
4 you what's been marked as Exhibit No. 2. Can you
5 tell us what that is, please.

6 A. Exhibit 2 is a DVD containing my narrative
7 report, digital photographs taken by myself and
8 other State Patrol Officers, and other logs
9 documented by the State Patrol. Essentially, the
10 binder I described before is what's on this DVD.

11 Q. All right. Did you bring that binder with you?

12 A. Yes, sir, I have a black and white copy.

13 Q. Can you just hold it up for us and show us what
14 you are talking about.

15 A. This binder here is the one I'm referring to.

16 Q. So Exhibit No. 2 is a electronic version of all
17 the information that's included in that binder.
18 And again, the relevant portions, other than some
19 of the measurements and the like, but at least
20 the figures that you will be referring to have
21 all been provided to counsel and the Court; is
22 that your understanding?

23 A. Yes, sir, that's correct.

24 ATTORNEY KRATZ: Okay. Just to - so that I
25 don't forget, more than anything else, Judge, I am

1 going to move for the admission of Exhibits 1 and 2
2 at this time?

3 ATTORNEY STRANG: No objection.

4 THE COURT: All right. Those exhibits are
5 admitted. I have one question, has -- or maybe it's
6 still coming -- has the image that we're looking at
7 on the screen been identified in some fashion yet?

8 ATTORNEY KRATZ: It has not, Judge. It is
9 about to be.

10 THE COURT: Very well. Go ahead.

11 ATTORNEY KRATZ: Mr. Strang indicates,
12 Judge, that my mike should be up a little bit as
13 well as Mr. Austin's. This is probably the time --

14 SHERIFF PAGEL: I think three would be for
15 Mr. Austin.

16 THE COURT: And State should be 4 or 5.

17 ATTORNEY KRATZ: Mine says mike 4
18 underneath, Judge.

19 ATTORNEY STRANG: Mine is mike 5.

20 THE COURT: I'm hearing some type of
21 buzzing periodically. I don't know if it's coming
22 over the sound system or where, but if it's not
23 bothering the parties, we'll proceed.

24 ATTORNEY KRATZ: I think what happens,
25 Judge, with this sound system, when you talk, as you

1 might know, our microphones cut out. When the Court
2 talks, they don't want anybody else talking at that
3 time, which is probably a good idea. But I think
4 the system then picks up yours, if we overlap a
5 little bit. And I think that's what's causing that,
6 but we'll move forward.

7 Q. (By Attorney Kratz)~ Mr. Austin, are you able
8 then to -- With the image that we're referring to
9 here, are you able to find that figure and could
10 you please identify that in your materials?

11 A. Yes, sir. May I reference my binder?

12 Q. Please do.

13 A. If I may, sir.

14 Q. Go ahead.

15 A. That photograph is Figure 3, which appears on
16 Page 10 of my narrative report.

17 Q. So at that scene that you have identified as the
18 Avery salvage property, then, I think you began
19 telling us that you took some measurements. Can
20 you tell us about that.

21 A. Yes, sir. The bulk of the measurements were
22 taken using an electronic device called a Total
23 Station, that's made by a company called
24 Geodimeter?

25 Q. Can you spell that for us.

1 A. Yes, sir, G-e-o-d-i-m-e-t-e-r.

2 Q. What is Total Station?

3 A. Total Station essentially is an electronic
4 device. It measures distance and angles to
5 document an objects position in 3D space,
6 basically measures along an X, Y, Z axis on a
7 standard coordinate system.

8 Q. What is Total Station typically used for in your
9 line of work, if you understand what I'm asking
10 you?

11 A. The Total Station, we utilize that in the
12 reconstruction unit for taking measurements at
13 both crash and crime scenes.

14 Q. You mentioned that Total Station assists in
15 taking measurements, can you very briefly tell us
16 how that occurs.

17 A. Are you asking me how the instrument works, or
18 how it records measurements?

19 Q. Sure.

20 A. Essentially, the instrument locates itself, if
21 you will, in 3D space. And then, if I'm taking a
22 measurement to you, Mr. Kratz, the instrument
23 recognizes that it's going say -- turning 90
24 degrees towards you, an elevation of maybe down
25 two degrees. The instrument recognizes that

1 change in elevation or change in angle and then
2 assigns or calculates what your coordinates would
3 be in relationship to me.

4 Q. I see. So, it isn't just simply a tape measure,
5 me to you, that would be one access, if you will,
6 but it's actually a three dimensional measurement
7 that is being taken; is that correct?

8 A. Yes, sir, that's correct.

9 Q. So, in lay terms, is that even more accurate than
10 a tape measurer or a one dimensional measuring
11 device?

12 A. When you look at adding in the operator factor,
13 if you will, yes, the Total Station is going to
14 be more accurate than if we had strung out, you
15 know, a thousand foot of tape at the Avery
16 salvage lot.

17 Q. All right. How many days were you involved in
18 taking measurements at the Avery property?

19 A. May I, again, reference my notes.

20 Q. Sure.

21 ATTORNEY STRANG: The witness ought to feel
22 free to look at whatever he needs, whenever he
23 needs.

24 THE COURT: Very well.

25 THE WITNESS: Thank you, sir.

1 A. We began the mapping on November 5th and finished
2 the mapping at the Avery property on
3 November 12th.

4 Q. So that was really the entire time that law
5 enforcement had control of the property; is that
6 right?

7 A. Yes, sir.

8 Q. You mentioned that during that time frame you
9 were involved in taking these measurements
10 individually. How many of those days were you
11 personally out there, if you remember?

12 A. I believe that I was there for six of those seven
13 days.

14 Q. And during that time, Trooper Austin, do you know
15 how many individual measurements were taken
16 through and by use of this Total Station process?

17 A. Yes, sir, there were over 4100 measurements taken
18 at the Avery Salvage Yard.

19 Q. I assume, based upon what you know of Total
20 Station and your use and the certifications for
21 that piece of equipment, you have an opinion as
22 to its accuracy?

23 A. Yes, sir. My opinion is that Total Station is
24 obviously very accurate. In fact, the maximum
25 induced error that an instrument gives us is only

1 about three seconds.

2 To explain, a circle is divided into 360
3 degrees. Each degree is divided into 60 minutes.
4 Each minute is divided into 60 seconds. The
5 Total Station is accurate to within three
6 seconds.

7 Essentially, in this particular case,
8 our longest shot is about 1200 feet. That comes
9 out to be an accuracy of about less than half an
10 inch.

11 Q. After the measurements are obtained by you, and
12 after the data is compiled, could you tell me the
13 first step in the creation of images. And let's
14 first talk about two dimensional images.

15 A. Certainly. The Total Station stores it's data
16 internally in its on board data collector. We
17 download the data from the Total Station and we
18 bring it into a computer aided drawing program.
19 In this case, we used a software program called
20 CAD Zone to begin processing that information.

21 Q. I'm going to, once again, direct your attention
22 to the in-house screen. We have to come up with
23 a better name for that as we go through the
24 trial. If you could tell me what figure we're
25 looking at here and if this is an image that may

1 better describe a two dimensional drawing or
2 representation that's created.

3 A. Yes, the particular picture, if you will, you
4 have on the board is Figure 4 from my narrative
5 report. What this shows is the two dimensional
6 view, meaning it is straight or completely
7 orthogonal, looking straight down on this portion
8 of the Avery Salvage Yard?

9 Q. I'm sorry, do you have a laser pointer with you?

10 A. No, sir, I do not.

11 Q. I'm going to give you mine.

12 A. Thank you.

13 Q. Trooper Austin, please feel free to use that as
14 you are describing things so we can better
15 understand what you are talking about. Go ahead.

16 A. Sir, if I -- if I may, do you have Figure 5? It
17 might be easier to help explain this.

18 Q. I'm sure I have everything.

19 A. What I have asked you to do is essentially zoom
20 out and look at the entire Avery property that
21 was diagrammed and mapped. The portion you
22 showed us before, which was Figure 4, is a
23 closeup of this upper northeast corner, which is
24 the primary business buildings, if you will, for
25 the Avery Salvage Yard.

1 So if you want to go back to Figure 4,
2 at least we know now what portion of the main
3 diagram it is from. So, now, we essentially zoom
4 in on that northeast corner and we can see this
5 would be the main road coming in. This is a
6 gravel driveway, if you will, that runs east and
7 west.

8 Here is a storage building, the main
9 shop, and here's a private residence. So we have
10 taken a small portion of that area that was
11 mapped and, now, looking at our diagram, straight
12 from above, looking down at a specific corner of
13 it.

14 Q. Now, diagrams like this, two dimensional
15 diagrams, is that what are commonly used in
16 trials or when there are triers of fact, to help
17 juries or judges understand evidence?

18 A. Yes, sir. We very commonly use two dimensional
19 diagrams such as this to help show the scene or
20 show where objects are or distances of particular
21 items.

22 Q. Although this is much nicer, the concept really
23 isn't any different than a blackboard or a
24 chalkboard that might be used to help describe,
25 or help understand some evidence; is that fair?

1 A. As technology has evolved, we have moved from the
2 chalkboard, to the easel, to two dimensional
3 diagrams. And as technology continues to
4 improve, we're going to move ahead also.

5 Q. Let's move ahead today, then. After your two
6 dimensional images are created, are you able to,
7 then, with the Total Station and the measurements
8 that are gained therefrom, create three
9 dimensional modeling?

10 A. What I discussed, the Total Station, a few
11 questions ago, I mentioned that the Total Station
12 measures in 3D space. That's the X coordinate, Y
13 coordinate, and now the Z coordinate, which gives
14 us height or elevation to objects.

15 So we have the information there, just
16 that we now bring that data into a second
17 computer program. This one is called forensic
18 3D, which allows us to draw or create diagrams in
19 3D space, so we can add that height, elevation
20 element to objects.

21 Q. I'm going to, once again, direct your attention
22 to the screen, ask if you can tell us what this
23 figure is, what it shows, and how it helps
24 explain your process?

25 A. This is Figure 8 from my narrative report. It's

1 on Page 14. This shows an unrendered three
2 dimensional image. When I say unrendered, what I
3 mean is, it does not have any textures applied to
4 three dimensional surfaces. As you can see, our
5 garage building, our vehicles are white. They
6 essentially haven't been painted, if you will. I
7 haven't applied any type of textures to those
8 objects.

9 Q. The application of the texture, then, how is that
10 process created?

11 A. In many cases, the software will allow us to take
12 a photograph of a particular texture. What I
13 mean by that, if I was diagramming this desk, I
14 could take a photograph of the wood and paste
15 that wood, that photo of the wood, on the model.

16 In this case, in this particular garage,
17 we photographed the siding on that garage so that
18 we could apply it to our three dimensional model.

19 Q. And so you aren't only guessing at what the
20 different colors and the different textures of
21 objects are, but you take them from images that
22 you retrieve from the property; is that right?

23 A. In most cases. I don't like the word guessing,
24 because there are some that I did apply textures
25 from a personal library. For example, the paint

1 on the truck, I did not photograph the paint on
2 that particular truck. I applied a general black
3 car paint texture to it. What we do see on the
4 garage --

5 Q. By the way, what figure are you referring to now?

6 A. I'm sorry, this is Figure 9. It's the same
7 image; however, it has now been rendered in the
8 software. Again, what we do see here, however,
9 is that texture mapping process on the garage
10 building.

11 Q. Your three dimensional modeling, could you
12 describe, not just in this case, but in other
13 cases that you have been asked to testify and
14 other cases that your colleagues have been asked
15 to testify, what is the advantage of 3D modeling
16 versus the two dimensional images that we saw, as
17 a jury or a trier of fact may consider?

18 A. When we look at two dimensional image, again,
19 we're just looking straight down on that
20 particular area. What's difficult for us to
21 appreciate, any type of spacial relationship or
22 geometric perspective, if you will.

23 In other words, we don't know, or it's
24 more difficult to actually visualize how that
25 scene looked, or how objects are related to each

1 other. When we now take that into a three
2 dimensional model, we can get a better
3 understanding of how that scene looked or how
4 objects are, again, in relationship to each
5 other.

6 Q. All right. You were asked, then, by the State,
7 by the prosecution, to take these 4100 plus
8 measurements, all of the data, including all the
9 photographs that you both obtained, and viewed,
10 and created some modeling for us; is that right?

11 A. Yes, sir. I have to add, though, we did not
12 model the entire Avery property in 3D.

13 Q. Why not?

14 A. I think I would still be working on it today if I
15 modeled that in 3D.

16 Q. All right.

17 A. Also, the work that I did was under the direct
18 supervision of the lead investigators or
19 yourself. And it was determined that we probably
20 really don't need the entire property done in
21 three dimensions.

22 Q. Now, because this is an adversary system, in other
23 words, because there's the defense, and the
24 prosecution, is it typical for one side or
25 another to ask you or direct you to create images

1 for use at trial?

2 A. Yes, when you look at the work that I did, and I
3 know we're going to get deeper into this, but
4 there are evidentiary areas that I don't
5 necessarily know about. And I need that
6 guidance, for persons to tell me what is
7 important, and what is not important, in a
8 diagram.

9 It's very typical for one side to tell
10 me what they would like to see. Many of these
11 exhibits I designed to assist others, in
12 explaining to you, or to a jury, what it is that
13 they did out there at the scene.

14 Q. Let me just talk about that just briefly. So,
15 other than you showing, if you will, or being
16 able to show the jury the scene itself, did we
17 ask you to provide or create these images to
18 allow investigators or law enforcement officers
19 that found evidence, or even other experts, to
20 use those images to better explain or describe
21 the evidence that they may have found, or their
22 testimony.

23 A. Yes, sir. It's one thing to be able to, if you
24 will, sit in this box and verbally explain where
25 something was positioned. But to be able to

1 physically show that geometric relationship; in
2 other words, where it is compared to other
3 objects, helps persons to better understand where
4 these items are located, where they are in
5 relationship to other items.

6 Q. Let's talk about some interiors first, all right.
7 And you were asked to do some modeling, not just
8 in the yard itself, or in the exterior -- or is
9 it easier to talk about exteriors first?

10 A. It's your option, sir.

11 Q. Doesn't matter to you, I'm sure. All right.
12 Let's talk about some interiors. I'm going to
13 show you Figure No. 31. Let's talk about what
14 we're looking at here, first.

15 A. Sir, this is Figure 31, found on Page 32 of my
16 narrative report. What we're looking at here is
17 an overview of a residence that was on the
18 salvage yard property. And what I have done with
19 this particular model is, I have hidden the roof.
20 In other words, if the roof is a layer, I turned
21 the roof off, so that we can see all of the rooms
22 together.

23 Q. Let me just stop you there. I'm sure Mr. Strang
24 and I at some point will establish the
25 foundation, but Exhibit 31, we're looking at

1 Steven Avery's residence?

2 A. Yes, sir.

3 Q. All right. Go ahead.

4 A. Again, what I have done is taken the roof off, or
5 rather, hidden the roof from the model so that we
6 can look at all the various rooms that are inside
7 of his residence. If you think of -- remember
8 the old overhead projectors, you could lay one
9 piece of plastic over it, and another, and
10 another, essentially we have taken one off so
11 that we can see what's underneath the roof in
12 this case.

13 Q. Now, Figure No. 31 is an unlabeled, or a clean,
14 if you will, image. Were you also asked, and did
15 you provide labels, if the Court allows, and if
16 the State, or whatever party actually wishes to
17 present them, believes it would be helpful for
18 the jury?

19 A. I provided you with two separate images, one
20 being unlabeled, which we just saw on the screen,
21 and I also provided you with one having labels,
22 in other words, there's text and leader arrows
23 identifying various rooms.

24 Q. What are we looking at now?

25 A. This is the image I just described. It is the

1 same one you had previously; however, this one
2 has text and leader arrows identifying various
3 rooms in the residence.

4 Q. And through all the images -- in fact, I'm going
5 to have you look at, I think it's Exhibit No. 4.
6 You have a packet of images up there, could you
7 tell us what Exhibit 4 is.

8 A. Yes, sir, I believe these are those images that I
9 provided you with. They are 4 by 6 prints of
10 these rendered models. And there should be label
11 versions and unlabeled versions in these
12 envelopes.

13 Q. And for assistance of the Court and really trying
14 to anticipate what the Court's direction may be,
15 to me, to the State, in use of some of these
16 images, you have created a hard copy, or a set of
17 all of your figures, both labeled and unlabeled,
18 so that a record can be made, that is, if some of
19 the documents -- some of the images might be
20 introduced and some may not, we're able to just
21 put in the ones that are acceptable to the Court,
22 and perhaps to counsel, as well; is that right?

23 A. Yes, sir, that's correct.

24 ATTORNEY KRATZ: Just to complete the
25 record, Judge, although we will have originals, the

1 entire packet which has been provided to the Court
2 in a 8 1/2 by 11 form, all those images are in
3 Exhibit No. 4. I would ask the Court receive those
4 for purposes of the record at this time.

5 THE COURT: Any objection?

6 ATTORNEY STRANG: None.

7 THE COURT: Those are received.

8 Q. (By Attorney Kratz)~ Now, other than the
9 buildings including Mr. Avery's trailer, were you
10 asked to do some interior renderings of
11 Mr. Avery's garage?

12 A. Yes, sir.

13 Q. And could you tell me, if we look at one of those
14 figures, direct me to one that might be helpful.
15 Exhibit 41?

16 A. Yes, sir, Exhibit 41.

17 Q. I'm showing you what's been labeled, then, as
18 Exhibit 41; what are we looking at?

19 A. Sir, Figure 41 is an overview of the garage that
20 you asked about. Again, I hid or turned off the
21 roof layer so we could see what's inside of that
22 garage.

23 Q. I'm sorry, this is Figure 41, it might be from
24 Exhibit No. 2, if I'm remembering correctly. Why
25 don't you take the laser pointer and just very

1 briefly tell us the items that you have been
2 asked to place inside of that garage?

3 A. Inside of the garage, there's a Suzuki Samurai
4 vehicle that was in the garage when I completed
5 the forensic mapping of that location. Next to
6 that is a snowmobile. There's also a snowmobile
7 on the opposite side of the Suzuki Samurai.

8 And then around the border, around the
9 walls here, we see various tools, if you will.
10 There's a tool chest in the back. There's an air
11 compressor. Next to that is a welder. There's a
12 freezer and a filing cabinet in here. Various
13 larger items that we can use to locate anything
14 else we need to find in the garage.

15 Q. Let me ask you, Trooper Austin, without the
16 assistance of this computer generated image,
17 would a jury or a trier of fact ever be able to
18 see something like this?

19 ATTORNEY STRANG: That really is not a
20 proper question.

21 ATTORNEY KRATZ: I can ask it a different
22 way perhaps, Judge.

23 THE COURT: Go ahead.

24 Q. (By Attorney Kratz)~ The computer generated
25 images, does it allow anybody, not just a trier

1 of fact, but anybody in the courtroom, to
2 visualize a scene from an angle or from a
3 perspective that the human eye could not?

4 A. That's why I believe that the three dimensional
5 models are important. In this case, you know, we
6 would never be able to have an overview of the
7 garage interior without removing -- excuse me --
8 removing the roof as we did in the three
9 dimensional model.

10 The same with the house. And we can
11 then move about in this model to gain other
12 perspectives so that we can, you know, perhaps
13 from a different viewpoint, look at those spatial
14 relationships we discussed earlier.

15 Q. When talking about three dimensional, it is that
16 relationship, that is, the relationship between a
17 piece of evidence to a fixed object, or to a
18 known location that's important; is that what
19 your testimony was?

20 A. Yes, sir.

21 Q. All right. Let's talk about exteriors for just a
22 moment. I'm going to have you -- have you look
23 at Figure No. 10 and tell us what we're looking
24 at?

25 A. Figure No. 10, Mr. Kratz, is an overview of the

1 entire area that I did model, in three
2 dimensions.

3 Q. Does that include what would be known as the
4 Steven area -- excuse me -- Steven Avery
5 residence and curtilage, as well as the Barb
6 Janda and Dassey residence and area surrounding?

7 A. In previous slides, we looked at a residence, in
8 the interior, and that Steven Avery residence is
9 over here. The garage we looked at is next to
10 that residence.

11 In terms of a directional relationship,
12 in this particular view, north would be to the
13 bottom of the screen. And, yes, I'm sorry, to
14 finish your question, sir, the Barb Janda
15 residence is over here on the left side of your
16 screen, and her garage.

17 Q. I'm going to have you look at just a couple of
18 other images, Image No. 16.

19 A. Yes, sir. Figure No. 16 is also from my report.
20 Essentially, we have moved our camera to get a
21 different perspective of the Steven Avery
22 property. This allows us to see both the
23 residence, the garage, as well as some other
24 items I was asked to include in the model.

25 Q. Were one of those items, or two of those items

1 that we're going to talk about, first of all, the
2 van, the Dodge Caravan, I believe; is that shown
3 in this image?

4 A. Yes, sir. The Dodge Caravan is this red colored
5 vehicle down here in the lower left portion of
6 your screen.

7 Q. For the Court's information and just as by way of
8 offer of proof, the evidence in this case will be
9 that was the vehicle that Teresa Halbach was
10 asked to come and take a picture of. Were you
11 also asked to include a burn barrel that was
12 found, or that you took dimensions of, and
13 measurements of, on this property?

14 A. Yes, sir. Both the mini-van and the burn barrel
15 were in place when I did the forensic mapping, so
16 they were located with the Total Station. The
17 burn barrel you are referring to is over here on
18 the right side of your screen.

19 Q. And not going into any detail, because that's
20 what the trial is for, but was it your
21 understanding that there is some evidence that
22 was recovered from the interior of that burn
23 barrel?

24 A. That is my understanding, sir.

25 Q. Now, as I understand, you're able to move the

1 camera around, if you will. Figure No. 20 is an
2 example of that. Can you tell us what we're
3 looking at.

4 A. Sir, that is indeed Figure No. 20 from my
5 narrative report. What we have done from that
6 previous slide you had up is we have moved our
7 position further to the south. And we're now
8 looking to the northwest, to the back of the
9 trailer -- I'm sorry -- residence we discussed
10 before, and the back side of the garage, and
11 items that were identified to me as being of
12 evidentiary value, behind that garage.

13 Q. Although Figure 20 shows some of the same items
14 that Figure No. 16 would be, this is a different
15 angle and, again, something that the human eye
16 would not be able to accomplish; is that correct?

17 A. And we're moving in closer from that last point,
18 which allows us to see items in better or greater
19 detail as they have been modeled here. So, yes,
20 I do agree with you.

21 Q. Last example that I'm going to give you, and
22 again, these are just by way of example, Figure
23 No. 23, tell me what we're looking at.

24 A. Sir, this is Figure No. 23 from my narrative
25 report. We have moved further to the southeast,

1 where we were before, and looking at the back
2 side of Steven Avery's residence. We're now
3 looking at the backside of the Barbara Janda
4 residence, and some other items back here that I
5 was asked to include in the model.

6 Q. All right. Trooper Austin, a little bit out of
7 your area of expertise by crash reconstruction
8 and crime scene reconstruction, were you asked to
9 assist another expert, an anthropologist in this
10 case, in the creation some other images?

11 A. Yes, sir. I was asked to work closely and under
12 Dr. Leslie Eisenberg, to create additional model
13 images.

14 Q. Were you able to perform that task?

15 A. Yes, I physically met with Dr. Eisenberg in
16 Madison and had lengthy communications with her,
17 after meeting with her person, to create model
18 images that would help her to explain her
19 findings in this case.

20 Q. Now, I don't expect -- in fact, let me just ask
21 you, much of what you were asked to create, did
22 you know what it was that you were creating? I'm
23 not sure how to ask that. Why don't you tell us
24 how that process culminated.

25 A. Yes, I was asked to create the model, which is my

1 area of expertise. However, what she wanted me
2 to assist her with was creating skeletal models
3 so that we could point out locations of various
4 bones. That is certainly outside of my area of
5 expertise, that's why I worked closely with her,
6 and directly under her, so she could explain, I
7 would like a leader arrow pointing to this bone,
8 and this bone is called a, and the name of that
9 bone.

10 Q. All right. I have a figure on the screen, it's
11 just the -- a picture of a female skeleton.
12 We're not going to show these because that will
13 be Dr. Eisenberg's area of expertise, but could
14 you just briefly describe how these skeletal
15 models were created?

16 A. The base skeletal model, that would be the one
17 without any type of textures to it, I obtained
18 from the FBI in Quantico, Virginia. They sent me
19 a CD containing various skeletal models.

20 I chose the female skeleton as was most
21 appropriate in this case. I then applied a bone
22 texture to it, received approval from
23 Dr. Eisenberg, and then met her in person to
24 again show close ups or different bone locations
25 on that model.

1 Q. All right. And, again, those have been created,
2 provided to the Court and to counsel -- excuse
3 me -- and are included in your images, both
4 Exhibit No. 4, as well as Exhibit No. 2; is that
5 correct?

6 A. Yes, sir. They are on the DVD I provided to you
7 and they should be in the photographs also -- or
8 the 4 by 6 images rather.

9 Q. All right. Let's leave the scene mapping or
10 modeling then and let's talk a little bit about
11 animations. Were you asked to create animations
12 as well?

13 A. Yes, sir, I was.

14 Q. And could you tell us about that process, please.

15 A. To create motion, essentially we need numerous
16 still images of those still renders. In fact, we
17 need about 30 of them for every second of motion
18 that we want to create. If you were to think
19 back perhaps to a child's toy where we would have
20 something in the corner and we flip through those
21 pages and we see that object changing or going
22 into motion, that's kind of what we're doing
23 here. We're putting image, after image, after
24 image to create that effect of moving through a
25 scene.

1 Q. Now, in lieu of, or instead of taking the jury to
2 the Avery salvage property in the middle of
3 February, did I ask you to create a walk through,
4 if you will, of the Steven Avery property, the
5 Barb Janda property, and the surrounding
6 curtilage?

7 A. Yes, sir, you did.

8 Q. And I know that we showed the Court your first
9 draft of that, it was probably last week
10 sometime; have you made some improvements to
11 that?

12 A. Yes, sir, I have made some minor changes to that.

13 Q. I have given you another exhibit, I think it's
14 Exhibit 3; is that right?

15 A. Yes, sir.

16 Q. Tell us what that is?

17 A. Exhibit 3 is the disk I gave you maybe an hour or
18 so ago with the final version of the animations.

19 THE COURT: And for the record, Judge, I
20 have given Mr. Strang his own version of that. And
21 I will be asking that the Court accept Exhibits 3 --
22 have I moved Exhibit 4, Janet, do you know?

23 THE CLERK: Yes.

24 ATTORNEY KRATZ: Yeah, Exhibit 3, then, I
25 would offer at this point to complete the record.

1 THE COURT: Any objection?

2 ATTORNEY STRANG: Not for purposes of this
3 hearing.

4 THE COURT: That exhibit is admitted.

5 Q. As I play this animation, Mr. Austin -- or let me
6 ask this first question, what improvements did
7 you make, and how long did it take to create, and
8 what kind of process was involved?

9 A. The version I gave to you last week, my draft
10 version, was completed at 15 frames per second,
11 meaning there were 15 images for every second of
12 animation. I felt it looked somewhat choppy. I
13 therefore re-rendered it at 30 frames per second,
14 which gives it a much more fluid sense of motion,
15 if you will.

16 I also felt that in that draft the
17 gravel did not appear as it should in the
18 animation. Because the way the software looks at
19 the reflection of light, the gravel essentially
20 appeared to sparkle. I, therefore, changed the
21 gravel texture so it doesn't have that reflective
22 capability to it.

23 Q. Once again, this animation, as well as all of
24 your other still images, do you believe that they
25 will assist, not only the trier of fact, that's

1 the jury, but other witnesses in explaining
2 evidence that's found or the relationship between
3 that evidence and fixed objects?

4 A. Mr. Kratz, as we put these 5200 pictures into
5 motion, or make them give that impression of
6 motion, that's going to help myself, you, jury
7 members, to be able to, again, see where items
8 are located to each other. As we go from one end
9 of the scene to the other, or then back around to
10 the backside, if you will, we're going to get a
11 better understanding of what exactly the geometry
12 is of that particular property.

13 Q. I'm going to play this DVD that's been created
14 and just invite you to chime in, if you will,
15 when that becomes appropriate.

16 ATTORNEY KRATZ: The record should reflect,
17 Judge, that this is Exhibit No. 3. And I have asked
18 Mr. Austin to -- to narrate as we go through.

19 Q. Go ahead, Mr. Austin.

20 A. Mr. Kratz, what I have done is, I started at the
21 southeastern portion of that property, if you
22 will. And we're going to come in by those --
23 that Dodge Caravan, which as we talked about
24 before, was identified to me as being of
25 evidentiary value. We are then going to pause in

1 front of that Caravan and identify it using a
2 beader, and that is text and arrow.

3 Q. Between this rendering and the one last week, did
4 you also remove some things?

5 A. I did change some of the text and I will bring
6 that up when we get to that point, what was
7 changed from the previous version.

8 Q. All right.

9 A. Forgive me, I did forget to tell you this
10 earlier, sir, another change I made is, I slowed
11 down the camera as we pan across the top of the
12 residence, so you will see it slightly slower as
13 we move from room to room.

14 Moving from the Caravan to the Steven
15 Avery residence, what we'll do is we'll fade that
16 roof out so we can see the interior of that
17 residence. Now, as we move between these rooms,
18 this is one of the changes I made. It's a little
19 bit slower than what you saw last week.

20 Q. As we're looking at all these images, how many
21 separate images are we actually seeing?

22 A. There's over -- For the entire animation
23 sequence, there's over 5200 images that were
24 rendered to create this.

25 Q. How long did it take to create this?

1 A. I utilized three separate computers to try to
2 speed up the process. I started last Friday and
3 I finished last night.

4 Q. So any delay wasn't intentional on your part?

5 A. No, sir. Moving from the residence to the
6 garage, similar to the still image you showed us
7 before, Mr. Kratz, we're going to fade the roof
8 out so we can see the inside of the garage.

9 Q. If you haven't added any images, all these things
10 that we're seeing were there while you were
11 taking the measurements; is that correct?

12 A. That's correct. From here, Mr. Kratz, we're
13 moving from the overview of the garage. We put
14 the roof back on, if you will, and now we're
15 looking at items behind the garage. And I have
16 added -- these were in last week's version. I
17 have added labels identifying Steven Avery
18 residence and we see we are now at the Steven
19 Avery garage.

20 Q. The darker area to the left, would that be what
21 is known as the burn area, or where some other
22 very important items, including some bone
23 fragments were found?

24 A. Yes, sir, that's my understanding. We're now
25 moving to the southeast. We're going to go

1 behind the Barb Janda property and we're going to
2 identify that residence, as well as the burn
3 barrels that were positioned behind that house.

4 Those burn barrels were there. I did
5 the forensic mapping, so those have been -- their
6 location was mapped. This is one of the changes
7 in the text. Previous to today that said,
8 Janda/Dassey burn barrels. I have taken the
9 names off, so it just says burn barrels there.

10 Q. Some other witness may identify who actually had
11 control of those burn barrels; was that the
12 reason for that change?

13 A. Yes. From those burn barrels we're now moving
14 back to the front of the Steven Avery property
15 and we're going to show the geometric location of
16 the burn barrel position there. And, again, when
17 we show the text here, this previously stated
18 Steven Avery burn barrel, it now just states burn
19 barrel when she show that header.

20 And this is, essentially, the end of the
21 animation generated here. We have seen those
22 images I discussed before, those 5,000 images,
23 and we're fading out to close off the animation.

24 Q. Now, this afternoon we're not going to show the
25 skeletal animations, but was roughly the same

1 process used to assist the jury, ultimately, and
2 probably through the narration of either an
3 anthropologist or a pathologist with what they
4 believe is some important evidence found in this
5 case?

6 A. Yes, the second animation you are referring to
7 was generated in exactly the same manner. It's
8 not as long, there's only slightly over 600
9 images to generate that one. And I don't know if
10 you viewed that last week, if you did, there are
11 no changes to it at all. That one was not
12 altered in any way.

13 Q. Finally, Mr. Austin, asked a little different way
14 and perhaps in more technical jargon, are the
15 images that you created, these computer generated
16 images, true and accurate depictions of the items
17 that are portrayed within them, at least to the
18 best of your ability to create them?

19 A. Yes, sir.

20 Q. All right. For purposes of this admissible
21 hearing, that's all I have of Mr. Austin. Thank
22 you, Judge.

23 THE COURT: Mr. Strang.

24 ATTORNEY STRANG: Thank you.

25 **CROSS-EXAMINATION**

1 BY ATTORNEY STRANG:

2 Q. And thank you, Mr. Austin. I just very briefly
3 want to understand the Total Station a little bit
4 better. When you say that device locates itself
5 in space, is this through the assistance of a
6 global positioning satellite?

7 A. No, sir. May I try to reexplain?

8 Q. Sure. Yes.

9 A. If I can. When I set the Total Station up, if
10 you take a point directly underneath that
11 instrument, essentially, that's our -- we call it
12 a zero point. If you're to think back to say
13 high school geometry, we have our X axis and we
14 have our Y axis, and we also have our Z axis,
15 which is our height. So that point directly
16 below the instrument, that we have created is
17 000. It will then will take the angle and
18 distance to you, sir, and then it would recognize
19 your position, then, both horizontally and
20 vertically.

21 Q. Okay. And does it do that by laser?

22 A. Yes, sir.

23 Q. So, it's sending laser beam and then measuring
24 the time back to a reflective surface or receptor
25 on the Total Station?

1 A. We have a -- it's a two-man operation, if you
2 will, sir. If the piece or the item we were
3 measuring was over by you, or if you were
4 standing by that, I would give you a prism, which
5 is on staff, and you would hold that directly on
6 that item, or directly over it, and, yes, it
7 would reflect back from that prism.

8 Q. So, what it's measuring then is not the item, but
9 the prism that someone is holding on or near the
10 item you are trying to map?

11 A. Correct. The Total Station knows, or we tell it
12 how tall it is by measuring it. We also tell it
13 how tall the prism is so it mathematically
14 calculates to compensate for that height. So it
15 still -- it's measuring to the prism, but what it
16 is determining is the coordinate to the item at
17 the bottom of the staff.

18 Q. Okay.

19 ATTORNEY STRANG: And I may need to have
20 the kind assistance of Mr. Kratz. May I call on
21 that?

22 ATTORNEY KRATZ: Please.

23 ATTORNEY STRANG: If we -- For example, if
24 we went to something with the four burn barrels
25 behind Barb Janda's trailer.

1 ATTORNEY KRATZ: Give me the figure number,
2 Mr. Strang.

3 ATTORNEY STRANG: I don't have the
4 foggiest.

5 THE WITNESS: Mr. Kratz, can we look at
6 Figure 23.

7 ATTORNEY KRATZ: You certainly can.

8 THE WITNESS: It's on Page 24, would that
9 work, sir?

10 ATTORNEY STRANG: Beautiful, just fine.

11 Q. (By Attorney Strang)~ The barrels themselves, as
12 they are modeled here, look like they are
13 supposed to have holes in them; is that right?

14 A. I applied a rust colored texture to them. I
15 don't believe it is supposed to depict holes. It
16 is supposed to depict just a rusty color.

17 Q. Just something you picked off the digital pallet
18 that the program provides?

19 A. There's a library, if you will, that's with it.
20 And I did pick a rust color to give the
21 impression that it's a rusty barrel.

22 Q. Okay. I thought when we were having our virtual
23 flyer one that I saw dark spots that I took to be
24 holes in the barrels. Maybe -- Maybe it was my
25 imagination of what the image was supposed to be.

1 A. If there were dark spots on there, and I think I
2 do believe there are, it's designed just to --
3 just to show an old barrel, not designed to show
4 any type of hole.

5 Q. So, one who is looking at this and says, boy,
6 gee, there look like a lot of holes in those burn
7 barrels, is seeing something that's simply
8 supplied by your imagination, or the computer's
9 choice of replication of a background, or a color
10 that you have selected?

11 A. For the barrel, could someone get that
12 impression, from what you are telling me, yes.

13 Q. Okay. And I'm not trying to tell you, I'm just
14 asking you. I mean if it looks like a hole, that
15 doesn't mean there was a hole in the barrel?

16 A. Right. You said you got that impression so,
17 obviously, somebody could, yes.

18 Q. Or I could have serious mental problems, I
19 suppose. But setting that aside, if it looks
20 like a hole, that doesn't mean there is a hole
21 there?

22 A. In that case, again, that was a texture from a
23 library designed to show -- in fact, I believe it
24 was for -- simply for a burn barrel that I
25 utilized.

1 Q. Excuse me?

2 A. The texture I assigned it was from a library for
3 a burn barrel.

4 Q. Oh, okay. And just -- I'm just trying to get a
5 better feel for the -- I'm particularly
6 interested in the three dimensional process. You
7 consistently use the term model to describe the
8 images that you have created for the State. Why
9 do you use the term model?

10 A. That's the term that's mostly used in the
11 industry, if you will, the software program I'm
12 using is generally used in the jewelry or marine
13 or both design industries. And these are
14 generally referred to as models. I could just
15 the same refer to them as a three dimensional
16 scaled diagram, perhaps it's just a term that's
17 been instilled in me from when I received the
18 training.

19 Q. Sure, but one thing you mean to denote by
20 choosing the word model is that this is not a
21 photograph in the sense that people have
22 understood that term for the last 150, 160 years
23 or so?

24 A. That's correct. No, I would never try to state
25 this is a photograph of the scene. It's not.

1 Q. It's not a photographic depiction in the sense of
2 something that is as accurate as a photograph
3 might be?

4 A. I don't know if I agree with you on accurate, the
5 geometry here, everything is accurate.

6 Q. And I'm with you on that. I'm with you on
7 geometry and spatial relationships, okay. You
8 and I don't have any quarrel at all, at least for
9 now, about that, and I don't know that we ever
10 will.

11 But in terms of the details that a human
12 eye might take in, a hole in a metal burn barrel,
13 chipped paint on the side of the garage, graffiti
14 on the side -- I'm not suggesting there was
15 graffiti -- but graffiti on the side of a garage,
16 a broken window pane, a lone leaf left on a tree,
17 those sorts of visual details here, the model
18 doesn't even purport to capture?

19 A. That's correct. No, you would see those in your
20 crime scene photographs.

21 Q. So what the model is useful for, among other
22 things I guess, but primarily, is showing us
23 relationships in space, of one item to another,
24 for example, true?

25 A. Yes.

1 Q. Okay. And does the model -- or does the Total
2 Station, which you eventually download to the
3 forensic 3D software, does the Total Station do a
4 good job, for example, of capturing the
5 circumference of the opening at the top of a burn
6 barrel?

7 A. To map location of the burn barrel, each
8 particular one, what I would do is, I would take
9 three points on there. And I can use those three
10 points in the CAD software to create a perfect
11 circle, if you will. So, you know, I don't
12 actually go around and go over every half inch
13 with the prism. Three points, because that's
14 what I need to create a circle.

15 Q. Okay. So if we look at the four burn barrels,
16 what you have done with your partner who's
17 holding the prism for you on the stick, is you
18 have gone to three separate points on the top of
19 each one of those four burn barrels?

20 A. Correct. There would be three points on each
21 barrel, for those four there.

22 Q. Okay. And then the computer says, I know what to
23 do now, I will create a perfect circle?

24 A. Well, I have to tell it to do that. You know, I
25 will, essentially, in the software I have got

1 various options, editing, drawing tools,
2 etcetera. I will tell it, I'm going to draw a
3 circle and I'm going to give you three points. I
4 then identify those three points and my circle is
5 generated.

6 Q. Got it. So, again, within the limitations here,
7 if what we were interested in knowing is, you
8 know, how far from the side door on Barb Janda's
9 trailer is the cluster of four burn barrels, this
10 would be a very good tool for doing that,
11 correct?

12 A. If I wanted to -- Are you asking me if I wanted
13 to physically measure that distance using the CAD
14 environment, or to get a perspective view?

15 Q. A perspective view.

16 A. Then, yes, I agree, this would be the tool.

17 Q. Okay. And, indeed, I suppose you could use the
18 software to spit out the exact -- not spit out,
19 but to tell you, if you were to run a cord line
20 from the middle of the four burn barrels to the
21 door knob on the side door of the trailer, we
22 could get down to a fraction of an inch the
23 distance of that cord line, correct?

24 A. Yes, we could.

25 Q. But as to what the burn barrels actually look

1 like to a human eye, or would look like in a
2 photograph, we shouldn't be relying on the model
3 to give us?

4 A. I agree.

5 Q. Now, if we go back, with Mr. Kratz's assistance,
6 to Figure 9, is that possible?

7 ATTORNEY KRATZ: Sure.

8 Q. Okay. Now -- And I'm also going to be interested
9 in Figure 10 eventually. But on Figure 9, I see
10 what looks to me like rather dramatic shadows of
11 two lovely leafy trees, casting across the bottom
12 half of that picture.

13 A. Yes.

14 Q. Is that what that looks like?

15 A. Yes.

16 Q. And the measurements here were taken between
17 November 5 and November 12, 2005?

18 A. Yes.

19 Q. Okay. If I have my directions about right,
20 should I be alarmed by a catastrophic change in
21 the planet earth's orbit and tilt that I now have
22 a strong sun shining out of the northwest, in
23 early November, 2005, in the northern hemisphere?

24 A. If I can put this particular item in perspective,
25 and perhaps I should have done that with

1 Mr. Kratz. The page that this is on, on Page 14
2 of my report, is talking about the forensic 3D
3 software package. And the image right before
4 this one is one of the unrendered garage. And
5 this one is shown in my report directly
6 underneath it as showing a rendered version.

7 And my point here, the point is in the
8 report was to show how we can generate these
9 models with the various textures on them. This
10 is in no way -- This particular view is not -- or
11 with the shadows, is not shown any later in the
12 report when I'm talking about the scene models.
13 And these are actually not leafy trees, these are
14 the pine type trees that are up near the
15 residence that you are seeing. So I would not
16 try to purport that this is how it looked on
17 November 5th, 6th, 7th through the 12th, 2005.
18 This was to show the software.

19 Q. So how do the lovely long shadows of the pine
20 trees get in there.

21 A. I turned the sun on in this particular case to
22 show, again, the software's capabilities. You
23 will see in the other renderings, the sun I
24 actually have off. You will see some shadowing,
25 but the sun giving directionality has not been

1 turned on. I did not intend to depict any time
2 of day, specific time of day, in any of the
3 models you are seeing, you know, that are
4 designed to show you the actual scene or any
5 animation.

6 Q. Or to suggest the orientation of sun to the
7 scene?

8 A. No, I did not do that or did I have any intention
9 of doing that.

10 Q. Okay. And when we see trees in your models,
11 particularly the ones that are leafless, as they
12 might be in early November around here, they all
13 look the same to me. Are these simply trees that
14 the computer generates for the purpose of
15 suggesting that there is a tree in that spot in
16 space.

17 A. This software package allows me to actually
18 specify different types of trees and to specify
19 different seasons. You would see your apple
20 blossoms in the spring and apples in the summer.
21 I, for the purpose of being demonstrative of
22 their being a tree, I did not vary the trees at
23 all. So you are very correct in that all of the
24 leafless trees are the same. The only difference
25 is in their size.

1 Q. Okay. And in general, then, there's a certain
2 amount of artistry, if you will, on your part or
3 on the part of the operator turning the sun on or
4 off, selecting color palet, that kind of thing,
5 to help make this an attractive model, if you
6 will.

7 A. The intent is not to be attractive, if you will.
8 It's to show that there is a tree in this
9 position, that this item is a barrel. But do we
10 have some liberty, if you will, of picking what
11 tree is going to go in there, or what texture is
12 going to be there. I suppose. I do the best I
13 can to try to make that as close as possible.

14 Q. No. And please don't take this as an attack.
15 And by attractive, I understand you are not
16 planning to send this home so mom can put it on
17 the refrigerator. But it's designed to give us a
18 sense of reality, or the illusion of reality of a
19 real scene, correct?

20 A. The design is to give you an idea. And I
21 mentioned these buzz words before about geometric
22 perspective and spacial relationships.

23 Q. Right.

24 A. But to give you an idea of how that scene is laid
25 out. It's not, as you mentioned before, it is

1 not designed to give you a photograph, or a
2 photographic image of what that scene looks like.

3 Q. So whether to color the garage, or what color to
4 make it, whether to turn on the sun, or leave the
5 sun turned off, you know, which direction the
6 shadows should fall, whether there should be
7 shadows, how to color the gravel, these are all
8 just decisions you have to make, in good faith.
9 I'm not suggesting anything to the contrary. But
10 these are just artistic decisions, for want of a
11 better word, in presenting something that looks
12 other than just shades of gray?

13 A. Yes, those are decisions that I made.

14 Q. Okay. And then there's, you know, you don't have
15 to buy into the label artistic, I don't mean
16 anything by it. I don't mean to pick a fight by
17 that. But in addition to those kinds of
18 decisions that you made, in creating your
19 exhibits here, there are also some decisions that
20 were made either by Mr. Kratz, or by Mr. Wiegert,
21 or Mr. Fassbender, primarily, correct?

22 A. As to the colors that were used?

23 Q. No, no, other decisions as to the depictions;
24 specifically, what items would be included?

25 A. Oh, yes.

1 Q. Okay. And those decisions simply were made by an
2 advocate, or people on one side of this lawsuit,
3 for demonstrative purposes?

4 A. Can you say that one more time. I did not
5 understand the lawsuit part.

6 Q. Sure. Some of the decisions about what to
7 include, simply were made by either Mr. Kratz, as
8 one of the lawyers for the State, or one of the
9 two lead investigators on the case, or their
10 purposes of showing or demonstrating what they
11 would like to show or demonstrate.

12 A. Yes, that's correct.

13 Q. Okay. Now, I'm quite certain, knowing these
14 gentleman somewhat, that they didn't ask you to
15 include anything that was made up, made up out of
16 faux pas. And you also were on the scene,
17 correct?

18 A. Yes.

19 Q. So, did you satisfy yourself that the things you
20 were asked to include in fact were things present
21 at least at some time between November 5 and
22 November 12th?

23 A. If I understand your question correctly, are you
24 asking if I'm satisfied everything I have
25 depicted was at that scene during that time?

1 Q. Yes.

2 A. Yes.

3 Q. Okay. Nothing was added in. In other words, if
4 we -- if we go to Figure 41, again, with
5 Mr. Kratz's help.

6 A. Overview of the garage, sir?

7 Q. Yes. Yes, with the roof peeled off. So, if we
8 go to that, there, in fact, was, looks like a
9 John Deere lawn mower or tractor, present in the
10 scene at some point while you were there?

11 A. Yes, sir.

12 Q. There were two snowmobiles, each a flank of the
13 Suzuki Samurai, not just one?

14 A. Yes.

15 Q. Okay. But now, to go in the other direction, or
16 the converse of this, there also were items
17 present that have been omitted from these models,
18 correct?

19 A. Yes. Omitted or not measured. There were a lot
20 of debris, for lack of a better word, in that
21 garage.

22 Q. Okay. So while we haven't added anything in that
23 wasn't there, we have taken out some things that
24 were there?

25 A. Taken out or they weren't measured when I was

1 there.

2 Q. And if they weren't measured, they cannot be
3 included?

4 A. If they weren't measured, then you are not going
5 to see them in there, denoted as being in a
6 specific location.

7 Q. So someone looking at this Figure 41, for
8 example, unless he or she was able to look at a
9 photograph taken at about the same time, would
10 not understand that the garage, in fact,
11 contained a whole lot more items and clutter than
12 it appears to in the model?

13 A. I believe I understand your question. Like if I
14 were to look at the -- there's a table back here
15 denoted in silver or grayish color. There were
16 items on that table, if you will. There were --
17 I can even tell you what they are: Parts, or
18 boxes, or other items. No, I denoted the
19 location of that table, but not everything that
20 was on it.

21 Q. Right. In fact, your recollection is that the
22 table top was all but covered with junk and
23 miscellaneous things.

24 A. Yes.

25 Q. Okay. Likewise, the garage floor was not

1 covered, but quite cluttered with all kinds of
2 parts and miscellaneous stuff?

3 A. There were more items in that garage than what
4 were depicted in this particular perspective.

5 Q. Perhaps the most striking example of this, if you
6 went to Figure 31.

7 A. The residence over here?

8 Q. Yes.

9 ATTORNEY STRANG: Is your Honor able to
10 follow along?

11 THE COURT: Yes, I am following along. I
12 have hard copies of the exhibits and I'm looking at
13 them.

14 Q. Okay.

15 ATTORNEY KRATZ: Do you need something from
16 me?

17 ATTORNEY STRANG: Figure 31 would be great,
18 just for the spectators.

19 ATTORNEY KRATZ: With or without arrows?

20 ATTORNEY STRANG: Right now, either is
21 okay. Very well.

22 Q. If the uninitiated took the model in Figure 31 as
23 an entirely accurate representation of the way
24 Mr. Avery's home looked, one would conclude that
25 at least as to his living room and dining room,

1 he had a fairly minimalist philosophy of interior
2 design.

3 A. In fact, I documented that in my narrative too,
4 sir, that items in those rooms were not measured,
5 you know, what the furniture that was there.

6 Yes, without -- if they weren't shown a crime
7 scene photograph, or they weren't told that this
8 is designed just to show relationships of certain
9 objects, yeah, they would not probably have an
10 understanding that there were other items there.

11 Q. Things like couches, and chairs, and fairly large
12 pieces of furniture?

13 A. I remember two chairs. I don't remember having a
14 couch.

15 Q. Okay. But in other words, there's some
16 significant pieces of furniture that just aren't
17 here?

18 A. That's correct.

19 Q. Okay. And so the things that are included
20 reflect some editorial judgment on the part of
21 the State in this instance?

22 A. Or items that I, like I say, I didn't actually
23 get to the chairs that you were referring to
24 there by the time our warrant ran out that day.
25 So, yeah, there's also some judgment on my part

1 when I was in there as to what items I could get
2 to in the time allotted.

3 Q. Fair enough. Fair enough. And throughout making
4 these slides, in a number of ways, you were
5 guided by the requests of, let's just say agents
6 of the State, in directing you on which of the
7 available items that actually were there should
8 be included and which should be omitted from the
9 image or the model?

10 A. Yes, that's correct.

11 Q. Now, in explaining that such direction is common
12 in your work, you told the Court that this is
13 common to rely on one side or the other in a
14 lawsuit, for that sort of direction?

15 A. The bulk of the work that I do, as -- as
16 Mr. Kratz pointed out, is -- is in crash
17 reconstruction.

18 Q. Yes.

19 A. And a lot of the diagrams that I do for crash
20 reconstruction, we don't show everything in those
21 aspects either. We'll actually usually collect
22 more information than we need, or on the flip
23 side, we can't show every single crack that's in
24 the pavement.

25 So that's what I meant by it's

1 relatively common to only show certain aspects or
2 for certain things to be omitted. You know, I'm
3 never going to intentionally omit something of an
4 evidentiary value for either side, but I think it
5 would be impossible to show everything.

6 Q. And that's not where I'm going. What I'm saying
7 is, you are getting your direction from one side?

8 A. Yes.

9 Q. Not from two sides?

10 A. That's correct.

11 Q. And because you are employed by the Wisconsin
12 State Patrol, when would the defense ever be, in
13 a criminal case, the defense ever be suggesting
14 what should be included and what not included in
15 a model?

16 A. Typically, that has not happened. I did offer to
17 Mr. Kratz, you know, that we could add additional
18 items if there was something that you
19 particularly wanted displayed or shown in there.
20 I haven't heard anything back on that yet. But,
21 no, typically we don't call the defense attorney
22 up and say what do you want in the diagram. Or,
23 you know, I guess I haven't had a chance where
24 they have approached me and said can you add
25 this. I have been asked in court to draw in

1 where something was on a diagram but, no, not the
2 scenario that you are portraying. That's not
3 happened to me.

4 Q. It's the first I'm hearing of it too. And, you
5 know, they are entitled to create their own
6 demonstrative exhibits. They just are, just the
7 same way I am.

8 The point is, you are someone at the
9 technical reconstruction unit of the Wisconsin
10 State Patrol Academy more typically would assist
11 the prosecution in preparing such exhibits?

12 A. That's correct and that's how it was in this
13 case, as you point out, yes.

14 Q. Here we can use this just as well as anything,
15 the -- the items that are shown, all of them were
16 mapped with the forensic station or the Total
17 Station?

18 A. No, a lot of these items were manually -- the
19 measurements were manually recorded. It would be
20 possible, but very difficult, to set the
21 instrument up in a small bedroom, as you will,
22 that we had here in the residence. It was
23 quicker just to manually, if you will, measure
24 those positions.

25 Q. Fair enough. Fair enough. And those

1 measurements may have been taken at different
2 times, by different people?

3 A. No, I took -- the measurements that you are
4 seeing here were taken by me on the last date.
5 So, obviously, they are going to be at different
6 times, but I was in there at one, you know, all
7 at one time frame, if you will.

8 Q. Okay. And, again, don't -- I'm just using this
9 demonstratively so to speak, okay, so don't get
10 carried away with just the image of, but in
11 general, the images we have seen, the mapping,
12 whether done by the Total Station, or done
13 manually, was done at different times?

14 A. Oh, I'm sorry, I misunderstood your question.
15 Yes, they were all done, you know, in the course
16 of one day. Then we would call it a day, go
17 home, come back the following day, reset up, or
18 do a different area, or finish that location.

19 Q. And during the time you were on scene, doing the
20 mapping, there were 50 or 100 other law
21 enforcement officers also on the scene, executing
22 at least a couple of search warrants; you were
23 aware of that?

24 A. Yes. They were never in the immediate area we
25 were working in. It's a very large area,

1 obviously.

2 Q. Right.

3 A. A lot of the searchers were down in the -- where
4 the vehicles were in the salvage yard. But,
5 yeah, I do know, for example, that there were
6 probably 60 of my co-workers that were out there
7 doing searches.

8 Q. Okay. And you have no way of knowing what items
9 law enforcement officers may have moved before
10 you got around to mapping the dimensions and
11 location of those items?

12 A. If that happened, I wouldn't know.

13 Q. I would like to go briefly to the skeleton model.
14 Just an unlabeled image. There we go. Great.
15 That works fine. This thing actually came off a
16 CD that the FBI sent to you?

17 A. Yeah, I contacted their -- was it their
18 Structural Imaging Unit -- I would have to look
19 at the particulars, and requested a -- Structural
20 Design Unit of the FBI and requested a skeletal
21 model in a standard CAD, be in a drafting format.
22 They sent me what's called a DXF file, which
23 means drawing exchange file, that my software
24 could also read. So, yes, I did obtain this from
25 the FBI.

1 Q. Okay. And was the -- was the depiction on the
2 FBI's CD or DVD, whatever it was, a photograph,
3 or was that image itself a computer generated
4 image of some kind?

5 A. What they gave me was, you know, for lack of a
6 better term, we discussed it before, was a three
7 dimensional model. It was actually the CAD file,
8 if you will, would have been similar to my final
9 overall scene of the Avery property. This was
10 just a file, if you will, of a female skeleton,
11 which then I can move around in 3D space.

12 Q. Sure.

13 A. Or put the texture, or label accordingly. So it
14 wasn't a picture they gave me, was the actual
15 model itself.

16 Q. Again computer generated?

17 A. Yeah, a computer electronic file. Yes.

18 Q. Yes. And as to whether it was a female skeleton,
19 you simply you relied on the label assigned to
20 the file?

21 A. I trusted the FBI. And I trusted Dr. Eisenberg
22 to confirm, yes, this is female.

23 Q. Okay. And if you know, do we have a height on
24 this skeletal model?

25 A. On the model itself?

1 Q. Yes.

2 A. I think -- I think I have it right around 5 feet.

3 I would have to go back and look, sir.

4 Q. But in any event, that's a number you could give
5 us, or dimension you could give us as height?

6 A. Of the skeleton?

7 Q. Yes.

8 A. Yes, I could go back and see what that was.

9 Although, everything -- if I were to adjust that
10 model's height, everything would be
11 proportionate, meaning if I made it 5 feet tall
12 or if I made it 20 feet tall, the relative size
13 and proportion would remain the same.

14 Q. Okay. So this can't be taken to depict any
15 particular person, in other words?

16 A. No, that's not my intention here at all. It was
17 to help Dr. Eisenberg to point out specific bone
18 locations.

19 Q. Right. The knee bone connects to the shin bone,
20 and one can see where the knee bone would be in
21 relationship to the shin bone?

22 A. Yes.

23 Q. Okay. That's fine. So let me go to some
24 specific questions. And here it will be useful,
25 not so much to use the screen, but just the

1 binder we have here, we all have the same one.

2 A. Okay.

3 Q. Now, we have been describing three dimensional
4 models. But of course, none of them are, right?
5 We're looking at the flat pieces of two
6 dimensional paper, or flat images on a screen?

7 A. Yes, it's a flat screen.

8 Q. The illusion of the third dimension is
9 perspective provided by mathematical algorithm?

10 A. Yes.

11 Q. The design of the software itself, or the design
12 of the algorithms that create the illusion of
13 three dimensional space are not something that
14 are your work product?

15 A. That's correct.

16 Q. Not something in which you are expert?

17 A. No, I'm not a programmer.

18 Q. So this is -- this is a commercially available,
19 or proprietary software package that somebody in
20 the Wisconsin State Patrol Academy purchased and
21 you use.

22 A. The first part of your question is correct. The
23 Wisconsin State Patrol Academy did not purchase
24 this. This is something that, as a trainer of
25 the software, that I have from them. So this is

1 not something the State Patrol has purchased yet.

2 Q. Sure. Okay. And that will teach me to ask
3 compound questions. If we go to Figure 17?

4 A. The exterior of the trailer, sir, or the
5 residence, rather.

6 Q. Yes, looks like that to me. You have no idea
7 what, if anything, duck tape may have to do --
8 duck tape under the porch may have to do with
9 anything in this case, do you?

10 A. No.

11 ATTORNEY STRANG: Do we have a labeled
12 version of that?

13 ATTORNEY KRATZ: Sure.

14 Q. Okay. But somebody asked you to include some
15 duct tape --

16 A. Yes, that's correct.

17 Q. -- in this figure. And didn't give you exactly
18 where the duct tape was supposed to be?

19 A. No, that's based off of a photograph.

20 Q. So, quite honestly, you simply tell us you here
21 that are doing an approximation?

22 A. Yes.

23 Q. Again, whether duct tape has anything to do with
24 anything, you have no idea?

25 A. That's correct.

1 Q. Okay. Likewise, in Figure 18, you refer to a
2 number of items, a vehicle bench seat, a mallet,
3 tire cords, a rake, and here, again, you tell us
4 placement is to be deemed as being approximate,
5 correct?

6 A. Yes, sir.

7 Q. So this is something that you just decided where
8 to put these items in the model?

9 A. I tried to do the best I could to explain in the
10 narrative here as to how the items were placed.
11 The one you pointed out here, yeah, they had been
12 moved before I forensically mapped that location.
13 I relied on photographs taken by the State Patrol
14 Trooper Jim Reese, to put those items in place.
15 So I did do what I could to note which items were
16 mapped and which were based on photographic
17 evidence.

18 Q. But we could look at the photographs, if he
19 wanted to know where the items were.

20 A. Which I did in this case. But now our view here,
21 we've moved up to -- I don't know what our
22 elevation is here, looks like somewhere around 50
23 feet, looking down, so we can see the entire
24 area.

25 Q. So if we wanted to pretend we were 55 feet tall,

1 now we can do that.

2 A. I don't think the intention would be for play
3 acting, just to get a good overview.

4 Q. Right. But that's the point of view so to speak.

5 A. Yes.

6 Q. Okay.

7 THE COURT: Excuse me, Mr. Strang. Let me
8 ask just one question. The approximate location,
9 based off of the photos, is that a number of photos,
10 or one photo that showed all these items?

11 THE WITNESS: There were several photos I
12 was able to utilize. I can't tell you, your Honor,
13 how many I had at that point. Trooper Reese did
14 take several shots behind there with the camera.
15 And for some of these, if it was possible, I also
16 utilized aerial photographs so that we can see the
17 vehicle bench seat in one of those. But if I could
18 use -- the more I could use, obviously, the better.

19 THE COURT: Go ahead, Mr. Strang.

20 Q. There were a number of area photographs taken,
21 some of which you used to assist you?

22 A. Yes.

23 Q. Were any of those done with a zoom lens?

24 A. I would have to look at my notes to see what
25 Trooper McConnell did or what type of camera he

1 had, or focal lens. I guess I don't know because
2 I wasn't involved in those.

3 Q. And it's not worth the time. Did you look at
4 them digitally?

5 A. Yes.

6 Q. Okay. So we know they were digital photographs
7 at least?

8 A. Yes.

9 Q. And, therefore, we could use Photoshop, or
10 something on the computer, to enlarge or minimize
11 the view of part of those photographs.

12 A. That is correct. There were also some
13 non-digital pictures that I believe were arranged
14 to be taken by DCI, which showed items also.
15 Those were not digital, but you could look at
16 them and see.

17 Q. Okay. If you go to Figure 32 --

18 ATTORNEY KRATZ: Labeled?

19 ATTORNEY STRANG: Either way.

20 Q. -- this is the bathroom?

21 A. Yes.

22 Q. Okay. There's a bathroom door, but it looks like
23 the doorway has disappeared?

24 A. The material on the -- I'm going to use a laser
25 pointer here, sir.

1 Q. Sure.

2 A. The material on this wall is the same as the
3 material on this wall. And you see this, this is
4 a shadow from this wall coming down. It's going
5 to be in the rendering or perhaps how we're
6 displayed here was printed.

7 There is an opening here, but because
8 the wall behind it is identical in texture, it
9 gives us the illusion, if you will, in that
10 picture, that it's a solid wall. But we do see a
11 shadow from this back wall in here, which shows
12 us that there really is an opening there. If I
13 would have made this wall darker or this wall
14 darker you would see a difference.

15 Q. I would see a doorway?

16 A. Yes. Do you see what I mean about the shadow
17 that's back here? The shadow is actually on that
18 hallway wall, so that's why we're seeing it
19 inside, by looking through the door.

20 Q. Okay. So, it's not a situation where there was
21 an error in measurement or something that caused
22 the computer to think there was no doorway into
23 the bathroom?

24 A. No, it's the fact that I have the same texture on
25 that wall as I do on the other wall and that in

1 this particular render gives us that -- I don't
2 want to say optical illusion, for lack of a
3 better term, it appears to us that that door is
4 missing.

5 Q. Here, again, this isn't another example where
6 you, quite forthrightly, in the report, told us
7 that you are approximating the location of the
8 guns?

9 A. That's correct. And you're right, that is
10 mentioned in the report.

11 Q. If we go to Figure 36-A now, you may not know
12 enough about this case to understand this, but
13 this sort of model is something that the lawyers
14 have been probably spending a fair amount of time
15 looking at. And I have seen photographs
16 depicting the same basic area.

17 So just for the Court's benefit, there
18 are a very noticeable pair of men's slippers just
19 to the left of the key in the photographs, of the
20 same area that you have modeled here. Have you
21 seen those photographs too?

22 A. Yes, I was given a singular photograph in this
23 case to show me the location of that key. And I
24 was asked to put that key in. I am aware of the
25 slippers they are talking about.

1 Q. And the outlet on the wall?

2 A. That's correct.

3 Q. Okay. So is that the kind of thing that you are
4 simply told, don't bother about the outlet on the
5 wall, don't bother about the slippers, just show
6 us the approximate location of the key?

7 A. I was asked about the outlet on the wall by the
8 prosecution, and that one I would have had
9 difficulty putting in without having
10 measurements. I did not measure the outlets or
11 light switches when I was there. I felt
12 comfortable putting the key on the carpeting on
13 the floor, but I did not feel comfortable in
14 putting the outlet in.

15 Q. An earlier draft of this -- and I understand it
16 was just a draft -- had no key fob on the key
17 correct?

18 A. That's correct.

19 Q. No little blue or purple strap. Were you asked
20 to add that back in?

21 A. That didn't exist at that point, in the previous
22 draft. I believe you are referring to the one I
23 had delivered to you back in December, what was
24 in there was a generic key, if you will. It was
25 not the actual key or a model of the key that was

1 found.

2 After that version came out, I was asked
3 to put in, if you will, the actual key. So I was
4 given access to it. I took measurements of that
5 key and, hence, you see it in this particular
6 version.

7 Q. Okay. And as we go through, we don't need to
8 stop particularly on each one of these, but
9 Figures 37 and 38, you have got cross-hatched
10 areas, shows approximate locations of things; is
11 that again based on photographs, or just
12 somebody's description to you of where bleach or
13 duct tape was found?

14 A. Yes, and yes. There were photographs of both of
15 these items. In fact, looking at my photographs
16 that I took when I was in the residence, the
17 bleach you are referring to in Figure 37 was in
18 place. But, yes, those are based on requests
19 they be in and/or based on statements and
20 photographs.

21 Q. Go to Figure 44, if you would.

22 A. Yes.

23 Q. Now, here some color has been added for
24 highlighting, specifically, blue color, correct?

25 A. You are referring to the truss. I apologize, my

1 version is black and white.

2 Q. Do you have the -- Do you have your little --
3 your writing at the top, your captioning?

4 A. Yes, you are referring to the mark, I can see it
5 in the one Mr. Kratz put up. Yeah, I thought
6 that was a blood print?

7 Q. Now, the blue coloring is something added by you?

8 A. Yes.

9 Q. Just to highlight an area?

10 A. Yes. I believe as I wrote here, it was shaded
11 blue to make the area differ from the remainder
12 of the other sections of the trusses. I did that
13 to show a location.

14 Q. The location is where at least someone told you
15 there were some marks on a ceiling truss?

16 A. I actually, when we surveyed -- This part, we did
17 use the Total Station for and myself and other
18 officers involved saw those marks ourselves. So
19 that actual location is correct on these. As to
20 do they have any value, I don't know. But we
21 mapped out that location and we put -- I put them
22 in there.

23 Q. Whether the marks themselves that you have
24 highlighted have anything to do with anything,
25 you have no idea?

1 A. That's correct, sir.

2 Q. The next slide, Figure 45 -- Are we using, in
3 Figure 45, the scene as it looked in March, 2006
4 or the scene as it looked in November, 2005, as a
5 starting point for the model?

6 A. The original model -- and if I'm not following
7 you, please, please stop me.

8 Q. Oh, sure.

9 A. The original model that's here is based on
10 forensic mapping that I did back in November of
11 2005. Now, what my intention to depict here is
12 items that were denoted by investigators in March
13 of 2006.

14 Apparently they had gone back in and
15 found some items of evidentiary value. And
16 that's what this and the following photograph are
17 designed to -- excuse me -- I mean photograph
18 image, are designed to depict, is items that they
19 noted during that examination.

20 Q. But the items themselves were among those that
21 were mapped in November, 2005, or were they
22 simply added in, based on new information in
23 March, 2006?

24 A. The paint thinner, I think, as I talked about
25 before, I didn't map the items that were on top

1 of that particular bench. I did observe, after
2 reading the reports and looking back at my
3 photographs that I took when I was in the garage,
4 the paint thinner was in place. I can't tell you
5 exactly, say it's 3 inches over, 4 inches back.
6 I can't do that.

7 Q. Sure.

8 A. That's why it says approximate.

9 Q. Was the blackjack creeper?

10 A. The blackjack creeper was in place when I was
11 there. And that one I could put in based on the
12 items around it. It's right up against that air
13 compressor and by the welder, so I had no
14 difficulty in putting that in.

15 Q. Although, you had not mapped it?

16 A. No, the location of the blackjack creeper was not
17 noted; however, the compressor behind it, there
18 is a lawn mower in front of it, a waste paper
19 basket, and a welder right there. So that was --
20 I was very confident in putting that in place.

21 Q. All right. Very briefly, we don't even -- I
22 don't think we need the images because they don't
23 have figure numbers, but there are some close up
24 views of the skeletal model showing defects, what
25 you have described as defects, or probably Dr.

1 Eisenberg described as defects, in the mental
2 foramen and in the parietal bone, true?

3 A. Yes, sir.

4 Q. And on those you simply picked, or Dr. Eisenberg
5 has picked at random, which side of the head to
6 use as in modeling those defects?

7 A. I believe that -- I guess I don't feel
8 comfortable discussing that. I was directed that
9 it's the left side of the head at this particular
10 location of the parietal bone. Again, as
11 Mr. Kratz pointed out, that's well outside of my
12 area of expertise. I generated these models
13 under her supervision and for Dr. Eisenberg.

14 Q. Okay. I'm interested in the text then, I guess,
15 just to nail that down on page 56.

16 A. I'm there, sir.

17 Q. You write, in part, however, it is unknown from
18 which side of the mandible the fragment
19 originated. For demonstration purposes only the
20 model shown below depicts the left side of the
21 head.

22 ATTORNEY KRATZ: Judge, I'm sorry, the
23 mandible is the jaw.

24 ATTORNEY STRANG: Right. Yes, it is.

25 ATTORNEY KRATZ: Dr. Eisenberg will testify

1 exactly where the defect is on the cranial defect.
2 But other than that, your Honor, the text is what it
3 is.

4 THE COURT: I must have a different Page
5 56, because my Page 56 doesn't show a jaw.

6 A. I'm sorry, Mr. Strang, could you repeat the
7 question.

8 Q. Well, the question was, am I right that simply
9 for purposes of illustration here, what you are
10 saying at least is, you are using the left side
11 of the mandible.

12 A. I believe, and thank you for refreshing my memory
13 on this one, what I did in that case, that I
14 showed one of the mental foramen which, again,
15 well outside my area of expertise, my
16 understanding is it's a opening for a blood
17 vessel in the jaw. There's blood on each side of
18 the jaw. I depicted one of them. I believe the
19 text says after that, that the mental foramen on
20 the right side of the jaw is similarly located.

21 Q. Very well. Technically, if you were asked, would
22 it be possible to start with, you know, Figure
23 31, for example, and then add in one arrow or
24 label at a time, like a PowerPoint presentation,
25 to use something much simpler, with which I'm

1 familiar with?

2 A. You are asking that could be done?

3 Q. Yes, could that be done technically?

4 A. Oh, yes.

5 Q. Without an unreasonable amount of work?

6 A. No, it would not be unreasonable at all.

7 Q. Okay. What you have given us here are all or
8 nothing. All the labels, or none of the labels,
9 on the figures that -- for which we can choose
10 labeled or unlabeled?

11 A. Yes. What I did was I gave -- obviously, I
12 couldn't do that in the report. Essentially, as
13 you said, it's all or nothing here.

14 Q. Right.

15 A. What I gave Mr. Kratz was 4 X 6 prints and
16 electronic versions of either, yes, all or
17 nothing. But, no, it would not be any difficult
18 amount of work to separate those out, or to put
19 them into a PowerPoint presentation.

20 Q. There's nothing magic about PowerPoint, but my
21 point -- my point simply was, if some of the
22 labels were acceptable to the Court or the
23 parties, and not others, is that something you
24 could do without a great deal of trouble?

25 A. If that were the decision, and either you or

1 Mr. Kratz were to direct me as to what has to be
2 done, yes, we could make that happen.

3 Q. Okay. And similarly, no big deal to take out
4 words in some of the labels, if that was the
5 decision? So, in other words, it could be
6 garage, rather than Steven Avery's garage, just
7 for example?

8 A. That's correct. And just to go a step further if
9 I may, sir.

10 Q. Sure.

11 A. In the animation, that would be relatively easy
12 also.

13 Q. Okay.

14 A. The difficulty would be if we had to re-render
15 some of those approaches, that would take a
16 lengthy amount of time. But the textural parts
17 in there can be altered rather simply.

18 Q. All right. And I think my last question is, the
19 new DVD that I was just given this afternoon, do
20 you think that, without any purchase of
21 proprietary software, I could pop that in a
22 laptop and run the virtual tour, or stop it, or
23 sort of use the exhibit as well?

24 A. Yes, there's nothing proprietary about it. It's
25 written to an M-PEG 2 Format, meaning any DVD

1 player can read that.

2 Q. Okay. And that can be stopped or backed up, that
3 kind of thing, by the person running the laptop?

4 A. Yes, just as if you were going to put a regular
5 movie in there, you could pause it, or reverse,
6 or fast forward.

7 ATTORNEY STRANG: Thanks. That's all I
8 have.

9 ATTORNEY KRATZ: Nothing for this hearing,
10 Judge.

11 THE COURT: All right. Your witness is
12 excused. We'll take our break at this time, give
13 the reporter a rest. Come back in 15 minutes.

14 ATTORNEY KRATZ: Judge, on this issue we
15 don't anticipate any more testimony; do you want a
16 brief argument?

17 THE COURT: I will hear the argument after
18 we get back.

19 ATTORNEY KRATZ: What time do you want us
20 back?

21 THE COURT: Fifteen minutes, quarter to
22 four.

23 (Recess taken.)

24 THE COURT: At this time we're back on the
25 record, I will hear argument on the defendant's

1 motion regarding the animations. I think,
2 Mr. Strang, we'll let you go first, I'm sure you
3 know exactly what the objections are.

4 ATTORNEY STRANG: Sure. I think we can
5 narrow the scope considerably. In the end, I don't
6 think there will be any real problem at all with the
7 skeletal model. And I can work through with
8 Mr. Kratz or his colleagues any minor issues that
9 remain.

10 But I think -- I think where we're
11 heading on that is that they have already removed
12 color highlights on bones, which was good. And
13 we're probably heading toward unlabeled images,
14 first, and then adding labels as a witness
15 describes, you know, whatever it is that the
16 arrow would come in for. And I don't think that
17 editorial content of the labels on the skeletal
18 model would be any issue at all. They are just
19 really using formal names for bones. So I think
20 that will wash out.

21 I will talk a little bit about
22 proportion and, you know, get a better
23 understanding of that now that I have a
24 foundation from Trooper Austin on that. But I
25 don't expect that the Court will need to address

1 that and we probably would withdraw the motion so
2 far as the skeletal models go -- or model.

3 The Avery property, you know, this
4 northwest corner of the 40 acre parcel will
5 present some difficulty, perhaps, and just to
6 describe what it is for the Court. I don't have
7 a good vocabulary for this because, at least to
8 me, not being involved in, you know, air crash
9 cases or personal injury cases, where a great
10 deal of money is at stake, computer generated
11 animations are new to me, even though they are
12 not new to the profession, particularly.

13 But the concern, if I can articulate it,
14 is that the models come so close to a realistic
15 or photographic quality that it's easy to forget
16 that they just are not. The photographic eye of
17 a video camera picks up everything within it's
18 field of focus and there's no opportunity for
19 somebody to say, well, I want this flower pot in,
20 but the watering can over there, I want that
21 taken out.

22 Now, obviously, with digital photographs
23 we actually can do that kind of thing now. But
24 in the traditional sense, a video recording or a
25 photograph gives a true depiction. These do not.

1 But what's included is so deceptively good -- and
2 I don't mean in a pejorative sense perceptively,
3 but it's so realistic appearing that it's easy, I
4 think, for a juror to forget that he or she is
5 looking at a collection of pixels that reflects
6 editorial judgment on everything other than the
7 geometry.

8 And I will simply take the geometry and
9 the spatial relationships off the table here.
10 I'm not concerned about the accuracy of the
11 algorithm. I'm not concerned about the accuracy
12 of measurements, whether they are manual or done
13 with the Total Station device. That can be
14 developed easily enough and understood by way of
15 foundational questions on direct, or a few simple
16 questions on cross-examination. And jurors then
17 can understand that, well, you know, there may be
18 some slight human error in spatial relationships.
19 Not worried about that, or the geometry, if the
20 Court will.

21 Where I get worried is things like holes
22 in burn barrels. That kind of thing, it is very
23 easy to assume that there really must be a hole
24 in the burn barrel if it looks like there's a
25 hole in the burn barrel.

1 Or easy to assume that, you know, the
2 dog was standing out at the end of his leash, if
3 he's standing out at the end of his leash in the
4 depiction here. It's all that much easier to
5 lose track of the fact that we're not depicting
6 anything as it would have been, necessarily, on
7 October 31, 2005.

8 We just -- There's no way of knowing.
9 These are later creations based on later
10 measurements. We'll also have to work some on
11 labeling, but my expectation would be that
12 collaboratively the State and the defense could
13 come to some agreement on labeling as to the
14 trailer and the Janda trailer and the surrounding
15 yard, for want of a better word.

16 We may even get -- We may, we're not yet
17 today, but we may get to some agreement on
18 something like the image that has a rake and tire
19 cords and a mallet and a number of items shown in
20 approximate locations. It may be that if the
21 State introduces photographs taken during the
22 same week, that photographically show the scene,
23 it may be that I'm a lot less concerned about a
24 demonstrative representation once the jury
25 understands, here are the photographs and here's

1 the diagram, which, you know, which is really
2 intended just for argument or illustration and
3 not for pictographic accuracy. We're not there
4 yet, we may be able to get there on that topic.

5 The greatest concern and the one on
6 which we probably do need the Court's help is the
7 garage. The garage, as depicted in the models
8 here, really is materially different than the
9 garage was in real life. And I say to myself,
10 here, this is where the differences are so
11 material that, you know, an actual jury view of
12 the garage would be better than a virtual tour of
13 the garage.

14 And the problem may be exasperated by
15 the fact that for whatever reason, at least the
16 photographs that Mr. Buting and I have seen of
17 the garage, aren't particularly good and they are
18 not particularly numerous. So I don't know,
19 here, that -- there may be photographs I have not
20 seen, not that they haven't been given to me, but
21 just that there's such a mass of photographs, I'm
22 not sure I have looked at every photograph we
23 have.

24 But it may be that there are photographs
25 I have not seen or things that could be blown up

1 that would allow the jury to see the garage as it
2 actually was. Because the differences are
3 material and they may be material to arguments
4 that the State wants to make. They could
5 potentially become misleading if one is relying
6 on the -- on the computer model only as to the
7 garage.

8 Could something fit in the garage; could
9 something have been laid down in the garage; the
10 truss marks; the marks on the truss. I have no
11 reason to think that the State will be able to
12 show the relevance here at all of marks on a
13 truss, so to have an image that takes the roof
14 off, gives the juror a view that, as the witness
15 said, probably is not humanly possible to have.

16 And then on top of it, highlights
17 something that may have nothing at all to do with
18 anything, in fact, as far as I know does have
19 nothing at all to do with anything relevant or
20 probative here. It becomes unfair. So that --
21 that -- the garage really is where most of the
22 points of contention lie. And whether we can get
23 there with photographs that would allow the jury
24 to take them proper in a fair context, a
25 demonstrative model of the garage, I don't know.

1 And, you know, as I say, the trailer,
2 would I be much happier with just a video camera
3 walk through, which may or may not have been done
4 at the scene, I don't know. I think it would be
5 more accurate, but there probably are enough
6 photographs in the end, or there may be enough
7 photographs of the trailer that we can live with
8 modeling as long as the Court gives a good
9 instruction on what a demonstrative exhibit may
10 or may not be used for properly.

11 THE COURT: Mr. Kratz.

12 ATTORNEY KRATZ: Thank you, Judge. I
13 appreciate Mr. Strang's concessions regarding
14 admissibility. And that's what this hearing is.
15 It's not to decide the weight that a jury may give
16 to these items, but simply whether or not they are
17 admissible.

18 We're left with, then, the standards of
19 admissibility for demonstrative evidence, which
20 is one of the simplest formulas for a Court to
21 apply in admissibility hearings. And it's simply
22 whether it will assist the jury and whether the
23 probative value may be outweighed by
24 countervailing factors, the 904.03 analysis.

25 Demonstrative evidence in and of itself

1 is certainly admissible. As Mr. Austin
2 testified, if a citizen can come down from a
3 witness stand and draw an intersection on a chalk
4 board without one measurement -- without it being
5 at all to scale and that's admissible, there
6 shouldn't be any question regarding admissibility
7 of these kinds of images; that is, with in excess
8 of 4100 measurements and being perfectly, not
9 only to scale, but of geometric proportions.

10 Here's a case, Judge, **State vs.**
11 **Peterson**, the 1998 decision in Wisconsin, just
12 cite it just for the record, at 222 Wis. 2d, 449
13 which describes the thing that I'm talking about;
14 that is, the determination of admissibility
15 requires this Court consider the degree of
16 accuracy in the recreation; the complexity and
17 duration of the demonstration; whether there is
18 other available means of proving the same facts;
19 and those risk factors that I talked about, that
20 is the risk that may impact on the fairness of
21 the trial.

22 This Court has heard from Mr. Austin and
23 I think there's no question as to the accuracy of
24 these images. And I also think there is no
25 question that it will assist the trier of fact.

1 The only real objection that I can envision would
2 be in the area or the point where we talk about
3 it being cumulative; that is, the State even
4 recognizes that we do reach a tipping point that
5 there may be a time when too many demonstrative
6 exhibits are being offered.

7 But to reach that level, Judge, we're
8 talking about so far down the path of relevance
9 and so many exhibits, that we really aren't
10 talking about a relevancy issue anymore; we're
11 talking about the same exhibit being shown over
12 and over. The State certainly doesn't intend to
13 do that.

14 That's why these are State exhibits.
15 That's why these are animations rather than
16 simulations. And let me just parenthetically,
17 Judge, describe for the Court and argue that we
18 aren't talking simulations we're talking
19 animations, which are simply representations of
20 objects that are shown within them and that
21 includes the animation.

22 Simulations, Judge, are when a computer
23 is asked to draw conclusions from data. Those
24 are the reconstructions and the like and that
25 isn't what we're talking about here. This Court

1 need not approach any analysis about the science
2 that's involved since that appears to be
3 unconverted.

4 And so for this hearing, Judge, I am
5 asking the Court rule on admissibility of the
6 scene images, both interior and exterior, as
7 being of the accuracy contemplated by a trial
8 court. They will assist the trier of fact and
9 there is no risk of a fairness problem.

10 Mr. Strang is free to describe or supplement any
11 of these animations or computer -- excuse me,
12 we're talking about computer images, with
13 photographs.

14 We are not prohibiting the defense, nor
15 have we ever, of the creation of their own
16 diagrams or their own renderings. These are
17 State exhibits and the jury will certainly be
18 told that. So we're asking the Court, again,
19 rule on the admissibility of the -- both the
20 interior and exterior property images.

21 As far as the skeletal images, I
22 appreciate, again, Mr. Strang's concession and
23 withdrawal of his objection. Dr. Eisenberg, I'm
24 sure, will talk about the bones and those all
25 appear accurate representations.

1 And then, finally, Judge, as to the
2 animations, that is the moving images, the 5200
3 images that are placed side by side, in lieu of,
4 or instead of, a jury view; I don't know what
5 better way we could have created something to
6 show the jury spatial relationships,
7 relationships of evidence to known and fixed
8 objects.

9 There's nothing that I believe that is
10 unfair or prejudicial in what we have seen. And
11 so, not just for opening statements, your Honor,
12 but when other witnesses may be asked to use
13 these images, I will ask leave of the Court to be
14 allowed to do that.

15 Let me also assure the Court and
16 Mr. Strang that I expect that we'll still have to
17 deal with relevance or materiality issues,
18 especially with things like the garage, or
19 trusses, or the like. But as far as whether or
20 not these images are admissible, the unbalance
21 and Exhibit 4 are all of the images that have
22 been provided to the Court. With the testimony,
23 which I would ask the Court to adopt, of
24 Mr. Austin, we'll ask the Court accept those as
25 demonstrative evidence in this case. That's all

1 I have.

2 THE COURT: Mr. Strang.

3 ATTORNEY STRANG: I'm in full agreement
4 with Mr. Kratz that animation presents no separate
5 problem; that is, if the image is fair and not
6 materially misleading and, therefore, potentially
7 helpful to the jury and the ability to move or
8 change the point of view in the image is not
9 objectionable.

10 And I disagree that there's no
11 simulation involved here, but there certainly is
12 no dynamic simulation in the sense we don't have
13 a 747 taking off and then a depiction of a
14 catastrophic failure and resulting explosion, for
15 example.

16 The simulation we do have is the removal
17 of the rooftops, which is a simulation. Now,
18 that isn't so much my problem as it is things
19 like highlighting parts of a truss or, you know,
20 labeling things in an editorial and potentially
21 misleading kind of way. So I don't know,
22 although there is some simulation here, I don't
23 know that it's a problem in and of itself.

24 The real problem where this stops
25 becoming helpful to a jury is where it tends to

1 mislead a jury into believing that the scene
2 looked very different than it actually looked.
3 And that's primarily an issue of the garage,
4 which if it can't be offset by good photographs
5 of the garage as it actually was during the
6 evening of November 5, I think there we do have
7 something that's not helpful to the jury because
8 it confuses or misleads the jury.

9 And the Court either would have to
10 exclude that or be very careful about both the
11 cautionary instruction with it and any labeling.
12 I would ask the Court to exclude altogether any
13 highlighting as really not helpful and, indeed,
14 affirmatively unhelpful.

15 THE COURT: All right. The parties have
16 both cited to the Court to the case of ***State vs.***
17 ***Peterson***, 1998 Court of Appeals case. And although
18 that case deals with a videotape that was taken
19 later, the Court agrees that much of the rationale
20 and the explanation of the law in that case appears
21 to apply here.

22 The Court in that case indicated that
23 before a videotape demonstration could be
24 admitted, it would have to be demonstrated that
25 it was conducted under conditions reasonably

1 similar to the conditions existing at the actual
2 event. The same standard I think will apply
3 here; that is, the animations, are they
4 reasonably similar to what the appearance was at
5 the scene at the time.

6 The case goes on to provide, even if
7 this foundation is established, the trial court
8 may, in its discretion, include the videotape
9 demonstration upon a finding that the probative
10 value of the tape is outweighed by its
11 prejudicial affect. As I understand the defense,
12 that may be part of its argument with respect to
13 the garage.

14 At this point in time, the parties have
15 asked for guidance and I'm going to attempt to
16 give some guidance. It's difficult. I'm not in
17 a position to address the motion to the extent it
18 asks me to specifically exclude something,
19 because I don't have enough foundation.

20 For example, the garage. At this point,
21 I don't know enough about the evidence to know
22 what the significance of clutter in the garage is
23 going to be. I would say at this point, based on
24 the defense's concern, I would want to see a
25 foundation from the State laid before that

1 particular image would be allowed in. That's an
2 image that shouldn't be used as part of an
3 opening statement presentation.

4 With respect to some of the other
5 concerns expressed by the parties, for example,
6 the concern that the jury might feel that the
7 animation shows holes in the burn barrels;
8 there's further language in **Peterson** where the
9 Court says, if enough of the obviously important
10 factors in the case are duplicated in the
11 experiment and if the failure to control other
12 possibly relevant variables as explained and if
13 the jury is aided, the Court should let the
14 evidence in.

15 As I viewed that particular exhibit, I
16 wasn't struck by the fact that it looks like
17 there's holes in the burn barrel, but I agree
18 from looking at it that perhaps that's a possible
19 conclusion the juror could come to. In the
20 Court's mind, that type of thing can be fairly
21 easily explained away by simply saying that that
22 type of detail is not attempted to be shown by
23 this exhibit. In many cases, I suspect there's
24 going to be photographs that do provide more
25 detail and can certainly help put any animation

1 into perspective for the jury.

2 With respect to the concerns about any
3 labeling that is disputed, it seems to me that's
4 easily enough addressed by requiring a witness to
5 lay a foundation before any labeling comes in,
6 unless it is agreed by the parties ahead of time.
7 It certainly wouldn't be unusual for a witness to
8 get up to a blackboard at a trial and draw a
9 diagram and say here is where I found the key or
10 whatever it was. And as long as there is a
11 witness that testifies to the location of
12 something like that, it seems to me that the
13 computer aided images can be a useful means of
14 showing the jury what it is the witness is
15 testifying to.

16 Something like the truss marks in the
17 garage, which I have to confess at this point I
18 have no idea what the significance of them might
19 be, that type of thing would require foundation
20 before an exhibit showing -- pointing an arrow to
21 truss marks, would be admissible.

22 There would have to be a prior showing
23 that there's a foundation that a witness found
24 something there and also the Court would have to
25 hear any objections as to relevance. I don't

1 know what relevance marks on a truss might have.

2 With respect to the exhibits showing
3 approximate locations, the labels would depend
4 on, No. 1, the significance of a precise
5 location. If there's a rake or a mallet in a
6 yard and whether it's one foot one way or the
7 other doesn't make a tremendous difference.
8 Approximate location may well be enough. If its
9 location is vital and its precise location can
10 not be determined, that could be a different
11 story.

12 I'm not sure, based on the evidence
13 presented and what I know at this point that I
14 can provide the parties with much more guidance.
15 It appears that the defense is willing to
16 acknowledge the concept of the relevance of some
17 of these computer exhibits and that there's --
18 objections are only going to be raised to certain
19 exhibits. That's all the guidance I can give the
20 parties at this point.

21 ATTORNEY STRANG: I can help a little bit
22 more too, just to clean things up. Mr. Kratz has
23 some actual photographs that he intends to use as
24 PowerPoint slides in his opening and the photographs
25 are not objectionable in the opening presentation.

1 THE COURT: Okay. Obviously, the opening
2 has to be addressed at this point because the
3 opening comes before there is any evidence. Are
4 there -- Is there a dispute as to any computer
5 generated exhibits that the State wishes to use in
6 its opening that the defense objects to?

7 ATTORNEY STRANG: I have seen them. I'm
8 trying to remember if the garage is one of the
9 slides and I can't. I just don't remember.

10 ATTORNEY KRATZ: There is one image, Judge,
11 of the interior of the garage. Let me -- I had
12 offered it because this is where two bullet
13 fragments were found. I can replace this, probably,
14 with a photo, evidence tent 9 and 23A. And until
15 that foundation is reached, if this will satisfy
16 Mr. Strang and with leave of the Court, I will
17 simply replace this with a photo. There's nothing
18 special about this, Judge, that I have to --

19 THE COURT: Well, again, for further
20 guidance of the parties and I -- I have some
21 reservations, because at this point Mr. Strang is
22 indicating there may not be any photos that show
23 what it really looked like. But if you had a photo
24 that showed how cluttered the garage was and it was
25 followed immediately by an exhibit such as this,

1 just to show the location of the evidence, the jury
2 would then have both an idea -- a clear idea from
3 this exhibit of where the evidence was found and a
4 clear exhibit -- idea from the photo of exactly what
5 the garage looked like and I would probably admit
6 both of them.

7 ATTORNEY KRATZ: I intended to do that.
8 And, in fact, Judge, you have this photo of the
9 garage. And, in fact, in my opening, it is intended
10 to put the computer animation right after this
11 photo. This is a March 1st photo. Does show the
12 clutter. Shows tent 9, does not show tent No. 23,
13 which, for the Court's information, it would be --
14 or the second bullet.

15 THE COURT: Is the defense satisfied that
16 if the other exhibit immediately follows this one
17 that it's not objectionable? I'm assuming this is
18 what the defense means by clutter; it would qualify
19 as clutter in my book.

20 ATTORNEY STRANG: Yeah, and there was -- a
21 whole vehicle is missing here, of course. This is
22 in March. But -- Well, let me say this, I mean, I
23 have no objection to the use of this photograph in
24 the opening statement. This is something that's
25 going to be admissible and, indeed, we have

1 stipulated the foundation or authenticity --
2 authenticity I should say of I think every
3 photograph the State wants to offer. This would be
4 relevant.

5 THE COURT: Well, for purposes of ruling on
6 the opening, I will, since I'm seeing both exhibits
7 now, if this exhibit is part of the opening and if
8 the objection to the garage photo is that it doesn't
9 accurately depict the amount of clutter in the
10 garage, if the computer exhibit immediately follows
11 this one, I think it's allowable. To me, the
12 combination of the two adequately informs the jury
13 of other relevant variables that have to be
14 explained and this photo certainly appears to
15 explain those variables.

16 ATTORNEY KRATZ: Very well, thank you,
17 Judge. Do I understand, then, that the balance of
18 the images that have been provided both to counsel
19 and to the Court will be met without objection?

20 THE COURT: Well, I think Mr. Strang
21 objected to a series of labeling items. Possibly --

22 ATTORNEY KRATZ: No, for opening, Judge.

23 ATTORNEY STRANG: Oh, for opening.

24 ATTORNEY KRATZ: For my opening images,
25 that's what we're talking about now, I thought.

1 ATTORNEY STRANG: What other images?

2 ATTORNEY KRATZ: There's one of the house,
3 this one.

4 ATTORNEY STRANG: I didn't think there was
5 any problem with that image.

6 ATTORNEY KRATZ: Very well, thank you.

7 THE COURT: I would say this, if you are
8 showing that in the opening and if there's a series
9 of pieces of furniture that are missing and I see
10 this one appears to have more furniture than the
11 other one I looked at, but it would be helpful in
12 the opening to at least make a mention to the jury
13 of limits that apply to the animation. Since they
14 will be seeing it at a time when they haven't
15 received any evidence.

16 ATTORNEY KRATZ: Very well, thank you.
17 That actually takes care of two of our motions
18 today.

19 THE COURT: Are there any other items
20 related to the computer generated animations that
21 require addressing at this time?

22 ATTORNEY KRATZ: I will -- And I appreciate
23 the Court's direction and general statement as to
24 admissibility. I will continue to work with
25 Mr. Strang between now and next week, when offered.

1 I suspect that Trooper Austin will give a version of
2 what he did today and perhaps the non-objectionable
3 images can be shown. And, then, before and until
4 those foundations are laid, we can address those
5 more objectionable images as the trial unfolds.
6 That seems to be the most reasonable approach. But,
7 once again, I will discuss that with Mr. Strang.

8 THE COURT: All right. There is one other
9 issue on the agenda today and that was the original
10 instructions or the preliminary instructions to be
11 given to the jury prior to trial. I have provided
12 the parties previously with a draft of instructions
13 the Court was proposing to give.

14 The statute that covers this provides
15 that, if the Court gives additional instructions
16 beyond the ones specified in the statute, they
17 shall be disclosed to the parties before they are
18 given. And either party may object to any
19 specific instruction or proposed instructions of
20 its own to be given prior to trial. It's my
21 understanding at least the defense had
22 instructions it wished to submit; I don't know
23 about the State.

24 But given the hour and the fact I'm not
25 sure what the parties will be doing this weekend,

1 but I know I will be in my office, let me suggest
2 this, if either party wishes to either object to
3 instructions I have included or propose
4 additional instructions that it requests be
5 given, you can put those in a Word document and
6 email them to me. I will get them this weekend
7 and on Sunday I will email back to you the
8 proposed opening instructions that I will give,
9 after consideration of any suggestions from
10 either party. Will that work?

11 ATTORNEY GAHN: I just have one quick one
12 that I think would solve it all if we could do it,
13 if you want to just hear about it. One thing that I
14 propose through it, under the 110, under your first
15 degree intentional homicide, when you have elements
16 of the crime, I think that it states here that
17 before the jury can find the defendant guilty --
18 says the defendant or Brendan Dassey. I think
19 that's troublesome because I think we need to cross
20 out Brendan Dassey. We have to focus on -- because
21 the jury could find Brendan Dassey committed this
22 and by reading this also find Steven Avery guilty.

23 THE COURT: Well, just wait a minute. The
24 State is the party charging party to the crime here.
25 And I believe that, granted, you wouldn't get,

1 reading from just that sentence alone, what you are
2 asking for, but if you move on to the jury's
3 instruction portion, you have to find you have to be
4 satisfied by a reasonable doubt that the defendant
5 committed both elements of the crime or that he
6 intentionally aided and abetted.

7 If you're going by the party to the
8 crime theory, the first element is that someone
9 else in this case, Mr. Dassey, committed the
10 crime. And then you have to go on to find that
11 Mr. Avery aided and abetted. I think that's
12 taken from the form instruction.

13 ATTORNEY GAHN: I read it as if, if they
14 were to find Mr. Dassey committed the offense that
15 they could find the defendant -- I just think it
16 would be clearer if we left the name out of Brendan
17 Dassey and just said the defendant comma and either
18 do one of four things: Either put as a party to a
19 crime, or put as a principle, or as an aider and
20 abettor, or put as a person concerned with the
21 commission of a crime, or fourth, as a person who is
22 a party.

23 I have seen it done all those four
24 different, or in concert with another, and leave
25 the name Brendan Dassey out. I wonder what

1 Mr. Strang thinks of that because I don't think
2 it's beneficial to Mr. Avery.

3 THE COURT: Well, Mr. Strang.

4 ATTORNEY STRANG: I do have my own
5 objections to it from a different angle. And I like
6 -- I like the Court's idea of putting this in
7 writing. And if I -- I think Word comes as part of
8 the Windows Office Suite, so it's probably on this
9 box somewhere. I always use Word Perfect.

10 THE COURT: I think even if you send it in
11 Word Perfect I could open it.

12 ATTORNEY STRANG: In other words, the Court
13 does not want it in PDF because that would require
14 retyping.

15 THE COURT: Right.

16 ATTORNEY STRANG: Okay.

17 THE COURT: Yes.

18 ATTORNEY STRANG: Let me figure -- I will
19 try -- I will try to figure out how to get into Word
20 and address it. But -- But as to a preview, I think
21 the Court has created a duplicity problem by -- by
22 joining together the first degree intentional
23 homicide and the mutilation of a corpse counts.

24 And I, too, have some concerns about the
25 way that Brendan Dassey is added to the

1 substantive elements under 1010. Although, I
2 mean, Brendan Dassey is the person as to whom
3 Steven Avery is supposed to be the party to the
4 crime. I mean, that clearly is the State's
5 theory, so I don't know that Mr. Dassey ought to
6 come out altogether.

7 THE COURT: If both parties prefer to -- I
8 joined them because they are both charged as a party
9 to the crime. If both parties want completely
10 separate instructions for each one, I will honor
11 that request.

12 ATTORNEY STRANG: Let me work on it. We'll
13 obviously copy each other on any emails. What I can
14 do, the Court has a note, the pages aren't numbered,
15 but the Court asked, does the defense wish that I
16 notify the jury of the agreement that Mr. Avery had
17 an unreversed felony conviction, on the felon in
18 possession charge?

19 THE COURT: Yes.

20 ATTORNEY STRANG: And I do, I think we
21 ought to be just upfront with the jury about that.

22 THE COURT: Okay. I don't know that that's
23 -- I think I have been informed that it was the
24 intention of the parties to place that on the
25 record, but I don't know that it's been done yet.

1 ATTORNEY STRANG: My intention is to
2 stipulate away the second element of felon in
3 possession of a gun. We will not challenge the
4 second element. The jury should consider it proven;
5 that is, that the defendant had been convicted of a
6 felony before November 5, 2005.

7 THE COURT: As long as I have your comments
8 by 7:00 Sunday morning, that will be fine.

9 ATTORNEY STRANG: We can exchange email
10 addresses off the record.

11 THE COURT: Okay. Anything else this
12 afternoon?

13 ATTORNEY KRATZ: We'll probably be
14 submitting ours this afternoon yet, Judge, but if I
15 could just have a moment.

16 ATTORNEY FALLON: Your Honor, there is one
17 other matter that I would -- I think the Court is
18 aware, that I will be submitting correspondence to
19 the Court and Mr. Strang will respond at some time.
20 Hopefully we can get that done by Sunday, but that
21 may be a tall order, as well. But there's that one
22 other matter that I will be sending correspondence
23 on.

24 THE COURT: I understand. And I understand
25 that sometime before Monday morning I'm going to

1 receive something on that; that's my understanding.

2 ATTORNEY STRANG: Maybe -- The jury is
3 coming at -- or we're starting at 9:00 with the jury
4 on Monday?

5 THE COURT: Yes.

6 ATTORNEY STRANG: Maybe we ought to be here
7 at 8:00.

8 THE COURT: I think that would be -- well,
9 at least by 8:30.

10 ATTORNEY KRATZ: We'll be here at 8:30;
11 that's fine, Judge.

12 THE COURT: Okay.

13 ATTORNEY KRATZ: That's all. Thank you.

14 THE COURT: All right. We're adjourned for
15 today.

16 (Proceedings concluded.)

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1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 10th day of September, 2007.

Diane Tesheneck, RPR
Official Court Reporter

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, POST-CONVICTION MOTION

5 vs. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** MAY 22, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
12 Special Prosecutor
On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
14 Special Prosecutor
On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
16 Special Prosecutor
On behalf of the State of Wisconsin.

17 DEAN A. STRANG
18 Attorney at Law
On behalf of the Defendant.

19 JEROME F. BUTING
20 Attorney at Law
On behalf of the Defendant.

21 STEVEN A. AVERY
22 Defendant
Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery, Case No. 05 CF
3 381. We are here this morning -- or this afternoon
4 to hear the defendant's motion for a new trial.
5 Will the parties state their appearances for the
6 record, please.

7 ATTORNEY KRATZ: Good afternoon, Judge, the
8 State appears by Calumet County District Attorney
9 Ken Kratz, Assistant Attorney General Tom Fallon,
10 Assistant District Attorney Norm Gahn, appearing as
11 special prosecutors.

12 ATTORNEY STRANG: Steven Avery is present
13 in person; he is in custody. Jerome Buting and Dean
14 Strang appear on his behalf.

15 THE COURT: All right. I will indicate for
16 the record I have received and reviewed the
17 defendant's written motion for a new trial with
18 arguments that consist of 39 pages. I also received
19 the State's response to defendant's motion for new
20 trial, specifically addressing issue number one.

21 I have read, more than once, each of
22 those documents. But if either party desires to
23 supplement the written argument with anything
24 additional today, I will give the parties an
25 opportunity to do so. Mr. Strang, on behalf of

1 the defendant, since it's your motion.

2 ATTORNEY STRANG: Well, I'm happy to do
3 that. I think probably since the briefing on our
4 side is reasonably lengthy and the arguments many,
5 it would be, in all likelihood, more helpful to the
6 Court if I responded to questions, or if there's an
7 area that the Court wants me to address, I'm happy
8 to do that.

9 THE COURT: Well, from your perspective, I
10 guess I was looking primarily at anything you might
11 want to say in response to the submission I received
12 from the State yesterday.

13 ATTORNEY STRANG: Sure. The State and I
14 are agreed on the basic rule in Wisconsin in a
15 criminal case, which is that inconsistent verdicts
16 alone don't require, in and of themselves, a new
17 trial in a criminal case.

18 It's a very different rule in a civil
19 case, of course, and that -- that's troubling
20 just considering the -- the interests at stake in
21 civil and criminal cases, why the law would be
22 more tolerant of -- of inconsistent verdicts in
23 the criminal setting with liberty at stake, than
24 in the civil with a shifting of money or an
25 allocation of damages for loss being at stake.

1 But the rule is as it is. I have tried
2 to explain here why the verdicts necessarily are
3 inconsistent. And the State, I think, in arguing
4 there is no necessary inconsistency, misses the
5 fact that the testimony, which was undisputed, in
6 the end, about bullet holes to the skull, two
7 particular areas of the head, either of which the
8 State's testimony suggested would have been
9 fatal, itself was a disfigurement for a
10 mutilation of a corpse, for purposes of the first
11 element of the mutilating a corpse charge.

12 So it won't do here to say that a jury
13 might have found that Mr. Avery killed Ms
14 Halbach, but not been persuaded, beyond a
15 reasonable doubt, that he burned her body. The
16 burning wouldn't have been necessary to establish
17 mutilation of a corpse.

18 Beyond that, I think there is a
19 necessary inconsistency and that the challenge I
20 offer to the Court is to rethink the a priori
21 assumption that Court's seem to apply that it's
22 the acquittal that's not warranted under law,
23 when that happens, rather than the conviction.

24 At least behind the veil, so to speak,
25 or without knowing more, there would be no reason

1 to go into a case with an assumption that a jury
2 would nullify in the defendant's favor, rather
3 than in the State's favor. It seems to me those
4 two possibilities are in equipoise and there's no
5 reason, no good justification, then, for allowing
6 inconsistent verdicts to stand on the unproven
7 and, I think, illogical assumption that the
8 defendant has gotten the benefit of the
9 inconsistent verdict, rather than the State.

10 Here, I thought it made sense to address
11 another possible reason justifying the difference
12 in treatment between civil cases, where there is
13 very little tolerance for inconsistent verdicts,
14 and criminal cases where there is much greater
15 tolerance for them.

16 Addressing a point on the criminal side
17 that it seems to me could augur in favor of the
18 rule, as it stands, and the State's position
19 here, which is the State, because of the double
20 jeopardy clause, arguably would bear all the
21 burden of a retrial if one were granted for
22 inconsistent verdicts.

23 The defendant could stand on his
24 acquittal and demand a retrial, only on the count
25 of conviction, thereby putting the State in a

1 position where it couldn't get the benefit of
2 multiple counts. And I, you know, whatever
3 may -- may be said in support of the double
4 jeopardy bar of retrial, that strikes me as
5 having some logical appeal, in terms of
6 tolerating the inconsistent verdict, rather than
7 prejudicing the State on a retrial in that
8 fashion.

9 And so what Steven Avery has offered to
10 do is to waive jeopardy, which indeed is waivable
11 under the Fifth Amendment and the Fourteenth
12 Amendment to the United States Constitution and
13 correlative provision of the Wisconsin
14 Constitution to waive jeopardy as to the
15 mutilating a corpse count, so that both he and
16 the State are back at square one, or in
17 equivalent positions on a retrial.

18 Moreover, the inconsistent verdict
19 problem doesn't go to the third count here, felon
20 in possession of a firearm at all. On that
21 basis, we have not sought to set aside the guilty
22 verdict on the felon in possession count. So the
23 parties can be put back where they were, ex ante
24 here, by virtue of Mr. Avery's willingness to
25 waive jeopardy on a grant of a new trial on the

1 homicide, to waive jeopardy on the mutilating a
2 corpse count so that that may be retried in
3 tandem.

4 That's, I think, the thrust of our
5 argument. It rests, in the end, on due process
6 and fairness and not treating a criminal
7 defendant disadvantageously as compared to a
8 civil party, also, again, challenging what is to
9 me a logically unsupportable a priori assumption
10 that in a case of inconsistent verdicts, it's
11 always the defendant who's gotten the benefit of
12 the jury's compromise.

13 THE COURT: All right. Mr. Kratz.

14 ATTORNEY KRATZ: Judge, I do ask the Court
15 consider our written position. It's clear, at least
16 to the prosecution, that the State of Wisconsin law
17 is that this Court is not permitted, by the theory
18 of inconsistent verdicts, to set aside this -- this
19 verdict and would ask the Court follow existing
20 Wisconsin case law and not make new law, or not
21 upset the precedential value that Mr. Strang asked
22 this Court to do. And on that issue, then, Judge, I
23 would ask the Court adopt our position and deny the
24 motion. That's all. Thank you.

25 THE COURT: Very well. Mr. Strang,

1 anything else?

2 ATTORNEY STRANG: No, your Honor.

3 THE COURT: The Court will address each of
4 the bases raised by the defense in its motion for
5 new trial. The first one more extensively than the
6 others, because the others have already been the
7 subject of prior Court rulings.

8 On the issue of inconsistent verdicts, I
9 will note, first, that the Court has not been
10 able to locate, and I don't believe I have been
11 cited to any reported Wisconsin criminal case in
12 which a conviction has been reversed because of
13 verdicts that were alleged to be inconsistent. I
14 do agree with the State that the leading
15 Wisconsin case on the issue appears to be **State**
16 **vs. Thomas**, a Court of Appeals case and what
17 appears to be the most recent authority on the
18 subject.

19 I will note at the outset, that's a case
20 that, in the Court's opinion, provides a more
21 extreme example, if you will, of verdicts that
22 were inconsistent because the charge on which the
23 defendant in that case was found not guilty was
24 armed robbery. And that charge was a predicate
25 for the charge in which the defendant was

1 convicted; specifically, intimidation of a
2 victim.

3 The charge of intimidation of a victim
4 required, as one of its elements, that the
5 defendant in the case had committed a crime. And
6 the only crime that was really the subject of the
7 testimony or argument was the armed robbery
8 charge on which the defendant was acquitted.

9 The following excerpts from that
10 opinion, in the Court's mind, are significant
11 here. The Court ruled in **Thomas** that juries have
12 always had the inherent and fundamental power to
13 return a verdict of not guilty, irrespective of
14 the evidence.

15 The Court went on to hold that the jury
16 here was instructed, that if it was satisfied
17 that the State had proven, beyond a reasonable
18 doubt, all of the elements of armed robbery, it
19 should find the defendant guilty of armed
20 robbery. But that if it was not so satisfied,
21 then it must find the defendant not guilty of
22 armed robbery. This distinction between must and
23 should in criminal law is long standing in
24 American jurisprudence.

25 The Court went on to hold, the fact that

1 a not guilty verdict is inconsistent with another
2 verdict finding the defendant guilty, does not
3 require, or by itself permit, reversal of a
4 judgment entered on the finding of guilt, since
5 there is no way of knowing whether the
6 inconsistency was the result of leniency,
7 mistake, or compromise.

8 The defense candidly and I think
9 properly, in its argument, acknowledges that the
10 State of Wisconsin law is such that it is
11 difficult, if not impossible, to have a verdict
12 on a particular count reversed on the basis that
13 it's inconsistent. I, as a circuit judge, do not
14 have the power to second guess the law as it has
15 developed in this case in the Wisconsin Supreme
16 Court and the Courts of Appeal. These arguments
17 are probably more properly addressed to the Court
18 of Appeals should this matter be appealed.

19 I would note, finally, that the defense
20 in this case did introduce independent evidence
21 challenging the State's contention of the burn
22 site location. And it's possible that the jury
23 could have doubts on that particular charge,
24 which it did not have on the homicide charge.

25 Verdicts are not necessarily entirely

1 consistent or entirely inconsistent. And it
2 appears to the Court that the verdicts in this
3 case, to the extent there is a sense of degree,
4 or at least is not inconsistent, as the verdicts
5 were in the **Thomas** case.

6 But in conclusion, I do not believe
7 there is a basis, in Wisconsin law, to question
8 the jury's verdict on a homicide charge, on the
9 basis of inconsistency with the verdict on the
10 mutilation charge.

11 The defense in this case sets forth
12 other reasons why the Court should consider
13 granting a new trial. The next one in order
14 deals with the three counts which were -- well,
15 two of which were dismissed before the trial
16 started, and one of which the Court dismissed
17 before the case went to the jury. The Court has
18 already addressed that argument in prior rulings,
19 specifically, elements of the argument that is
20 made in the brief, and I'm not going to do so in
21 detail here.

22 I would note that in this pleading and
23 in prior pleadings, there was a reference to the
24 statements of Mr. Dassey as being inadmissible.
25 In the Court's mind, I have always viewed them as

1 being potentially inadmissible, but not
2 necessarily inadmissible. Mr. Dassey was never
3 offered as a witness.

4 We don't know if he would have asserted
5 a right to his Fifth Amendment right to remain
6 silent, whether there would have been an order
7 for him to -- if the State had requested it, how
8 the Court would have ruled. And I don't think,
9 as part of the defense argument, that the Court
10 would agree that the State never had any
11 admissible evidence to proceed on those counts,
12 because it was a bit early in the game to
13 characterize any statements Mr. Dassey may have
14 made as inadmissible.

15 The defense also reiterates its
16 disagreement with the Court's decision not to
17 strike a juror for cause during the course of the
18 trial; specifically, a juror who some six or
19 seven years earlier had sat in as a juror in a
20 civil case in which one of the State's witnesses,
21 Detective David Remiker, was a plaintiff.

22 The Court has previously ruled, or did
23 rule during the course of the trial, that there
24 was not sufficient grounds to strike that juror
25 for cause. The Court stands by that ruling. I

1 would note, in addition, today, that the juror in
2 question was removed from the jury -- from the
3 jury as one of the alternates who did not
4 deliberate. So the juror in question did not
5 actually deliberate on the verdicts.

6 I also note, in reference to the two
7 cases relied on by the defense in the argument,
8 that there are significant factual differences
9 between those cases and the juror in this case.

10 The first case cited by the defendant
11 was *State vs. Delgado*. In that case, the juror
12 in question was asked, as were other jurors on
13 voir dire, whether they had any history or
14 personal experience with sexual assaults. The
15 juror did not answer the question at the time,
16 but disclosed during deliberations that the
17 juror, in fact, had been a sexual assault victim
18 herself. And the juror's statement during the
19 deliberations demonstrated that her history did
20 affect her service as a juror in that case.

21 In this case, there is no indication,
22 that the Court can see, that the juror was not
23 candid during voir dire. I went back and read
24 her written questionnaire in which she did
25 disclose that she was, in fact, a juror in a

1 civil case some five to six years earlier. She
2 did not name the parties in that case. I don't
3 believe she remembered who -- what those names
4 were. She was not asked during oral examination
5 further details about the case.

6 She, in the Court's mind, candidly
7 disclosed to the Court, without being invited to
8 do so, during the course of the trial, that once
9 she saw Mr. Remiker on the stand, she recognized
10 him as the plaintiff in the case in which she had
11 deliberated. She indicated she did not have a
12 recollection as to whether or not he testified in
13 that case. And I saw no reason, and continue to
14 see no reason, to doubt her recollection in that
15 regard. It's not unusual to forget, after six or
16 seven years, what the details were of a
17 particular case, even if you sat on it as a
18 juror.

19 The Court also believes that the facts
20 in this case are distinguishable in a number of
21 ways from the **Faucher** case, a second case cited
22 by the defense. The juror in that case indicated
23 that the juror recognized one of the witnesses as
24 a former next door neighbor. And the juror
25 indicated that in her opinion the witness was a

1 girl of integrity who wouldn't lie.

2 That's significantly different from this
3 case where the only contact between the juror and
4 Detective Remiker was the exposure of Detective
5 Remiker to the juror in the course of a trial
6 some six or seven years earlier. And the juror
7 had no opinion as to Mr. Remiker's credibility
8 because the juror could not even remember if
9 Mr. Remiker had testified in the case. So I
10 think there's significant differences between
11 this case and the case in which jurors were ruled
12 to have been jurors who should have been stricken
13 in the past.

14 The next item raised by the defendant is
15 the Court's denial of the defendant's **Batsen**
16 Challenge to a minority juror who was stricken by
17 the State. The Court is not going to elaborate
18 on its prior decision sustaining that strike. As
19 the Court noted at the time, and as the defense
20 points out, the fact that the defendant in this
21 case is not himself a member of a minority group
22 did not prevent him from raising the **Batsen**
23 challenge. But the Court finds that under the
24 rule of **Batsen**, the decision to strike the juror
25 was not improper.

1 The defense also argues that the Court
2 erred in excluding the testimony of Manitowoc
3 County Coroner, Debra Kakatsch. The Court
4 excluded the testimony during the course of the
5 trial under Section 904.03 because the Court
6 determined that the probative value of the
7 offered testimony was significantly outweighed by
8 a potential confusion of the issues and
9 considerations of undue delay and waste of time.

10 To elaborate on the Court's earlier
11 decision, at the outset of the investigation of
12 this case, once the police became involved,
13 responsibility for the investigation of the case
14 was turned over by the Manitowoc County District
15 Attorney to the Calumet County District Attorney.
16 And the Wisconsin Department of Criminal
17 Investigation was brought in almost immediately.

18 The decision was made because of
19 Mr. Avery's pending lawsuit against Manitowoc
20 County. And I believe it's important to keep in
21 mind that while it was the actions of the
22 Manitowoc County Sheriff's Department that no
23 doubt formed the basis of the lawsuit, the
24 Manitowoc County Sheriff's Department is not an
25 independent entity that was the subject of the

1 suit, it's Manitowoc County. And Coroner
2 Kakatsch was also an employee of Manitowoc
3 County.

4 While it's true that representatives of
5 the sheriff's department participated in the
6 investigation, the supervisory role was ceded to
7 Calumet County and the State of Wisconsin. And
8 Coroner Kakatsch would have had a supervisory
9 role had she participated.

10 More significantly and directly
11 involved, as far as her testimony would have
12 gone, she could only offer testimony of what she
13 would have done had authority not been turned
14 over to Calumet County and the State. She had no
15 significantly relevant testimony or probative
16 evidence to offer on factual matters related to
17 the crime.

18 The Court gave the defense more than
19 adequate opportunity to highlight the motives
20 that members of the Manitowoc County Sheriff's
21 Department conceivably could have had against the
22 defendant. In the Court's judgment, it would
23 have been a waste of time to make a five week
24 trial even longer by allowing the testimony of
25 what a witness might have done had the witness

1 participated in the investigation.

2 The Court does acknowledge that the
3 defendant certainly had a right to introduce
4 evidence critical of the State's handling of the
5 forensic cremains evidence in this case. The
6 defendant was given adequate opportunity to do so
7 in the form of cross-examination of the State's
8 witnesses and the testimony of Dr. Scott
9 Fairgrieve, its own witness.

10 That evidence was directly probative and
11 more than sufficient to address this particular
12 part of the defense case. The Court concludes
13 that Coroner Kakatsch had no particular expertise
14 that would have added anything to the defense
15 argument.

16 The defendant also argues that the Court
17 erred in allowing Mark LeBeau's testimony. He
18 was the FBI expert that testified about EDTA test
19 results. Again, this issue was thoroughly
20 addressed during the trial. I'm not going to
21 repeat everything again. But given the learning
22 curve, if you will, of the Court, with respect to
23 EDTA evidence, both before the trial and during
24 the course of the trial, I would make the
25 following observations:

1 The Court is not being critical of
2 either party for not conducting EDTA tests
3 earlier. Each party was free to make whatever
4 strategic decision it wished to make on this
5 point, that is, to conduct EDTA testing or not
6 testing.

7 With respect to the scientific state of
8 EDTA testing itself, the Court, based on the
9 testimony at the trial, and the pre-trial briefs
10 that were submitted by the parties earlier, comes
11 to the following conclusions:

12 At least at this point there is no one
13 standardized procedure for testing the presence
14 of EDTA in blood samples, primarily because of a
15 lack of demand for such testing.

16 The Court also concludes, however, that
17 testing for the presence or absence of EDTA
18 appears to be scientifically possible. Certainly
19 the FBI expert, Mr. LeBeau, who testified,
20 believes it is.

21 And as the Court understood the
22 testimony of defense witness, Janine Arvizu,
23 while she was critical of some of the methods
24 employed by the FBI and the conclusions that were
25 drawn from the methods employed, I do not recall

1 anything in her testimony to suggest that EDTA is
2 something that cannot be measured in blood
3 samples with proper testing protocols.

4 While it's true that the FBI at this
5 point may have more experience in this area than
6 private labs, the Court does not believe there is
7 anything special about the FBI's experience or
8 equipment that would make the FBI uniquely
9 qualified to test for EDTA. In fact, Ms Arvizu's
10 testimony suggested that a private lab may well
11 have utilized alternative procedures to do a
12 better job.

13 Finally, I would note that the defense
14 has argued alternatively during the latter stages
15 of the pre-trial proceedings and the trial
16 itself, either that EDTA testing is unavailable
17 or unreliable, but, then, at the same time,
18 argued that the Court should have continued the
19 trial in this case to permit the defendant to
20 conduct EDTA testing.

21 Given the defense experts criticism of
22 the methods employed by the FBI, the Court
23 believes that the defendant could just as easily
24 have conducted EDTA testing before the trial as
25 at this time. The decision not to test, the

1 Court believes, was the defendant's decision and
2 cannot form the basis of an argument for a new
3 trial at this point.

4 Finally, the defense alleged that there
5 were other errors committed by the Court,
6 including rulings on the searches, the
7 admissibility of the bullet on which the victim's
8 DNA was found and other motions that the Court
9 ruled on during the course of these proceedings.
10 In all likelihood, many of the Court's rulings
11 may be the subject of challenge in an appeal of
12 this matter, but the Court finds no reason at
13 this time to reconsider those rulings.

14 For all those reasons, the Court is
15 going to deny the defendant's motion for a new
16 trial at this time. And we will proceed to
17 sentencing which is scheduled for 1:30 on
18 June 1st.

19 I will inform counsel that I had my
20 judicial assistant contact the PSI writer. I
21 understand it's expected to be available
22 Thursday, that is, two days from today. Is there
23 anything further from either party this
24 afternoon?

25 ATTORNEY KRATZ: Did the Court want me to

1 draft an order?

2 THE COURT: Yes, I would like you to draft
3 an order, please.

4 ATTORNEY STRANG: Two things, one, I think
5 the Court misspoke factually on the third issue
6 concerning the juror we contend should have been
7 stricken for objective bias. It is true the juror
8 did not serve, but that was not because she was an
9 alternate who was excused. We used the extra
10 peremptory strike that we agreed, with the State,
11 the parties would have to remove her because the
12 Court had not removed her for cause.

13 THE COURT: Well, the Court understands
14 that to be a method that the parties agreed to, to
15 select the alternate jurors who would not serve, but
16 I do agree that that was the procedure that the
17 parties agreed to.

18 ATTORNEY STRANG: And, secondly, does the
19 Court know whether the PSI will be mailed to
20 counsel, or is it to be picked up or ...

21 THE COURT: I would suggest that the
22 parties contact the PSI writer directly for that.
23 And if there are problems with getting it in a
24 timely fashion, notify the Court. I'm trying to
25 think, this Thursday would be --

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ATTORNEY STRANG: The 24th.

THE COURT: -- the 24th. And that would be eight days before the scheduled sentencing date.

ATTORNEY BUTING: Would the Court have any objection if it's faxed. I have received -- some counties will do that. I don't know whether it's --

THE COURT: Let's do this, after we go off the record, let's go back in my chambers and contact the PSI writer and attempt to resolve this. Anything else on the record today?

ATTORNEY KRATZ: No.

ATTORNEY STRANG: No.

THE COURT: Very well, we're adjourned for this afternoon.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 22nd day of January, 2008.

Diane Tesheneck, RPR
Official Court Reporter

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, SENTENCING HEARING

5 vs. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** JUNE 1, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
12 Special Prosecutor
On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
14 Special Prosecutor
On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
16 Special Prosecutor
On behalf of the State of Wisconsin.

17 DEAN A. STRANG
18 Attorney at Law
On behalf of the Defendant.

19 JEROME F. BUTING
20 Attorney at Law
On behalf of the Defendant.

21 STEVEN A. AVERY
22 Defendant
Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery, Case No. 05 CF
3 381. We are here this afternoon for the sentencing
4 hearing in this case. Will the parties state their
5 appearances for the record, please.

6 ATTORNEY KRATZ: Good afternoon, Judge, the
7 State appears by Calumet County District Attorney
8 Ken Kratz and Assistant Attorney General Tom Fallon,
9 both appearing as Special Prosecutors.

10 ATTORNEY STRANG: Good afternoon, as well.
11 Steven Avery is here in person, in custody; Jerome
12 Buting of Buting and Williams on his behalf, as well
13 as Dean Strang of Hurley, Burish and Stanton.

14 THE COURT: Okay. I will indicate for the
15 record that the defendant was found guilty and
16 convicted, following a jury trial, on March 18,
17 2007, of first degree intentional homicide and felon
18 in possession of a firearm. The crime of first
19 degree intentional homicide is a Class A felony
20 which -- which carries a mandatory penalty of life
21 in prison.

22 However, the Court is required to make a
23 determination as to if, and when, the defendant
24 is eligible for extended supervision. The
25 choices are: Eligibility after 20 years of

1 incarceration, eligibility after a date set by
2 the Court which can be no earlier than 20 years
3 of incarceration, or the Court can determine that
4 the defendant is not eligible for release to
5 extended supervision.

6 The charge of felon in possession of a
7 firearm is a Class G felony which is punishable
8 by a fine of up to 25,000 or up to 10 years in
9 prison consisting of no more than 5 years initial
10 confinement and no more than 5 years of extended
11 supervision.

12 The Court has previously ordered and has
13 been provided with a copy of the Presentence
14 Investigation Report in this case. I believe the
15 writer of that document, Ms Czechanski, is
16 present somewhere in Court. Have both of the
17 parties received a copy of the Presentence
18 Investigation Report? Mr. Kratz?

19 ATTORNEY KRATZ: We have, Judge.

20 THE COURT: And Mr. Buting?

21 ATTORNEY BUTING: We have.

22 THE COURT: Mr. Buting, have you had a
23 chance to review the Presentence Investigation
24 Report with your client?

25 ATTORNEY BUTING: Yes, I have.

1 THE COURT: I understand from a previous
2 submission I received last week, involving
3 statements given by Brendan Dassey, that the Defense
4 disputes background information presented in the
5 presentence attributed to Mr. Dassey. I suppose
6 before we proceed further I should allow you to
7 elaborate on that.

8 ATTORNEY BUTING: Thank you, Judge. Before
9 I do, let me say, also, there's -- there's other
10 background information about Mr. Avery's family,
11 education, those sorts of things, we don't have any
12 objection to, or claim that there are any
13 significant inaccuracies in that portion of the
14 presentence.

15 However, the presentence describes the
16 description of the offense as well as her
17 recommendation for disposition. Clearly, those
18 sections rely heavily on the one statement of
19 Brendan Dassey that was introduced at his trial;
20 that is, a portion of the March 1st, 2006,
21 interrogation. We absolutely do object to any
22 consideration or reliance by the Court at
23 sentencing on any of those facts.

24 We believe they are untruthful,
25 inaccurate, false, and misleading. And as the

1 Court knows, a defendant has a due process
2 constitutional right to be sentenced only upon
3 accurate information.

4 Cite just a couple of cases, **Townsend**
5 **vs. Burke**, 334 U.S. 736, and **U.S. vs. Tucker**, 404
6 U.S. 443. Also some Wisconsin cases, **State vs.**
7 **Mosley**, 201 Wis. 2d, 36, that's a Court of
8 Appeals 1996 case. And more recently, **State vs.**
9 **Groth**, G-r-o-t-h, 258 Wis. 2d, 889, that's a
10 Court of Appeals 2002 decision in which the
11 sentencing was reversed.

12 And, basically, what those cases hold is
13 that it is paramount that the Court base its
14 sentence on accurate information, not false, or
15 inaccurate, or misleading information.

16 In the **Groth** case, there was allegations
17 made that the defendant, in the past, had beaten
18 pregnant women, I think was the facts in that
19 case. And it was later determined that the
20 district attorney was relying on inaccurate
21 information and that was enough for the Court to
22 actually reverse the sentence.

23 Here, Mr. Dassey, I'm confident from the
24 submission that we sent, which is 58 pages long,
25 a memorandum, as well as all of the transcripts

1 and all of the DVDs, the version of Mr. Dassey's
2 numerous stories that was presented at his trial,
3 is only one of a number of versions. And it's
4 misleading for the presentence writer, or this
5 Court, to consider that version of events as
6 reliable and accurate when, in fact, it's not.

7 I should note, also, that,
8 unfortunately, that version which has been, we
9 believe in our case, largely disproved,
10 factually, by the lack of physical evidence to
11 corroborate it, that version describes a very
12 cruel death for Teresa Halbach, a torture, more
13 or less, for which there is no factual support,
14 other than the one version given by Brendan
15 Dassey, a 16 year old young man with limited
16 mental facilities, who we believe was imposed
17 upon by the psychological police interrogation
18 techniques that we set forth in the attachment.

19 The only evidence of how Teresa Halbach
20 died was presented at our trial, which was that
21 there was a gunshot to the head. It was unclear,
22 at least it was unproven, in my mind, whether
23 that even occurred while she was alive or dead.
24 I don't think that was possible to have been
25 proven.

1 But to assume that what she suffered at
2 the hands of anyone, much less Mr. Avery or Mr.
3 Dassey, is the version of events that were
4 presented in the March 1st confession is -- is a
5 stretch because there's no evidence to support it
6 whatsoever. And all of the physical facts tended
7 to disprove that version.

8 It's unfortunate that that's the -- the
9 image that the Halbach family and friends are
10 left with, as an example, or a picture of what
11 she went through when, in fact, that very well --
12 she may have gone through nothing at all like
13 that.

14 Mr. Avery and his attorneys do not know
15 how Teresa Halbach died. That she did die is --
16 was proven by the State in this case, but how she
17 died was not. And, certainly, no evidence, no
18 reliable, accurate information, was presented
19 that this Court can rely on, that she suffered
20 before she died, that she was tortured, that she
21 was begging for her life, any of that, which not
22 only pervades the presentence report itself, but
23 also the attached letters from the family and
24 friends, who -- some of whom highlight that very
25 issue; that is, it's not just that she died, but

1 it's the manner in which she died that they take
2 such offense at, and understandably so.

3 But, again, what I'm asking this Court
4 to do is twofold. One, to take no consideration
5 and to rely -- to not rely on, at all, anything
6 in the presentence report that describes Teresa
7 Halbach's death in the manner in which Brendan
8 Dassey, on that one portion of the interview,
9 said it happened.

10 And two, because these presentence
11 reports are not used just today, these also go
12 into the offender's correctional file, with the
13 Department of Corrections, I'm asking that the
14 Court order that this be rewritten and that all
15 references to that Brendan Dassey version be
16 stricken.

17 I don't think it's enough to just order
18 on the record that you are not considering it. I
19 think the Court also has to have this rewritten
20 and resubmitted, absent all of those disputed
21 facts, because they are disputed, they are
22 inaccurate, and they would be a violation of
23 Mr. Avery's due process rights for the Court to
24 consider them.

25 THE COURT: All right. I will ask the

1 State, at this time, if they have any response to
2 that particular request before I, Mr. Buting, go
3 back to you about any other matters in the PSI which
4 may be of concern.

5 ATTORNEY KRATZ: Are you asking for a
6 response as to Mr. Buting's confidence in the
7 unreliability of the statements, or that it should
8 be rewritten or resubmitted, or both?

9 THE COURT: Well, both.

10 ATTORNEY KRATZ: All right. Mr. Buting's
11 personal confidence in the unreliability of
12 Mr. Dassey's statements is of very little help for
13 this Court. Mr. Buting can have his own personal
14 opinion as to the reliability, as Mr. Dassey's jury
15 could have an opinion as to the reliability of his
16 statements. I will note for this Court that the law
17 permits this Court consider any version of the
18 events which are supported by evidence; in fact, to
19 consider uncharged, unproven offenses, even conduct
20 for which a defendant has been acquitted. **State vs.**
21 **Leitner**, L-e-i-t-n-e-r, and other cases, stand for
22 that proposition.

23 I will, however, Judge, just so that we
24 can move on with the real purpose of today's
25 hearing, that is the sentencing, indicate that

1 the State's position, although obviously
2 disagreeing with virtually everything that
3 Mr. Buting has just told the Court, indicate that
4 Mr. Avery was convicted in this case, with what
5 the State believes was overwhelming
6 circumstantial and scientific evidence.

7 Although the Defense has attempted, at
8 this point, to complain about evidence which was
9 not introduced nor needed to convict Mr. Avery,
10 and which may be relevant for another sentencing,
11 or even for some other hearings, it is not
12 relevant for today's purposes.

13 The State does intend and the State will
14 be asking the Court sentence Mr. Avery, based
15 upon the evidence presented in this case, on the
16 defendant's own criminal history, on the victim's
17 character, on the victim impact that is to be
18 introduced, and not as to Mr. Dassey's statement,
19 or at least not to give or intend undue reliance
20 upon those admissions.

21 Finally, Judge, it is the State's
22 position that this Court has no authority to
23 direct the presentence writer to rewrite or
24 resubmit a PSI because Mr. Buting may think that
25 the facts or versions stated therein are

1 disputed, or Mr. Buting thinks that they are
2 unreliable. The Court can give the version of
3 events and the weight to that, what the Court
4 deems appropriate.

5 This Court is in a very good position
6 since it has sat through this entire case for the
7 last 18 months. Certainly, I'm sure,
8 individually, has developed a version of events
9 for which a sentence can be derived and we would
10 ask the Court do that. That's all we have today,
11 Judge, thank you.

12 THE COURT: All right. Mr. Buting, are
13 there any other parts of the PSI which the defendant
14 wishes to suggest corrections to?

15 ATTORNEY BUTING: Factually, no, but if I
16 could just respond to the last portion of
17 Mr. Kratz's comments. It's not a matter of just
18 personal opinion, whether I believe Brendan Dassey's
19 March 1st story or not.

20 What we're talking about is a
21 constitutional right to due process. Yes, the
22 Court can consider facts that even -- that come
23 from uncharged offenses, or even cases for which
24 there was an acquittal.

25 But there has to be -- The information,

1 the Court has to find, is accurate and reliable
2 in order to rely upon them. And what we're
3 saying is, to Brendan Dassey's statements, none
4 of his statements are accurate or reliable enough
5 for this Court to consider at sentencing.

6 And if the State disputes that, then
7 we'll be happy to have a hearing and present all
8 of the evidence that we have presented through
9 live witnesses, right here in this packet that we
10 submitted to the Court. If not, if the State
11 wishes to move on, then the Court cannot consider
12 them, or rely upon them, is the actual language
13 from the case law.

14 The Court may not rely on inaccurate
15 facts. And if they are disputed facts, they have
16 to be resolved in some way. And if the Court
17 chooses to resolve them by relying on them, then
18 the Court has to so state.

19 As far as the Court's authority on the
20 presentence, certainly the Court has the
21 authority to order the presentence to be modified
22 or amended, the Court is the one that orders the
23 presentence. The presentence writer is supposed
24 to be independent to the Court.

25 And if -- if the -- I believe it's the

1 **Mosley** case, **Mosely** and **Groth** talk about the
2 problems when there are inaccurate -- when there
3 is inaccurate information in the presentence
4 itself; and that those are the facts that are
5 being disputed, that's what needs to be
6 addressed.

7 And because they do go to the Department
8 of Corrections, the Court should order, and can
9 order, that that be deleted, if the Court chooses
10 not to rely on it. If the Court wants to rely on
11 those at a sentencing, then this material can
12 stay. But, obviously, that's an issue, then,
13 that can be addressed on post-conviction, with
14 Mr. Avery, later. But what we're asking is that
15 the Court not consider or rely upon any of
16 Mr. Dassey's statements and that they be deleted
17 from the presentence as well.

18 THE COURT: It's my understanding, unless I
19 misunderstood the State, that with respect to the
20 circumstances surrounding the charges in this case
21 themselves and the conviction, that the State is
22 going to ask the Court to rely simply on the
23 evidence that was introduced at the trial, which was
24 certainly thorough, covered five weeks, I was there.
25 Mr. Kratz, am I speaking correctly?

1 ATTORNEY KRATZ: That is correct, Judge,
2 yes.

3 THE COURT: So the State is not going to
4 ask -- be asking the Court to consider the extra
5 statements from Mr. Dassey that are described in the
6 PSI?

7 ATTORNEY KRATZ: That's right.

8 THE COURT: All right. Mr. Buting, is
9 there anything else about the PSI that you wish to
10 bring up at this time? I'm talking now by way of
11 the factual background provided.

12 ATTORNEY BUTING: Sure, but let me just
13 point out that the PSI or -- it's not entirely clear
14 to me whether the State intends to rely on -- the
15 State did mention they want the Court to sentence on
16 victim impact.

17 And if there are statements in the PSI,
18 letters that are attached and they may perhaps be
19 repeated or similarly stated in court today with
20 live statements that refer specifically to the
21 manner in which Teresa Halbach died, as a
22 particular impact on the victim, and if those --
23 again, that coming solely from the one Brendan
24 Dassey version on March 1st; and if that is going
25 to be relied on by the State in justification of

1 their recommendation or the Court in
2 justification of its sentence, we have the same
3 problem, I think.

4 THE COURT: Well, I think you are talking
5 about two different concepts. The victims have a
6 right to express their feelings, whatever they are,
7 and express their beliefs, whatever they may be.
8 And I don't think the Court is in a position to tell
9 them they can't feel a certain way, or believe
10 certain facts.

11 But as far as the facts that the Court
12 will be using to assess the severity and scope of
13 the offense, maybe I'm wrong, but I understood
14 that both parties were going to be asking the
15 Court to consider the evidence that was
16 introduced at the trial in this case. Now, if
17 I'm missing something, let me know, but that's my
18 understanding.

19 ATTORNEY BUTING: That's fine.

20 THE COURT: Mr. Kratz?

21 ATTORNEY KRATZ: That's fine, Judge.

22 THE COURT: All right. Mr. Buting,
23 anything else?

24 ATTORNEY BUTING: Other than what the Court
25 chooses to do about the presentence, which you could

1 do at the end if you wish or you could --

2 THE COURT: I understand that you are
3 making a separate request. At this time I will
4 simply note for the record that the defendant
5 disputes the account of what happened as it's
6 attributed to Brendan Dassey in the PSI; and that
7 neither of the parties are going to be asking the
8 Court, in their sentencing arguments, to rely on
9 that information; and that the defendant is making a
10 separate request for further action from the Court
11 as to the content of the PSI itself. That's never
12 been requested of me before and I'm not prepared to
13 answer that from the bench today, but I will take
14 your request under advisement.

15 ATTORNEY BUTING: Thank you.

16 ATTORNEY KRATZ: Judge, if I could have
17 just a moment. We're prepared, Judge, thank you.

18 THE COURT: All right. At this time I will
19 indicate that the Court has read the attachments to
20 the PSI, which include a -- one letter in support of
21 the defendant, the defendant's own statement, and a
22 significant number of written statements from
23 victims and members of the victim's family.

24 I will, in a few minutes, offer any
25 victims a chance to make statements to the Court.

1 But before I get to that, I would like to ask the
2 parties if there is any other testimony from
3 anyone, or any other statements from anyone, that
4 either party wishes to present to the Court
5 today, other than victim impact statements.

6 ATTORNEY KRATZ: Not by the State, your
7 Honor.

8 ATTORNEY STRANG: We anticipate no
9 testimony, but I expect that Mr. Avery may wish to
10 exercise his right to allocution.

11 THE COURT: And I will certainly grant him
12 that right, after I hear the arguments of the
13 parties. With that, then, we'll proceed to Victim
14 Impact Statements. Mr. Kratz.

15 ATTORNEY KRATZ: Judge, before proceeding
16 to that, it is a responsibility of this Court, at
17 the time of sentencing, to inquire of the State
18 whether all provisions of Chapter 950 have been
19 complied with. I will tell the Court that they
20 certainly have in this case. This course -- excuse
21 me -- this Court understands that the victim's
22 family has been in attendance throughout these
23 proceedings, and the sentencing hearing is no
24 exception thereto.

25 Written impact statements have been

1 provided. There is no restitution request, as
2 noted in the presentence, and I think the Court
3 needs to make a specific finding of that. And
4 with that, Judge, we are prepared, then, to hear
5 from five relatives of Teresa Halbach. And when
6 the Court is ready to hear those statements, I
7 can introduce them at that time.

8 THE COURT: You may do that at this time.
9 I'm going to ask you to share your microphone at the
10 podium with anyone who chooses to make a statement.

11 ATTORNEY KRATZ: What I'm going to do,
12 Judge, is I'm going to have the individuals identify
13 themselves, their relation to Teresa, and then
14 provide their statement. I will also tell the
15 Court, as the Court understands, at the conclusion
16 of the five impact statements, we do have a DVD
17 video to play, which is approximately three minutes
18 in length. I will introduce that before it is
19 played. The first statement will be given by Maria
20 Halbach. Maria.

21 MARIA HALBACH: Good afternoon, Judge
22 Willis.

23 I have always been taught that
24 everything happens for a reason. This belief has
25 been challenged in the last year and a half. I

1 continue to struggle with why or what reason
2 there could be behind the suffering Teresa went
3 through, but I guess some things are bigger than
4 we can understand.

5 Life seemed so simple on October 29th,
6 2005, when I was with Teresa. Little did I know
7 that this would be the last time I would see her,
8 that at that moment, when we're out living life
9 and having some fun, someone in the world was
10 plotting to take Teresa's life.

11 I was brought up in the same small town
12 as Teresa. I got to know Teresa in middle
13 school. We made many great memories throughout
14 our friendship.

15 We camped out in high school. We went
16 to dances. We went through boyfriends. We had
17 fights with girlfriends. Skydived. She was
18 there to see each of my children as they were
19 starting their lives. Through it all, Teresa was
20 always there with a smile and had something
21 lighthearted to say.

22 I was blessed to fall in love with a
23 Halbach and join this amazing family. What you
24 see is what you get. Teresa, and everyone who
25 surrounded her, are full of faith, love, and true

1 kindness.

2 One of the ways that Teresa's murder has
3 affected me is in the feeling, the emotion that
4 is completely foreign to me, and that is anger.
5 Anger is not something I'm used to feeling. I
6 did not understand what it felt like to truly
7 feel angry with another person until the events
8 of Teresa's death began to unfold.

9 Just when we thought things could not
10 get any more horrifying, it did. I would get a
11 phone call, an email, or read the newspaper and
12 another detail was displayed that was beyond the
13 realm of our imagination.

14 I was raised to forgive those who sin
15 against me or someone that I love. The statement
16 sounds great and it is easily said; however, it
17 has been put to the test. Forgiving someone who
18 does not take responsibility for their actions is
19 not an easy task.

20 The events that took place on
21 October 31st, 2005, have not only affected me,
22 but they have affected my children. I have three
23 children. Two of my children were near and dear
24 to Teresa. And my third child never even got the
25 chance to meet her. Zachary was born one month

1 after Teresa's death.

2 My children have had to learn more about
3 death and the horrifying acts that other people
4 are capable of, at a very young age. A piece of
5 their innocence and their childhood was taken
6 from them when Teresa was so brutally taken from
7 us.

8 My husband and I are raising our
9 children in the same way Teresa was raised, to
10 trust in the greater good that exists in people.
11 We were raised to trust and be optimistic.
12 Teresa's murder shook this trust and temporarily
13 set in place a sense of insecurity and
14 skepticism.

15 However, I'm not going to allow Steven
16 Avery to take my life away from me, as he did
17 Teresa. I'm going to continue to live life like
18 Teresa. Teach my children to do the same. They
19 still look to the stars at night to find the
20 brightest one. This is the star that represents
21 Teresa.

22 The course of events surrounding
23 Teresa's death do not overshadow her life. We
24 may not know the reason, but life is too short to
25 focus on this. My faith has led me to believe

1 that this crime is horrific and unthinkable;
2 however, our place is not vengeance, our place is
3 justice.

4 Justice for Teresa is to be assured that
5 the people who hurt her and humiliated her are
6 never allowed the opportunity to hurt someone
7 like this again. It is in your hands, Judge
8 Willis, to hold Steven Avery accountable for his
9 actions and not let him hurt again. He needs to
10 be put behind bars for the rest of his life,
11 until he has to answer to the ultimate judge.
12 Thank you.

13 KERI LOWE: Good afternoon, Judge. A
14 part of a parent's role is many --

15 THE COURT: Excuse me, can you state your
16 name for the record.

17 KERI LOWE: I'm Keri Lowe; I'm Teresa's
18 cousin.

19 THE COURT: Go ahead.

20 KERI LOWE: A part of a parent's role is
21 many different things: First, to protect her
22 from all; protect from harm, evil and bad
23 influences in society.

24 Secondly, you create a positive
25 environment for children to observe and grow.

1 Furthermore, you instill values that only hope --
2 that you only hope will carry on with them
3 through life.

4 Finally, you raise them to be confident,
5 strong, outgoing, and full of life.

6 A parent is a provider of strength;
7 physically, emotionally and intellectually.

8 Because of the evils in society, my role as a
9 mother is different. I still protect. I still
10 do the things moms do. When something tragic
11 happens to your family your world changes.

12 I'm a Halbach family member with three
13 young girls. I'm now dealing with issues and
14 situations I never foresaw. Explaining to my
15 girls how an innocent woman's life was taken, for
16 no apparent reason, leads to many unanswered
17 questions.

18 Keeping faith, being strong and being
19 positive are difficult attributes to maintain
20 after an incident as this. I hope the outcome
21 will help me as a parent show all, especially
22 young children such as my three girls, how
23 society will protect us from evil.

24 Life goes on; however, we have a void
25 that will never be replaced or forgotten. Please

1 help my role as a parent and show me that we will
2 all be protected. Judge Willis, for our sake and
3 our children's, please put Steven Avery away for
4 life without parole. Thank you.

5 THE COURT: Would you state your name and
6 your relationship to Teresa, please.

7 RHONDA BEHNKE: My name is Rhonda Behnke
8 and I'm Teresa's cousin.

9 THE COURT: Go ahead.

10 RHONDA BEHNKE: Dear Judge Willis, How
11 do I start a letter to tell someone how much a
12 person meant to me, because it so personal and
13 heartfelt that I have never had to let all those
14 kinds of emotions and feelings known to public.

15 To know what I lost losing Teresa in my
16 life affects me and my family very much. I
17 couldn't list everything that she has meant to me
18 and all she's been to me. I know what I feel is
19 a loss of a friend; a cousin; a brilliant,
20 artistic, creative person; someone who could
21 imagine so deep; a person who could find good in
22 everything.

23 I have lost my daughters only now
24 knowing or hearing of the good that Teresa did,
25 and not seeing or experiencing it firsthand.

1 Teresa's laugh, hearing it once, you
2 would think that you would never be able to
3 forget it. You would never imagine not being
4 able to not hear it again. It's not that you
5 want to forget it, but it's very distant now.

6 Her love was one in a million,
7 unconditional love, not judging, never think
8 twice kind of love. We weren't ready for Teresa
9 to be taken away from us. We weren't ready to
10 say our goodbyes and we never really did get to
11 say goodbye.

12 The talent the world can't see through
13 her eyes anymore, the beautiful depth of her
14 pictures, the true things she could only bring
15 out in people, the love no child can feel from
16 her, the love of a husband and of being a mom,
17 the laugh we will never hear again, and the loss
18 we feel every day.

19 Like I said, how do you tell a stranger
20 the love and hurt you feel with losing someone as
21 wonderful and beautiful as Teresa. Saying this
22 isn't even half of what my heart feels every day.

23 So, I am not a judge and I am not -- and
24 I know I don't have say into what happens to
25 Mr. Avery. All I know is that I do have an

1 opinion. I wish to see Mr. Avery serve life in
2 prison with no parole.

3 Why do I feel this way, because Teresa's
4 life was taken with no good reason. She did not
5 want to leave us this way. She did not ask for
6 this to happen to her.

7 And I feel we're here to defend her life
8 and her death. We're here to make sure that
9 Mr. Avery gets what he deserves for taking not
10 only Teresa's life, but also her future and our
11 futures with her.

12 So, please, Judge Willis, look into the
13 hearts of this Teresa Halbach family. Look at
14 us, in our hearts, and see what is missing. See
15 what Mr. Avery took from us; a beautiful,
16 wonderful young lady who meant the world to us
17 and who we will miss every day. Thank you.

18 MIKE HALBACH: Mike Halbach, Teresa's
19 younger brother. Honorable Judge Willis, my
20 family and I would never choose to be involved in
21 a situation like this. We never chose to feel
22 heartbreak, to feel loss.

23 But Steven Avery chose my sister,
24 Teresa. He thought only of himself. He chose to
25 end her life. He chose to retain his sins inside

1 himself and to point blame at everyone else. He
2 chose not to hold himself accountable and ask for
3 forgiveness, but to make a jury of 12 of his
4 peers decide if he was accountable or not.

5 They did that, and in doing so, have put
6 you in the position you are in now. As God
7 guided Teresa's life, let him guide your decision
8 now. It's your choice. I ask that you sentence
9 Steven Avery to life in prison without parole.
10 Thank you.

11 TIM HALBACH: Tim Halbach, Teresa's
12 older brother. Judge Willis, at first I wasn't
13 going to speak today because, quite honestly, I
14 didn't think you'd need any more convincing that
15 Steven Avery should get life without parole.

16 He killed my sister. And in doing that,
17 he took the life of someone that he barely knew
18 and completely disregarded the ramifications that
19 his actions would have, not only ending Teresa's
20 life, but the affects it would have on her
21 family, her friends, and this community. And for
22 that alone, he deserves to spend the rest of his
23 life in prison.

24 But putting that aside for the moment,
25 and after thinking about more whether or not to

1 speak today, I felt compelled to come here and
2 speak to you, because, as Teresa's big brother, I
3 instinctively always try to look out for her.
4 And although there is nothing I can do for her
5 now, what I can do, and what I am doing, is
6 standing here today and respectfully asking this
7 Court to send Steven Avery to prison, without the
8 possibility of parole, to ensure that he never
9 does this again, to someone else's sister.

10 Finally, for the past 19 months, we hope
11 that -- my family and I have hoped that our love
12 for Teresa was shown in our words and our
13 actions. Judge Willis, we want you to see this
14 type -- we want you to see the type of person
15 Teresa was and why we'll always -- why we will
16 always carry her spirit with us.

17 We have a presentation that Teresa made
18 when she was -- videos that Teresa made when she
19 was 22 years old. And this -- we want you to see
20 who Steven Avery took from us. Thank you.

21 (Video playing.)

22 TERESA HALBACH: I love hugs. I love --
23 I have a theory that you need nine hugs a day in
24 order to feel loved.

25 I love being happy.

1 I love knowing that I have nothing to
2 complain about.

3 I love knowing that my family is
4 healthy, that I have a lot of friends.

5 I love making people laugh. I love
6 laughing.

7 I love when people compliment me.

8 I love the Beatles.

9 I love God.

10 I love knowing that I like who I am.

11 I love taking pictures. I love holding
12 a camera in my hand.

13 I love kids. I love babies.

14 I love traveling. I love talking about
15 traveling.

16 I love being myself with everyone I
17 know.

18 I love No Doubt and Gwen Steffani.

19 I love my sisters, my mom, my whole
20 family, of course. I don't hate anyone. I love
21 a lot of people. I feel loved.

22 Um, so let's say I die before I'm 31.
23 Let's say I die tomorrow. I don't think I will,
24 I think I have a lot more to do. I just want
25 people I love to know that whenever I do die, I

1 just want people to know that whenever I die,
2 that I was happy, that I'm happy with what I did
3 with my life.

4 The only thing, is if it happened now,
5 is that I wish I could have become a mother,
6 because that's the one thing I have always known
7 that I want, to be a mom, so... But there's a
8 reason for everything. And I will be a good mom
9 one day. I will. As long as I'm happy.

10 Okay. That's enough.

11 THE COURT: Is there anything else from
12 either party before closing argument?

13 ATTORNEY KRATZ: No, Judge. I would ask
14 that the Court, having previously received the
15 video, the DVD that has been shown, include the
16 Court's copy as part of the official file and
17 official record of these proceedings. Other than
18 that, Judge, the State only has argument. Thank
19 you.

20 THE COURT: Any objection from the Defense?

21 ATTORNEY STRANG: No, the State's request
22 should be granted.

23 THE COURT: All right. The Court will do
24 so. All right. Mr. Kratz, I will hear from you
25 first.

1 ATTORNEY KRATZ: Thank you, Judge. The
2 only decision that this Court has pursuant to
3 Section 973.014 is whether the defendant should be
4 eligible for extended supervision. This still
5 requires the Court, like any sentencing, to consider
6 the three primary sentencing factors; that is, the
7 gravity of the offense, the character of the
8 offender, the need to protect the public.

9 And my comments this afternoon will
10 track those three primary factors; the first
11 being gravity of the offense. Obviously, there
12 is no more serious offense in Wisconsin than
13 first degree intentional homicide, that for which
14 the defendant has been convicted. The PSI writer
15 and the evidence, in fact, recognizes that this
16 particular homicide was premeditated; that is, it
17 was planned. And Mr. Avery targeted Ms Halbach
18 as his victim and this became not just a
19 senseless, but what the State argues to be a
20 sadistic crime.

21 The Defense, as you heard today,
22 complained about the versions as to the manner of
23 death and, certainly, what lead up to it. But
24 whatever version this Court adopts, there is no
25 sanitized or polite way to describe and discuss

1 how this lovely young woman was killed.

2 The community's worst nightmare, the
3 State argues, is violence perpetrated against
4 somebody, either random or targeted, for no
5 apparent reason. And when considering, then, the
6 gravity of this particular offense, we're asking
7 the Court consider the violence that was used, as
8 well as the surrounding circumstances.

9 The character of the defendant is
10 perhaps easiest to discuss when looking at the
11 defendant's past. Whenever Mr. Avery was not
12 incarcerated, that is, when he was not in prison
13 or jail and when he was allowed to make his own
14 kinds of decisions, we look at the kind of
15 behaviors that he engaged in. It's clear, Judge,
16 that Mr. Avery chose criminal behavior as the
17 preferred type of behavior, since he was a very
18 young man.

19 Page 6 of the presentence report
20 chronicles Mr. Avery's criminal history, which
21 this Court knows includes several burglary
22 convictions for which he was placed on probation.
23 His probation was revoked and, thereafter, sent
24 to prison.

25 It includes a horrific story of torture

1 of an animal committed by Mr. Avery in 1982.

2 And, finally, in 1985, includes
3 endangering the safety of a young woman by
4 forcing her off the roadway, pointing a gun at
5 her and ordering her into his vehicle. This
6 pattern of behavior certainly goes to the
7 character of the defendant and is all behavior
8 while Mr. Avery was not in a locked up or
9 confined setting.

10 The presentence also chronicles how
11 Mr. Avery behaved after his release in 2003, and
12 most particularly, includes the statements of his
13 then girlfriend, Jodi Stachowski, where she
14 describes Mr. Avery's bad temper, describes him
15 as being abusive, describes threats to kill him
16 and, in fact, claims by Mr. Avery that he could
17 get away with it if he chose to kill Ms
18 Stachowski.

19 I didn't read anywhere, Judge, in this
20 presentence report, nor in the volumes of
21 information that, certainly, I had available to
22 me in preparing for the trial, that would suggest
23 any mitigating or redeeming social qualities that
24 Mr. Avery brings before this court. Certainly no
25 remorse has been showed, no acceptance of

1 responsibility, which in and of itself is not a
2 significant factor, but when considering the
3 character of the defendant, it is certainly
4 something that this Court can and should
5 consider.

6 Lastly, Judge, the need to protect the
7 public perhaps is the most important of the three
8 primary factors for the Court to consider. And
9 this Court has the opportunity, as you heard not
10 only in oral statements today but in written
11 submissions, to ensure that this kind of crime
12 never happens, at least by Mr. Avery's hand.

13 The presentence writer describes Mr.
14 Avery as being a very high risk to reoffend. And
15 in the presentence writer's words, suggests that
16 this Court guarantee that Mr. Avery never see the
17 light of day again, outside of the prison walls.

18 The victim's family, which is important
19 and appropriate for this Court to consider, all
20 suggest that Mr. Avery have no possibility of
21 release, not only piece of mind for the family,
22 but, again, considering his recidivism or risk to
23 reoffend.

24 And, finally, Judge, I think it
25 appropriate for this Court to consider those

1 values and those considerations that the
2 community has. Although, certainly not something
3 that is well publicized, this is a small
4 community, something difficult for the State to
5 imagine a community being more impacted by a
6 crime than that committed by Mr. Avery.

7 Assurance for the community, that is,
8 assurance that Mr. Avery will not be available to
9 commit these other crimes, is something
10 appropriate for this Court to consider.

11 That brings me, then, Judge, to our
12 recommendations and brings me to that point in
13 this trial that is a very important part of the
14 trial; that is, of course, the sentencing and the
15 State's recommendations.

16 The Halbach family has been forced not
17 only to come to terms with the loss of a loved
18 one, but also to consider her last moments on
19 earth, at the hands of Mr. Avery. This Court,
20 through the past 18 months, has also heard, that
21 despite the high quality and professional
22 investigation that was performed, that law
23 enforcement officers have been subjected to both
24 professional and personal attack throughout,
25 including allegations of criminal wrongdoing

1 themselves.

2 In fact, Judge, the entire community,
3 that is, Northeast Wisconsin, has been required
4 to endure a year and a half of a combination of
5 very sad news, a combination of witnessing what I
6 will characterize as legal gamesmanship, in one
7 version or another, of the term "poor Steven
8 Avery".

9 Well, today, Judge, is the day that the
10 Halbach family and law enforcement and the entire
11 community has waited for. It's the day when
12 justice will reign down upon this cold-blooded
13 killer. When this community, through this court,
14 and through this Judge, tells Steven Avery that
15 your evil deeds will be punished, that you will
16 be held accountable for your cowardly, for your
17 senseless acts, the State then believes, and only
18 then, justice is going to be served.

19 The Court has seen a videotape today and
20 the Court has heard from many of Ms Halbach's
21 family and friends and knows now, or at least
22 should know, that Teresa Halbach was a genuinely
23 lovely young woman. Her whole life was ahead of
24 her. She was a talented photographer; loved by
25 her family and by her friends; was active in the

1 community; and her loss continues to be felt by
2 all of those individuals who knew her and who
3 loved her.

4 It isn't just how she died that has
5 caused pain and has horrified this family, but
6 the memory of how she lived and the memory of the
7 kind of person that she could have become, that
8 is so painful.

9 Judge, I'm asking, on behalf of the
10 State of Wisconsin, that this Court consider the
11 gravity of the offense, the character of the
12 defendant, the need to protect the public and
13 sentence this man to life imprisonment without
14 the possibility of release; that is, without the
15 possibility of an extended supervision time.

16 There is, Judge, a second count; that
17 is, possession of a firearm by a felon, which I
18 guess necessarily isn't discussed in great detail
19 in this case, but the State will argue that
20 Mr. Avery receive a consecutive period of
21 confinement. What the State has available is 5
22 years initial confinement, 5 years extended
23 supervision. We're asking the Court include that
24 as a consecutive sentence to whatever it is that
25 the Court decides as to the homicide count.

1 That's all the comments we have, Judge.

2 I will remind the Court, which I'm sure
3 the Court already knows, Mr. Avery will have the
4 opportunity to have some credit applied to
5 whatever sentence the Court imposes. That would
6 be from, I believe, the 9th of November, 2005,
7 when he was first taken into custody. That's all
8 Judge. Thank you.

9 THE COURT: All right. Mr. Strang, I
10 believe you are going to argue for the Defense.

11 ATTORNEY STRANG: I am, but I'm going to
12 turn to Steven Avery now, first, because I think if
13 he is to speak, he should do that first. And I
14 expect that what he has to say will not be easy for
15 anyone sitting behind me and it won't be easy for
16 him, but I at least would invite him to speak now if
17 he wishes.

18 THE COURT: Mr. Avery, do you -- You have
19 the right to allocution. If you wish, I would let
20 you speak after the attorneys have made their
21 arguments, but I will also grant your attorney's
22 wish and let you speak now, if you wish to speak
23 now.

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Mr. Strang, has the order been

1 discussed with Mr. Avery? Does he understand he
2 could speak after you are done if he wishes?

3 ATTORNEY STRANG: Yes.

4 THE COURT: All right. Mr. Avery, I will
5 hear from you at this time.

6 THE DEFENDANT: Well, your Honor, I'm sorry
7 for the Halbach's family, Teresa Halbach's family,
8 what they are going through, the pain, the hate they
9 got. There's nothing else going to bring her back,
10 you know. And my family, what they are going
11 through, and everybody's friends, and the community,
12 it's hurting everybody.

13 And for myself, Teresa Halbach I didn't
14 kill. I am innocent of what all of this. And I
15 figure later on, I will prove myself innocent. I
16 will take it from there. That's all I got.
17 Thank you.

18 THE COURT: All right. Mr. Strang.

19 ATTORNEY STRANG: Thank you, your Honor.
20 One of the things we're left to do in every human
21 endeavor is to take each other, one another, just as
22 we are and just as we find ourselves today. We
23 aren't given impressions, none of us are given the
24 ability, entirely, to shape even our own future let
25 alone the future of a world we would imagine or want

1 to live in as perfected.

2 If your Honor or anyone else in this
3 courtroom had a way to prevent one more murder
4 from ever happening in this human family,
5 anywhere in the world or in the State of
6 Wisconsin as one small corner of the world, I
7 willingly would follow your honor or anyone else
8 to the ends of that world in pursuit of ending
9 the time when human beings kill one another.
10 It's a subject on which I feel deeply. And what
11 I feel doesn't much matter here, but I would do
12 that.

13 If I could get governments to stop
14 killing people; if I could get men to stop
15 killing women; if I could get parents to stop
16 killing their kids; if I could stop human
17 killing, I would follow anyone who had the
18 solution for that.

19 We never have been able to stop it for
20 as long as human beings have lived in society.
21 Since -- I guess since homo erectus yielded to
22 homo sapiens, we have acted without much
23 sapientiae -- to use the Latin in our specie's
24 name -- far too often and we have killed one
25 another.

1 Since I despair of ever stopping murder,
2 I would say this, that my wish, my secondary wish
3 short of stopping murder, would be that every,
4 every person who has the misfortune of being
5 murdered might be grieved as Teresa Halbach has
6 been grieved. Everyone of them, I wish they
7 could be grieved by as many loved ones, by a
8 family and a group of friends who have shown as
9 much dignity, who have shown as much decency, who
10 have as much bedrock faith in human beings to
11 rely upon when it gets as bad as it can get. I
12 would wish that for anyone. If there has to be
13 another murder somewhere today, I would wish that
14 for the victim.

15 And it brings your Honor, unfortunately,
16 to what to do. And, understandably, the people
17 to my left, who are themselves loyal workers
18 within one of the institutions of the state, one
19 of the institutions of criminal justice as we
20 attempt to administer it as human beings; and the
21 people behind them who, as law enforcement
22 officers, also are members of a state institution
23 dedicated to criminal justice; and in the
24 community behind them, who, because we live in a
25 community, want to have faith in our state

1 institutions and in the hope of justice in
2 criminal cases.

3 I understand, I think well after 20
4 years of doing this work and even thinking about
5 it from time to time, why there is the need and
6 the desire and the rightful wish to rely on those
7 institutions of criminal justice. They are the
8 front end institutions of criminal justice with
9 whom and with which we have the most direct
10 contact.

11 It is the police who respond to the
12 missing person. It is the State, through its
13 police and district attorney, who investigate the
14 murder, who seek to bring the perpetrator to
15 justice; the district attorney who must file
16 charges, prosecute them in court.

17 Your Honor belongs to one of the
18 institutions of criminal justice that work at the
19 front end of our search for justice, presides
20 over a trial, imposes sentence. It is natural
21 and right to want to rely on these institutions.

22 What I ask today, concretely, is that we
23 leave room to rely, as well, on the back end
24 institutions of the same state, the same system
25 of pursuing criminal justice. At the back end,

1 the state institutions that we find are the
2 Department of Corrections and the Parole
3 Commission which continues to exist in that name,
4 although it is extended supervision that the law
5 now describes for the Parole Commission's
6 consideration.

7 There is reason not to exclude those
8 back end institutions from the State's effort to
9 pursue criminal justice as well. They serve
10 useful purposes and, indeed, today marks the end
11 of the role of the front end institutions of
12 criminal justice.

13 The circuit court completes its final
14 act today, or shortly after, with the entry of a
15 final judgment. The police have completed their
16 work, for functional purposes. The district
17 attorney, finally, is relieved of the burden of
18 this case; and if there's to be an appeal, passes
19 it to still another institution in the assemblage
20 of our state institutions that pursue criminal
21 justice.

22 So today, after about 19 months, just
23 over a year and a half, the front end
24 institutions have completed their work and done
25 their best. The back end institutions, if this

1 Court were to do as I will ask the Court, will
2 not begin to make decisions about Steven Avery
3 until they have had 20 years of experience with
4 him, rather than 19 months.

5 They won't begin to consider what should
6 be done with him until they have had 20 years
7 direct experience with Steven Avery and, I hope,
8 20 years of experience with the Halbach family
9 and with the community who loved Teresa Halbach.

10 Concretely, my plea today is simply to
11 place the same faith in the back end institutions
12 of criminal justice that we repose on the front
13 end institutions. So mine, your Honor, is a plea
14 to preserve the prospects of progress.

15 We find, today, someone who is
16 unremorseful, who is not prepared to ask for
17 forgiveness, who asserts innocence. That's who
18 we find today. It is beyond our power to know,
19 in any godlike way, whether the claim of
20 innocence is false or true; and if false, why it
21 is made. It simply is beyond our power.

22 What we can do and what we must do,
23 because we're human, is rely on the good
24 functioning of the front end institutions of
25 criminal justice, interlocking as they are, but

1 each with their own character: Court, jury -- an
2 important front end institution in our system of
3 justice; prosecution; police. We have to rely on
4 them.

5 We cannot pretend to have an omniscient
6 knowledge about what's in his heart or what he
7 did. And we are right to rely on these
8 institutions. It's the best we can do today.
9 But if we are to do our best, then we will leave
10 open the prospects for progress. And we will
11 repose the same reliance and faith in the back
12 end institutions that our state provides in its
13 pursuit of criminal justice.

14 Progress is not just possible, it's
15 unavoidable for everything that lives. I think
16 progress for Steven Avery is not just possible,
17 it's unavoidable. Progress for the Halbach
18 family, and all those in the community who loved
19 Teresa Halbach, is not just possible, it's
20 inevitable. Every living thing progresses. And
21 progress, indeed, for the state's own
22 institutions of criminal justice, is not just
23 possible, it is inevitable.

24 I speak of the truth, that everything
25 that lives, that is vital, progresses; only death

1 is static. Life, inevitably, invariably, is
2 dynamic; only death is static. I take these as
3 truths.

4 And in saying that, I ask your Honor,
5 today, to impose a life sentence and not a death
6 sentence. I ask your Honor to impose a dynamic,
7 vital sentence of life that will leave the full
8 role for the other institutions of criminal
9 justice into whose hands you will tender Steven
10 Avery today and whose work will be longer, more
11 intimate than the work of the front end
12 institutions can be and who themselves will have
13 the benefit of progress.

14 To pretermite the work of the Parole
15 Commission and the Department of Corrections
16 today is to render static the rest of Steven
17 Avery's biological life; to render static the
18 participation of the Halbach's in the horror that
19 brings them here; and to render static, as to
20 Steven Avery at least, every further and human
21 improvement that may come to our institutions.

22 It is to impose a death sentence with
23 only the indeterminate and uncontrollable factor
24 of the cessation of biological functioning to
25 intervene. It is to cut off all prospects of

1 progress, to deny parole eligibility.

2 Now, people who are a lot smarter than I
3 am argue about whether progress is necessarily
4 regenerative or whether it's degenerative;
5 whether progress necessarily, in the end, means
6 expansion or collapse; whether progress
7 necessarily is good or whether sometimes the
8 progress of human life and the world is bad.

9 But we don't have to get into that
10 debate because there is always progress in life.
11 It moves forward. It's dynamic. And when the
12 institutions are left in place and left the
13 powers that they can exercise, it will be dynamic
14 and not static. Progress is good. Whether it
15 leads to collapse or expansion, whether it is
16 regenerative or degenerative, it's good.

17 Steven Avery not only may change, he
18 necessarily will change, over time. It may give
19 him a chance, some day, to ask for the
20 forgiveness that the Halbach's wish to hear him
21 solicit. And he would have a reason to do it,
22 here, among us, the human family, rather than on
23 knee, bent in prayer, if indeed the prospect of
24 eligibility for extended supervision is left open
25 as a prospect for progress.

1 The Halbach's will change, because they
2 will live. By the year 2025, I urge your Honor
3 to give them a chance to speak again, to speak to
4 the Parole Commission, to tell the parole
5 commission what, then, in 2025, is in their
6 hearts and in their minds. And I expect that
7 they would have that opportunity again in 2030,
8 or 2035, in 2045, perhaps.

9 Don't expect parole or extended
10 supervision to be granted at its first
11 opportunity, if ever. And as part of why I say
12 we don't have to decide what progress means in
13 the end, because the outcome may be the same.
14 Steven Avery may die of natural causes tomorrow.
15 He may die of natural causes when he is 85. And
16 it may well be, if your Honor imposes the life
17 sentence that I ask, that he dies in prison at
18 age 85. That well may be.

19 Eligibility for extended supervision is
20 no promise of its grant. And if in 2025, or
21 2035, or 2045, the Halbachs view Mr. Avery's
22 proper place as remaining behind prison walls,
23 then the Parole Commission ought to hear that.
24 And they ought to have a chance to say it.

25 And if they feel something differently,

1 which of course I can't predict, no one with any
2 humility could predict, then the Parole
3 Commission ought to hear that as well.

4 All I can say with any confidence, the
5 one narrow prediction I can make with any
6 confidence at all, is that if, for example, Mike
7 Halbach is given a chance to speak again, 25
8 years from now or 30 years from now, my confident
9 prediction is that he will not photocopy the
10 eloquent written statement he submitted with the
11 presentence report. He will not photocopy the
12 already different and progressed eloquent written
13 statement he gave here today.

14 He will not stand on those words alone
15 at 45, eloquent as they were for a 25 year old
16 today. He will have progressed. There will be
17 new nuance, new life experience, new perception
18 and understanding that will have been acquired.
19 And it may lead him to say that Steven Avery
20 should remain in prison. So be it. It's
21 something worth hearing and it's a prospect for
22 progress we ought not cut off.

23 The state institutions of criminal
24 justice themselves will change and grow and
25 progress over the 20 years before Mr. Avery even

1 would be eligible for consideration of extended
2 supervision, under the best of circumstances.

3 Thank heavens that in 1985 progress was
4 not pretermitted as to one of Mr. Avery's prior
5 convictions. Thank heavens progress was possible
6 within our institutions of criminal justice. I
7 do thank heaven for that.

8 And if this conviction is rightly
9 obtained and a guilty man is behind bars, then we
10 will know that better in 20 years, or 30 years,
11 or 40 years, or 50 years. We will know that with
12 more certainty than we know it today. It's the
13 nature of progress and the refinement of human
14 institutions.

15 So, whatever the outcome, whether he
16 never is released on extended supervision in his
17 lifetime or whether he is, there will have been
18 growth, greater understanding, a hope of
19 reconciliation or even redemption. And all of
20 that will come with progress.

21 To pretermitt that prospect of progress
22 today by saying that the back end institutions of
23 criminal justice have no role to play, there will
24 be no consideration of eligibility, or no
25 eligibility and no consideration for extended

1 supervision, is to draw a line in time after
2 which progress cannot benefit or affect Steven
3 Avery, or the Halbach family, or as to him, the
4 institutions of criminal justice.

5 Now, your Honor, in no other field of
6 human endeavor known to me do we cut off the
7 prospect of progress. If 10 years from now
8 Mr. Avery comes down with some dread disease,
9 comes down with cancer and he has to be treated
10 in the Department of Corrections and he is turned
11 over to those who practice medicine instead of
12 practicing law; they will not say we can and will
13 treat you only with the methods of diagnosis and
14 treatment and cure known in 2007. If the cancer
15 occurs in 2017, they will treat him with the
16 benefits of human progress through the day in
17 which he's diagnosed.

18 If some psychological need develops for
19 him or for anyone else in the Department of
20 Corrections and we turn from law to psychology,
21 that psychologist will not say, you were
22 incarcerated in 2005 and, therefore, I will treat
23 you only on the basis of the body of knowledge
24 that we had in 2005, although the calendar today
25 says 2030. It would be unthinkable in any other

1 field of human endeavor.

2 Historians, for example, do not feel
3 themselves bound to assess Abraham Lincoln's life
4 by what was known about it in 1865. In every
5 other area of human endeavor we rely on and draw
6 the benefits from progress. Law should do the
7 same and it can.

8 We have institutions at the back end of
9 our system of criminal justice just as competent,
10 just as dedicated, as those at the front end.
11 And those institutions will be able to make
12 contemporaneous judgments and judgments on the
13 basis of 20, or 25, or 30, or 40, or 50 years
14 experience, not the year and a half under which
15 all of us labor today.

16 Finally, I want to say that if your
17 Honor accepts the invitation to foreclose
18 consideration for extended supervision today,
19 your Honor, in doing so, and I don't -- I
20 understand that these are the wishes of most of
21 the people in this room, certainly those to your
22 Honor's right, behind me.

23 But I say, all the same, that if your
24 Honor takes up that invitation, then from this
25 day forward, as a matter of criminal justice,

1 quite apart from the role she will continue to
2 play in the hearts of her friends and her family
3 and her community, but as a matter of criminal
4 justice, if your Honor takes up that invitation,
5 Teresa Halbach becomes an abstraction and one
6 quickly forgotten, because there are a lot of
7 murders in our human family.

8 But if the Halbachs and the community
9 have the chance to speak and be heard by the
10 institutions of criminal justice that work at the
11 back end, their words will be actuated by their
12 memories of Teresa Halbach's values, by their
13 memories of her life, by the memories of what she
14 believed in. Their words will be actuated, in
15 part, by that.

16 And 20 years from now, those who loved
17 her best will speak for Teresa Halbach and speak
18 accurately of what she valued and loved. Thirty
19 years from now they will do that. And 20 and 30
20 and 40 years from now, the Parole Commission will
21 have to consider Teresa Halbach, not as an
22 abstraction, but as somebody who's part of
23 progress and, therefore, vital in the way that I
24 have described it.

25 And if the words that people speak at

1 that point, actuated by love and memory of Teresa
2 Halbach, are words without mercy, words without
3 reconciliation, words of fear for the community
4 safety, then so be it. Then so be it. He should
5 hear it, the Parole Commission should hear it, we
6 all should hear it. And if they are something
7 else, then so be that. We can't know what will
8 happen between now and then. I ask your honor
9 only to let it happen.

10 I'm asking the Court to take the harder
11 course, the one that is not easy, but also the
12 one that is not pointless. I'm asking the Court
13 to show as much faith in the back end
14 institutions of criminal justice as in its front
15 end institutions. I'm asking the Court to
16 preserve the prospects of progress.

17 In making that request, I want to add
18 that I agree entirely with those who loved Teresa
19 Halbach, about one point they made unanimously in
20 particular; that is this, that there are many
21 lessons to learn from the life of Teresa Halbach,
22 many lessons that can be learned from the life of
23 Teresa Halbach. Unfortunately, I know of only
24 one lesson that can be learned from Teresa
25 Halbach's death; and that is, that imposing death

1 on another human being is easy and it's pointless
2 and it's wrong.

3 And in the hope that we have all learned
4 that one lesson from her death, I'm asking this
5 Court not to take the easy course, not to take
6 the pointless course, but to preserve the
7 prospects of progress. And with progress, to
8 allow the lessons of Teresa Halbach's life
9 themselves to live.

10 I'm asking the Court to exercise its
11 discretion under Section 973.014 (1g)(a), 1 and
12 to leave Mr. Avery eligible, eligible for
13 consideration for extended supervision in 20
14 years. I have not the slightest expectation,
15 today, that he will walk out of prison in his
16 lifetime. But I have a hope and a faith in
17 progress, including his. And so, in a real
18 sense, I'm asking for the life sentence, not the
19 death sentence.

20 THE COURT: Does the State have anything in
21 rebuttal?

22 ATTORNEY KRATZ: No, thank you, Judge.

23 THE COURT: Mr. Avery, although I have
24 already heard from you, traditionally, the Court
25 allows the defendant to have the last word, if you

1 will, and I'm going to give you another chance to
2 say anything additional, if you wish. I will let
3 you speak with your attorneys for a few minutes,
4 first, if you want. And if there's any other
5 statement you wish to make to the Court, I will
6 allow you to make it at this time.

7 ATTORNEY BUTING: He is fine.

8 THE COURT: Very well. I'm going to take a
9 recess at this time to review the arguments of the
10 parties, the statements of the victims, and other
11 information that's been presented. The Court will
12 be back out with a sentence in about 20 minutes.

13 (Recess taken.)

14 THE COURT: Before the Court announces its
15 sentence in this case, I want to remind all those
16 present that this is a court of law. The Court
17 recognizes the emotional nature of this case and its
18 importance to all parties involved; however, any
19 vocal outburst or displays of emotion will not be
20 tolerated. Any violation will result in removal
21 from the courtroom and possible arrest.

22 At the outset, I wish to express the
23 Court's sympathy to Mr. and Mrs. Halbach and the
24 other members of the Teresa Halbach family.
25 During the course of these proceedings, I have

1 had the opportunity to observe how your family
2 has handled an extremely difficult situation with
3 dignity and poise.

4 I'm sure that your ability as a family
5 to focus on the joy and happiness of Teresa's
6 life, rather than the tragic circumstances of her
7 death, has been a source of strength for your
8 family as well as an inspiration to other
9 families who have experienced personal tragedies.

10 The Court is highly aware that in many
11 ways this case is unique, even among homicide
12 cases which, fortunately, are rare in this
13 county. This was the longest criminal trial in
14 the history of Manitowoc County. The case has
15 received more publicity than any other trial in
16 the counties history. But, nevertheless, the
17 rules that the Court is to apply in sentencing
18 are the same as they are for other criminal
19 cases.

20 At the conclusion of the trial, the
21 Court instructed the jury that the jurors were
22 not to be swayed by sympathy, prejudice, or
23 passion. The State, the defendant, and the
24 victim are all entitled to the same consideration
25 from the Court in imposing a fair and just

1 sentence in this case.

2 With respect to sentencing
3 recommendations on the homicide charge, the State
4 has recommended that the Court impose the
5 mandatory sentence of life in prison without the
6 possibility of extended supervision.

7 The Defense has recommended that the
8 Court impose a sentence of life in prison, but
9 authorize eligibility for extended supervision
10 after 20 years.

11 The PSI writer recommends that the Court
12 impose a sentence which will not allow for the
13 defendant's release from prison.

14 Those are the recommendations presented
15 to the Court today.

16 The law in Wisconsin directs the Court
17 to consider three primary factors; specifically,
18 the severity of the offense, the character of the
19 offender and the needs of society. The law also
20 requires the Court to impose the minimum amount
21 of custody or confinement which is consistent
22 with these factors.

23 Although in a case of first degree
24 intentional homicide the Court is required to
25 impose a life sentence, the Court understands

1 this directive to apply to its determination of
2 when and if a defendant, sentenced to life in
3 prison, is eligible for extended supervision.

4 First of all, with respect to the
5 gravity of the offense, the charge of first
6 degree intentional homicide is the most serious
7 crime known to the law. The evidence in this
8 case, although largely circumstantial, was more
9 than sufficient, in the Court's mind, to sustain
10 the jury's verdict and the Court so ruled earlier
11 in this case.

12 We know that the victim in this case,
13 Teresa Halbach, suffered at least two gunshot
14 wounds to her head. Because of the condition of
15 the body, it could not be conclusively stated
16 whether the gunshots were the cause of her death
17 or whether other means were used and the gunshots
18 were post mortem.

19 The blood evidence demonstrated that at
20 some point after the death, Mr. Avery, the
21 defendant, transported Teresa Halbach's body in
22 the back of her vehicle.

23 There was also evidence introduced at
24 trial that the defendant lured Teresa Halbach to
25 his home on that day.

1 There was evidence that he specifically
2 requested that she be the person sent to take the
3 photo of the vehicle for sale.

4 There was also evidence that there were
5 two cell phone calls he made to her on that day
6 on which he blocked his number indicating a
7 desire to conceal his identity.

8 Because of the condition of the body
9 that was discovered, there were many things about
10 the homicide that, necessarily, are not known.
11 Among those are the defendant's precise
12 motivation for committing this crime. However,
13 while the motivation cannot be known with
14 certainty, the circumstantial and scientific
15 evidence was strong that the defendant's actions
16 in killing Teresa Halbach were premeditated.

17 The effects of this crime on the
18 victim's family will be permanent. Teresa
19 Halbach's vibrant life was brutally taken from
20 her at a very young age. Her parents, siblings,
21 and other family members have lost a loved one
22 forever, as emotionally detailed in their
23 statements to the Court. This is not a case in
24 which any tool of restorative justice can repair
25 the devastating and permanent damage caused by

1 Mr. Avery's actions.

2 With respect to the other charge, the
3 felon in possession of a firearm charge, the
4 severity of that charge is generally determined
5 by the circumstances in which the weapon was
6 possessed. In this case, those circumstances are
7 aggravated because the weapon was used in
8 connection with an intentional homicide.

9 Moreover, there's no evidence to suggest
10 that the homicide in this case was the result of
11 any loss of temper or anything in that area, but
12 rather was the result of a calculated murder. In
13 addition, the victim in this case had no prior
14 meaningful relationship of any kind with the
15 defendant, Steven Avery.

16 The Court is also directed to consider
17 the character of the offender. That background
18 is contained largely in the Presentence
19 Investigation Report. Mr. Avery was 43 years old
20 at the time the crimes in this case were
21 committed.

22 The record shows that, while he is
23 somewhat below average in intelligence, he is not
24 mentally impaired in any sense. There's no
25 evidence of any serious health problems to speak

1 of.

2 Mr. Avery was previously married and had
3 four children. He was divorced while serving a
4 17 and a half year prison sentence for felony
5 convictions in two cases. First, for endangering
6 safety by conduct regardless of life as a
7 repeater, and felon in possession of a firearm in
8 Case 85 FE 3.

9 The second sentence arose out of what
10 everyone now acknowledges were wrongful
11 convictions for attempted first degree
12 intentional homicide and related charges in Case
13 85 FE 118.

14 The record contained in the PSI
15 demonstrates that Mr. Avery has been regularly
16 involved in criminal activity during those
17 portions of his adult life when he was not
18 incarcerated.

19 At age 18 he was convicted of his first
20 two felonies, two burglary counts for Manitowoc
21 County. He was originally placed on probation.
22 That probation was subsequently revoked for other
23 criminal violations and he was sentenced to two
24 years in prison.

25 At about the same time, he was convicted

1 on three misdemeanor theft counts that were
2 amended down from three burglary counts, for
3 crimes committed in Marinette County.

4 At age 20, he was again convicted of a
5 burglary in Marinette County and received a 15
6 month prison sentence, served concurrently with
7 his first prison sentence.

8 Approximately a month after the
9 Marinette County burglary conviction, Mr. Avery
10 was convicted in Manitowoc County of cruelty to
11 animals, a charge which arose out of an incident
12 in which he poured gasoline on a cat and threw
13 the cat into a bonfire. After the cat escaped
14 the fire and ran into the yard, Mr. Avery
15 reportedly poured more gasoline on the cat, so
16 that it would burn to death.

17 The Court has -- or did exclude evidence
18 of this crime and other crimes committed by
19 Mr. Avery, during the trial, because of their
20 highly prejudicial effect. However, at
21 sentencing, these crimes become relevant as
22 evidence of the defendant's character.

23 While the incident involving the cat
24 occurred many years ago, it does demonstrate a
25 level of cruelty that the Court finds difficult

1 to rationalize simply as a mistake of youth.

2 In 1985, at age 22, Mr. Avery committed
3 his most serious felonies, before the charges in
4 this case. He was convicted of endangering
5 safety by conduct regardless of life as a
6 repeater and felon in possession of a firearm as
7 a repeater. For those charges, he received a 6
8 year prison sentence.

9 The Complaint in that case indicated
10 that at 5:30 in the morning, on January 3rd,
11 1985, Sandra Morris was driving to drop off her
12 infant daughter at her grandparents before
13 reporting to work. On County Highway Y, a
14 vehicle driven by Mr. Avery came up from behind,
15 pulled alongside of her vehicle and struck the
16 side of it forcing her to stop.

17 Mr. Avery got out of the car. She
18 recognized him when he got out and approached her
19 vehicle, while he was pointing a rifle at her.
20 He originally ordered her to get into his
21 vehicle, but when she pointed out that her infant
22 child was in the car and it would freeze if left
23 alone, Mr. Avery allowed her to leave.

24 By the time he was 24 years old, when he
25 was sentenced to the prison sentences that

1 included the sentence on the wrongful conviction,
2 Mr. Avery had been convicted of five felonies and
3 four misdemeanors.

4 He did not commit any crimes, needless
5 to say, during the next 17 and a half years that
6 he spent in prison. However, while in prison, he
7 sent written correspondence and an audiotape
8 threatening to kill his wife. The threats were
9 considered serious enough that his former wife
10 obtained an order prohibiting him from contact
11 with his children.

12 His only convictions following his
13 release from prison in September, 2003, are the
14 convictions in this case.

15 While the majority of Mr. Avery's adult
16 life has been spent in prison, and a significant
17 portion of that time was for a crime he did not
18 commit, the fact remains that, during his time
19 out of prison as an adult, Mr. Avery has
20 regularly committed crimes, including serious
21 felonies.

22 Before leaving the character of the
23 offender issue, I want to make one point. The
24 Court gives no weight, whatsoever, to Mr. Avery's
25 refusal to admit guilt in this case. The Court

1 believes it would be improper to consider that as
2 an aggravating factor. It is Mr. Avery's
3 absolute right to maintain his innocence, even in
4 the face of the jury's verdicts in this case.
5 One need only look at Mr. Avery's wrongful
6 convictions in the 1986 case to understand the
7 rationale for this rule.

8 While the defendant's acknowledgment of
9 guilt can be considered as a mitigating factor,
10 and that is not present here, nevertheless, the
11 converse of the rule is not true. A refusal to
12 admit guilt is not an aggravating factor.

13 The most important factors, from the
14 Court's perspective, on the issues of severity of
15 the offense and character of the offender are,
16 first, the vicious nature of the crime in this
17 case. The indications that Mr. Avery consciously
18 selected the victim in this case, the fact that
19 there was no rational reason for the crime, no
20 prior relationship to the victim, this wasn't a
21 domestic dispute; it appeared to be simply a
22 calculated, premeditated murder.

23 There were probably other background
24 explanations for what happened, but the Court is
25 not going to speculate as to what those might be,

1 or go beyond the evidence that was introduced at
2 the trial.

3 With respect to the character of the
4 offender, the Court finds it to be most
5 significant that Mr. Avery has been involved in
6 serious criminal activity, on a regular basis,
7 during those times of his adult life when he was
8 not incarcerated. Significantly, while most
9 criminals become more law abiding as they get
10 older, the record demonstrates Mr. Avery's crimes
11 have gotten more serious as he's gotten older,
12 culminating with the homicide of Teresa Halbach
13 in this case.

14 The final consideration for the Court
15 is -- or are, the needs of society. In the
16 Court's opinion, those needs are the most
17 important factor in this case. I have to say,
18 Mr. Avery, that what particularly strikes the
19 Court as I was preparing for today's proceedings,
20 as the -- is the continuing danger that you pose
21 to those around you, evidenced not only by the
22 homicide in this case, but by its timing in your
23 life.

24 Whatever crimes may have been a part of
25 your past, at the time you committed this

1 homicide, everything suggested that your life was
2 poised to take a turn for the better. By October
3 31 of 2005, you had legitimately become a
4 standard barer for the success of the Wisconsin
5 Innocence Project. Nobody doubted that you were
6 innocent of the crimes for which you were
7 exonerated, and that project was instrumental in
8 securing your freedom.

9 The fact that everyone acknowledged that
10 you had been wrongly convicted made you a subject
11 of sympathy, not only in this community, but
12 across the State. The State legislature
13 introduced legislation which bore your name,
14 extending greater protections to those accused of
15 crimes in order to reduce the future potential
16 for wrongful convictions. Legislators were
17 questioning whether the State shouldn't be
18 increasing the maximum amount of compensation
19 which can be awarded to persons who were
20 wrongfully incarcerated.

21 You were also the plaintiff in a civil
22 suit against Manitowoc County, which promised to
23 bring you significant compensation for your
24 lengthy period of wrongful incarceration. Even
25 with the specter of the homicide charges in this

1 case hanging over your head, your attorneys were
2 able to settle that case for \$400,000. However,
3 despite having the widespread sympathy of the
4 public, and the prospects for a significant
5 financial award, you committed the horrible crime
6 that brings you here to be sentenced today.

7 All the evidence suggests that this was
8 not a crime of passion, but rather of planned
9 premeditation. There is no indication, that I
10 saw in the trial, that you were under the
11 influence of alcohol or drugs at the time. The
12 victim was not a acquaintance with which you had
13 any particular relationship that could have given
14 rise to any type of domestic disturbance, but was
15 a mere business acquaintance. Moreover, the
16 crime was not the result of a youthful lapse of
17 judgment; you were 43 years old at the time you
18 committed the crime.

19 In terms of assessing your danger to
20 society, the evidence forces me to conclude that
21 you are probably the most dangerous individual
22 ever to set foot in this courtroom.

23 Your attorney has argued eloquently that
24 the Court should make you eligible for release at
25 some point in the future. But from what I see,

1 nothing in your life suggests that society would
2 ever be safe from your behavior.

3 One of the things that strikes me the
4 most is that, as you have grown older, your
5 crimes have increased in severity. This crime
6 was committed at a time when you were 43 years
7 old. Given the trend of your crimes, society has
8 a legitimate right to be concerned that there is
9 a serious risk you would reoffend and commit
10 serious offenses if you were ever permitted to be
11 released from prison.

12 The moral need for punishment as a
13 result of the gruesome murder in this case,
14 coupled with the danger that the Court believes
15 you pose to society based on your prior history
16 and the premeditated and senseless nature of the
17 homicide in this case, compels the Court to
18 conclude you should not be free again.

19 For the foregoing reasons, on the first
20 degree intentional homicide charge, the Court
21 sentences you to life in prison and determines
22 that you will not be eligible for release to
23 extended supervision.

24 On the felon in possession of a firearm
25 charge, the Court sentences you to a penalty of

1 10 years in prison, consisting of 5 years initial
2 confinement, followed by 5 years extended
3 supervision; that sentence to run concurrent with
4 your sentence on the first degree intentional
5 homicide charge.

6 In light of the Court's sentence on the
7 first degree intentional homicide charge, the
8 Court is not going to set any specific conditions
9 of extended supervision on the possession of a
10 firearm charge.

11 The Court has been notified that, in
12 terms of sentence credit, you are entitled to
13 credit of 568 days, that being the period of time
14 from November 9 of 2005, to the present.

15 I'm required to notify you that you will
16 be losing your voting rights as a result of your
17 conviction in this case. We have a paper that
18 explains those rights for you.

19 I also have for you a Written
20 Explanation of Indeterminate Sentence, which the
21 Court is required to prepare on the firearms
22 charge. I will hand that to you before you leave
23 today.

24 I will also notify you that you do have
25 the right to seek post conviction relief in this

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case. You have 20 days in which to file a notice of motion. We have a form your attorneys will go over with you before you leave today. Is there anything further from either party?

ATTORNEY KRATZ: No, Judge.

THE COURT: Mr. Strang.

ATTORNEY STRANG: No.

THE COURT: If not, these proceedings are adjourned.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 12TH day of July, 2007.

Diane Tesheneck, RPR
Official Court Reporter

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, 05 CF 381

5 vs. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** September 28, 2009

9 **BEFORE:** Hon. Patrick L. Willis
Circuit Court Judge

10 **APPEARANCES:**

11 THOMAS J. FALLON
Special Prosecutor
12 On behalf of the State of Wisconsin.

13 KENNETH R. KRATZ
Special Prosecutor
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
Special Prosecutor
16 On behalf of the State of Wisconsin.

17 SUZANNE L. HAGOPIAN
Attorney at Law
18 On behalf of the Defendant.

19 MARTHA K. ASKINS
Attorney at Law
20 On behalf of the Defendant.

21 STEVEN A. AVERY
Defendant
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven A. Avery, Case No. 05
3 CF 381. Will the parties present state their
4 appearances for the record.

5 ATTORNEY FALLON: Good morning, your Honor,
6 may it please the Court, the State appears by
7 Assistant Attorney General Tom Fallon and District
8 Attorney Ken Kratz as Special Prosecutors.

9 ATTORNEY HAGOPIAN: Steven Avery appears in
10 person with his attorney, Suzanne Hagopian, and
11 Martha Askins.

12 THE COURT: Very well, we are here this
13 morning on the defendant's post-conviction motion.
14 I will note for the record the defendant has filed a
15 post-conviction motion seeking a new trial on two
16 separate grounds.

17 The defendant alleges, as the Court
18 understands the motion, that the trial court
19 committed error by excluding evidence of third
20 party liability at the trial; and second, the
21 defendant alleges the trial court committed error
22 by improperly excusing a juror with a claimed
23 family emergency, following the first day of
24 deliberations. I will stop here, Attorney
25 Hagopian, and ask if you want to rephrase that.

1 I briefly summarized it, but.

2 ATTORNEY HAGOPIAN: No, that's fine.

3 THE COURT: Very well. One note, at the
4 outset, the Court did grant the defendant's request
5 to submit a portion of the post-conviction motion,
6 that is, documents relating to the claimed error in
7 excusing the juror, under seal. I did that with the
8 understanding that, following the evidentiary
9 portion of today's hearing, those documents would be
10 released. And I will issue an order, following the
11 hearing today, releasing all of the documents that
12 have been filed in connection with the
13 post-conviction motion, from their sealed status.

14 I will also indicate that, before
15 today's hearing, the parties filed briefs on the
16 issue of whether or not the juror who was
17 excused, who is the subject of that portion of
18 the post-conviction motion, would be permitted to
19 testify at today's hearing.

20 The parties indicated to the Court they
21 took opposite positions on that question and the
22 Court permitted the parties to file briefs with
23 the Court. Those briefs are included in the
24 documents which will be -- which were originally
25 admitted under seal, but which will be released

1 at the conclusion of today's hearing.

2 The State challenges the defendant's
3 offer of that testimony both on grounds of
4 relevance and as being prohibited by Section
5 906.06 of the Wisconsin Statutes. With respect
6 to the relevance of the proffered testimony, the
7 defense agrees, and the Court agrees, that as it
8 relates to some of the defendant's arguments, the
9 testimony would be irrelevant. That is, for
10 example, to the extent the defendant alleges that
11 the Court committed structural error in the
12 procedure that was used to exclude the juror, the
13 evidence would not be relevant.

14 However, the defendant argues that,
15 under other of its theories, specifically the
16 possibility that an appeals court would require
17 that the defendant show prejudice as a result of
18 the Court's actions, the evidence could have
19 relevance. And the Court agrees that both as it
20 relates to the defendant's allegations of
21 prejudice and the claim of ineffective assistance
22 of counsel -- Whoever has the child in the back
23 of the room is going to have to leave the
24 courtroom immediately. To the extent it relates
25 to the prejudice claim and the ineffective

1 assistance of counsel claim, the evidence could
2 have relevance and the Court will, therefore,
3 allow the excused juror to testify.

4 In addition, there's an issue of whether
5 or not the evidence is prohibited under Section
6 906.06 (2), which is a statute that in general
7 prohibits testimony from a juror when it's used
8 to impeach a verdict. Specifically, the
9 introductory portion of the statute reads as
10 follows: Upon an inquiry into the validity of a
11 verdict or indictment, a juror may not testify as
12 to any manner or statement occurring during the
13 course of the jury's deliberations.

14 The Court accepts the defendant's
15 arguments that while the type of testimony
16 described in the statute is of the type that
17 would be prohibited should the verdict be
18 questioned, in this case the evidence is offered
19 for a different purpose, that is, as it relates
20 to the procedure used to excusing the juror and,
21 therefore, the statute does not prohibit the
22 juror from testifying.

23 That is not to say that anything the
24 juror might say would be relevant, but the Court
25 concludes that the juror is not prohibited from

1 testifying in any respect, for those reasons.
2 Unless there's something further from either
3 party at this time, Attorney Hagopian, you may
4 call your first witness.

5 ATTORNEY HAGOPIAN: Very well, thank you.

6 THE COURT: Just a second.

7 ATTORNEY FALLON: Your Honor, thank the
8 Court for the ruling. We do have a motion to
9 sequester expected witnesses.

10 THE COURT: Any objection from the defense?

11 ATTORNEY HAGOPIAN: No.

12 THE COURT: Very well, any other witnesses
13 who will be testifying should be excused from the
14 courtroom at this time. I see Attorney Strang
15 leaving the courtroom. Are there any other
16 witnesses in the courtroom who the defendant intends
17 to call?

18 ATTORNEY HAGOPIAN: Our investigator, I
19 think, is going to leave.

20 THE COURT: Very well.

21 ATTORNEY FALLON: We're not going to oppose
22 if the investigator wishes to stay, because Officer
23 Wiegert is here on our behalf as well. So we don't
24 have any objection if their investigator wishes to
25 remain here, because we intend to have Officer

1 Wiegert present, not anticipating calling him, but
2 one would never know.

3 ATTORNEY HAGOPIAN: All right. Thank you.

4 THE COURT: Okay. That's acceptable to the
5 defense then, so the defense investigator and
6 Officer Wiegert may stay in the courtroom. Attorney
7 Hagopian, you may call your witness.

8 ATTORNEY HAGOPIAN: I would call Richard
9 Mahler.

10 ATTORNEY FALLON: While we're waiting for
11 Mr. Mahler, if the record would reflect that
12 Attorney Gahn has joined the prosecution table.

13 THE COURT: So noted.

14 THE CLERK: Please raise your right hand.

15 **RICHARD R. MAHLER**, called as a witness
16 herein, having been first duly sworn, was
17 examined and testified as follows:

18 THE CLERK: Please be seated. Please state
19 your name and spell your last name for the record.

20 THE WITNESS: Richard R. Mahler,
21 M-a-h-l-e-r.

22 **DIRECT EXAMINATION**

23 BY ATTORNEY HAGOPIAN:

24 Q. Mr. Mahler, how old are you?

25 A. Forty-four.

1 Q. Are you employed?

2 A. Yes.

3 Q. And where are you employed?

4 A. I work in retail.

5 Q. Are you married?

6 A. Yes.

7 Q. How long have you and your wife been married?

8 A. Thirteen years.

9 Q. Is it correct that you were selected to serve as
10 a juror in this case, that being State vs. Avery?

11 A. Yes.

12 Q. Was that in early February, 2007?

13 A. That's correct.

14 Q. Would you agree that this was a very high profile
15 case?

16 A. Yes, I do.

17 Q. Had you ever before served on a jury?

18 A. No, I did not.

19 Q. How did you feel about being selected to serve on
20 this jury?

21 A. I thought it would be an honor to look at
22 evidence and base a decision on the evidence.

23 Q. How did your wife feel about the fact that you
24 had been chosen to serve on the jury?

25 A. She was kind of excited because it was such a

1 high profile case and, I mean, she thought it
2 would be interesting for me to be on a jury.

3 Q. Had your wife been upset about something that had
4 been reported in the media at the time the jury
5 was selected?

6 A. Yes, ma'am.

7 Q. Do you recall what it was in the press report
8 that had upset your wife?

9 A. That I was a musician living off my wife's money.

10 Q. Now, your name didn't appear in that media report
11 did it?

12 A. No, ma'am.

13 Q. What about your wife's name, did that appear in
14 the press account?

15 A. No, it did not.

16 Q. But your wife was able to figure out who they
17 were talking about?

18 A. Yes, ma'am.

19 Q. Was your wife upset about that report to the
20 point that she did not want you to serve on the
21 jury?

22 A. No.

23 Q. When you began your jury service, were you and
24 your wife having marriage problems?

25 A. No, we were not.

1 Q. And as a juror in this case, as the trial got
2 under way, were you present in court for the
3 lawyers' opening statements?
4 A. Yes, I was.
5 Q. Were you present in court for all of the witness'
6 testimony?
7 A. Yes, I was.
8 Q. And were you also there in court for the lawyers'
9 closing arguments?
10 A. Yes, I was.
11 Q. That whole process took a number of weeks, didn't
12 it?
13 A. That's correct.
14 Q. Do you remember about how long you were here
15 listening to the case?
16 A. Five weeks, roughly.
17 Q. Now, during those five weeks when you were in
18 court, right up to the very end of trial, were
19 you permitted to go home each night?
20 A. Yes, I was.
21 Q. Were you permitted to go home on the weekends?
22 A. Yes.
23 Q. And did you, in fact, go home to your family each
24 night and on the weekends, while this trial was
25 going on?

1 A. Yes, that is correct.

2 Q. Was there a point in the trial when the jury was
3 not allowed to go home?

4 A. That was during deliberations.

5 Q. During about the time of deliberations?

6 A. Yes.

7 Q. Now, if I, when questioning you, use the word
8 sequestered, do you know what I'm talking about?

9 A. It means lock down.

10 Q. Lock down.

11 A. Can't go home, can't do nothing, no TV, sit in
12 your room and do nothing.

13 Q. Now, is it correct that you were among the 12
14 jurors who were given the case and began
15 deliberations?

16 A. Yes.

17 Q. And when that began, when the deliberations
18 began, do you recall how many nights you had
19 spent away from home?

20 A. I believe it was one night.

21 Q. Where did the jurors stay while you were
22 sequestered?

23 A. The Best Western in Chilton.

24 Q. And now, at that point, when you're sequestered,
25 five weeks, six weeks after you were selected to

1 serve on this jury, at that point were you and
2 your wife having marriage problems?

3 A. No.

4 Q. Did you feel that your wife was still generally
5 supportive of your jury service?

6 A. Yes, I do.

7 Q. I would like to direct your attention,
8 specifically, to the day that deliberations
9 began, which was March 15 of 2007; do you
10 remember that day?

11 A. Yes, I do.

12 Q. Do you recall approximately how long the jury
13 deliberated that day?

14 A. We deliberated for four hours.

15 Q. At some point, were the deliberations completed
16 for the night?

17 A. Yes, ma'am.

18 Q. Was it your expectation that deliberations would
19 begin again the next day?

20 A. That is correct.

21 Q. What was your mood as deliberations ended for the
22 night, on March 15th?

23 A. I was exhausted but, really, it was done for the
24 day.

25 Q. What was your feeling, in just a general sense,

1 as to how things had gone during deliberations
2 that day?

3 A. I was frustrated.

4 Q. And why was that?

5 A. Because of some comments in the deliberations.

6 Q. And what sort of comments, just generally?

7 A. One of the jurors made a statement before looking
8 at the evidence.

9 Q. And that made you feel frustrated?

10 A. Yes, it did.

11 Q. What did you do after deliberations were done for
12 the day?

13 A. We were escorted to the bus, and from the bus we
14 went to Seven Angels Restaurant.

15 Q. And did all of the jurors go out to eat together?

16 A. Yes, we all did.

17 Q. And you mentioned you were transported there by a
18 bus?

19 A. That's correct.

20 Q. And were you in the company of bailiffs, or
21 officers, or who was with you?

22 A. Bailiffs and state patrol officers. And I'm not
23 sure if there was county, but I know there were
24 plenty of state patrol officers around.

25 Q. So then you're at dinner at Seven Angels; was

1 there anyone present during the dinner, other
2 than the jurors?

3 A. The bailiff and, like I said, the other officers,
4 state patrolmen.

5 Q. At any point during the dinner did Sheriff Pagel
6 arrive?

7 A. Some time during dinner, yes, he did.

8 Q. And do you recall what was the occasion for him
9 to arrive at the restaurant?

10 A. Some of the jurors felt that they wanted to have
11 an alcoholic drink and I guess Sheriff Pagel
12 stated that the judge said it was okay.

13 Q. And in this restaurant, were the jurors seated in
14 some sort of separate room, away from the public?

15 A. Yes, we were all in like a side banquet room,
16 with the doors closed.

17 Q. And when Sheriff Pagel arrived, did he come into
18 that banquet room where the jurors were?

19 A. Yes, he did.

20 Q. Did he then leave after telling the jurors that
21 you could have a drink?

22 A. I don't recall.

23 Q. Could you describe the seating arrangement at the
24 restaurant?

25 A. It was in a -- tables were in kind of a U shape,

1 I believe, with a couple tables in the center,
2 that's what I remember.

3 Q. And who were you sitting next to?

4 A. I was sitting next to Juror Carl.

5 Q. And do you recall his last name?

6 A. Yes, Wardman.

7 Q. Now, Carl Wardman, he was another juror serving
8 on the case?

9 A. Yes, ma'am.

10 Q. Did you speak with Mr. Wardman at dinner that
11 night?

12 A. I didn't catch the question.

13 Q. Did you speak with Mr. Wardman at dinner that
14 night?

15 A. Yes, I did.

16 Q. And what did you say to him?

17 A. I told him that I was frustrated with
18 deliberations.

19 Q. And did Mr. Wardman have a response for you?

20 A. Yeah, if you can't handle it, why don't you just
21 leave.

22 Q. I'm sorry, I'm having a little trouble hearing
23 you. Could you speak up.

24 A. If you can't handle it, why don't you tell them
25 and just leave.

1 Q. Could you describe Mr. Wardman's tone of voice
2 when he made that comment?

3 A. Pretty much the way I stated it. You know, if
4 you can't handle it, then, you know, tell them
5 and just leave. Just kind of sarcastic tone of
6 voice.

7 Q. And how did you interpret Mr. Wardman's comment
8 to you?

9 A. Verbally threatening.

10 Q. Did you feel physically threatened by him?

11 A. No.

12 ATTORNEY FALLON: I'm sorry, I can't hear
13 the witness.

14 A. No, ma'am.

15 Q. (By Attorney Hagopian)~ When you said you felt
16 verbally threatened, what do you mean by that?

17 A. It was just his tone of voice and demeanor when
18 he said it.

19 Q. And how did your exchange with Mr. Wardman leave
20 you feeling?

21 A. I felt threatened and upset.

22 Q. You had earlier testified to even before going to
23 dinner that night to feeling somewhat frustrated
24 by the deliberations?

25 A. That's correct.

1 Q. Was Mr. Wardman at all involved in your feeling
2 of frustration from the deliberations?

3 A. Yes, he is the one who made the statement as we
4 walked into the jury room.

5 Q. What was the statement that was made?

6 ATTORNEY FALLON: Objection, relevance and
7 hearsay.

8 THE COURT: Counsel.

9 ATTORNEY HAGOPIAN: As to hearsay, we're
10 not offering it for its truth, but merely for the
11 effect on the listener. And the relevance is in
12 terms of his explanation as to why Mr. Mahler was
13 feeling the way he was.

14 THE COURT: I will allow it.

15 A. He said he's --

16 (Court reporter couldn't hear.)

17 A. He said, he's fucking guilty.

18 Q. And was that very early in the deliberations?

19 A. That was right as we got into deliberations.

20 Q. Had there been a preliminary vote taken by the
21 jury that day during deliberations?

22 A. Yes, there was.

23 Q. What was your vote?

24 A. I voted not guilty, based on I wanted to look at
25 all the evidence and make a decision based on

1 that evidence.

2 Q. And do you know what Mr. Wardman's vote was?

3 A. No, I can just guess. I have no clue what his
4 vote was.

5 Q. And when you say guessing, would it be correct to
6 say that you are relying on the comment that he
7 made --

8 A. Yes.

9 Q. -- basically arriving in the deliberation room?

10 A. Yes, ma'am.

11 Q. So, after dinner, did you then return to the
12 motel with the other jurors?

13 A. That's correct.

14 Q. And I assume you were taken back to the motel on
15 a bus?

16 A. Yes.

17 Q. All of the jurors together?

18 A. With state patrolmen --

19 Q. Mm-hmm.

20 A. -- all over the place.

21 Q. What did you do when you got back to the motel?

22 A. We were escorted to our rooms.

23 Q. Did -- Were you aware, were jurors all staying in
24 their rooms or did some other things happen?

25 A. At first, we were all pretty much in our rooms.

1 Q. Was there an area the jurors were allowed to
2 congregate?

3 A. Yes, in the evening, they had a television with
4 VCR tapes or movies that we could watch.

5 Q. Because I assume you didn't have a TV in your
6 individual room, did you?

7 A. No.

8 Q. And you didn't have a telephone in your room?

9 A. No, ma'am.

10 Q. At some point, then, after you're back from
11 dinner, back in your motel room, did you decide
12 to call home?

13 A. Yes, I did.

14 Q. And what did you -- So you didn't have a phone in
15 your room; what did you have to do to make
16 arrangements to call home?

17 A. Well, there was -- I noticed a couple other
18 jurors calling home from a phone that the bailiff
19 had, a cell phone.

20 Q. Were you aware, prior to your arrival back to --
21 at the motel that evening, that jurors were
22 allowed to call home?

23 A. No, I didn't.

24 Q. But you saw other jurors doing that?

25 A. Yes.

1 Q. And why did you decide to call home?

2 A. I decided to call home just to check in, to let
3 her know everything was okay.

4 Q. And when you refer to "check in and let her
5 know", are you referring to your wife?

6 A. Yes, ma'am.

7 Q. Did you have any information at that point that
8 your wife was trying to reach you?

9 A. No, not at all.

10 Q. Did you have any information that your wife had
11 called a bailiff, or anyone else at the motel, to
12 report a family emergency?

13 A. No.

14 Q. Were you able to speak with your wife?

15 A. Yes, I was.

16 Q. And you were doing this on the bailiff's cell
17 phone, correct?

18 A. That is correct.

19 Q. Were you in your private room or somewhere else
20 in the motel?

21 A. We were in the group TV room that we were
22 watching movies in.

23 Q. Did you tell your wife how you were feeling?

24 A. No.

25 Q. In that conversation, did your wife tell you

1 something about your stepdaughter?

2 A. Yeah, she said that there was an accident.

3 Q. How old was your stepdaughter at that time?

4 A. Seventeen.

5 Q. Now, the mention of an accident, did that come up
6 immediately in the conversation?

7 A. No.

8 Q. So you and your wife had conversed about other
9 matters before there was any mention of an
10 accident?

11 A. Just how I was doing. I told her I was doing all
12 right.

13 ATTORNEY FALLON: I'm sorry, I'm having a
14 real hard --

15 A. I told her that I was doing okay, that I was all
16 right.

17 Q. (By Attorney Hagopian)~ And it was then, after
18 some discussion, that there was mention of an
19 accident?

20 A. That's correct.

21 Q. Did your wife tell you that your stepdaughter was
22 in the hospital?

23 A. No, she did not.

24 Q. Did she tell you that your stepdaughter was
25 injured in any way?

1 A. No, she did not.

2 Q. Did your wife tell you that you needed to come
3 home?

4 A. No.

5 Q. Did you sense that your wife was upset that
6 evening?

7 A. Yes, I did.

8 Q. Did you know why?

9 A. No.

10 Q. Did you think your wife would divorce you if you
11 did not come home that night?

12 A. No, not at all.

13 Q. When you then ended the conversation with your
14 wife, did you hand the cell phone back to the
15 bailiff?

16 A. Yes, I did.

17 Q. As you handed the cell phone back to the bailiff,
18 did you tell the bailiff that you had a family
19 emergency?

20 A. Not that I recall.

21 Q. What did you do?

22 A. I went back to my room.

23 Q. And what were your thoughts at that point?

24 A. After sitting in my room for awhile, I was
25 uncertain what was happening at home.

1 Q. You were uncertain about what was going on at
2 home?

3 A. That's correct.

4 Q. Were you also feeling frustrated?

5 A. Yes, I was.

6 Q. And what was the source of that frustration?

7 A. That conversation at dinner.

8 Q. So were you still upset about your exchange at
9 dinner that night, with Mr. Wardman?

10 A. Yes, I was.

11 Q. Were you still upset about how things were going
12 in deliberations?

13 A. Yes.

14 Q. What did you do next?

15 A. I believe I talked to one of the state patrolmen,
16 outside my door.

17 Q. What did you tell the state patrol officer?

18 A. And I told him that I needed to talk to the
19 bailiff.

20 Q. And what was the officer's response?

21 A. He said he would get the bailiff to my room.

22 Q. And what happened next?

23 A. As I recall, the bailiff came in and said he
24 would get ahold of Sheriff Pagel.

25 Q. Did you provide any information to the bailiff at

1 that point?

2 A. Yes, that there was a family emergency I had to
3 deal with at home.

4 Q. And that was the extent of the conversation, as
5 you recall?

6 A. As I recall, yes.

7 Q. So the bailiff said he would get Sheriff Pagel.
8 Did Sheriff Pagel arrive, then, at some point?

9 A. Yes, he did, with the bailiff.

10 Q. And where were you when Sheriff Pagel arrived?

11 A. I was in my hotel room.

12 Q. And you had been in your motel room this entire
13 time, from after when you spoke to the state
14 patrolman, until Sheriff Pagel arrived?

15 A. Yes.

16 Q. And when Sheriff Pagel arrived, did he actually
17 come inside the motel room with you?

18 A. Yes, he did.

19 Q. Was there anyone present in that room, other than
20 you and Sheriff Pagel?

21 A. I believe the bailiff was there with him.

22 Q. And did you speak with Sheriff Pagel?

23 A. Yes, I did.

24 Q. Did Sheriff Pagel say anything to you?

25 A. Yes, I guess he was asking what was going on.

1 Q. And what did you tell Sheriff Pagel?

2 A. That there was some kind of an accident at home,
3 family emergency.

4 Q. Did you tell him anything else?

5 A. Just that I felt I needed to go home.

6 Q. Do you recall if you told Sheriff Pagel that your
7 stepdaughter's car had been totaled?

8 A. No, I don't recall saying anything like that.

9 Q. What did Sheriff Pagel do when you told him that
10 you needed to go home?

11 A. He said he would get ahold of the judge.

12 Q. Were you present when Sheriff Pagel spoke with
13 the judge?

14 A. Yes, I was.

15 Q. Do you remember where that occurred?

16 A. That was in my hotel room.

17 Q. So it's you and Sheriff Pagel in your room,
18 possibly the bailiff as well?

19 A. Right.

20 Q. And Sheriff Pagel was on the phone with the
21 judge; is that correct?

22 A. As I recall, yes.

23 Q. And is Sheriff Pagel using his own cell phone?

24 A. Yes, he was.

25 Q. Could you hear what the sheriff was saying to the

1 judge?

2 A. I remember him talking to the judge, but I don't
3 remember what he was saying.

4 Q. Now, at some point after this encounter with
5 Sheriff Pagel and the call to the judge, did you
6 yourself speak with Judge Willis?

7 A. Yes, I did.

8 Q. And whose phone were you using?

9 A. Sheriff Pagel's.

10 Q. And where were you when this conversation with
11 the judge took place?

12 A. In my hotel room.

13 Q. Was Sheriff Pagel present while you were speaking
14 with the judge?

15 A. Yes, he was.

16 Q. Do you recall where he was in relation to you,
17 the distance?

18 A. Couple feet.

19 Q. Would he have been able to hear what you were
20 saying?

21 A. Yes.

22 Q. Approximately how long did your conversation with
23 the judge last?

24 A. Two minutes.

25 Q. What, to the best of your recollection, did you

1 tell the judge?

2 A. I told him that there was a family emergency at
3 home. And I recall him asking if I needed --
4 sure I needed to go home.

5 Q. So you told the judge there was a family
6 emergency and you needed to go home?

7 A. Yes.

8 Q. Did you say anything else?

9 A. Not that I recall.

10 Q. Did the judge ask you if your stepdaughter was in
11 the hospital?

12 A. No, he did not.

13 Q. Did the judge ask you if your stepdaughter was
14 injured?

15 A. No, he did not.

16 Q. Did you tell the judge, in that conversation,
17 that your marriage was in trouble?

18 A. No, I did not.

19 Q. Did you tell the judge that you and your wife
20 were having trouble before the trial had even
21 begun?

22 A. No.

23 Q. What happened next?

24 A. I handed the phone back to Sheriff Pagel and then
25 I waited in my room and got my stuff together.

1 Q. Did the judge say anything to you at the end of
2 that conversation?

3 A. He said I was free to go.

4 Q. Had you told the judge the full story about why
5 you wanted off the jury that night?

6 A. No, I did not.

7 Q. What did you not tell the judge?

8 A. About my conversation with Mr. Wardman.

9 Q. Had your stepdaughter actually been in an
10 accident?

11 A. No, ma'am.

12 Q. What had happened to her?

13 A. Her car was having troubles. She just had car
14 troubles.

15 Q. When did you find that out?

16 A. Upon my arrival at home.

17 Q. And once you were home, what were your feelings
18 about having gotten off the jury?

19 A. I was frustrated and angry with myself.

20 Q. Did you feel like you had let yourself down?

21 A. I felt like I left myself down and all parties
22 involved.

23 Q. When did you start to feel that way?

24 A. A few hours after I got home.

25 Q. So you felt that way even before the jury had

1 come back with a verdict?

2 A. That's correct.

3 Q. Does this still bother you today?

4 ATTORNEY FALLON: Objection, relevance.

5 THE COURT: Attorney Hagopian.

6 ATTORNEY HAGOPIAN: I think it just may
7 offer some further explanation as to why he's here
8 today.

9 THE COURT: I'm going to sustain the
10 objection.

11 Q. (By Attorney Hagopian)~ Mr. Mahler, the way you
12 have spoken in your testimony today, is that your
13 typical manner of speaking?

14 A. No, ma'am.

15 Q. What is your typical manner?

16 A. I'm usually pretty happy. Pretty -- I don't feel
17 as nervous --

18 Q. Mm-hmm.

19 A. -- as I do right now.

20 Q. The way you are speaking today, is that how you
21 would speak when you are feeling upset about
22 something?

23 A. Yes, ma'am.

24 ATTORNEY HAGOPIAN: That's all I have.

25 Thank you.

1 THE COURT: Mr. Fallon.

2 ATTORNEY FALLON: Thank you.

3 **CROSS-EXAMINATION**

4 BY ATTORNEY FALLON:

5 Q. Good morning, Mr. Mahler.

6 A. Good morning.

7 Q. Would you say you have a pretty fair recollection
8 of the events of March 15th, 2007?

9 A. Yes, I do.

10 Q. Very well. What time did you begin deliberations
11 on March 15th, 2007?

12 A. It was in the afternoon, like one -- around 1:00.

13 Q. And what time did you call it a day,
14 deliberating?

15 A. It was like 4, 4:30 roughly.

16 Q. At the end of deliberations that day, what was
17 the first stop the jurors made when they left the
18 courthouse? Did they go to the hotel? Did they
19 go to the restaurant? What did they do first?

20 A. We went to the restaurant.

21 Q. And you went to Seven Angels?

22 A. That is correct.

23 Q. And there were the 12 jurors, correct?

24 A. That's correct.

25 Q. And there were bailiffs, correct?

1 A. That's correct.

2 Q. How many bailiffs?

3 A. I believe one.

4 Q. And there were some law enforcement officers
5 providing security detail, correct?

6 A. That is correct.

7 Q. All right. There were some sheriffs deputies?

8 A. As I recall.

9 Q. A state patrol officer or two?

10 A. Yeah, there were plenty of state patrol officers.

11 Q. All right. And you got to the restaurant on the
12 bus that was provided by the county, correct?

13 A. That is correct.

14 Q. Who did you sit with on the bus?

15 A. I don't recall.

16 Q. Did you have any conversations with anyone on the
17 bus, on the way to dinner?

18 A. No, sir.

19 Q. You testified that you had an unpleasant exchange
20 with Mr. Wardman at dinner. Prior to that dinner
21 conversation, you had no other conversation with
22 Mr. Wardman, correct?

23 A. That is correct.

24 Q. And thus, the only time that you had any exchange
25 with Mr. Wardman was at this brief dinner

1 exchange, correct?

2 A. That is correct.

3 Q. What did you have for dinner?

4 A. I believe it was some kind of -- like a French
5 dip type of sandwich.

6 Q. How did it come to pass that you were sitting
7 next to Mr. Wardman?

8 A. I just -- I don't know, I just sat down.

9 Q. Just coincidence that you ended up sitting next
10 to Mr. Wardman?

11 A. I don't know why, I just sat down.

12 Q. So it was a coincidence?

13 A. Pretty much so.

14 Q. All right. How long were you at the dinner --
15 excuse me -- How long were you at dinner or
16 having dinner at Seven Angels?

17 A. About an hour or so, as I recall.

18 Q. Not a long dinner; is that correct?

19 A. That is correct.

20 Q. All right. What did Mr. Wardman have?

21 A. I don't recall.

22 Q. And from your questioning by counsel, I take it
23 that you only had one exchange with Mr. Wardman,
24 correct?

25 A. That's right.

1 Q. I'm sorry?

2 A. Yes.

3 Q. All right. So you had no other small talk, as it
4 were, with Mr. Wardman, whatsoever?

5 A. No.

6 Q. And so at some point, was this before dinner,
7 during dinner, or after dinner, that you had this
8 exchange with him?

9 A. It was during dinner.

10 Q. And so out of the blue, without having any
11 discussion beforehand, you turned to him and told
12 him you were frustrated about the deliberations
13 that afternoon?

14 A. That is correct.

15 Q. All right. And he said, well, if you can't
16 handle it, then you should just tell them that
17 you want to leave, correct?

18 A. Yes.

19 Q. There was no other exchange between the two of
20 you, correct?

21 A. No, sir.

22 Q. I'm sorry?

23 A. No, sir.

24 Q. Thank you. Did you find participating in the
25 trial itself, as a juror, to be stressful?

1 A. Yes, sir. I believe we all did.

2 Q. And it was stressful, why?

3 A. Because to me it was because of certain things
4 that were said during deliberations.

5 Q. Well, I'm not getting to deliberations. I'm
6 talking about the trial itself, listening to the
7 evidence for the five weeks before deliberations,
8 was that stressful?

9 A. No, sir, I didn't feel it was.

10 Q. Okay. So it would be fair to say that the first
11 time you felt stress was during the initial four
12 hours of deliberations; is that correct?

13 A. That is correct.

14 ATTORNEY FALLON: May I have a moment,
15 please.

16 Q. (By Attorney Fallon)~ You found the deliberations
17 stressful because you attribute a cavalier
18 comment to one of the jurors, Mr. Wardman,
19 correct?

20 A. That's correct.

21 Q. All right. What other stress, other than that
22 one comment, now I'm talking during
23 deliberations, caused you stress?

24 A. There was a couple of different jurors that made
25 statements, but his stood out the most to me.

1 Q. All right. So there was the one statement that
2 he made and a statement or two attributed to
3 other jurors, seemingly suggesting too cavalier
4 approach for your liking; is that it?

5 A. To me, it just seemed they were more willing to
6 look at the evidence.

7 Q. I'm sorry, they were what?

8 A. To me it seemed that they weren't willing to sit
9 down and look at the evidence.

10 Q. So, there was a comment from Mr. Wardman and a
11 comment from how many other jurors?

12 A. Two others.

13 Q. All right. So there were three jurors that you
14 didn't think were taking this seriously enough?

15 A. That's correct.

16 Q. All right. And that made you stressful?

17 A. As far as doing my civil duty, yes.

18 Q. All right. Were you upset about that?

19 A. Yes, I was.

20 Q. Were you distraught?

21 A. I was angry.

22 Q. You were angry?

23 A. Yes, sir.

24 Q. And who did you express your anger to?

25 A. I basically held.

1 Q. All right. So you didn't respond to Mr. Wardman
2 when he made his first comment during
3 deliberations?

4 A. I did not.

5 Q. You did not respond to the other two jurors
6 either, correct?

7 A. That is correct.

8 Q. All right. So you didn't impress upon them the
9 serious nature of the deliberations, correct?

10 A. I did mention too that during the deliberations,
11 that we're here to look at the evidence. I
12 didn't direct it to the three jurors, but I said
13 to everybody, that we should look at the
14 evidence.

15 Q. All right. All right. So there were those three
16 comments that were made by three different jurors
17 during the initial deliberations stage?

18 A. Yes, sir.

19 Q. All right. There were no other comments,
20 correct?

21 A. No, sir.

22 Q. The rest of the time was actually spent looking
23 at the evidence and talking about things, as
24 jurors do, correct?

25 A. The majority of us, yes.

1 Q. All right. So that night, you had no prior
2 conversation with Mr. Wardman, whatsoever, before
3 you leaned over to him during dinner and told him
4 you were frustrated by that afternoon's events?
5 A. No, I did not.
6 Q. And you had no further conversation with him,
7 after he made what you termed to be a sarcastic
8 comment about, then you should just leave?
9 A. No, I had no other comment -- or no other
10 conversations with him.
11 Q. All right. And you had no conversation with any
12 other juror about your frustrations, correct?
13 A. No, not during --
14 Q. Dinner?
15 A. -- dinner.
16 Q. Correct?
17 A. That's correct.
18 Q. All right. On the bus ride back to the hotel,
19 who did you ride with?
20 A. I don't recall. I don't know.
21 Q. Did you have -- You didn't have any conversation
22 with anyone on the bus regarding the day's
23 events, your frustrations, I mean, correct?
24 A. No, sir. We were bound to not talk about it.
25 Q. All right. You got back to the hotel or motel;

1 what time was it?

2 A. I believe it was like 6, 6:30, something like

3 that.

4 Q. What was the first thing you did?

5 A. We were escorted to our hotel rooms.

6 Q. You were escorted to your room?

7 A. That's correct.

8 Q. Who escorted you to your room?

9 A. The sheriff -- The state patrol.

10 Q. A state patrol officer?

11 A. Yes. They walked us up the steps.

12 Q. How many bailiffs were there?

13 A. I do recall there was one.

14 Q. All right. Do you recall the bailiff's name?

15 A. No, I don't.

16 Q. He had been a bailiff with this jury for quite

17 some time, had he not?

18 A. Yes.

19 Q. All right. You do not recall his name at this

20 time?

21 A. No, sir.

22 Q. Did you have conversation with anyone else at

23 dinner, about family, about work, music?

24 A. No, not during the meal.

25 Q. Not during dinner?

1 A. No.

2 Q. On the bus ride back to the hotel?

3 A. No.

4 Q. When you got to the hotel, your first stop was
5 immediately to your room?

6 A. Yes.

7 Q. How long were you in your room?

8 A. Three, four hours, as I recall.

9 Q. Three or four hours.

10 A. Yes, sir.

11 Q. What did you do during the three or four hours?

12 A. I believe I went to sleep.

13 Q. So you had no conversation with anyone --

14 A. Not until --

15 Q. -- after returning to the motel?

16 A. Not until I found, you know, I found out there
17 was movies.

18 Q. What time was that?

19 A. That was probably around 9:30, 10:00.

20 Q. Well, if I were to tell you that court records
21 reflect that you had a conversation with Judge
22 Willis about your need to leave, about 9:00,
23 would that be incorrect?

24 A. I don't recall.

25 Q. You have no recollection of that?

1 A. I don't recall what time it was.

2 Q. All right. So, just so I'm clear, you went back
3 to your room and stayed in your room for a period
4 of time, you think you took -- you went to sleep?

5 A. As I recall, yes.

6 Q. So up to this point, you were frustrated?

7 A. Yes, I was.

8 Q. You were angry?

9 A. Yes.

10 Q. You were distraught?

11 A. I -- Yes.

12 Q. All right. And all as a result of your exchange
13 at dinner with one other juror; is that correct?

14 A. That is correct.

15 Q. That exchange at dinner lasted 10 seconds?

16 A. Yes.

17 Q. And as a result of that exchange, you felt
18 threatened; is that correct?

19 A. That is correct.

20 Q. All right. You were -- Did you feel -- Well,
21 let's talk about that. Why did you feel
22 threatened?

23 A. It was by the way he said it and his comment at
24 the beginning of deliberations.

25 Q. All right. And why did you feel threatened by

1 that, his tone of voice?

2 A. His demeanor, the way he said it.

3 Q. Did you feel it was going to seriously jeopardize
4 your ability to be a juror?

5 A. I don't believe it did.

6 Q. You don't believe that it did, correct?

7 A. I felt -- No, that I didn't feel that it would.

8 Q. I'm sorry, you are going to have to be clearer,
9 Mr. Mahler.

10 A. I didn't feel it would affect my judgment as a
11 juror, no.

12 Q. All right. So, in other words, being a juror,
13 you were going to more or less stick to your guns
14 and review the evidence and then decide, after
15 you reviewed everything, as you thought the
16 evidence merited, correct?

17 A. That is my -- That was my intention.

18 Q. That was your intention. And even though you had
19 this unpleasant exchange with Mr. Wardman, that
20 was still your intention when you went to your
21 room that night, correct?

22 A. Yes.

23 Q. All right. And it obviously wasn't that
24 threatening because you mentioned it to no one,
25 correct?

1 A. I'm not the kind that usually tells. You know, I
2 sometimes hold a lot of things in. I don't
3 express my anger.

4 Q. All right. But you didn't mention anything to
5 the bailiff, correct?

6 A. No, sir.

7 Q. And you didn't mention any of this concern or
8 threatening behavior to any of the troopers,
9 correct?

10 A. No, sir.

11 Q. And you didn't mention it to the sheriff's
12 deputies who were assisting in the security
13 detail, correct?

14 (Court reporter couldn't hear.)

15 A. No, sir.

16 Q. All right. Now, at some point you woke up and
17 you proceeded to this common room?

18 A. That's correct.

19 Q. And when you got to that room, who was present?

20 A. The bailiff and a bunch of other jurors.

21 Q. All right. And what was going on in the common
22 room when you arrived?

23 A. There were jurors watching television and I
24 noticed that other jurors were talking on the
25 cell phone with their spouses.

1 Q. All right. And the bailiff was there, correct?

2 A. That is correct.

3 Q. And what did you do?

4 A. After -- Well, when I noticed that other jurors
5 were calling their spouses, I asked if I could
6 call home.

7 Q. All right. And you asked the bailiff this,
8 correct?

9 A. That's correct.

10 Q. You asked if you could use his phone, right?

11 A. Yes, sir.

12 Q. And he agreed to allow you to call home, correct?

13 A. That's right.

14 Q. And he stood nearby as you called home, correct?

15 A. That's correct.

16 Q. All right. And you called home and spoke to your
17 wife?

18 A. Yes, sir.

19 Q. All right. And you have just told us that your
20 relations with your wife were just fine, correct?

21 A. Yes, sir.

22 Q. All right. You have a warm, loving relationship,
23 correct?

24 A. Yes, sir.

25 Q. All right. And you feel secure and safe in

1 telling her things that you may not tell other
2 individuals, correct?

3 A. Yes, sir.

4 Q. All right. And you have been married for how
5 many years, 15 years?

6 A. Thirteen.

7 Q. Thirteen years. All right. And often times you
8 have told her and expressed things to her that
9 you pretty much keep to yourself and don't tell
10 others, right?

11 A. Yeah, I try.

12 Q. And in this particular case, you were so upset
13 and so distraught, but you didn't mention
14 anything to your wife about the stress of the
15 deliberations, correct?

16 A. No, sir, because I was sworn not to say anything
17 to her about anything in deliberations.

18 Q. All right. Now, in your conversations with your
19 wife, she told you your stepdaughter had been in
20 an accident?

21 A. That's correct.

22 Q. All right. She was still upset about the report
23 that appeared in the press, during the initial
24 selection process, about you living on the
25 proceeds of a trust fund that she had, correct?

1 A. Didn't seem that's why she was upset that
2 evening.

3 Q. I'm coming to that. But at the time of the
4 deliberations, even after five or six weeks, that
5 was still a sore point with her, right?

6 A. I believe it was, yes.

7 Q. All right. Now, in the phone conversation that
8 night, March 15th, there was no discussion of
9 that press report, correct?

10 A. Not at all.

11 Q. All right. Did she tell you that your
12 stepdaughter's car was totaled?

13 A. No.

14 Q. She did not tell you that?

15 A. No, sir.

16 Q. All right. She was upset that your stepdaughter
17 was in an accident?

18 A. I didn't know why she was upset.

19 Q. But she told you that your stepdaughter was in an
20 accident?

21 A. That's correct.

22 Q. All right. And you assumed that she was upset
23 because of the accident?

24 A. That's correct.

25 Q. All right. You never asked if she was hurt,

1 right?

2 A. No, sir.

3 Q. And your wife never told you if your stepdaughter

4 was hurt, or did she?

5 A. No, she did not.

6 Q. She didn't tell you, right?

7 A. That's correct.

8 Q. All right. She also could have been upset

9 because you weren't there for family support,

10 because of the accident, correct?

11 A. I suppose that could be.

12 Q. That could be part of the --

13 A. Part of it, right.

14 Q. -- of the reason for her seeming upset to you?

15 A. I believe it could be, yes.

16 Q. All right. And how would you characterize her

17 demeanor on the phone?

18 A. She just seemed upset.

19 Q. Seemed upset. How did she seem upset to you?

20 A. Her tone of voice.

21 Q. All right. Was she crying?

22 A. I couldn't tell.

23 Q. Did she raise her voice?

24 A. No.

25 Q. Did she lower her voice too much?

1 A. I don't believe so, no.

2 Q. What was it about the tone of her voice that led
3 you to believe that she was upset?

4 A. It was the way she was talking to me, she just
5 seemed kind of like I'm talking to you now, you
6 know, kind of upset, nervous, whatever. I
7 couldn't -- It was the way she was talking.

8 Q. All right.

9 A. She wasn't talking like she usually talks to me.

10 Q. Did she tell you she wanted you to come home?

11 A. No, sir.

12 Q. She didn't tell you that?

13 A. No, sir.

14 Q. But you felt that you should go home?

15 A. I felt under the circumstances, yes.

16 Q. That you should go home?

17 A. Yes.

18 Q. Because you thought that there was a crisis at
19 home, that you should be there to help out?

20 A. I didn't know what was going on and I was worried
21 about what was happening, yes.

22 Q. How long did the conversation last between you
23 and your wife?

24 A. About five minutes.

25 Q. And that was in the common room?

1 A. Yes, sir.

2 Q. With the bailiff nearby?

3 A. That's correct.

4 Q. And he was there close enough to make sure that

5 there was no discussion regarding the status of

6 deliberations or the case, correct?

7 A. Yes, sir.

8 Q. So he could hear what you were saying?

9 A. Yes, I believe so.

10 Q. What did you say to the bailiff when you were

11 done speaking with your wife?

12 A. I just handed him the phone.

13 Q. You didn't say anything?

14 A. Not that I recall, no.

15 Q. You didn't say anything about the nature of your

16 conversation with your wife?

17 A. No, not that I --

18 Q. You didn't tell him that your wife seemed upset?

19 A. No.

20 Q. You didn't say anything that maybe you needed to

21 go home?

22 A. Not that I recall, no.

23 Q. All right. So after the conversation, you left

24 the common room and you went back to your room?

25 A. That is correct.

1 Q. Were you escorted back to your room, or did you
2 walk alone?

3 A. There were state patrolmen that escorted us or
4 were down the halls to ...

5 Q. So did they escort you, or were they just well
6 placed in the hallway to observe your movements?

7 A. They were -- I remember I was escorted to my
8 room.

9 Q. All right. And was your room nearby, or was it a
10 longer walk?

11 A. It was a longer walk.

12 Q. All right. You got to your room, the trooper
13 watched you walk into your room; is that correct?

14 A. That's correct.

15 Q. And you went into your room and you were there
16 alone?

17 A. That's right.

18 Q. All right. And you were in your room how long,
19 before you decided you needed to speak to
20 someone?

21 A. I don't recall how long I was there.

22 Q. What was your mood at that time?

23 A. I was upset, worried.

24 Q. You were worried about what was going on at home.

25 A. That's correct.

1 Q. You didn't really know what was going on at home;
2 is that what you are telling us?

3 A. That's correct.

4 Q. All right. So there was this reference to a car
5 accident, but the reason for your concern was
6 more that you had no idea what was going on; is
7 that correct?

8 A. The uncertainty, yes.

9 Q. The uncertainty of the situation made you upset?

10 A. That's correct.

11 Q. And it caused stress?

12 A. Yes, sir.

13 Q. And you were distraught?

14 A. Yes, sir.

15 Q. And primarily, as a result of the tone of voice
16 that your wife was talking to you about?

17 A. Yes, sir.

18 Q. All right. What did you talk about in that
19 conversation?

20 A. We talked about how things were going, you know,
21 how I was doing, how I was feeling.

22 Q. All right. How you were doing, how you were
23 feeling. And you told her you were doing, okay?

24 A. Yes, sir.

25 Q. So far so good, as it were; is that right?

1 A. Yes, sir.

2 Q. You didn't complain to her that you were feeling
3 down, correct?

4 A. I don't know.

5 Q. You didn't tell her you certainly weren't feeling
6 threatened, right?

7 A. I don't remember saying anything like that.

8 Q. Basically, you tried to put her at ease and tell
9 her everything was all right with you, correct?

10 A. Yes, sir, without going into details of
11 deliberations or anything.

12 Q. Right. But generally, your mood, you said you
13 talked about how each of you were feeling and you
14 told her you were fine, right?

15 A. (Witness nods.)

16 Q. Is that a yes?

17 A. Yes, sir.

18 Q. Thank you. All right. After some period of time
19 in your room, you decided that you need to speak
20 to someone. How much time would you say elapsed
21 before you, after mulling these things over, you
22 stepped into the hallway, right?

23 A. Yes. I don't remember.

24 Q. All right. And who did you speak to in the
25 hallway?

1 A. State patrol officer.

2 Q. All right. And you didn't tell him anything
3 other than what?

4 A. That I needed to talk to a bailiff.

5 Q. All right. And he said he would get the bailiff?

6 A. Yes, sir, as I recall.

7 Q. All right. So he told you to remain in your
8 room, correct?

9 A. Yes, sir.

10 Q. All right. So you went to your room -- back in
11 your room?

12 A. Yes, sir.

13 Q. All right. And he went and got the bailiff?

14 A. That's correct.

15 Q. All right. Now, if I told you that bailiff's
16 name was Oscar, would that ring a bell?

17 A. Yes, sir.

18 Q. That was the bailiff, right?

19 A. Yes, sir.

20 Q. All right. So Oscar came to your door, right?

21 A. As I recall, yes.

22 Q. All right. Did he come into your room?

23 A. I believe he did.

24 Q. All right. All right. What did you tell Oscar?

25 A. That there was a family emergency and I felt I

1 had to go home.

2 Q. Did you give him any details on the family
3 emergency?

4 A. No.

5 Q. Did you tell him your stepdaughter was in an
6 accident?

7 A. Not that I recall.

8 Q. Did you tell him your wife was upset?

9 A. Not that I remember.

10 Q. You didn't tell him it was the uncertainty of the
11 situation which led you to believe you should go
12 home?

13 A. Not that I recall, no.

14 Q. All right. So Oscar told you that he would get
15 the sheriff, right?

16 A. That's correct.

17 Q. All right. It's your testimony that you talked
18 to Sheriff Pagel first, correct?

19 A. After I talked to the bailiff --

20 Q. Right.

21 A. -- I believe, yes.

22 Q. The first person you talked to after Oscar was
23 Sheriff Pagel?

24 A. That's correct.

25 Q. You told Sheriff Pagel that your stepdaughter was

1 in an accident?

2 A. That's correct.

3 Q. You told him that the vehicle was totaled?

4 A. I don't recall that.

5 Q. You told him that your wife was very upset about
6 the accident?

7 A. I don't recall.

8 Q. You don't recall saying that?

9 A. No, I was pretty upset at the time.

10 Q. You were upset at the time?

11 A. I was upset with --

12 Q. And you were upset at the time because you
13 couldn't figure out why your wife was upset?

14 A. That's correct.

15 Q. You also told him that your wife was still upset
16 because of the media reports regarding this trust
17 fund issue, correct?

18 A. I don't recall that.

19 Q. You don't recall telling him that?

20 A. No, sir.

21 Q. Could you have told him that?

22 A. I might have.

23 Q. All right. Could you have told him that your
24 wife was upset about the accident; could you have
25 told him that?

1 A. It's probable, possible.

2 Q. It's probable, possible. All right. You told
3 him that your wife was upset by the amount of
4 time that you were away from the home because of
5 the length of this trial, right?

6 A. I don't recall.

7 Q. You don't recall. You could have told him that?

8 A. I don't recall.

9 Q. You don't recall. You would characterize your
10 demeanor in your conversation with Mr. Pagel as
11 being upset?

12 A. Yes, sir.

13 Q. Distraught?

14 A. Yes, sir.

15 Q. All right. Really concerned about what was going
16 on at home?

17 A. Yes, sir.

18 Q. All right. You certainly suggested or implied
19 that you had some marital difficulties with your
20 wife, with Mr. Pagel, correct?

21 A. I don't recall saying anything like that.

22 Q. You didn't imply or impress upon him that it was
23 vital for your marriage that you be excused and
24 go home and attend to those family issues?

25 A. I don't recall.

1 Q. You don't recall?

2 A. No, sir.

3 Q. Specifically, and exactly, what did you tell
4 Sheriff Pagel when he came to your room?

5 A. As I recall, that I told him there was a family
6 emergency that I had to attend to at home.

7 Q. That was it?

8 A. That's what I recall telling him.

9 Q. That's what you recall.

10 A. Yes, sir.

11 Q. All right. And he said he would contact the
12 judge?

13 A. Yes, sir.

14 Q. All right. He left your presence?

15 A. I believe he did.

16 Q. All right. And he contacted someone, or did
17 something, he was gone?

18 A. Yes, sir.

19 Q. For a few minutes?

20 A. Mm-hmm.

21 Q. He returned?

22 A. That's correct.

23 Q. All right. And when he returned, he had a cell
24 phone?

25 A. Yes, sir.

1 Q. And at that particular point, he dialed the cell
2 phone and you believed him to be contacting Judge
3 Willis?

4 A. That's correct.

5 Q. All right. And he and Judge Willis had a brief
6 conversation?

7 A. I believe so, yes.

8 Q. How long?

9 A. I don't recall.

10 Q. Seconds?

11 A. He just put me on the phone.

12 Q. He put you on the phone right away?

13 A. Pretty much so, yes.

14 Q. All right. So you didn't overhear any
15 conversation, at that particular point, between
16 Sheriff Pagel and Judge Willis?

17 A. I don't recall much of a conversation.

18 Q. You recall no conversation?

19 A. Much of a conversation, right.

20 Q. And your impression was it was very brief and he
21 then handed you the phone so that you could speak
22 to the judge?

23 A. Yes, sir.

24 Q. All right. And at that particular point, you
25 spoke to the judge?

1 A. That's correct.

2 Q. All right. At that particular point, when you
3 spoke to the judge, you were upset?

4 A. Yes, sir.

5 Q. You were distraught?

6 A. Yes, sir.

7 Q. You were concerned about what was going on at
8 home?

9 A. That's correct.

10 Q. In fact, you were concerned primarily because you
11 had no idea what was going on at home?

12 A. That's correct.

13 Q. All right. You told the judge that your
14 daughter, your stepdaughter, was in an accident?

15 A. That's correct.

16 Q. You told him that the vehicle had been totaled?

17 A. I don't recall.

18 Q. You told the judge that your wife was very upset
19 about the accident?

20 A. I believe that's what I told him, yes.

21 Q. All right. You also told him that your wife was
22 upset about the amount of time that you were
23 spending away from home because of the
24 requirements of this trial?

25 A. I don't recall that.

1 Q. You don't have any recollection of that?

2 A. No, sir.

3 Q. All right. You could have told the judge that?

4 A. I don't recall if I did or not.

5 Q. You told the judge that the family and friends
6 and your wife were still somewhat embarrassed by
7 those news reports about the trust fund issue,
8 right?

9 A. I don't recall saying that.

10 Q. You don't have any recollection of saying that to
11 the judge?

12 A. No, sir.

13 Q. You told the judge you were having marital
14 difficulties, correct?

15 A. I don't recall saying that to him.

16 Q. You have no recollection of that?

17 A. No, sir.

18 Q. You impressed upon the judge that it was vital
19 that you go home to preserve your marriage,
20 because you were concerned about that, correct?

21 A. I don't recall saying that.

22 Q. When you were speaking with the judge, you spoke
23 very quietly, right? That's your demeanor?

24 A. I believe I sounded upset.

25 Q. All right. And your tone of voice, you spoke

1 quietly?

2 A. I don't -- I believe I was talking, you know,

3 like I am right now.

4 Q. Slowly?

5 A. That's correct, like I was upset --

6 Q. Somewhat --

7 A. -- and nervous.

8 Q. I'm sorry, go ahead.

9 A. Well, I was talking like I am, basically, now.

10 Q. Somewhat monotone?

11 A. Correct.

12 Q. You told the judge that the trial was putting a

13 strain on your marriage, didn't you?

14 A. I don't recall that.

15 Q. You have no recollection of that?

16 A. No, sir, none at all.

17 Q. What impression were you trying to create with

18 the judge, in this conversation with him?

19 A. I was upset.

20 Q. All right. What other impression? What did you

21 want the judge to conclude, after his discussion

22 with you?

23 A. That I should be let go.

24 Q. That you should be allowed to return home,

25 correct?

1 A. Yes, sir.

2 Q. So your conversation with him was designed to
3 accomplish that objective, right?

4 A. Under the circumstances, yes.

5 Q. All right. You certainly left the judge with the
6 impression that your marriage might very well be
7 at stake because --

8 ATTORNEY HAGOPIAN: Objection, that would
9 be beyond the scope of his knowledge.

10 ATTORNEY FALLON: I will rephrase.

11 THE COURT: Go ahead.

12 Q. (By Attorney Fallon)~ It was your intent to
13 create the impression that your marriage was at
14 stake?

15 A. I don't believe so.

16 Q. Your conversation with the judge lasted less than
17 five minutes, right?

18 A. About two, three minutes, yeah.

19 Q. And Sheriff Pagel was present the entire time of
20 that conversation, correct?

21 A. Correct.

22 Q. And he was just a few feet away from you during
23 the course of that conversation, right?

24 A. Yes, sir.

25 Q. All right. At the end of the conversation, the

1 judge told you you could be excused?

2 A. That's correct.

3 Q. All right. And he told you that he would not
4 publicly disclose the reasonings, on the record,
5 correct?

6 A. As I believe, yes, that's what he said.

7 Q. All right. And you thanked him for that,
8 correct?

9 A. Yes, sir.

10 Q. You were concerned about your family privacy in
11 those issues, at the time, correct?

12 A. Yes.

13 Q. All right. Mr. Mahler, in your conversation with
14 Sheriff Pagel, before the call with Judge Willis,
15 you never mentioned anything about your concerns
16 of being verbally threatened by another juror,
17 correct?

18 A. No, sir.

19 Q. You never mentioned anything to the bailiff,
20 Oscar, that this was a concern, correct?

21 A. No, sir.

22 Q. All right. And the bailiff was the one who was
23 actually in charge of the juror's well-being,
24 correct?

25 A. Yeah, I believe so.

1 Q. That was his job, as far as you could tell?

2 A. Mm-hmm. Yes, sir.

3 Q. And you never mentioned anything about your
4 concerns with the jury or, more particularly,
5 this incident at the restaurant, correct?

6 A. No, sir.

7 Q. All right. And in your conversation with Judge
8 Willis, you did not tell him about that?

9 A. No, I was pretty much concerned about what was
10 happening at home.

11 Q. All right. And the real reason you wanted to go
12 home was what was occurring at home, or what you
13 didn't know, but certainly was concerning to you,
14 at home?

15 A. Yes, that was.

16 Q. That was the reason you wanted to go?

17 A. Yes, sir.

18 Q. So if -- In an effort to get home, you told the
19 judge that you were having marital problems,
20 didn't you?

21 ATTORNEY HAGOPIAN: Objection, asked
22 several times and answered.

23 THE COURT: Sustained.

24 Q. (By Attorney Fallon)~ Mr. Mahler, the
25 preservation of your marriage was more important

1 than your duty as a juror, correct?

2 A. I don't believe, no.

3 Q. You don't believe so?

4 A. It had nothing to do with my marriage.

5 Q. I'm sorry?

6 A. It had nothing to do with my marriage.

7 Q. But you told the judge that it did?

8 A. I don't recall --

9 ATTORNEY HAGOPIAN: Objection.

10 A. -- saying that.

11 ATTORNEY HAGOPIAN: Covering the same
12 ground.

13 THE COURT: I'm going to sustain the
14 objection.

15 Q. (By Attorney Fallon)~ All right. Did you intend
16 to deceive the judge?

17 A. I don't recall saying --

18 Q. You don't recall saying any of those things I
19 asked you about, is that correct?

20 A. About my marriage being in trouble, no. And my
21 intention wasn't to deceive the judge.

22 Q. Your intention was to get home?

23 A. Under the circumstances, yes, right.

24 Q. And those circumstances were the problems at
25 home?

1 A. The uncertainty of what the accident, or
2 whatever, what I thought was an accident.

3 ATTORNEY FALLON: Pass the witness.

4 THE COURT: Any redirect?

5 ATTORNEY HAGOPIAN: Yes, please.

6 **REDIRECT EXAMINATION**

7 BY ATTORNEY HAGOPIAN:

8 Q. Mr. Mahler, you made reference that you had
9 entered into deliberations with the plan of how
10 you wanted to proceed; is that right?

11 A. That's correct.

12 Q. And what was your thought about what you wanted
13 to do in deliberations?

14 A. My object was --

15 ATTORNEY FALLON: Objection, beyond the
16 scope of cross.

17 THE COURT: Counsel.

18 ATTORNEY HAGOPIAN: There had been
19 testimony, at some length, elicited on cross, as to
20 his reaction and things that were actually said
21 during deliberations. And that's what I am leading
22 to, following up on that.

23 ATTORNEY FALLON: The question is his state
24 of mind and what occurred that evening, not what he
25 was planning to do the next day.

1 THE COURT: As the question is phrased, I'm
2 going to sustain the objection.

3 Q. (By Attorney Hagopian)~ You testified about some
4 comments that were made by the jurors in this
5 first day of deliberations; do you recall that
6 testimony?

7 A. Yes, ma'am.

8 Q. And how did those comments leave you feeling?

9 A. I felt hopeless. I felt angry. I was angry and
10 I felt hopeless.

11 Q. And one of the jurors who made the comment, as
12 you described, quite immediately, that he is
13 guilty, that's one of the comments you are
14 referring to that left you feeling frustrated?

15 A. Yes. There were similar comments from two other
16 jurors.

17 Q. So then, at dinner, when you were seated next to
18 Mr. Wardman, and you made the comment that you
19 were feeling frustrated; in your own mind, what
20 were you referring to?

21 A. I was referring to his comment, without directly
22 pointing the finger at him.

23 Q. And it was after you made the comment, in your
24 own mind referring to his behavior during
25 deliberations, that he then responded to you,

1 correct?

2 A. That's correct.

3 Q. And your testimony was that his -- his -- his
4 comment was that you should try to get off the
5 jury?

6 A. Yes.

7 Q. And how did you take that comment?

8 A. As a verbal threat.

9 Q. And I would like you to explain what you mean by
10 a verbal threat. In your own mind, at that time,
11 what did you think he was trying to tell you?

12 ATTORNEY FALLON: Objection, asked and
13 answered.

14 THE COURT: Sustained.

15 Q. (By Attorney Hagopian)~ You have testified, that
16 when you spoke with the judge, that you were
17 feeling frustrated and you were upset. Part of
18 that frustration was your family situation?

19 A. Yes.

20 Q. Was there some other thoughts in your mind at
21 that time that were troubling you?

22 A. It was a mixture of what was said during
23 deliberations, at lunch, and then all of a sudden
24 the family emergency hit.

25 Q. And when you refer to the deliberations, what

1 specifically are you referring to?

2 A. To the comment that Carl and two other jurors had
3 made.

4 Q. And are you also, then, referring to the comment
5 that was made by Mr. Wardman at dinner?

6 A. Yes.

7 Q. So when you spoke to the judge, you did want off
8 the jury; is that right?

9 ATTORNEY FALLON: Objection, leading.

10 Q. (By Attorney Hagopian)~ When you spoke to the
11 judge, what were you hoping to accomplish?

12 A. To go home and find out what was really going on.

13 Q. Had you been instructed by the Court about what
14 you could and couldn't talk about, in terms of
15 the deliberations?

16 A. Pretty much anything about the trial, we weren't
17 allowed to talk to anybody about.

18 Q. And was it your understanding that you should not
19 be talking to other people about what was going
20 on in deliberations?

21 A. That is correct.

22 Q. Did you think it would, in any way, be improper
23 for you to talk with your wife about what
24 happened in deliberations that day?

25 A. Yes, it would have been improper.

1 Q. Would it have -- Also, in your own mind, would
2 you have thought maybe it wasn't proper to talk
3 about that with the bailiff?

4 A. I felt it was improper to talk about it with
5 anybody.

6 Q. When you spoke with your wife that evening, and
7 there was mention of an accident, did your wife
8 provide you with any details about this accident?

9 A. Not at all.

10 Q. Did you ask her specific questions about the
11 accident?

12 A. No, I didn't ask her.

13 Q. So there's mention of an accident and then what
14 happens in the conversation?

15 A. I just said, well, I got to get going, I will
16 talk to you later.

17 Q. You were questioned some about this press report
18 about a trust fund that I would like to ask if
19 you remember a day, I'm referring to March 12th
20 of 2007, that would have been a few days before
21 the case went to the jury. Do you remember being
22 brought in and questioned by the judge, each
23 juror, one by one?

24 A. Yes, ma'am.

25 Q. You specifically remember that day and you

1 remember, were you in the courtroom or somewhere
2 else?

3 A. We were in a back room.

4 Q. And do you recall at that time some reference
5 being made to that press report?

6 A. I don't recall.

7 Q. Would it refresh your recollection to take a look
8 at the transcript of that? I have here --

9 THE COURT: Just a minute. Do you
10 understand the question?

11 THE WITNESS: Yes, ma'am. Yes, sir.

12 THE COURT: What is your answer, to whether
13 or not looking at the transcript would refresh your
14 recollection?

15 THE WITNESS: Yes, it would help.

16 THE COURT: Go ahead.

17 ATTORNEY FALLON: I'm going to object as to
18 the relevance of the transcript during the jury
19 selection process as it pertains to his state of
20 mind on the night the decision to excuse him.

21 THE COURT: It's my understanding we're not
22 talking about the jury selection process here, but
23 rather a questioning of the jury that occurred a few
24 days before these events. I don't actually know the
25 substance of what's being referred to. Why don't

1 you show Mr. Fallon the transcript.

2 ATTORNEY HAGOPIAN: Certainly.

3 (Off record discussion.)

4 ATTORNEY FALLON: That's fine, Judge, I
5 will withdraw the objection.

6 THE COURT: Very well.

7 ATTORNEY HAGOPIAN: May I approach the
8 witness?

9 THE COURT: Yes, you may.

10 Q. (By Attorney Hagopian)~ Mr. Mahler, I'm showing
11 you a transcript dated March 12, 2007. I'm on
12 page 32. I'm actually going to ask you to start
13 reading at line 24. It refers to officer as
14 being the speaker, however, I believe Mr. Fallon
15 will agree that that must be a typographical
16 error and that was actually you speaking.

17 ATTORNEY HAGOPIAN: Is that correct,
18 Mr. Fallon?

19 ATTORNEY FALLON: That would be my
20 understanding of the general context of the
21 discussion, it appears to be a misnomer.

22 Q. (By Attorney Hagopian)~ I would ask you then to
23 start reading on line 24, continue on to the next
24 page and read through line 16?

25 THE COURT: And you are asking him to read

1 it to himself?

2 ATTORNEY HAGOPIAN: Yes, please.

3 A. Okay.

4 Q. (By Attorney Hagopian)~ Okay. Have you completed
5 reading that?

6 A. Yes, ma'am.

7 Q. I will take that back then. And I'm going to ask
8 you, then, in that questioning by the Court, did
9 you raise with the Court the incident where there
10 had been a press report that had caused some
11 upset for your wife?

12 A. Yes, ma'am.

13 Q. And were you asked whether that would affect you
14 now, at this point in the trial, shortly before
15 deliberations were to begin?

16 A. Yes.

17 Q. And did you feel at that point that this was
18 going to affect your ability the serve as a
19 juror?

20 A. Not at all.

21 Q. And as far as you can recall, Mr. Mahler, in
22 your -- whatever you told Sheriff Pagel when he
23 came into your motel room, you do not recall
24 mentioning your wife's upset about this press
25 report?

1 A. No, ma'am.

2 Q. And to the best of your recollection, you do not
3 recall mentioning that in your conversation with
4 the judge?

5 A. No.

6 Q. Is it fair -- If the judge, when you spoke with
7 him by phone that evening, had asked you for
8 details about the accident, would you have been
9 able to provide them?

10 A. No, ma'am.

11 Q. And when you refer to your upset about your
12 family situation, did you feel -- what was your
13 feelings in terms of what you have described as
14 the uncertainties?

15 A. I just wasn't sure what was happening at home.
16 And I was upset, like anyone would probably be,
17 with uncertainty of the situation.

18 Q. And your lack of knowledge about the accident,
19 about what was going on at home, these would be
20 matters that could be clarified with some further
21 follow up with your family?

22 A. Yes.

23 Q. But that never happened, right?

24 A. No, ma'am.

25 ATTORNEY HAGOPIAN: That's all I have.

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Thank you.

THE COURT: Mr. Fallon, anything?

ATTORNEY FALLON: Nothing.

THE COURT: Very well. You are excused.
We'll take our morning break at this time and resume
at 5 minutes to 11.

(Recess taken.)

ATTORNEY FALLON: Your Honor, before we
proceed, I think counsel and I would like to
introduce Exhibit No. 1, which is the Court's
memorandum on the issue we just talked about.

THE COURT: The Clerk will mark it. It is
marked. Very well.

ATTORNEY FALLON: Very well. Thank you.

THE COURT: And is it stipulated that it's
being admitted, or you are simply marking it?

ATTORNEY FALLON: I believe admitted.

ATTORNEY HAGOPIAN: Admitted. Although
could I just look at the second page of that, just
to make sure?

ATTORNEY FALLON: It's got the addendum.

ATTORNEY HAGOPIAN: It does. Okay.

ATTORNEY FALLON: Yup.

THE COURT: Very well, Exhibit 1 is
admitted. Attorney Hagopian, you may call your next

1 witness.

2 ATTORNEY HAGOPIAN: We call Dean Strang.

3 **ATTORNEY DEAN A. STRANG**, called as a
4 witness herein, having been first duly sworn, was
5 examined and testified as follows:

6 THE CLERK: Please be seated. Please state
7 your name and spell your last name for the record.

8 THE WITNESS: Dean A. Strang, S-t-r-a-n-g.

9 **DIRECT EXAMINATION**

10 BY ATTORNEY HAGOPIAN:

11 Q. Is it correct, Mr. Strang, that you and Attorney
12 Jerry Bruting (sic) were trial counsel for
13 Mr. Avery in this case?

14 A. Not initially, but eventually, yes.

15 Q. And you were -- you or your law firm was retained
16 by Mr. Avery?

17 A. Initially, I and my law firm were retained, and
18 then Jerry Buting was retained after that.

19 Q. And you were the first attorney to represent
20 Mr. Avery in this case, were you?

21 A. No.

22 Q. Is it correct that his first attorneys were
23 appointed by the Public Defender's Office?

24 A. That's my understanding.

25 Q. And the defendant must be found indigent in order

1 to qualify for public defender appointment; isn't
2 that right?

3 A. At least past an initial appearance, that's my
4 understanding.

5 Q. How was Mr. Avery able to afford to retain you?

6 A. He settled the civil action he had pending under
7 42 U.S.C. 1983 and all -- or substantially all of
8 those proceeds went to retaining counsel.

9 Q. And that lawsuit, the civil action, was related
10 to his wrongful conviction; is that right?

11 A. Yes.

12 Q. When you agreed to represent Mr. Avery, did you
13 or your law firm enter into a written retainer
14 agreement with Mr. Avery?

15 A. The firm did, yes.

16 Q. Did that agreement require Mr. Avery to pay a
17 specific fee to retain your law firm?

18 A. Yes. And my recollection is that it was to be a
19 flat fee. So, yes, he had to pay a specific fee
20 to retain us and that was all we were going to
21 get.

22 Q. The record shows that you were retained in about
23 February of 2006 and the trial began a year
24 later, February of 2007. When the trial began,
25 how much of the fee had been expended for

1 Mr. Avery's representation?

2 A. I cannot be certain of that, but if forced to
3 guess, I would say all of it, and then some,
4 before trial began.

5 Q. To your knowledge at that time, did Mr. Avery
6 have additional funds to put towards his legal
7 representation?

8 A. No, nothing significant. There may have been an
9 old car somewhere, or snowmobile, but nothing
10 that was worth the trouble to try to ask him to
11 sell or give to us.

12 Q. Did the retainer agreement specify at what point
13 your representation of Mr. Avery would end?

14 A. Going by memory here, I think we agreed to
15 represent him through a first trial and
16 sentencing, if necessary, but not on a retrial or
17 any post-conviction or appeal proceedings.
18 That's memory, but that's my recollection.

19 Q. So if a mistrial had been declared under the
20 terms of the retainer agreement, would you or
21 your law firm have been obligated to represent
22 Mr. Avery at a second trial?

23 A. As I recall the agreement, no.

24 Q. I'm now going to direct your attention toward the
25 end of trial; and specifically, I'm referring to

1 March 15 of 2007, that was the day when closing
2 arguments were completed and the jury began
3 deliberations. Do you have a recollection of
4 that day?

5 A. Sure, in a general sense.

6 Q. That evening of March 15th, were you informed at
7 some point that the jury had stopped deliberating
8 for the day?

9 A. Yes.

10 Q. How did you learn that?

11 A. I think by -- you know, I'm sure by a phone call.
12 And whether that came into my cell phone or to --
13 I think I had a working telephone in the
14 apartment that I was renting, but in any event it
15 would have been a telephone call.

16 Q. And do you recall approximately what time that
17 was?

18 A. No, is the short answer to that. It was either
19 getting toward or well into maybe time for
20 dinner.

21 Q. When you received the news that the jury had
22 stopped for the day, was it your understanding
23 that the jury would resume deliberations the next
24 day?

25 A. Yes.

1 Q. After having been told that the jury was done for
2 the night, what did you do?

3 A. I know approximately, I may be compressing time
4 here because I just don't remember exactly when I
5 was told we could stand down for the evening, but
6 at least at some point after that what I remember
7 doing is collecting Mr. Buting and suggesting
8 that we go have dinner and a beer.

9 Q. Now, you had been in trial for, what, about six
10 weeks at that point?

11 A. I think at least or, you know, something right
12 around there, yeah.

13 Q. How were you feeling that evening?

14 A. Exhausted. I mean, if I'm recalling this
15 correctly, I had given my portion of the defense
16 closing argument the same day as Mr. Kratz's
17 rebuttal and the judge's instructions. And
18 that's the day we're talking about, I think,
19 right?

20 Q. You had completed your arguments, correct.

21 A. Okay. So I was having the sort of let down you
22 have after a closing argument.

23 Q. Did you have a drink with dinner that night?

24 A. I remember we went out for Mexican food. It was
25 in a strip mall somewhere not far from the

1 southeast corner of the city of Appleton, where
2 Jerry and I both were staying.

3 Couldn't possibly tell you the
4 restaurant or exactly where it was, but it was a
5 Mexican restaurant in a strip mall. And when I
6 have Mexican food I have a negra modelo beer.
7 And at no other time do I drink negra modelo
8 beer, so, yes, I had a negra modelo beer very
9 shortly after getting to the restaurant and
10 getting somebody's attention.

11 Q. Okay. And do you recall, were you feeling the
12 effects of the alcohol while you were at the
13 restaurant?

14 A. Yes, I was. I think I only had one beer. I'm
15 sure I would have been legal to drive --

16 Q. Mm-hmm.

17 A. -- but I could feel the beer.

18 Q. At some point that evening did you receive a
19 telephone call from Judge Willis?

20 A. Yes.

21 Q. Did this occur while you were still at the
22 restaurant?

23 A. Yes.

24 Q. Do you have any recollection as to the time?

25 A. In my head, it was about 8:30. That could be --

1 that could be off one way or the other, but
2 that's -- that's my recollection. And I think
3 the phone call came into my cell phone, as
4 opposed to Jerry's. That's my recollection.

5 Q. So the phone call comes on your cell phone; I
6 assume you were the one who answered it?

7 A. That's how I recall it.

8 Q. And did you speak directly with Judge Willis?

9 A. Yes.

10 Q. To your knowledge, was there anyone else on the
11 line, aside from you and Judge Willis?

12 A. I can't believe the phone call would have
13 happened without someone from the prosecution
14 either already on the line or being added
15 immediately. But, honestly, the only one I
16 remember speaking was Judge Willis. And, you
17 know, I remember I spoke a little bit. But --
18 so, no, I can't tell you for sure that someone
19 from the prosecution team was on there, but I
20 would be quite surprised if one or more of the
21 prosecutors were not.

22 Q. But at least as you are sitting here today, you
23 don't have any recollection of having heard, for
24 example, District Attorney Kratz say anything
25 during the conversation?

1 A. I really don't. It doesn't mean he wasn't on the
2 phone, I just don't remember anyone other than
3 the judge speaking and, you know, my reacting.

4 Q. So you are on the phone, Judge Willis is on the
5 phone, that much you recall?

6 A. That's what I recall.

7 Q. Was Attorney Buting on during this call at all?

8 A. I don't think so, because if -- I think it came
9 into my cell phone, and if that cell phone had a
10 speaker phone feature, I surely never figured out
11 how to use it or had any interest in using it.
12 And so, you know, I think that what was -- I know
13 Jerry was there and I remember him being there,
14 but I think that I was probably relaying tidbits
15 to him.

16 Q. What did Judge Willis tell you in that phone
17 conversation?

18 A. Well, approximately, as I recall --

19 Q. Yeah.

20 A. -- what he said is that he had been notified
21 maybe by the sheriff's department, I don't know
22 that I was given a name, but by the sheriff's
23 department, that a situation had arisen with a
24 juror. And my recollection is that it was
25 presented to me as being urgent and serious. And

1 I'm distinguishing, I mean, that it was a serious
2 situation, something important, but that it was
3 also emergent or urgent.

4 Q. I'm sorry, could you -- I didn't quite understand
5 the last.

6 A. It was not just serious, it was something urgent,
7 something that needed to be tended to
8 immediately, was the impression I got during that
9 conversation.

10 Q. In that conversation, do you recall, did the
11 judge tell you which juror was seeking to be
12 excused?

13 A. I'm sure he did. I don't recall that, but I know
14 which juror we were talking about. I can't
15 attribute it to that first conversation with
16 100 percent certainty, but he probably told me.

17 Q. And which juror are we talking about, in your
18 mind?

19 A. Mr. Mahler.

20 Q. Yes. Okay. And in that phone conversation,
21 again, this is at the restaurant, with Judge
22 Willis, was there any discussion about how to
23 handle the situation?

24 A. Yes.

25 Q. What was proposed?

1 A. I don't remember what was proposed. What I think
2 I remember is what was agreed upon, or settled,
3 which is that the judge would make his own
4 inquiry of the juror. And if the facts presented
5 to him, or suggested to him by someone in the
6 sheriff's department, were born out by the
7 judge's inquiry, that the juror would be excused,
8 would be relieved of further duty on the case.

9 Q. Your recollection is that that was something that
10 was agreed upon in the conversation?

11 A. Agreed, acquiesced to, yes. I mean, I didn't --
12 I don't recall my squawking about that or
13 objecting.

14 Q. Do you recall if you were the one who had
15 proposed that?

16 A. No, I don't, but maybe I did. I mean, I -- It's,
17 you know, I just have an impressionistic
18 recollection that the judge was sort of driving
19 the suggestion, or the resolution.

20 Q. So that in that phone conversation, did you agree
21 that the judge should speak with the juror?

22 A. Yes, or I mean, agreed or didn't object to that
23 course. My own recollection is that that was the
24 best -- that was the best that was going to
25 happen at that point.

1 Q. And when you agreed, or acquiesced, was it your
2 understanding that the judge would be speaking
3 with the juror, without either you or Mr. Buting
4 present?

5 A. Yes.

6 Q. Was it your understanding that Mr. Avery would
7 also not be present?

8 A. Yes.

9 Q. And as part of that, again, that conversation,
10 did you agree or acquiesce that the judge should
11 also remove the juror?

12 A. Yes, if -- if the facts were as they had been
13 presented to the judge, you know, were as
14 represented by the sheriff's department or
15 something very close to that, yes. And I really
16 don't mean to be splitting hairs on agreeing or
17 acquiescing. This was -- I don't remember who
18 proposed.

19 Q. Mm-hmm.

20 A. I don't remember the full discussion, but I think
21 by the end there was a consensus that this was
22 the course of action the judge would take.

23 Q. And at that time, when that decision was made,
24 did you have a recollection of who this juror
25 was, which juror was Richard Mahler?

1 A. Oh, sure.

2 Q. Okay. What did you think of him?

3 A. Focus me a little bit on that.

4 Q. Well, during the course of trial, were you paying
5 some attention to the jurors, as the trial went
6 on?

7 A. Not that much. It's one of my shortcomings, as a
8 trial lawyer, to be honest. But I was aware of
9 who he was.

10 In voir dire, I had this sense that he
11 would not be a follower necessarily, that this
12 was someone who, you know, wasn't a standard
13 government issue human being. He was -- had
14 maybe his own drummer, so to speak. I'm not
15 trying to make a joke about being a musician, but
16 he was someone who was likely to come to his own
17 views of the case, I thought, and I didn't have
18 any sense where he would end up.

19 Was he more likely a prosecution juror
20 or defense juror, that I had no sense. But I had
21 the sense that he would probably prove to be a
22 relatively strong juror.

23 Q. And that the characteristics that you had
24 ascertained from the individual voir dire, that
25 he would be able to come at his own decision,

1 would that be something you would view as
2 favorable, favorable quality in a juror?

3 A. Not necessarily. You know, this isn't something
4 I ascertained, it's something I guessed,
5 surmised, intuited, from the sort of unhelpful
6 process that is voir dire.

7 Q. That night, when the situation arose, did you
8 have a strategic reason for trying to get Richard
9 Mahler off the jury.

10 A. No. No, I mean not -- No, I didn't want this man
11 off the juror -- off the jury, on his merits. I
12 certainly did have a concern that if he was
13 distracted by a family tragedy, or something that
14 was weighing heavily on him, that he might be
15 someone who would be inclined not to deliberate
16 fully or with a, you know, an exclusive focus on
17 the case. But that wasn't a concern I had before
18 the phone call. I wasn't out to get rid of this
19 juror.

20 Q. In the conversation with Judge Willis that
21 evening, was there any discussion of the
22 Wisconsin Supreme Court's decision in ***State vs.***
23 ***Lehman?***

24 A. In the phone call while we were --

25 Q. In the phone call at the restaurant.

1 A. -- at the Mexican restaurant. Not that I recall,
2 no.

3 Q. Were you familiar with that decision as you spoke
4 with Judge Willis?

5 A. No, and that's why I think it didn't come up. I
6 remember not knowing exactly what our options
7 were at that point, if the juror got excused.

8 Q. Did you become aware, familiar with that decision
9 at some point after that conversation?

10 A. Later on, yes, later on that evening. I'm quite
11 certain there was not a second beer. I think
12 dinner was either gulped down or cut short. And
13 I went back and got on Westlaw, at some point
14 earlier than I would have preferred to.

15 Q. When you agreed to have the Court speak with the
16 juror and remove him if the information was
17 confirmed, did you consider whether Mr. Avery and
18 his attorneys had a right to be present during
19 that inquiry?

20 A. I knew we did. He had a right, personally, to be
21 present if the Court was speaking to a juror and
22 he certainly also had what I see as an
23 independent right to have counsel present during
24 such conversation with a juror.

25 Q. Did you consult with Mr. Avery about whether he

1 wanted to be present during the Court's inquiry
2 with the juror?

3 A. No, I couldn't, he was in the Calumet County
4 Jail.

5 Q. So you were also not able to consult with him
6 about whether he wanted this particular juror
7 taken off the jury?

8 A. No.

9 Q. In your mind at that time, again you are still at
10 the restaurant, in this conversation, what did
11 you think would happen if you had objected to the
12 procedure that was discussed, the Court talking
13 to the juror and excusing him? What if you had
14 objected to that and told the Court that
15 Mr. Avery and his attorneys had a right to be
16 present?

17 A. What would have happened is necessarily
18 speculative. But I -- right or wrong, I had the
19 impression that this was serious enough and
20 urgent enough that some contact between the judge
21 and the juror just was very likely to happen that
22 night, at best, or that the juror would be let go
23 on the say so of the sheriff's department.

24 I can't say the judge said that, I'm
25 just -- that was the sense I had, was that sort

1 of the best safeguard we were going to get was to
2 have the judge talk to the juror. I don't recall
3 any conversation about reconvening that night in
4 court. Maybe we had it, I just don't recall any
5 conversation like that, or even I don't recall
6 talking about doing this in the morning.

7 It was -- I felt like at the time -- I
8 mean, bluntly, my sense at the time was this was
9 not a time for temporizing or worrying too much
10 about legal niceties. That was just my sense.

11 Q. Well, when you agreed to the juror's removal, did
12 you have any information about an accident?

13 A. Yes, I think what we were told, and judge was
14 attributing this to the sheriff's department, was
15 that maybe a stepdaughter of the juror had been
16 in a car accident; that neither she nor anyone
17 else had been killed, as far as anyone knew; but
18 whether she was injured or in the hospital, or
19 whether others were injured or in the hospital,
20 seemed unknown at that point; and that in a
21 related way the juror's wife had about had it
22 with his absence, or his service on the jury; and
23 that this car accident was sort of a last straw
24 and she was threatening to walk out of the
25 marriage. That was, as I recall, what was

1 presented, secondhand, by the judge, to us.

2 Q. Mm-hmm. Did you have any information that, for
3 example, the stepdaughter was hospitalized?

4 A. No, my recollection is that we were told that was
5 unknown, that no one had died, but I don't think
6 we knew whether anyone was in the hospital or
7 not.

8 Q. And you refer to this information as having come
9 from the sheriff's department; is that correct,
10 as far as you knew?

11 A. I think that's what the judge said.

12 Q. Was there any, to your recollection, any specific
13 mention that the information came from Sheriff
14 Pagel?

15 A. I don't remember that now. Is it possible, yes,
16 but I don't remember it being attributed to any
17 particular employee of the sheriff's department.

18 Q. When you agreed that the judge could speak with
19 the juror and remove him if information was
20 confirmed, were you aware that Sheriff Pagel had
21 spoken with Mr. Mahler?

22 A. I don't think I was. I don't recall that. I
23 can't exclude it entirely.

24 Q. Would it have concerned you, had you known that
25 the sheriff was speaking with the juror?

1 A. Yes, but I think it would have concerned
2 Mr. Buting more.

3 Q. And why is that, why do say that?

4 A. He was more suspicious of Sheriff Pagel. And I
5 tried to maintain a line of communication there,
6 a cordial working relationship with the sheriff.

7 Q. And when you authorized, or agreed for the Court
8 to speak with the juror, did you expect that
9 Sheriff Pagel would be involved in that
10 communication?

11 A. I don't know that I had an expectation one way or
12 the other.

13 Q. Were you provided, again, in this conversation
14 with the judge, were you provided any information
15 as to how this situation about the accident had
16 come to the juror's attention?

17 A. Might have been, I don't remember -- I don't
18 remember being told that, I might have been. May
19 have been that the jurors all had been allowed to
20 call home. I guess I'm guessing. I don't recall
21 specifically how this came to the juror's
22 attention.

23 Q. You didn't have any specific information that the
24 wife had been calling in to report a problem?

25 A. If I did, I don't remember it now, that's

1 possible, but I don't remember it.

2 Q. So, there's a conversation with the judge, all
3 this is occurring at the restaurant, there's an
4 understanding of how the judge should handle it.
5 And what happened next in terms of your knowledge
6 of the situation?

7 A. Well, I think there was a second phone call that
8 Mr. Buting placed to Judge Willis. But I only
9 think that because I have seen a page of
10 Mr. Buting's cell phone record more recently. I
11 didn't remember --

12 Q. Okay.

13 A. -- that Jerry Buting had placed a call to the
14 judge. Without that cell phone record, my
15 recollection would be that at some point that
16 night we were told that it was fait accompli,
17 that the juror had been interviewed by the judge
18 and the judge had excused the juror. I think I
19 knew that before I went to bed that night.

20 Q. Okay. So, when you got back to your apartment,
21 your best recollection is that you knew at that
22 point that Juror Mahler was off?

23 A. I don't know if it was before I got back to the
24 apartment, but some -- some time before I went to
25 bed. And it probably was either before I got to

1 the apartment or very soon thereafter. Because,
2 as I say, I did go on Westlaw and start doing
3 some research to see if I could determine what
4 our options were then.

5 Q. And that's when you discovered the **Lehman**
6 decision?

7 A. Yes, I found **Lehman**.

8 Q. So then I turn your attention to the next day,
9 it's March 16, 2007; was there a meeting in
10 chambers that morning with Judge Willis and the
11 attorneys?

12 A. Yes.

13 Q. Was Mr. Avery present during that in chambers
14 conference?

15 A. No. No, the initial meeting with the judge and
16 the lawyers in chambers, Mr. Avery was not
17 present for that.

18 Q. And by the time of that in chambers conference,
19 had you spoken to Mr. Avery about the juror's
20 removal?

21 A. I don't think so.

22 Q. So as far as you knew, when you went into that in
23 chambers conference, your understanding would
24 have been that Mr. Avery still had no knowledge
25 of the fact that a juror had been taken off the

1 jury?

2 A. My recollection is that we had not, that
3 Mr. Buting and I had not spoken to him before
4 going to chambers the morning of March 16. So,
5 if he knew, that didn't come from us.

6 Q. Was there some discussion of the **Lehman** decision
7 in that conference?

8 A. Yes, I mean, as I recall it, more or less
9 simultaneously, the judge and I discovered that
10 we each had found **Lehman** and we had copies of it.

11 Q. And in part, relying on that decision, was there
12 some discussion of the options available now that
13 a deliberating juror had been removed?

14 A. Yup. Yes.

15 Q. And what options were discussed?

16 A. Well, I think -- I think all the lawyers and the
17 Court were in agreement that there were three
18 options. One, you could continue with 11 jurors;
19 two, you could declare a mistrial; three, you
20 could insert an alternate juror, if one had been
21 retained, into the group, to restore it to 12.
22 And that if you did that, the jurors would have
23 to be instructed to begin deliberations anew.

24 And I think there also was consensus
25 that each of the two sides had an absolute veto

1 in the sense that any -- either of the two
2 options would have allowed deliberations to go
3 forward, required the assent of both sides.

4 Could have forced a mistrial, to put it
5 succinctly, either side could have.

6 Q. And it was the understanding at that point that
7 indeed there was an alternate available?

8 A. We had retained an alternate, yes.

9 Q. And while you were still in that in chambers
10 conference, did the parties reach an agreement of
11 which of the options to take?

12 A. My recollection is, no, that at some point I or
13 Jerry, or both of us, said we have got to go talk
14 to Steven.

15 Q. But was there some at least tentative agreement
16 among the attorneys and the Court as to which
17 option would be taken?

18 A. I think that we were all leaning toward plugging
19 in the retained alternate juror and continuing
20 deliberations with 12, although deliberations
21 would have to start afresh. I think we were
22 leaning that way by the time Mr. Buting and I
23 left chambers to go down and speak with Mr. Avery
24 in the jail.

25 Q. And even in that conference, may there have been

1 some discussion of drafting the appropriate
2 instruction to give the jury, if the sub -- if
3 the alternate were put in?

4 A. I can't place the exact time at which that
5 discussion occurred, but at some point, yes, we
6 talked about an instruction and settled, I think,
7 on the wording of an instruction. I can't place
8 that at the initial meeting in chambers before
9 Mr. Buting and I spoke to Mr. Avery. Maybe,
10 maybe not.

11 Q. When the decision ultimately was made to
12 substitute in the alternate, was it your
13 understanding that **Lehman** would allow the parties
14 to consent to putting in an alternate during
15 deliberations?

16 A. As long -- excuse me -- as long as deliberations
17 started over, yes.

18 Q. And you have testified that you had found **Lehman**
19 the night before and were familiar with that by
20 the time of the in chambers conference. Had you
21 also researched whether there had been any
22 changes to the relevant statute since **Lehman** was
23 decided?

24 A. I did not.

25 Q. So, did you ultimately agree to the option of

1 substituting in the alternate with the belief
2 that that was an option permitted under Wisconsin
3 law?

4 A. Yes.

5 Q. So after this in chambers conference, then, you
6 went to meet with Mr. Avery?

7 A. Yes.

8 Q. And that took place at the jail; is that right?

9 A. Yes, it did.

10 Q. Who was present?

11 A. Jerry Buting, Steven Avery, and I.

12 Q. How long did that meeting last?

13 A. Something under 20 minutes, close to 20 minutes.

14 Q. That 20 minutes would have been from the time you
15 arrived at the jail until the time you left?

16 A. I have looked at that page from my trial notes,
17 and as I recall, the notes say 8:45 to 9:05. And
18 I have a habit about keeping time with
19 conferences with the detained or incarcerated
20 clients.

21 And I note the time when I'm walking
22 through the security door, the last locked door,
23 and then I note the time when I leave the secure
24 area of the jail or prison. I don't -- I
25 don't -- you know, I don't write down the time

1 when the client walks in the interview room, or
2 the booth, or wherever we're meeting. Because
3 that's unpredictable, how long that's going to
4 take the jail personnel to get the client there.
5 And usually what I'm doing at that point is
6 writing down the things we're going to discuss.

7 Q. So, based on your note showing that time of a 20
8 minute time frame, that would be the absolute
9 longest the conversation with Mr. Avery took?

10 A. Right. The conversation with Mr. Avery would
11 have been a little bit shorter than that. The
12 Calumet County Jail was very prompt about getting
13 Mr. Avery into the interview room that we used.
14 I think because -- I think because he was the
15 only inmate in the adjoining pod, but we never
16 had to wait long.

17 Q. And what was discussed in that meeting with
18 Mr. Avery?

19 A. The fact that we lost a juror, the night before,
20 and what the three options were at this point,
21 going forward.

22 Q. And those would have been the three options you
23 just described in your testimony?

24 A. Right. And -- And I also would have explained --
25 I did explain to Mr. Avery that, in the end,

1 which of these three options to choose was his
2 choice.

3 Q. And so as part of this discussion, did you tell
4 Mr. Avery he could have a mistrial?

5 A. I did.

6 Q. Did you give him any advice about taking a
7 mistrial?

8 A. I advised that he not take a mistrial. I steered
9 him toward introducing the alternate juror into
10 the deliberations.

11 Q. And in part of your discussion with him about
12 whether to take a mistrial, did you talk to him
13 about whether you would be representing him at a
14 second trial?

15 A. We must have then, and I remember more than one
16 such conversation with Mr. Avery. And one of
17 those must have been then, in this meeting on the
18 16th.

19 Q. And what did you tell him?

20 A. If you have a mistrial, which you have a right to
21 do, they will try you again. This isn't a case
22 where they are going to, you know, make a
23 meaningful offer for a lesser disposition. The
24 case will go to trial again and neither Jerry nor
25 I will be able to represent you, financially. We

1 just can't and won't do that, through a second
2 trial.

3 Q. At any point in that discussion of the options,
4 did you advise Mr. Avery that he should proceed
5 with 11 jurors?

6 A. No.

7 Q. Why did you not recommend that?

8 A. Because I never would.

9 Q. Why?

10 A. Twelve is better than eleven. I mean, you know,
11 look, you want to win the case, but placing, so
12 to speak, is a mistrial, in my business. And you
13 have got one more chance to get a mistrial with
14 12 jurors than you do with 11. The dynamic is
15 different.

16 Q. If substitution of a juror, during deliberations,
17 was not a legal option, would you have advised
18 Mr. Avery to proceed with 11?

19 A. I'm sorry, I zoned out a moment.

20 Q. Sure. You had talked about mistrial and you
21 recommended substituting, correct?

22 A. Yup.

23 Q. You did not recommend going with eleven?

24 A. I recommended that we not go with 11.

25 Q. If --

1 A. Strongly.

2 Q. -- substitution of a juror was not an option
3 allowed under law, would you then have advised
4 Mr. Avery to proceed with 11 jurors?

5 A. No.

6 Q. If the choices allowed by law would have been go
7 with 11 or have a mistrial, which option would
8 you have recommended?

9 A. Well, I don't know, and here's why I don't know,
10 because I would have been saying mistrial and I'm
11 not sure Mr. Buting would have. That's
12 something, had we known that there were only two
13 options, that's something that would have
14 required a real discussion, between me and
15 Mr. Buting, to reach agreement ourselves, before
16 we spoke to Steven, because we weren't going to
17 go into a client and, you know, have his two
18 lawyers be giving him directly conflicting advice
19 or bickering about what we thought he ought to
20 do, in front of him.

21 Q. So, if I understand your testimony, you
22 personally, if given the choices of 11 jurors or
23 a mistrial, would have preferred the mistrial,
24 correct?

25 A. Yes.

1 Q. But you are unsure whether Attorney Buting would
2 have preferred 11 or a mistrial?

3 A. To this day, I'm unsure of that. But, you know,
4 we had -- we had made an agreement which became
5 sort of solemn over time. We had made an
6 agreement, the day Jerry Buting agreed to get
7 into the case, that we would not play it for the
8 fumbles, that we were going to try to win this
9 trial. We wanted, you know -- we wanted not
10 guilty verdicts down the line. And Jerry had
11 secured my agreement before he agreed to come in
12 as co-counsel.

13 And that agreement, interestingly enough
14 in this trial, was one we had to come back to and
15 reaffirm at a number of different junctures.
16 This was one of those. And if the choices had
17 been two, not the three that we thought, that
18 would have been a juncture that would have
19 required a real serious conversation about, you
20 know, do we go for broke or do we take a
21 mistrial.

22 Q. But just to make sure then I understand, the
23 declining of a mistrial was with the
24 understanding that the option that was chosen,
25 substituting in the alternate, was a legally

1 permissible option?

2 A. Absolutely, yes.

3 Q. I'm going to show you a court memo that is dated
4 March 16th, 2007, and has been marked as an
5 exhibit. And I just want to ask if you are
6 familiar with that.

7 A. Yes.

8 Q. You have seen that before?

9 A. I have.

10 Q. How did you become aware of that memo?

11 A. Judge Willis told us, I think the morning of
12 March 16, that he either had or was going to
13 prepare a memo like this, just to memorialize
14 what had happened the night before.

15 Q. And so you were told about it, do you recall,
16 though, when you actually saw it?

17 A. I don't.

18 Q. Do you think it was that same day?

19 A. I don't, but I honestly, in my mind, I saw this
20 after trial, for the first time. But I could be
21 wrong about that, it could have been that day, it
22 could have been the next day. In my head, for
23 whatever reason, I think I didn't see this until
24 after trial. Perfectly possible I'm wrong about
25 that.

1 ATTORNEY HAGOPIAN: I will take that back.
2 And then I think that's all I have for now. Thank
3 you.

4 ATTORNEY ASKINS: Judge, at this point, we
5 would turn our attention to the other issue and
6 should I just go ahead and proceed with Mr. Strang,
7 or what did you want to do in terms of the Court's
8 schedule today?

9 THE COURT: Why don't you go ahead and get
10 started.

11 ATTORNEY ASKINS: Okay. Thank you.

12 **DIRECT EXAMINATION CONTD**

13 BY ATTORNEY ASKINS:

14 Q. Mr. Strang, I would like to change subjects here
15 and ask you about some other matters relating to
16 Mr. Avery. Now, prior to the trial in this case
17 there were a number of motions filed by each side
18 to resolve certain potential trial problems; is
19 that correct?

20 A. Yes.

21 Q. In fact, there was lots of pre-trial litigation,
22 lots of pre-trial motions, correct?

23 A. You know, both sides filed a number of motions
24 and briefs.

25 Q. And prior to the trial, do you recall filing with

1 the Court a request to be able to introduce
2 evidence at the trial of alternative persons who
3 may have been responsible for Mr -- for Ms
4 Halbach's death?

5 A. Yes. And at least one brief supporting that
6 motion.

7 Q. And, ultimately, the Court issued a ruling on
8 that; is that correct?

9 A. Yes.

10 Q. And do you recall that the Court ordered that you
11 could not present evidence that a third party,
12 other than Brendan Dassey participated in the
13 commission of these crimes; is that also correct?

14 A. Yes, generally. Let me tell you what I remember
15 about that, and I haven't gone back and looked.
16 But my recollection is that the judge ruled that
17 **Denny** applied. And that under **Denny** we had not
18 made a sufficient showing as to anyone, other
19 than Brendan Dassey, and the State, I think, gave
20 us Brendan Dassey. I think they conceded Brendan
21 Dassey, for **Denny** purposes. But I think beyond
22 Brendan Dassey, the Court ruled that we had not
23 made the necessary showing that would allow us to
24 argue specific third party liability.

25 Q. Now, a minute ago you used a phrase that you and

1 Mr. Buting -- and I'm not going to get it exactly
2 right -- had an agreement not to play for
3 fumbles, but for the win, correct?

4 A. Yes.

5 Q. And I'm wondering why you made that agreement;
6 what was the purpose for that sort of agreement
7 between you and Jerry, or the rationale behind
8 it?

9 A. And it's -- I realize it sounds funny because I
10 don't take any case planning to lose, you know.
11 You try to win everything that you think is going
12 to trial. But this was a matter of specific
13 discussion. And Jerry brought it up, in our
14 first meeting in my office, when he was
15 considering entering an appearance.

16 And, you know, it was, look, Dean, if
17 I'm going to get in, I'm not interested in a
18 mistrial. I'm not interested in appellate
19 issues, you know, for their own sake. I'm
20 interested in trying to win this case.

21 And while I don't remember the details
22 of that conversation, it had to do, and the
23 reason we struck that agreement, or really, you
24 know, reached an accord deeper than ordinary
25 professional obligation, was that this was Steven

1 Avery we were talking about. This was somebody
2 who had spent 18 years in a cage for a crime he
3 didn't commit.

4 And I'm an officer of the court. I work
5 in the system. I have given my professional life
6 to our system of justice and I didn't want that.
7 And I think, to his credit, the first one who
8 decided he didn't want that happening again, on
9 his watch, was Jerry Buting. And that's the gist
10 of the conversation that we had. So if we're
11 going to do this, we are going to try to win this
12 case.

13 Q. Now, the Judge's ruling on third party liability,
14 and I will either refer to it as the **Denny** ruling
15 or the ruling on third party liability; did that
16 affect your trial strategy?

17 A. Sure.

18 Q. I would like to direct your attention to the
19 opening statement. You presented the opening
20 statement on the part of the defense, correct?

21 A. Yes.

22 Q. You have tried many cases in your career?

23 A. Maybe not as many as you think, but.

24 Q. As an experienced defense attorney, however, you
25 would agree that you are an experienced defense

1 attorney?

2 A. I guess, relatively speaking, I'm getting more
3 experience by the day, but.

4 Q. As a defense attorney, do you have a specific way
5 that you approach an opening statement to a jury?
6 Is there something that you are trying to
7 accomplish?

8 A. Grab their attention, give them a coherent
9 narrative that embraces and advances the theory
10 of defense.

11 Q. And that was true in Mr. Avery's case as well?

12 A. That's what I tried to do.

13 Q. In light of the Court's ruling, then, did the
14 Court's third party liability ruling affect your
15 approach to the opening statement?

16 ATTORNEY FALLON: Objection, relevance, the
17 opening --

18 ATTORNEY ASKINS: I'm sorry, I can't hear
19 the objection.

20 ATTORNEY FALLON: Objection, relevance.

21 THE COURT: Mr. Fallon.

22 ATTORNEY FALLON: Yes, the opening
23 statement is not evidence and nor is it argument.
24 It's a statement of what is expected to occur. It's
25 an oratorical device. It is not argument. It is

1 not evidence. And, therefore, is irrelevant to the
2 specific and narrow focus of this post-conviction
3 motion.

4 THE COURT: Attorney Askins.

5 ATTORNEY ASKINS: Judge, ultimately the
6 question is going to be raised about what effect
7 the -- or what prejudice, what effect there was on
8 this case, due to the Court's third party liability
9 ruling. And I think the opening statement being
10 part of the whole defense case is certainly relevant
11 to how this case was handled differently.

12 THE COURT: Well, I largely agree with
13 Attorney Fallon on this one. I will let you ask a
14 couple questions as an introduction into the
15 evidence portion of the case and certainly the
16 closing argument, but.

17 ATTORNEY ASKINS: Very well, thank you.

18 THE COURT: Go ahead.

19 Q. (By Attorney Askins)~ Would you like me to repeat
20 the question?

21 A. No, I think I have it in my mind. Had the **Denny**
22 ruling gone our way, we would have settled on one
23 or more people as to whom we thought we had the
24 best case, that they had committed the crime.
25 And I would have presented a theory of defense in

1 my opening statement that identified that person
2 or those persons that stopped short of, and
3 explain to the jury why I was not taking on the
4 burden of persuasion in the end of proof beyond a
5 reasonable doubt.

6 But the theory of defense would have
7 been shaped around the person we thought probably
8 committed the crime. And I would have had a
9 chance in that opening statement to blunt the
10 thrust of the prosecution argument that I
11 expected, which was, if you are saying the police
12 planted evidence to frame Mr. Avery, or to make
13 it appear that Mr. Avery committed the crime, if
14 you're saying that, then you must also be saying
15 that the police killed Ms Halbach, which we
16 weren't saying.

17 But unable to point to the person we
18 think did, we were -- we were wide open on the
19 flank to that prosecution attack. And I would
20 have shaped -- tried to shape an opening
21 statement that took that opportunity for attack
22 away from the State.

23 Q. Let's turn now to the actual evidence at the
24 trial. You were able to illicit testimony that
25 Teresa Halbach was good at getting so-called

1 hustle shots; is that correct?

2 A. Yes. Can't tell you from whom, but I know that
3 came in.

4 Q. Did the trial court's third party liability
5 ruling affect your ability, in your mind, to
6 elicit other testimony relating to hustle shots?
7 And what I mean by -- I should back up. When I
8 say other testimony, testimony other than what
9 you did elicit.

10 A. That I don't -- That I don't remember, tying the
11 **Denny** ruling to hustle shots.

12 Q. All right.

13 A. Honestly, Jerry was more focused on the hustle
14 shots than was I, but I don't remember that.

15 Q. Now, another -- or one important piece of
16 evidence in the State's case was the blood inside
17 of Ms Halbach's vehicle, correct?

18 A. Yes.

19 Q. Did the trial court's ruling on third party
20 liability affect how you would respond to that
21 evidence at the trial?

22 A. It took away the ability to suggest that persons
23 other than law enforcement officers had access to
24 bloody bandages, bloody towels, blood drips that
25 came from Steven Avery. He had cut his finger

1 badly some time I think shortly before Ms Halbach
2 disappeared, or right after, somewhere in there.

3 Q. Another blood source, you have stated, how would
4 that matter?

5 A. Well, if his blood was found in her car, as the
6 people from -- or, you know, Sherri Culhane was
7 going to testify, that's a big problem for the
8 defense. How did it get there, if it wasn't
9 Steven Avery who bled in the car. The *Denny*
10 ruling left us only the police as the possible
11 source of that blood, if it wasn't directly from
12 Steven Avery.

13 The people who were on that property
14 regularly, though, would have had, presumably,
15 access to Steven's trailer or to places where he
16 disposed of bandages, things he had bled on.

17 Q. As a defense attorney, have you previously
18 defended a client on a theory that the -- that
19 client was framed in some fashion by the police?

20 A. Certainly not in the first chair, at least not
21 that I remember in the first chair. It is an
22 enormously unappealing defense, for obvious
23 reasons.

24 And I think I second chaired Jim Shellow
25 in a trial in which that was essentially the

1 argument as to an FBI agent who had elicited a
2 statement from the client. That is, I know I
3 second chaired Jim. And I remember the trial and
4 I think Mr. Shellow's argument in that was that
5 the FBI agent had set up the client in some
6 fashion. That's the only thing that even comes
7 close, that I remember as I sit here.

8 Q. And I think you stated, is that a difficult or an
9 easy argument to make to a jury?

10 A. You know, it's not an argument that most jurors,
11 most jurors, come in prepared to accept. You
12 know, there are some who just don't like or trust
13 law enforcement. But, you know, the norm, so far
14 as in my experience with jurors, is that they
15 presuppose the good faith, competence, and
16 honesty of law enforcement officers as a group.

17 Q. I'm going to refer to the State's rebuttal
18 closing argument in this case, in it and this is
19 a quote from the transcript and I'm going to ask
20 you a question following that.

21 The quote is this, Despite Mr. Buting
22 trying to sell you on the fact that we're not
23 saying the cops did it, that's exactly what they
24 are saying. That's exactly what they are arguing
25 to you and you have to be prepared to go there.

1 Closed quote.

2 In light of the trial court's *Denny*
3 ruling, did this argument from the State surprise
4 you or did you expect that argument?

5 A. Expected that from the get go. That's the
6 argument I would have been making if I were
7 Mr. Kratz. I think I tried, you know -- I
8 think -- I think, in opening statement, I told
9 the jury, we're not saying the police killed Ms
10 Halbach.

11 Q. Did the trial court's third party liability
12 ruling affect how you would handle this expected
13 argument from the State?

14 A. Yes. I think I could have taken it away, had I
15 been able to say, this probably is who killed Ms
16 Halbach and this is why they had a motive to put
17 it on Steven. And in doing so, they found a very
18 receptive audience in law enforcement, who were
19 happy to believe him guilty.

20 Q. All right. I would like to turn your attention
21 now to Bobby Dassey, one of the State's
22 witnesses; you recall his testimony at trial, in
23 general?

24 A. In general.

25 Q. And do you recall that he was one of the

1 individuals you identified in your third party
2 liability briefs as a potential alternative
3 suspect?

4 A. Yes. Yes, I think -- I think we identified all
5 of the Dassey brothers who lived with their
6 mother as, I think, as potential third party
7 perpetrators.

8 Q. And now you did the cross-examination of Bobby,
9 do you recall doing the cross-examination?

10 A. Yes.

11 Q. All right. And did the trial court's third party
12 ruling affect your cross-examination of Bobby
13 Dassey?

14 A. Yes, I think there is a very, very good
15 likelihood. I can't say this for sure, because
16 we're talking about a ruling we never got, you
17 know, but had the **Denny** ruling gone the other
18 way, I think there's a very good possibility that
19 Bobby Dassey would have been cross-examined by me
20 as someone who potentially was a murderer.

21 Q. Just drawing your attention to a couple of -- and
22 I'm not going to go into a great amount of detail
23 about this, but were there areas that you thought
24 would be fruitful to cross-examine Bobby on,
25 Bobby Dassey?

1 A. The mutual and mutually exclusive alibi that he
2 and Scott Tadych offered each other would have
3 been the one that comes to mind.

4 Q. Had you looked at Mr. Dassey's, Bobby Dassey's
5 chronology that day, his timeline for where he
6 was and when?

7 A. Well, I'm sure that I had. We had all the
8 interviews of law enforcement with Bobby Dassey.

9 Q. Would you have treated Mr. Dassey differently
10 about the so-called joke that Mr. Avery had
11 supposedly made to him?

12 A. Almost surely.

13 Q. How so?

14 A. That could have been handled as a blame shifting
15 effort by someone who himself was culpable,
16 rather than having to handle it as, oops, you
17 made a mistake, you didn't really mean to suggest
18 that Mr. Avery was serious about that.

19 Q. Now --

20 A. Could have been handled as something, you know,
21 that he never heard.

22 Q. Excuse me?

23 A. It could have been handled as something that
24 Bobby Dassey never heard and was saying to point
25 an accusatory finger at his uncle.

1 Q. Now, another individual was Scott Tadych, who was
2 the State's witness; do you recall Mr. Tadych?

3 A. Oh, yes.

4 Q. And you did the cross-examination of him as well?

5 A. I did.

6 Q. And do you recall that he was also identified as
7 a possible third party suspect?

8 A. Yes.

9 Q. Did the Court's **Denny** ruling affect your
10 cross-examination of Mr. Tadych?

11 A. Almost surely.

12 Q. Can you give some examples of how the Court's
13 ruling affected your handling of Mr. Tadych, or
14 more specifically, your cross-examination?

15 A. I expect that I would have projected to
16 Mr. Tadych, or to the jury, in my attitude toward
17 Mr. Tadych, my tone of voice, the manner of my
18 questioning, the view that he was a probable
19 murderer.

20 Q. You mentioned the mutual alibi with Mr. Bobby
21 Dassey; would that have been a source of
22 cross-examination as well?

23 A. It was anyway. I would have tried to develop
24 that at greater length, including the
25 improbability of the whole notion that these two

1 guys going hunting, you know, Dassey at Tadych's
2 place, and Tadych somewhere past Dassey's place.

3 You know, the improbability of that
4 could have been developed on cross of both of
5 them, including, you know, Bobby Dassey's claim
6 that he took a shower before going hunting, not
7 something a bow hunter likely would do.

8 Q. How about other witnesses, and I understand that
9 the ruling did not go your way; however, had the
10 ruling gone your way, would you have considered
11 calling other witnesses in Mr. Avery's defense?

12 A. Potentially, if allowed, witnesses to
13 Mr. Tadych's temper; witnesses to Mr. Tadych's
14 attempt to sell a .22 caliber long rifle, shortly
15 after this; a witness to Mr. Tadych bolting out
16 of work, ashen faced, shortly after this, when he
17 heard that one of the Dassey boys either had been
18 arrested or was being questioned by the police.

19 Q. Other than Mr. Tadych, any other types of
20 evidence or witnesses who you might have called,
21 I mean other than witnesses relating to
22 Mr. Tadych? Anybody else who you think you might
23 have called?

24 A. That -- Now, we're beyond my ability to sort of
25 reconstruct this. The ruling did not go our way

1 so we tried a different case than we would have
2 tried had the ruling gone our way. That's just
3 the nature of pre-trial rulings, significant ones
4 in any event.

5 Q. Fair enough. So now we move on to the closing
6 argument and both you and Mr. Buting made closing
7 arguments, correct?

8 ATTORNEY FALLON: Your Honor, I'm going to
9 impose an objection. I have listened now for about
10 the last 30 minutes on this line of questioning, and
11 it occurs to me that this line of questioning is
12 entirely irrelevant to the specific focus of the
13 post-conviction motion, which was, in effect, did
14 the Court err in making the ruling that you made at
15 that time, based on the argument presented by the
16 defense and the arguments presented by the State, as
17 to the existence of the evidence at the time.

18 And this last 35 minutes here of what is
19 in effect speculation as to what might have
20 occurred, could have occurred, we would have done
21 this, or we might have done that, doesn't really
22 shed any light whatsoever on whether or not the
23 Court was wrong, or committed an error in
24 deciding whether the evidence of third party
25 liability should have gone the other way. I

1 don't see its relevance.

2 THE COURT: Attorney Askins.

3 ATTORNEY ASKINS: Your Honor, it is
4 relevant because, as I mentioned earlier, ultimately
5 this question is going to be addressed in terms of
6 prejudice, and what we're establishing today is
7 prejudice. And the other response that I would
8 have, first of all, is that we're now closing in on
9 the last two questions that I have for Mr. Strang
10 and so the objection is a little late in this
11 process.

12 But this is also information that the
13 Court did not have at the time that it made the
14 **Denny** ruling. This information that we're
15 eliciting today is information that you had not
16 heard prior to today's date. And so I think it's
17 useful for you to have that, to understand what
18 is part of our motion relating to **Denny**.

19 ATTORNEY FALLON: If I may respond.

20 THE COURT: Go ahead.

21 ATTORNEY FALLON: We haven't heard any
22 evidence. What would the evidence have been, that
23 is where the essence of the prejudice argument,
24 assuming for the sake of this brief discussion that
25 prejudice must be shown under these circumstances.

1 But the real question is, what is the evidence, not
2 what counsel's strategy would have been, or how
3 counsel might have changed his opening, or how
4 counsel might have cross-examined Mr. Dassey
5 differently or Mr. Tadych differently. The question
6 is, what would the evidence have been if elicited.
7 There is no evidence.

8 THE COURT: All right. Well, this is a
9 post-conviction motion hearing rather than a trial,
10 I'm not going to anticipatorily decide that the
11 defendant doesn't have an argument to make based on
12 this line of questioning. I will let the State make
13 that argument in its written brief. Attorney
14 Askins, I'm going to permit you to continue.

15 ATTORNEY ASKINS: Thank you, your Honor.

16 Q. (By Attorney Askins)~ Turning to the closing
17 argument, as I was asking you before, did the
18 trial court's ruling affect your closing argument
19 to the jury?

20 A. Yes, I -- there's a specific instance that I can
21 recall in the -- I -- The defense split the
22 closing argument, Mr. Buting went first, I went
23 second. He said something suggesting that
24 someone else may have been the culprit, during
25 his closing argument. I don't remember the

1 details now, but I think it probably was
2 Mr. Kratz who objected and wanted to be heard.

3 And my recollection is that at some
4 point in chambers, so maybe it was at the end of
5 the day, or at some break, before I started my
6 closing argument, I think I was told, you know,
7 Strang, you better go back, you better go out and
8 clean up the mess that Buting made or, you know,
9 sort of pull back from the position he took,
10 otherwise there may be a curative instruction by
11 the Court, which as I recall is what Mr. Kratz
12 wanted.

13 Q. I had asked earlier if you have a theory of how
14 you approach an opening statement to a jury. Do
15 you also have a kind of a theory of how to
16 approach a jury in your closing argument?

17 A. Again, with a narrative that I hope reaffirms the
18 facts that I expected to elicit for the jury and
19 that reaffirms the theory of defense as
20 consistent with the evidence the jury heard, and
21 that, if possible, inspires the jury to hold firm
22 to the rules by which we try cases in this
23 country, and offers them a narrative in a theory
24 that fits better with the facts than the
25 competing narrative that the State offers.

1 Q. Did you understand the trial court's ruling to
2 prohibit you from offering a coherent theory that
3 some specific other individual did this?

4 A. I couldn't argue that anyone other than Brendan
5 did it, that was the nature of the Court's ruling
6 as I understood it.

7 And I think I went back and tried to
8 retract or smooth over whatever it is Jerry had
9 argued in his portion of the closing argument
10 that had resulted in the objection and the
11 colloquy, whether that was in the courtroom or in
12 chambers.

13 ATTORNEY ASKINS: I have no other
14 questions, your Honor.

15 THE COURT: All right. We're going to take
16 our noon break at this time. Counsel, I will leave
17 it up to you whether we resume at 1:00 or 1:15. I
18 would like to try and get the evidence in today.

19 ATTORNEY FALLON: 1:15 is fine.

20 THE COURT: 1:15.

21 ATTORNEY HAGOPIAN: That's fine.

22 THE COURT: Very well, we'll see you back
23 at 1:15.

24 (Noon recess taken.)

25 THE COURT: All right. Mr. Strang, you may

1 be seated. At this time we're back on the record.
2 Attorney Askins, I believe you completed your
3 direct, correct?

4 ATTORNEY ASKINS: That's correct, your
5 Honor.

6 THE COURT: All right. Mr. Fallon.

7 ATTORNEY FALLON: Good afternoon, counsel.

8 THE WITNESS: Good afternoon.

9 **CROSS-EXAMINATION**

10 BY ATTORNEY FALLON:

11 Q. If we could take a moment or two to get a little
12 information regarding your background, I think
13 that would be beneficial. As I understand it,
14 Mr. Strang, you have extensive practice in both
15 federal and state courts here in Wisconsin?

16 A. Sure. I mean, I won't quibble with the
17 adjective, but yes, both federal and state court.

18 Q. All right. In fact, at one time, you were the
19 federal defender, I believe, in the eastern
20 district, was it?

21 A. I was the first federal defender in Wisconsin, I
22 was initially the eastern district of Wisconsin
23 and then three or four years in we added the
24 western district of Wisconsin.

25 Q. So at some point you were the -- Well, first of

1 all, tell us what the federal defender is?

2 A. It's a public defender position, but representing
3 the indigent only in federal court on federal
4 prosecutions.

5 Q. And how long did you hold that position?

6 A. Five years, almost to the day.

7 Q. And I believe you were just telling us at some
8 point your responsibilities included the whole of
9 Wisconsin?

10 A. Both districts, yes, which encompassed the whole
11 of Wisconsin together.

12 Q. All right. And prior to that time, you had
13 experience as a criminal defense attorney,
14 correct?

15 A. Yes, about 11 and a half, 12 years of criminal
16 defense experience before I became the federal
17 defender.

18 Q. All right. And how long ago or how long has it
19 been since you stepped down from the position as
20 the federal defender?

21 A. I stepped down on August 1, 2005.

22 Q. So, in terms of experience, you have roughly 20
23 years of criminal defense practice experience?

24 A. Twenty-one.

25 Q. All right. And as I understand it, you have, at

1 least on two occasions, argued cases before the
2 United States Supreme Court?

3 A. The second time I was only the co-author of the
4 brief and at counsel table I didn't argue **Booker**,
5 but I argued a case in the U.S. Supreme Court
6 before that.

7 Q. All right. And on that -- particularly on that
8 **Booker** case, that was a pretty significant piece
9 of legislation -- of case law, was it not?

10 A. In the little world of federal --

11 Q. Sentencing.

12 A. -- criminal law and sentencing, yes, it was a
13 significant case.

14 Q. And you were successful in arguing that the
15 federal sentencing scheme was unconstitutional?

16 ATTORNEY HAGOPIAN: Objection, relevance.
17 And I think there is some relevance to the general
18 experience, but this sort of level of detail, I just
19 don't think it's relevant.

20 ATTORNEY FALLON: Well, if one of the
21 allegations here, Judge, is that counsel was
22 ineffective, we're certainly entitled to know of his
23 experience.

24 THE COURT: I hope we're not going to be
25 spending a lot more time on it, but I will allow you

1 to ask a couple questions.

2 ATTORNEY FALLON: I have about four or five
3 more questions.

4 Q. (By Attorney Fallon)~ You are or have been an
5 adjunct professor of law at Marquette University
6 Law School?

7 A. Yes.

8 Q. You similarly have been or are an adjunct
9 professor of law at the University of Wisconsin
10 Law School?

11 A. That's also true.

12 Q. And you currently have that position at the
13 University of Wisconsin, do you not?

14 A. Yes, and at Marquette, although I'm not teaching
15 a class this semester at Marquette.

16 Q. In fact, in classes that you teach, you have
17 taught classes on federal law, federal crimes?

18 A. Well, I taught a course for three years, or four
19 years, or something, at Marquette Law School
20 called Federal Crimes and Federal Criminal
21 Procedure, one course.

22 Q. And you have taught courses on evidence?

23 A. I have taught evidence once, last spring, at UW
24 and expect to do it again next spring.

25 Q. All right. And was that state rules of evidence

1 or federal?

2 A. Both, because of the diploma privilege, but a
3 focus on the federal rules of evidence.

4 Q. And you have also taught on Fourth Amendment
5 Search and Seizure Law?

6 A. I teach -- With Marcus Berghahn, I teach a
7 seminar on the Fourth, Fifth, and Sixth
8 Amendments, at -- again, at the University of
9 Wisconsin Law School.

10 Q. And the Fifth Amendment talks about both
11 interrogation law and even fair trials and double
12 jeopardy. You cover those topics?

13 A. We don't -- We actually don't cover double
14 jeopardy, but you have got the right amendment.

15 Q. All right. And you are also on faculty for the
16 National Criminal Defense College in Macon,
17 Georgia, correct?

18 A. Yes.

19 Q. And you have been on that faculty for about 10
20 years?

21 A. Yes.

22 Q. And that's a school designed to educate and teach
23 trial skills to defense attorneys from around the
24 country?

25 A. Yes. And to some extent outside the country.

1 Criminal defense lawyers only, that's correct.

2 Q. You have authored a number of law review
3 articles?

4 A. Co-authored one, authored and published two, and
5 then another one is coming out this fall, later
6 this fall.

7 Q. All right. And this one coming out this fall is
8 entitled what?

9 A. Becoming What We Pretend To Be, Casual Rhetoric
10 In American Criminal Justice. Get it while it's
11 hot.

12 Q. And you have also have been involved in the anti
13 death penalty movement, correct?

14 A. Not so actively now, but yes, very actively in
15 the mid-nineties to late-nineties.

16 Q. Lectured, debated, wrote on the issue?

17 A. Yes, to all three.

18 Q. All right. In this particular case, I believe
19 you already expressed this, but I want to be
20 clear, the ultimate goal in this case, at least
21 as you and Mr. Buting set out, was to obtain an
22 acquittal?

23 A. Yes.

24 Q. And that, in this case, would have been three not
25 guilty verdicts, correct?

1 A. As the case went to the jury, that's right.

2 Q. All right. Now, you would agree with me,
3 counsel, that a trial lawyer's decisions
4 throughout the course of handling a case like
5 this are an effort to achieve that objective, an
6 acquittal; you make decisions with that goal in
7 mind?

8 A. In this case?

9 Q. Yes.

10 A. Yes. And I'm sorry, I mean to the extent that
11 it's a case where the client is saying I'm
12 innocent, I didn't do it --

13 Q. Right.

14 A. -- and I want to go to trial, then I could speak
15 more generally and agree with you, yes.

16 Q. All right. That would be the point, your point
17 is well taken. And certainly in this particular
18 case, a not guilty verdict on a charge of
19 homicide for Teresa Halbach was definitely in
20 Mr. Avery's best interest, right?

21 A. Yes.

22 Q. All right. Now, a criminal defense attorney, in
23 representing a client and representing their
24 interest, has what often is referred to in the
25 law as a fiduciary obligation, right?

1 A. I view it that way. I don't know how often I
2 have seen fiduciary duty apply to the criminal
3 defense role, but I view it that way.

4 Q. All right. And would you express, then, to us,
5 your understanding of what that obligation is,
6 that fiduciary obligation?

7 A. Well, as I understand it, it would be to put the
8 client's interest first and to act in a way that
9 advances his legitimate interests so far as
10 possible, while obeying the ethical and other
11 societal rules that bind lawyers, and in general
12 bind all of us.

13 Q. All right. And with that in mind, with that
14 obligation in mind, you make decisions which you
15 believe are in the best interest of your client,
16 directed toward the goal of an acquittal?

17 A. Yes, some decisions are the clients to make,
18 others are committed to the lawyer, but I think
19 no matter who's the ultimate decision maker, I
20 would agree with you that I try to come to a
21 course or a decision that is in the client's
22 legitimate best interest.

23 Q. And you would agree that sometimes, whether it's
24 a decision or a recommendation to a client for
25 their decision, sometimes that's a very difficult

1 process, the decision making process?

2 A. Oh, sure.

3 Q. Or deciding on a recommendation?

4 A. Yes, I do agree with that.

5 Q. All right. And sometimes it's unpleasant?

6 A. Yes.

7 Q. Sometimes contentious?

8 A. Rarely, but yes, that has happened.

9 Q. And sometimes you may make an argument or a
10 recommendation to the Court because your client
11 thinks that's what should be done?

12 A. Now, you are speaking generally, beyond this
13 case?

14 Q. Generally, yes. I mean, you may not always agree
15 with your client, and they may want -- but if
16 it's their decision --

17 A. Yes.

18 Q. -- and if it's legal and appropriate, you have to
19 go that way?

20 A. If you can't dissuade them from a poor but
21 permissible choice, then, yes, unless it's --
22 unless it's a matter that's so clearly committed
23 to my judgment, yes, I would go that way or ask
24 to withdraw.

25 Q. All right. Now, returning again to decisions,

1 sometimes, and I'm talking generally now,
2 sometimes decisions are made jointly with you and
3 the client together?

4 A. Ideally, yes.

5 Q. Right.

6 A. And, yes, I mean I try to work toward that on
7 every decision, to the extent I can, with a
8 client.

9 Q. The goal being to forge a consensus between you
10 and your client?

11 A. An understanding, a mutual reliance, trust. And
12 it's a good way to check in to see that we're --
13 you know, we still view the case the same way.

14 Q. Right. And, however, as I think you have just
15 said, sometimes decisions are those that are
16 solely for the client?

17 A. Yes.

18 Q. All right. And sometimes there are just other
19 decisions which are best made and solely the
20 purview of the lawyer?

21 A. At least by law committed to the lawyer's
22 judgment, that's right.

23 Q. Certainly. But good practice is to at least kick
24 those things around with your client before you
25 decide on a course of action?

1 A. That's -- that's the best practice. You -- I
2 think most people, or at least I will speak for
3 myself, I fall short of that sometimes, but that
4 is certainly what I view as the best practice.

5 Q. Regardless of the situation, whether it's a joint
6 decision, the client's decision, or you as the
7 lawyer's decision, the goal is to make a decision
8 which is in the best interest of the client?

9 A. That is the goal.

10 Q. All right. As to the night of March 15th, you
11 first became aware there was a problem when you
12 received a call from Judge Willis, correct?

13 A. Yes, that's my recollection.

14 Q. And now, as recalled, the jury went out about
15 1:00 that afternoon, on March 15th?

16 A. Well, I don't know, I recall things as being a
17 little later in the day, but it was some time in
18 the afternoon.

19 Q. And they quit around 5:30?

20 A. There, again, I thought it was later, but it's
21 not like I have a specific recollection or a note
22 or anything.

23 Q. When the call came from the Court, I believe you
24 have already told us you were having dinner at a
25 Mexican restaurant and Mr. Buting was with you?

1 A. Yes, I was awaiting food. We had ordered, but
2 the food had not arrived when the call came.

3 Q. And when the call came in, you were the one doing
4 the talking for the defense team primarily, with
5 the judge, correct.

6 A. That's how I recall it, yes.

7 Q. And your best recollection is is that Mr. Buting
8 was nearby and you were relaying the comments
9 that were made to you by the Court?

10 A. Yes. And that -- and that Mr. Buting could
11 overhear my end of the conversation.

12 Q. Certainly. And you don't recall Mr. Kratz being
13 in on the conversation, but you fully expect he
14 was?

15 A. That's true.

16 Q. All right. And he said -- The reason you don't
17 remember him, probably, is that he said very
18 little during that conversation, correct?

19 A. That would explain it, I mean, that would be one
20 plausible explanation.

21 Q. All right. Now, in terms of your recollection as
22 to the information you were receiving, the Court
23 advised you that it had received some information
24 from Sheriff Pagel concerning Juror Mahler,
25 correct?

1 A. I don't remember Sheriff Pagel being identified
2 personally. That doesn't mean that Judge Willis
3 didn't say it, I just don't recall it being
4 attributed specifically to Jerry Pagel or any
5 other person by name.

6 Q. But you do recall the Court saying, I have been
7 made aware or I have been told this information.

8 A. Yes. And beyond that, I remember the Court
9 attributing it to the sheriff's department,
10 someone. I knew the source was the sheriff or
11 someone in his employ.

12 Q. In other words, the impression you were left with
13 is that it was an, for lack of a better term, an
14 official source of information?

15 A. For lack of a better term.

16 Q. All right. And the Court advised you that
17 Mr. Mahler apparently was advised that his
18 stepdaughter was in a car accident earlier that
19 evening, correct?

20 A. That was part of what I recall, right.

21 Q. And there was some information relayed to the
22 Court that the vehicle which she was driving was
23 totaled, heavily damaged?

24 A. That well could have been relayed to me. I don't
25 remember that specifically. My recollection is

1 no one was killed, extent of injuries or property
2 damage, unknown.

3 Q. Unknown?

4 A. That's my recollection.

5 Q. However, there was other information that his --
6 that the juror's wife was very upset by the
7 accident and the amount of time that he had been
8 away from the family?

9 A. As I recall it, the sense was this was the last
10 straw, with the juror's wife. This just, last
11 straw, put it over the edge.

12 Q. And part of the reason for that last straw
13 impression was, some of the media had attributed
14 to the information that he revealed during voir
15 dire that apparently a large source of his income
16 was coming from his wife's trust fund apparently?

17 A. I believe that now. I don't know whether I heard
18 that in the first phone call, or when that piece
19 of explanation came about. But I understand that
20 came to be part of the story.

21 Q. All right. So as you think about it now, it's
22 easier for you to connect those two pieces than
23 maybe it was that night?

24 A. My memory just is not fresh on this phone call.

25 Q. All right. The Court provided you with

1 information. I believe you testified on direct
2 examination that you -- you were certainly
3 impressed with the apparent urgency of the
4 situation?

5 A. And, again, that's his objective impression that
6 I remember best as opposed to --

7 Q. Specific --

8 A. -- objective events or words.

9 Q. All right. As opposed to specific details, you
10 remember being impressed that this is an urgent
11 or very important situation?

12 A. Serious and urgent.

13 Q. And as a result, you were then impressed with the
14 fact that it needed to be addressed, somehow,
15 sooner rather than later?

16 A. That's what I thought the Court was
17 communicating. I mean, that's the sense I got
18 from what Judge Willis was saying, yes.

19 Q. All right. Part of that sense of urgency came
20 from the fact that the juror's marital state was
21 certainly becoming an issue. In other words,
22 there was a sense that maybe his marriage was on
23 the rocks and that helped contribute to the
24 urgent impression you were left with?

25 A. The information the judge was relaying to me,

1 that was a piece of it, you know, that the wife
2 might walk out or something terrible might happen
3 as a matter of the juror's marriage.

4 Q. Right. All right. So with that information, did
5 you ask the Court to hold for a moment and you
6 and Mr. Buting discuss, well, what do you think
7 we should do, or was it kind of a free flow
8 evolving discussion as to what do you think we
9 should to?

10 A. I don't remember. As a matter of reconstruction,
11 because I have seen one page of Mr. Buting's cell
12 phone records, as a matter of reconstruction, I
13 surmise that I probably said, your Honor, let us
14 get back to you in a few minutes. Let us talk
15 about this and call you back soon. Because it
16 appears that, if I'm remembering right, like
17 8:59 p.m. Mr. Buting places a call on his cell
18 phone to the judge.

19 Q. All right.

20 A. And I had -- My cell phone was sort of old and
21 the battery was dying. It didn't -- It didn't
22 last very long and all I had was a car charger
23 when I was up trying Mr. Avery's case. So it
24 would make sense that we would switch to Jerry's
25 better cell phone.

1 Q. All right. So your recollection is that there
2 must have been some discussion between you and
3 Mr. Buting as to how you should proceed, or what
4 your recommendation to the Court would be as to
5 how you guys should proceed?

6 A. This is something that I would have wanted to
7 talk to Jerry about and that we would have viewed
8 as co-counsel as being a collaboratively made
9 decision, if circumstances permitted that.

10 Q. And while we're on that topic, is it fair to say
11 that the responsibility for handling this case
12 was split equally, or were you more lead counsel?

13 A. Both. The agreement was that I was lead counsel
14 and would be the tie breaker, so to speak, if we
15 needed one, but that we really would try to
16 operate as equals and share responsibilities.
17 And I think the division of labor was as close to
18 equal as you can get.

19 Q. All right. In any event, after discussion or
20 consulting with Mr. Buting to assess the defense
21 strategy here, for your part of the conversation,
22 it was ultimately agreed that the Court should
23 investigate this report further before any final
24 decision could be made as to what to do with the
25 juror, right?

1 A. Right. I mean, if you really want my subjective
2 recollection or sense of this, it was convincing
3 Judge Willis to talk to the juror before acting
4 and before removing the juror, was sort of the
5 best we were going to get. That's how I recall
6 it, rightly or wrongly.

7 Q. And both you and Mr. Buting were in agreement
8 with that plan, that we should at least verify
9 whatever this report is before we make any
10 decisions?

11 A. Yes.

12 Q. And as --

13 A. Well, we in the sense of having at least the
14 judge do that.

15 Q. Right.

16 A. Right.

17 Q. And as a result, with the agreement of Mr. Kratz
18 and Mr. Buting, you advised the Court to go ahead
19 and attempt to ascertain whether the report of
20 this juror's problem was in fact accurate?

21 A. I doubt that I advised the Court to do anything,
22 and I can only assume Mr. Kratz agreed. I don't
23 remember in the end, anyone objecting.

24 Q. That was my next question. No one objected to
25 the Court's inquiry?

1 A. Not that I recall.

2 Q. And you certainly had plenty of opportunity to do
3 so?

4 A. Well, sure, informally, we were -- I don't think
5 there was a court reporter. I don't think we
6 were on the record or being recorded. So in some
7 sense, we had no opportunity to object in the way
8 lawyers use that term. Informally, in terms of
9 expressing an opinion, no one was cutting us off.

10 Q. Right. And there was no opinion expressed during
11 the phone conversation that this would be a bad
12 idea?

13 A. I don't -- Yeah, I don't recall anyone
14 expressing, you know, affirmatively, this would
15 be a bad idea.

16 Q. Now, at the time that the decision was made that
17 the Court should inquire further, well, that
18 decision at that time, you believed, was in the
19 best interest of Mr. Avery, correct?

20 A. Yes.

21 Q. And -- And one of the reasons were that you would
22 certainly be concerned that if there -- that if
23 Mr. Mahler's mental state, you -- would somehow
24 become an issue if he were remaining on the panel
25 as well, correct?

1 A. Well, sure, that he would be a distracted juror.
2 Now, I want to make clear, that although I
3 thought, given the range of possibilities that I
4 perceived, having the judge talk to the juror was
5 in Mr. Avery's best interest, yes.

6 As I said, I also thought that I was
7 acting, in some ways, in a broader moral sense,
8 in the juror's best interest, or in the interest
9 of his family. And as I suggested on direct,
10 this just felt like a time where you -- where I
11 shouldn't stand on legal niceties. That may have
12 been a mistake, but that's how I -- that's how I
13 took it and I was, at least in part, considering
14 the juror and his family.

15 Q. And as a matter of fact, during that
16 conversation, several of the individuals did
17 express concern for his emotional state, for his
18 well-being, the juror's? I mean that -- the
19 feeling that you just expressed, you were not the
20 only one to express some concern for Mr. Mahler's
21 well-being?

22 A. I remember the judge expressing that.

23 Q. Right.

24 A. Yes. And Mr. Kratz may have, I don't remember
25 him speaking, but.

1 Q. And you would also be concerned, as a lawyer, if
2 Mr. Mahler had remained on the panel, that his
3 mental state could affect the deliberations,
4 generally, of other jurors?

5 A. I don't think I agree. I think the specific
6 concern that I had was that if he remained on the
7 jury, and whatever the events were at home were
8 weighing heavily on him, that he might be
9 inclined to rush through deliberations or not
10 hold to a sincerely held belief about the weight
11 of the evidence.

12 Q. All right. And -- But you have had enough cases
13 where you are experienced to realize that one
14 juror with a problem like that can have an affect
15 on the overall panel's deliberations, right?

16 A. I can't draw on my own experience on that one, I
17 have never had anything really very close to this
18 arise before.

19 Q. But you have never had a particular juror who was
20 distracted or any -- had any other problems such
21 that that juror's demeanor and mental state
22 affected the deliberations of the panel as a
23 whole?

24 A. Well, I have certainly seen, you know, jurors
25 come out with a hung jury or a verdict where

1 someone appeared to be in tears or in some
2 emotional distress, but I really don't think I
3 had ever lost a juror during deliberations
4 before. That's why I did not know what the
5 options were. That's why I had to get on Westlaw
6 that night.

7 Q. In any event, you did tell the Court that if the
8 Court were able to verify the preliminary report
9 that it received regarding the problems he was
10 experiencing, it would be appropriate to excuse
11 him?

12 A. Whether I said it or I told anybody that in the
13 end, I was part of that consensus, as I recall.

14 Q. And Mr. Buting was in agreement with that?

15 A. Yes, he must have been. I don't remember us, you
16 know -- I didn't overrule him, so to speak, on
17 that.

18 Q. And you would agree that the decision to excuse
19 that juror, under the circumstances as you
20 believed them, was in the best interest of
21 Mr. Avery?

22 A. Given the information I had and the range of
23 possibilities as I perceived them, yes,
24 understanding that I was also thinking about the
25 juror's interests.

1 Q. So, at some point you did become aware that the
2 Court did excuse Mr. Mahler?

3 A. I'm sure I knew that before I went to bed that
4 night. I don't think we learned that the next
5 morning in chambers.

6 Q. And one of the reasons you have that belief is
7 you, as you said, hit the books, or as we say
8 today, hit the computer and did some research?

9 A. Right. Yes, that is part of why I -- and, you
10 know, just in general, I recall knowing that the
11 night of the 15th, I guess, when this came up.

12 Q. All right. And so when you went to bed that
13 night, you and Mr. Buting -- Well, let me not
14 assume that. After you found the **Lehman** case,
15 I'm assuming that you had some discussions with
16 Mr. Buting as to what you thought that case
17 meant, on its own, and then what it meant for
18 your decision as it pertains to Mr. Avery's case?

19 A. Here's what I think happened. His apartment was
20 right below mine and I think I printed off
21 **Lehman**, decided there was nothing newer than
22 that, that was something like a 1982 case,
23 thereabout.

24 Q. Right.

25 A. Printed it off. Took it down, I think, to

1 Jerry's apartment. My recollection is that he
2 was going to call Kathy, who is his wife and law
3 partner, and bounce it off her and see if she had
4 ever bumped into this situation or could help.
5 But I think it wasn't very long before I got down
6 there and said, you know, I think I have the
7 case.

8 Q. All right. And so you and he then discussed what
9 you thought the case meant and how it might
10 affect Mr. Avery's case?

11 A. Right. It was -- As I recall, it was a Justice
12 Abrahamson opinion, so it took a while to read,
13 but, yes.

14 Q. Another time. When you went to bed that night,
15 then you were aware of the fact that, at least as
16 you believed them, there were three options
17 available to you, and more particularly, to
18 Mr. Avery? When I say you I mean you and
19 Mr. Buting.

20 A. Right. I think we knew those three options when
21 we retired.

22 Q. And as you talked about, the one option was
23 proceed with 11?

24 A. Yes.

25 Q. Another option was a mistrial?

1 A. Yes.

2 Q. And then the third option was, let's go with the
3 substitute juror?

4 A. Yes.

5 Q. All right. And as I understood your comment, you
6 have a firm personal philosophy of not advising
7 to go with 11 jurors?

8 A. Right. And that would be consistent with what I
9 learned from the people who mentored me.

10 Q. And one of the reasons for that is, that
11 regardless, if there is to be a conviction, it's
12 going to take 12 and not 11, so there's an extra
13 person there?

14 A. Yup.

15 Q. And the other option is, if there's a 12th juror,
16 then there's at least -- I'm not going to get
17 into statistics, but there's at least one more
18 opportunity that you might have a juror that's
19 not convinced and you are going to have a
20 mistrial?

21 A. Yes.

22 Q. Thus there would be no conviction for your
23 client?

24 A. That's right.

25 Q. And even though its not a conviction -- or excuse

1 me -- even though it's not an acquittal, it's not
2 a conviction, so it's still in your client's
3 interest?

4 A. He lives to fight another day.

5 Q. He lives to fight another day.

6 A. That's right. That's right.

7 Q. All right. So with the benefit of the 12th
8 juror, the substitute juror, then it would have
9 been true that by substituting that juror, you
10 kept your client's right to a 12 person jury
11 firm?

12 A. I don't want to quibble with you on firm, but I
13 -- but I will -- I will agree that, yes, in the
14 end he had 12 jurors who returned the verdicts.

15 Q. Returned the verdicts. And by having a 12th
16 juror, you then also had that -- you still had
17 that additional option that maybe a mistrial
18 would result, because there was still one more
19 person the State had to convince before a
20 conviction could be obtained, right?

21 A. Well, we had no way of knowing which way the jury
22 was split or leaning but, yes, there were 12
23 people who had to agree unanimously, one way or
24 the other at that point, not 11.

25 Q. So in this sense, the opportunity for a mistrial

1 still existed?

2 A. Sure, I mean, they hadn't returned a verdict, so
3 there's always a possibility that they will
4 deadlock, I suppose.

5 Q. Right. Now, you told us about the fee agreement
6 and the handshake with Mr. Buting about -- that
7 you would go all out for an acquittal in this
8 particular case. In terms of assessing this
9 case, you also felt fairly good about how the
10 case went in for the defense, did you not?

11 A. At trial's end?

12 Q. I'm sorry?

13 A. At trial's end?

14 Q. Yes.

15 A. Yes, I thought that it had gone in about as well
16 as it could, taken as a whole.

17 Q. Right. All right. And so when it came down to
18 discuss these three options with your client, you
19 had to make a recommendation to him as to which
20 option you thought was in his best interest,
21 right?

22 A. Yes.

23 Q. And how much time did you spend with him
24 discussing the option of proceeding with just the
25 remaining 11 jurors?

1 A. Almost none. I would have -- I would have made
2 very clear I thought that folly.

3 Q. And as I understood your testimony, that was --
4 there was clear agreement by Mr. Buting on that
5 point, with you?

6 A. Right, no disagreement, certainly.

7 Q. So you told him about the option, but you really
8 made short shrift of any discussion as to whether
9 that was in his best interest?

10 A. That's fair.

11 Q. All right. So, in effect, then, the time spent
12 with him was the discussion of should we mistry
13 this case or should we go with the substitute
14 juror. The balance of your time with him was
15 discussing those possibilities?

16 A. At least the balance of the substantive
17 discussion, I agree.

18 Q. All right. And with respect to assessing this
19 case, you recommended, I believe you said,
20 against mistrial?

21 A. Yes.

22 Q. Mr. Buting agreed with that recommendation?

23 A. Yes, I think we were speaking jointly, not at the
24 same time, but I think we agreed, yes, we'll take
25 the 13th juror, the alternate, put her in, start

1 deliberations over.

2 Q. All right. And you would agree with me, would
3 you not, that the parties, meaning yourself and
4 Mr. Buting, and the three of us, Mr. Gahn,
5 Mr. Kratz and myself, had contemplated the very
6 possibility that we would have need for a
7 substitute juror?

8 A. Yes. Who's idea that was, I don't have any
9 recollection now, but, yeah, we kept a 13th. I
10 think excused two alternates and kept one for the
11 purpose of having a spare, so to speak, if we ran
12 into trouble.

13 Q. And as a matter of fact that was the result of a
14 somewhat extensive process, was it not?

15 A. What I remember, that I could describe fairly as
16 extensive, is that I think we horse traded so
17 that it was -- it was really sort of wired who
18 the one remaining alternate would be.

19 Q. As a matter of fact, it was you, was it not, who
20 suggested that the parties exchange one
21 additional peremptory strike of the three
22 alternates, thereby leaving one alternate left?

23 A. It certainly could have been. I mean that level
24 of detail, I don't remember, but that sounds like
25 me. I mean, that --

1 Q. Yes.

2 A. That sounds right.

3 Q. All right. And as a matter of fact, you had one
4 particular juror in mind that you wanted to
5 strike because a previous motion to strike for
6 cause was denied?

7 A. Yes, that's right. That's right. I think there
8 had been a motion to strike for cause.

9 Q. All right. And as result of some familiarity
10 with one of the witnesses?

11 A. I don't remember why. I remember there was one I
12 really wanted to see go.

13 Q. All right. And the State also removed one juror
14 that was a concern to all parties as a result of
15 some activities that occurred shortly before the
16 end of the trial?

17 A. I think so, something that had to do with maybe
18 brandy Manhattans, at a fish fry.

19 Q. Something about a juror being a little too
20 talkative at a fish fry.

21 A. Yeah.

22 Q. All right. So the parties horse traded, as it
23 were, thereby we left one alternate juror on the
24 panel.

25 A. That's how I recall it.

1 Q. And then we took the additional step of agreeing
2 that that juror would be sequestered at the
3 hotel, all by herself?

4 A. Yeah, I think that's probably right. Do I recall
5 that specifically, no, but that sounds right.

6 Q. All right. Because we didn't want to run the
7 risk of her somehow being contaminated by any
8 news accounts or discussions with family,
9 correct?

10 A. I'm sure. I'm not disagreeing if you have a
11 better recollection than that.

12 Q. So when it came time to actually be faced with
13 the decision here, the parties had contemplated
14 and prepared for this eventuality?

15 A. The lawyers, at least on the defense side, it was
16 just the lawyers. We had not included Mr. Avery,
17 probably, in any of that.

18 Q. In any of that.

19 A. Probably not.

20 Q. In your view, that was -- these are the kinds of
21 questions that lawyers routinely make, based on
22 their experience?

23 A. Yes and no. This is something I should have
24 discussed with Mr. Avery, but because he was not
25 admitted to bail, or he was unable to make the

1 bail the Court had set, and I think Sergeant
2 Wiegert in particular, or Detective Wiegert, was
3 listening assiduously to his phone calls at the
4 end of each week; we just didn't share things
5 with Mr. Avery that we should have.

6 Q. But the question is, with respect to the lawyers
7 in this case agreed that -- to this option being
8 available?

9 A. Yes.

10 Q. All right. When you recommended against mistrial
11 to Mr. Avery, what other reasons did you give
12 him? You talked about the situation, the
13 agreement you had with Mr. Buting, but what other
14 reasons, what other thoughts, crossed your mind?

15 A. Well, it crossed my lips. I mean, I told Mr.
16 Avery, you know, if this case gets mistried, it's
17 not going away, you know.

18 It's a very serious case. They are
19 going to reprosecute this. You know, you are
20 going to face another jury trial and you won't
21 have us as your lawyers. We tried to say that
22 nicely and gently, but he was entitled to that
23 truth. He was not going to have us as his
24 lawyers.

25 And as a practical matter, what that

1 meant is that he would have to rely on counsel
2 appointed by the State Public Defender. That was
3 information we had -- I thought, had to share
4 with him.

5 I think I'm really pretty certain that I
6 told him, hey, the case went in, you know, about
7 as well as it could have. You know, we won some,
8 we lost some but, you know, overall, you take
9 this on the whole, it went in about as well as it
10 could have, for the defense. That I'm quite sure
11 I told him.

12 Q. And you believe that you and Mr. Buting did the
13 best you could on this case?

14 A. Oh, geez, that's a -- that's a God question, in
15 some ways. I mean --

16 Q. Well, you worked very hard on this case?

17 A. We worked very hard on the case, that's true.

18 Q. And you believe that you said that it went in as
19 well as it could, and we can't account for
20 everything in trial work, can you?

21 A. Right. I mean, about as well as we could have.
22 The calculus really was, is this case likely to
23 go in better for the defense the second time, and
24 I thought probably not.

25 Q. Right. And one of the reasons is, you thought

1 that you and Mr. Buting gave him his best chance
2 at an acquittal, based on the record you made?

3 A. There's probably some arrogance in that but, yes.

4 Q. And you knew at a retrial the prosecution would
5 have an opportunity to dissect whatever defense
6 strategy there was and attempt to deal with it on
7 a retrial?

8 A. Yes, that's a two way street but, of course, yes.

9 Q. And certain evidentiary developments that
10 occurred during the course of the trial would
11 have affected any possible retrial of this case,
12 specifically, reference the EDTA issue?

13 A. Yes. I think that was part of the calculation,
14 or should have been and rightly was part of the
15 calculation.

16 Q. As to what might likely occur on any type of
17 retrial?

18 A. Right. One could assume that there would be some
19 months between the Court declaring a mistrial and
20 then impaneling a new jury.

21 Q. And that --

22 A. With the change of counsel, there well could have
23 been a year.

24 Q. And that was my next question, could have been at
25 least nine months and probably more?

1 A. It well could have been.

2 Q. And that would have been 9 or 10 or 12 more
3 months in the local county jail for your client?

4 A. As matters stood, I mean, one would renew a bail
5 motion, but he was not able to come close -- he
6 and his family could not come close to posting
7 the bail that the Court set.

8 Q. Right. And finally, you had a pretty good
9 idea -- Well, let me rephrase that. You at least
10 had some idea who the alternate juror would be
11 when she was substituted in?

12 A. I knew her name.

13 Q. You knew the name.

14 A. Sure.

15 Q. And it wasn't someone that you moved to strike
16 either for cause or for any peremptory challenge
17 earlier on, right?

18 A. I'm not answering that one because, you know, A,
19 there will be a transcript of what I did or
20 didn't do. And, B, I have no recollection of
21 whether I moved to strike that juror at any
22 point.

23 Q. All right. But in terms of whatever impression
24 you had, you were left with the impression that
25 she was at least an acceptable or an okay juror

1 to assume the role as the 12th juror?

2 A. Specifically, what my opinion was, that she was
3 the best of the three alternates. You know, if
4 we were going to have an alternate retained,
5 during deliberations, this woman was the one to
6 pick.

7 Q. But we didn't know who the alternates were until
8 the names came out of the tumbler, right?

9 A. I think that's right, but it was after that point
10 we knew there were three.

11 Q. Three.

12 A. And my view was, of those three this is the one I
13 would pick --

14 Q. If you had to --

15 A. -- if I had to choose, right.

16 Q. Now, in your discussions with Mr. Avery,
17 regarding whether he should follow your advice or
18 not, he certainly didn't insist on proceeding
19 with 11 jurors, did he?

20 A. No.

21 Q. And he accepted your recommendation that a
22 mistrial was probably not the best choice?

23 A. Yeah, he accepted it. I really think I steered
24 this decision --

25 Q. Right.

1 A. -- to the outcome.

2 Q. But that's not the first time you have had a
3 discussion with a client and recommended
4 strongly, or softly, or to use your phrase,
5 steered a client toward a decision which you
6 believed was in their best interest?

7 A. Oh, it's not the first time at all.

8 Q. No. In fact, it's somewhat -- it's often quite
9 routine?

10 A. I do it commonly.

11 Q. All right.

12 A. I think it's the first time I ever told a client
13 to turn down a mistrial.

14 ATTORNEY FALLON: May I approach?

15 THE COURT: Yes.

16 Q. (By Attorney Fallon)~ Counsel, I'm showing you
17 what has been received as Exhibit No. 1, I
18 believe you have previously identified that?

19 A. Yes.

20 Q. The Court provided us with that memo on the 16th,
21 did it not?

22 A. I don't recall that. I'm not denying it. It's
23 dated the 16th. In my mind, I first saw this
24 after trial, which of course is impossible, if it
25 was given to me on the 16th. I would have looked

1 at it.

2 Q. Do you want to take a moment to look it over,
3 specifically page two? Read page two to
4 yourself.

5 A. The second paragraph --

6 Q. Yes.

7 A. -- is the one you are trying to invite --

8 Q. Yes.

9 A. -- me to consider? Yeah, I read it, but I don't
10 know if the judge is saying he prepared the memo
11 this morning or prepared the memo to elaborate
12 the comments on the record this morning.

13 Q. But we had a discussion in chambers at 8:30 as
14 well?

15 A. Right, probably was 8:30.

16 Q. All right. But you would agree that the Court
17 did provide you with that memorandum?

18 A. Oh, yes, absolutely.

19 Q. All right.

20 A. I don't know if when is a big deal --

21 Q. Right.

22 A. -- but.

23 Q. As you read it over now, there's nothing in there
24 that strikes you as being inconsistent with your
25 memory of those events, is there?

1 A. I didn't read the whole thing. If you want me to
2 answer that I'm going to read the whole thing
3 then.

4 Q. Sure.

5 A. You know, the only thing I really -- I recall
6 differently is, I think the first call from the
7 judge to my cell phone happened, you know, before
8 9:00 p.m. I would have -- you know, I think it
9 more like 8:30.

10 Q. Quarter to nine, something like that?

11 A. Yeah, but I mean, earlier than that. And then
12 the rest of it, you know, is consistent with my
13 recollection, to the extent I have one. And this
14 sort of prompts me to recall, but I think in the
15 first conversation there was some discussion
16 which the judge was expressing reluctance to go
17 too far into the details of the marital
18 difficulties, or not, you know, not wanting to
19 embarrass or pry unnecessarily. And, you know,
20 that I agreed that some deftness there was
21 appropriate.

22 Q. In other words, the Court was struggling to
23 balance the competing objectives that were at
24 play here?

25 A. That was my sense.

1 Q. All right. All right. Thank you. As a result
2 of, then, Mr. Avery accepting your recommendation
3 to proceed with 12, that then put into play a
4 series of events regarding just how we were going
5 to do that, in terms of integrating a brand new
6 juror, correct?

7 A. Yes.

8 Q. All right. And I believe that the parties were
9 in agreement. And I think based on some of the
10 research the parties had done, is that they would
11 have to be instructed as a group again, to start
12 over?

13 A. Right.

14 Q. And that they should be told to start over?

15 A. That much I got from **Lehman**, or that's -- you
16 know, I read **Lehman** to require that.

17 Q. And as a matter of fact, the first step we took
18 in the process was to invite the new juror in and
19 make sure that she had obeyed her responsibility
20 not to listen to any media accounts, or anything
21 of that sort; in other words, we wanted to make
22 sure that her knowledge base hadn't been tainted
23 by outside information? We had a colloquy with
24 the juror, correct?

25 A. I really don't remember that. I'm sure it's a

1 matter of record. I'm not disputing whatever the
2 transcript shows.

3 Q. And we did bring the jury back in as a whole and
4 have them reinstructed, and the jury was
5 instructed to accept the new juror and to begin
6 deliberations anew?

7 A. Yes, I remember being in the courtroom, all the
8 lawyers, Mr. Avery. I remember the jury coming
9 back in and an instruction to that effect being
10 given. I have no specific recollection of
11 details.

12 ATTORNEY FALLON: May I?

13 THE COURT: Yes.

14 Q. (By Attorney Fallon)~ I'm showing you what has
15 been marked as Exhibit 2?

16 (Witness asks for a break.)

17 THE COURT: We'll take a short break at
18 this time, resume in five minutes.

19 (Recess taken.)

20 THE COURT: Mr. Fallon, you may continue.

21 ATTORNEY FALLON: Just a few more questions
22 on this issue, counsel.

23 Q. (By Attorney Fallon)~ I provided you what has
24 been marked for identification purposes as
25 Exhibit No. 2; do you recognize it?

1 A. This must be the instruction the jurors were
2 given after the alternate joined them.

3 Q. And there was no objection from you or Mr. Buting
4 as to the content of that instruction, correct?

5 A. I don't want to be quarrelsome, I don't remember.
6 I'm going to let the record speak on that, if
7 that's acceptable.

8 Q. Very well. All right. Let's change gears a
9 little bit and ask, if I may, a few questions on
10 the third party liability question. We have
11 referred to it as the Court's **Denny** ruling, so I
12 will use that terminology, if that's acceptable?

13 A. Sure.

14 Q. The Court's ruling did not preclude you from
15 pointing a finger at Brendan Dassey, correct?

16 A. That's right.

17 Q. And in this particular case, you chose not to
18 introduce any evidence or point the finger that
19 way?

20 A. That's right.

21 Q. The Court's ruling still allowed you to suggest,
22 and you so argued, that some unknown, some other
23 person, committed this murder?

24 A. Yes. I mean, we certainly were allowed a
25 reasonable doubt argument and I think your

1 request, generally, was fair.

2 Q. And so the impact of the ruling specifically was
3 that you couldn't point a particular finger at a
4 particular suspect?

5 A. Or suspects, yes.

6 Q. Or suspects, or more than one. All right. The
7 ruling still permitted you to argue and
8 cross-examine witnesses with the idea in mind
9 that the police framed Mr. Avery?

10 A. Yes, I mean, at least in the sense of suggesting
11 the police may have planted evidence, yes. And I
12 paused because there may have been -- I think
13 there was a separate motion argument and ruling
14 on that issue, if my memory serves.

15 Q. Well, there was the blood vial issue, right?

16 A. I thought even apart from that. I may be wrong,
17 but the short answer to your question was, yes,
18 we were able to argue planting of evidence.

19 Q. And you were then able to choose, as a lawyer,
20 which bits of evidence you would actually argue
21 were planted by the police?

22 A. Yes.

23 Q. In other words, you had your choice of suggesting
24 that the blood was planted?

25 A. In the Toyota?

1 Q. Yes.

2 A. Yes.

3 Q. You had the opportunity to argue that the police
4 planted the key?

5 A. Yes.

6 Q. In fact, you also argued that the bones, the
7 fragments identified as Teresa Halbach, were
8 actually moved from some place else to the fire
9 pit behind his house, correct?

10 A. That argument was not directed toward the police.
11 That's not on the topic we're discussing. The
12 blood, yes. The key, we had -- we were able to
13 develop an evidentiary basis to make those
14 arguments.

15 Q. And you chose not to make the argument with
16 respect to the bones in the fire pit,
17 specifically?

18 A. Chose not to argue that the police moved the
19 bones?

20 Q. Yes.

21 A. I didn't argue that the police moved the bones
22 and, you know ...

23 Q. That some unknown person did?

24 A. The perpetrator, I think, was the gist of my
25 argument and the police were not the perpetrator.

1 Q. Now, you realized that the prosecution was going
2 to argue that the way the frame up theory was
3 positive, that a reasonable conclusion, in fact,
4 an almost irrefutable conclusion, was that they
5 would have had to have been involved in the
6 crime. You knew that argument was coming?

7 A. I didn't know it, I anticipated that you would
8 make what I sort of think of as a false premise
9 argument, that if we argued that the police were
10 involved in planting evidence, to believe that
11 you would have to believe that the police also
12 committed the underlying crime.

13 Q. In fact, I made that argument in the
14 suppression -- in the motion hearing two weeks
15 before trial.

16 A. I don't recall that, but I certainly anticipated
17 it and, you know, probably anticipated it
18 before -- two weeks before the trial, if you made
19 that argument then.

20 Q. Right.

21 A. It didn't take a genius to anticipate that
22 argument.

23 Q. Exactly. Now, there was quite a bit of evidence
24 in this particular case that was available for
25 you to poke holes at or question its reliability?

1 A. I don't know how to agree or disagree with that.
2 I mean, the Court's rulings circumscribed the
3 available evidence in some ways, opened it up in
4 other ways.

5 You know, there was a whole series of
6 rulings, obviously, that had an affect on both
7 the evidence the parties would have available to
8 them and the arguments they might make based on
9 that evidence, or the inferences they might ask
10 the jury to draw, so.

11 Q. That's my point, the rulings that while they may
12 close some doors, they open other doors that
13 previously weren't there, as you just said.

14 A. Right. And I'm not going to --

15 Q. My next question is, can you give us an example
16 of that?

17 A. Of what?

18 Q. Of a Court's ruling opening an avenue or opening
19 a door you hadn't previously thought of?

20 A. No, you know, a door the Court did not close, for
21 example, would have been -- I know there were
22 some doors the Court left open and I can't come
23 up --

24 ATTORNEY ASKINS: Judge, excuse me, I would
25 like to interpose an objection. I'm not sure what

1 the relevance is of this is.

2 THE COURT: Mr. Fallon.

3 ATTORNEY FALLON: The relevance is that
4 they have spent some time talking about trial
5 strategy and supposed impact of the Court's ruling
6 in this particular case. My argument is that the
7 Court's ruling, or I'm trying to get counsel to talk
8 about the fact that this ruling does, for whatever,
9 there's a cause and there's effect. There's a
10 liability and there's an availability of other
11 arguments and other approaches to the evidence. And
12 that's what I'm probing here, this relative to the
13 prejudice issue. I will rephrase the question.

14 THE COURT: Okay.

15 ATTORNEY FALLON: That's probably the best
16 way to go here.

17 Q. (By Attorney Fallon)~ All right. You indicated
18 on examination that you would have approached the
19 handling of witness, Bobby Dassey, differently;
20 is that correct?

21 A. It's reconstructive necessarily, but, yes, I
22 think I probably would have approached Bobby
23 Dassey differently if the **Denny** ruling had gone
24 our way, rather than against us.

25 Q. All right. And I think you said you would have

1 treated him more as a murderer?

2 A. As a potential murderer, I probably would have
3 projected that attitude, you know, taken that
4 position as a foundation for my cross. If that
5 makes sense to you.

6 Q. What evidence did you have that Bobby Dassey
7 killed Teresa Halbach?

8 A. He potentially is the last one to admit seeing
9 her. His only alibi is Scott Tadych. His story
10 about deer hunting is improbable, at least
11 because of the showering. His recollection of
12 time frames is different than the bus driver.

13 And I think we had a good argument that
14 she was, because of the habit and the sort of
15 likelihood that she's getting to each stop along
16 her school bus route at the same time, five days
17 a week, that she was a more reliable witness in
18 that respect.

19 He has access to Steven's trailer. He
20 has access to the guns in his own home.

21 And, you know, if you're asking for
22 direct evidence, no, I didn't have a confession.
23 We could have presented a circumstantial
24 evidence, in much the same way the State did
25 here, against Mr. Avery.

1 Q. But you would agree there was no direct evidence
2 connecting Mr. Dassey to the murder?

3 A. I don't know that I can agree or disagree, as I
4 sit here now, at that level of detail, I'm sorry.

5 Q. There's no physical evidence?

6 A. No -- No forensic evidence, no trace evidence?

7 Q. Right.

8 A. None that I'm aware of, that's right.

9 Q. No blood?

10 A. Of Bobby Dassey?

11 Q. Yup.

12 A. None that I know.

13 Q. And none of Teresa Halbach's was apparently
14 located anywhere inside the Dassey trailer,
15 correct?

16 A. Or the Avery trailer.

17 Q. Or the Avery trailer, which makes it rather
18 unusual if somebody was trying to frame him,
19 wouldn't they put evidence there?

20 A. Arguably they did leave a gun there.

21 Q. Well, they left a gun.

22 A. With masking tape, saying Steve's gun, or
23 something like it.

24 Q. Only it wasn't Steve's gun, was it?

25 A. I don't remember whose -- the masking tape is

1 what I remember, and I think I -- I think I all
2 but gave the jury the felon in possession count
3 in closing argument, if memory serves.

4 Q. But that's not my question, what you did in
5 closing argument.

6 A. No, I'm sorry.

7 Q. The question is the evidence. So you would have
8 taken a different tone of voice?

9 A. Attitude, I mean, the cross would have been
10 outlined differently and the projected attitude
11 to the witness, I think, would have been
12 different, yes.

13 Q. All right. But that's not evidence, correct?

14 A. No, that's -- No, it's part of the courtroom
15 mosaic. It's considered by juries. It's not
16 within the definition of evidence.

17 Q. And you were able to cross-examine Mr. Dassey
18 about the so-called joke, the Court's ruling did
19 not preclude you from crossing him on the joke,
20 correct?

21 A. That's correct. That's correct.

22 Q. And you would agree, as trial counsel, there are
23 several ways for lawyers to deal with issues such
24 as that. There's not just one way to
25 cross-examine a witness when something happens

1 like that.

2 A. Oh, I agree with that. I think the point is that
3 one's theory of defense drives the
4 cross-examinations, just as its drives the direct
5 examinations and the decisions about who to call,
6 if anyone, in a defense case, if you're defending
7 the case, and the theory -- your theory drives
8 all of those decisions. So I think, in a sense,
9 I'm agreeing with you.

10 Q. And so the ruling did not preclude you from
11 cross-examining them on the joke?

12 A. No, I was allowed to cross-examine him.

13 Q. What evidence did you have that Scott Tadych
14 murdered Teresa Halbach?

15 A. Just circumstances that would have allowed the
16 inference. I ticked through some of them on
17 direct examination. I'm not going to sit here
18 and pretend to recall all of it.

19 But I think his foreman, or his boss,
20 had some helpful potential testimony about his
21 violent nature, his angry nature, the day he runs
22 out of work ashen faced when one of the Dassey
23 boys is picked up by the police, or talked to by
24 the police. Mutual alibi with Bobby Dassey.
25 Changes in his story about when he sees flames,

1 how high the flames are, how big the fire is.

2 I mean, this is -- this is someone who,
3 as I recall, testified differently on a number of
4 points, than the statements he had made to
5 Calumet County sheriff's officers earlier.

6 Q. And you pointed out those inconsistencies in the
7 cross-examination of Mr. Tadych, didn't you?

8 A. Some of them, I did, yes, times, height of
9 flames.

10 Q. Height of flames, the passing of Mr. Dassey on
11 the roadway?

12 A. I didn't do much with that.

13 Q. But you cross-examined him, you had that
14 opportunity?

15 A. Oh, sure, I had the opportunity to cross-examine
16 Mr. Tadych, agreed.

17 Q. And you knew that afternoon Mr. Tadych was
18 nowhere near that property, was he?

19 A. I don't know that at all.

20 Q. He was up visiting his mother in the hospital;
21 there were numerous witnesses to that, correct?

22 A. Well, as a matter of fact, I think he said there
23 were none. And no one testified they had seen
24 him visit his mother at Bellin. But that was his
25 story, that he had been up visiting his mother at

1 Bellin hospital, as I recall it.

2 Q. And there are witnesses that could have been
3 called to substantiate that, had it been
4 necessary?

5 A. I don't know that at all.

6 Q. You and I both know that in trying a particular
7 case you pick and choose what evidence is going
8 to be delivered to the jury during the course of
9 a trial, correct?

10 A. Sure.

11 Q. And you make decisions on whether or not the
12 evidence is needed or necessary at the time
13 before it's presented to the jury for
14 consideration?

15 A. If I were you, I would have decided no such
16 evidence to corroborate Mr. Tadych was necessary
17 because he wasn't available to us as a *Denny*
18 suspect.

19 Q. And that's because there was no evidence that
20 directly connected him to that crime?

21 A. I mean, we're getting back to arguing the
22 briefing.

23 Q. What evidence did you have that he was trying to
24 frame his brother-in-law, or soon to be
25 brother-in-law?

1 A. What evidence did I have? Changing the story, I
2 guess, and putting Steven out by a bonfire at the
3 side of a garage, different times depending on
4 when you asked him.

5 Q. But he wasn't the only one to put him by a
6 bonfire, was he?

7 ATTORNEY ASKINS: Objection, your Honor, I
8 think this goes beyond the scope of our direct.

9 THE COURT: Well, cross-examination isn't
10 limited by direct.

11 ATTORNEY ASKINS: Then I guess I would have
12 to question the relevance, your Honor.

13 ATTORNEY FALLON: They are the ones saying
14 that the record is such that they have been
15 prejudiced by the Court's ruling. I'm looking for
16 what the law requires as introduction of evidence
17 upon which a court makes a ruling. And we're
18 probing for the evidentiary underpinnings of the
19 argument they are now advancing.

20 THE COURT: All right. I did rule in the
21 defense favor before on the theory that some showing
22 of prejudice should be allowed, so I'm going to
23 allow your questions to proceed as well.

24 A. I paused as I did, and I will defer to all of you
25 who have read the transcript presumably, and I

1 have not, of the trial. But I can't remember
2 another witness who put Steven Avery -- at trial,
3 who put Steven Avery at a bonfire. Maybe I'm
4 forgetting someone, but I don't remember any
5 other trial witness who did that. I think
6 Mr. Fabian talked about seeing a fire in the one
7 burn barrel to the south and east maybe of, or
8 north and east of Mr. Avery's trailer, but I --
9 again, I will defer to all of you who have read
10 the transcript.

11 Q. My point is, if you had evidence, it was
12 presented in your motion to the Court in an
13 effort to get the Court to rule in your favor and
14 permit this type of -- permit this type of
15 argument?

16 A. I think I did the best I could in that brief to
17 lay out the available evidence that I thought
18 bore on making the *Denny* showing. That I agree.

19 Q. And going back to the point I was making earlier,
20 you and I both know, as trial counsel, that there
21 is what is in the record and what is actually
22 used by the lawyers in their case. And then
23 there's a whole other set of facts and other
24 information which is available, that the lawyers,
25 for whatever reason, tactical or otherwise, chose

1 not to use or introduce in evidence?

2 A. That's generally true. That's right.

3 Q. And in this particular case, there was a
4 substantial amount of police investigation that
5 was developed?

6 A. Yeah. I'm not -- I mean, I'm not going to
7 quarrel with the adjective.

8 Q. But the point being is that there easily could
9 have been other witnesses to many events, they
10 just weren't called as witnesses, because for one
11 party or the other decided they didn't need to
12 use them.

13 A. I can agree with that, in general.

14 ATTORNEY ASKINS: Your Honor, excuse me. I
15 just want to interject because -- and this is a
16 little unusual because, of course, Mr. Fallon
17 participated at the trial, but he is prefacing many
18 of his so-called questions with, my point is. And I
19 would ask that the attorney be instructed that we're
20 going at questions now, not points that he is
21 attempting to establish with this witness, or with
22 this witness.

23 THE COURT: I understand his usage of the
24 phrase to mean the point of my question is.

25 ATTORNEY ASKINS: All right.

1 THE COURT: That's the way I'm taking it.

2 ATTORNEY ASKINS: Thank you, your Honor.

3 ATTORNEY FALLON: Going to pass the

4 witness.

5 THE COURT: Any redirect?

6 ATTORNEY HAGOPIAN: Yes, please.

7 **REDIRECT EXAMINATION**

8 BY ATTORNEY HAGOPIAN:

9 Q. Mr. Strang, I would like to direct your attention
10 back, again, to the conversation you had with
11 Judge Willis on March 15th, while you were at the
12 restaurant. When the judge explained to you the
13 problem with the juror, was it your understanding
14 that at that point the judge had not personally
15 spoken with the juror?

16 A. Yes.

17 Q. Was it your understanding that the information
18 that was being imparted to you was, at best,
19 secondhand?

20 A. Yes, someone in the sheriff's department, to
21 judge, to me.

22 Q. Did you, in fact, know that someone in the
23 sheriff's department had spoken with the juror?

24 A. I think I understood that from what the judge was
25 telling me. The information the judge got was

1 coming from the sheriff's department, so I
2 inferred that someone in the sheriff's department
3 had spoken to the juror.

4 Q. So, was it your understanding that at the time
5 this information was imparted to you, that Judge
6 Willis had had no opportunity to observe the
7 demeanor of the juror?

8 A. That was my understanding. I don't know if he
9 said this or not, but I had the sense that the
10 judge was calling me from his home.

11 Q. So the judge would have had no opportunity to
12 personally assess whether this juror was upset or
13 distraught?

14 A. At the time of the first call to me?

15 Q. Yes.

16 A. So I assumed.

17 Q. And in that conversation, did you know, did you
18 have any information that this juror, Mr. Mahler,
19 may have had some concerns about how some other
20 jurors were approaching the deliberations?

21 A. No.

22 Q. Did you have any information that perhaps
23 Mr. Mahler was having some problem with another
24 juror?

25 A. No.

1 Q. Did you have any information that Mr. Mahler had
2 felt verbally threatened by another juror?

3 A. No.

4 Q. And in this conversation and when you authorized
5 the Court to speak with and then to remove the
6 juror, it's correct that you also, personally,
7 had no opportunity to assess the demeanor of the
8 witness?

9 A. That's true.

10 Q. Excuse me, not the witness, but the juror.

11 A. The juror, Mr. Mahler, no, that's true.

12 Q. There was some indication that this juror may
13 have been upset, or a part of his emotional
14 status was due to his wife's upset about some
15 press report; do you recall that?

16 A. Do I recall hearing that in that first telephone
17 conversation?

18 Q. Yeah, in that conversation.

19 A. I can't place it there. I know I heard it at
20 some point, it well could have been in that first
21 conversation.

22 Q. You could have heard that in the conversation?

23 A. Yeah, I could have, yes.

24 Q. And that wasn't the first time you had heard
25 something about his wife being upset about a

1 press report, correct?

2 A. Gosh, off the top of my head, I don't remember an
3 earlier time, but.

4 Q. Do you remember a few days earlier, was on
5 March 12th, when the Court conducted an
6 individual voir dire of each of the jurors?

7 A. Yes. I couldn't have told you the date, but in a
8 little conference room down the hall from -- from
9 Judge Poppy's chambers in Calumet County, I
10 think.

11 Q. And Richard Mahler was among the jurors who was
12 individually questioned; do you recall that?

13 A. I think we went through all of them, I think,
14 that day.

15 Q. And do you recall in that individual voir dire
16 whether Mr. Mahler had referred to his wife's
17 upset about a press report at the time of jury
18 selection?

19 A. That -- that rings a bell. That rings a bell
20 with me, but I couldn't give you details or
21 even --

22 Q. Would it --

23 A. -- really assert to you with complete confidence
24 that he said it in that individual voir dire.

25 Q. Would it refresh your recollection to take a look

1 at the transcript of the individual voir dire?

2 A. Sure, and I'm not disputing the transcript, I
3 mean it does ring a bell, but.

4 ATTORNEY HAGOPIAN: May I approach, your
5 Honor?

6 THE COURT: Go ahead.

7 Q. (By Attorney Hagopian)~ I'm going to ask you to
8 take a look at the transcript from March 12,
9 2007. And page 32, beginning at line 24, there's
10 a reference here, actually, to officer speaking
11 and I believe the State has agreed that that must
12 be a typographical error and actually was
13 referring to Mahler. And if you would begin
14 reading there and on to the next page?

15 A. I remember the gist of this.

16 Q. Okay. So is it, then, your recollection -- Did
17 you read through line 14 on page 33?

18 A. No, I read through line 24 --

19 Q. Okay.

20 A. -- on page 33.

21 Q. Okay. So in that individual voir dire, then,
22 Mr. Mahler raised the issue of his wife's upset?

23 A. Yes.

24 Q. And that was referring back to the time of jury
25 selection?

1 A. Yes.

2 Q. And the Court asked Mr. Mahler if that was going
3 to affect his ability to continue serving on this
4 jury?

5 A. Right, and in effect he said, no, that he could
6 deal with that.

7 Q. And he could handle that. And so you -- you were
8 present for that individual voir dire on the
9 12th?

10 A. Yes, I was.

11 Q. And you would have been familiar with that when
12 you received the call from the Court on March
13 15th indicating a problem with this juror?

14 A. Yes. And I would hazard a guess that I would
15 have remembered it, three days later, unlike now.

16 Q. You have testified that you were concerned that
17 perhaps the best you could accomplish that night,
18 in that conversation with Judge Willis, was to
19 have the judge talk to the juror before excusing
20 him. Is that -- Do you recall that testimony?

21 A. Yes.

22 Q. So, was it your concern that if somehow you
23 objected to this process, objected to the Court
24 talking to the juror, that the judge might just
25 excuse Mr. Mahler without even speaking with him?

1 A. That was my concern. Now, I can't attribute that
2 to anyone other than myself. I mean, that was
3 just an impression, was that the best we were
4 going to get was having the judge speak directly
5 to the juror.

6 Q. But is it also your recollection that when --
7 that at some point you told the judge you needed
8 to confer with Mr. Buting about this and you
9 would get back to him?

10 A. It's a -- That's a reconstructed recollection, in
11 the sense I know I would have wanted to talk to
12 Mr. Buting, arrive at an agreement. We, like the
13 day before, or two days before, very recently
14 before this, Jerry Buting and I had had a set to
15 over a decision I had made without consulting
16 him. It was probably two days before. Because I
17 didn't consult him, he was home preparing his
18 part of the closing argument and I was here -- or
19 I was at the courthouse in Chilton.

20 We had had a real disagreement over that
21 for, first real conflict. So I know I would have
22 been attuned, the night of the 15th, to bringing
23 Jerry into the loop and making a collaborative
24 decision on this. And I now know there was a
25 phone call. I didn't remember that phone call

1 until you and Ms Askins showed me the page from
2 the cell phone records, but there was a cell
3 phone call from Mr. Buting's phone to the judge's
4 telephone number, I think. So, I'm
5 reconstructing what I believe must have happened.

6 Q. So your best recollection, though reconstructed
7 at this point, is that you did ask for time to
8 confer, although perhaps not a lot of time, but
9 that the judge did permit you to confer and get
10 back to him?

11 A. Right, that's my -- that's my best recollection
12 as I sit here.

13 Q. Now, there was reference to the -- what was
14 agreed to was that the Court could speak with
15 Mr. Mahler, and if the information was
16 verified -- is that a fair word to use, verified?

17 A. Right.

18 Q. That he could then dismiss the juror.

19 A. Right. And I want to -- I'm sorry not --

20 Q. Let me just ask.

21 A. Sure.

22 Q. By verified, you took that to mean that the Court
23 would be speaking with Mr. Mahler, correct?

24 A. Right.

25 Q. And that that would be occurring off the record?

1 A. Yes.

2 Q. And there wasn't any plan, as part of this
3 agreement, that the judge would report back to
4 you about what he learned from Mr. Mahler before
5 excusing him?

6 A. You know, I don't -- I don't remember. I think
7 we had given him the authority to go ahead and
8 excuse the juror if he decided that the report
9 from the sheriff's department was verified. I
10 think we had, you know, that we had agreed that
11 that's what the judge would do.

12 Q. So would it be fair to say that the verification
13 to you didn't come, really, until the next
14 morning, when --

15 A. I think I knew that night.

16 Q. You knew the juror was removed?

17 A. I think so. I really do. I think so.

18 Q. But any information that you obtained about what
19 Mr. Mahler told the judge would have come after
20 Mr. Mahler was removed from the jury, correct?

21 A. Yes, I think that's right. In other words, I
22 think when I heard it, it had happened, the Court
23 had excused Mr. Mahler. And then I think we were
24 told the details that the judge got and where the
25 judge stopped short rather than pushing the

1 juror, and the judge's impression that the juror
2 was very -- you know, was distraught, or in some
3 emotional distress.

4 Q. There -- You were asked on cross-examination
5 that, well, you know, even though you didn't take
6 a mistrial you still held out the possibility
7 that you could have had a hung jury; do you
8 remember that --

9 A. Yes.

10 Q. -- questioning? But you -- That morning, on
11 March 16th, you didn't have any doubt in your
12 mind you could have had a mistrial at that point?

13 A. Yes, I had a right to have a mistrial that
14 morning, or Steven did, Steven Avery did.

15 Q. And that was your reading of *Lehman*?

16 A. Yes. And I think had I told Steven Avery we
17 should have taken the mistrial, he would have
18 said, okay, and we would have had a mistrial.

19 Q. It was equally clear in your mind that you were
20 not going to be the attorney representing him in
21 the second trial?

22 A. I was not.

23 Q. And that was made clear to Mr. Avery as well?

24 A. Yes, not just in the fee agreement, but the
25 morning of the 16th.

1 Q. Now, had this case gone to a second trial, would
2 you have cooperated with successor counsel?

3 A. Sure.

4 Q. You would have shared your discovery that you
5 have obtained?

6 A. Well, sure.

7 Q. That next attorney could have obtained the
8 transcripts of the first trial?

9 A. Sure. Probably would have shared my trial notes.

10 Q. You testified that you had steered Mr. Avery to
11 not take the mistrial?

12 A. Yes.

13 Q. And is it correct that that steering away from a
14 mistrial was with the belief that what you were
15 steering him to, substituting the alternate, was
16 allowable under the law?

17 A. Yes.

18 ATTORNEY HAGOPIAN: That's all I have.
19 That's on the juror issue. In fact, I think that's
20 all we have for you.

21 THE COURT: Very well, Mr. Fallon.

22 ATTORNEY FALLON: Nothing from the State.

23 THE COURT: Witness is excused. Counsel,
24 you may call your next witness.

25 ATTORNEY HAGOPIAN: Call Attorney Jerry

1 Buting.

2 ATTORNEY FALLON: Judge, while we're
3 waiting for the witness, could counsel and I
4 approach?

5 THE COURT: Sure.

6 (Off record discussion.)

7 THE CLERK: Please raise your right hand.

8 **ATTORNEY JEROME BUTING**, called as a
9 witness herein, having been first duly sworn, was
10 examined and testified as follows:

11 THE CLERK: Please be seated. Please state
12 your name and spell your last name for the record.

13 THE WITNESS: Jerome Buting, B-u-t-i-n-g.

14 **DIRECT EXAMINATION**

15 BY ATTORNEY HAGOPIAN:

16 Q. Mr. Buting, is it correct that you, along with
17 Attorney Dean Strang, were trial counsel for
18 Mr. Avery in this case?

19 A. Yes.

20 Q. I would like to direct your attention to near the
21 end of trial and, specifically, the date is
22 March 15, 2007. That's the day on which closing
23 arguments were completed and the jury began
24 deliberations; do you have some recollection of
25 that day?

1 A. Yes, I do.

2 Q. And, specifically, that evening, did you and
3 Attorney Strang go out to dinner that night?

4 A. Yes, we did. I believe it was some time after 8.
5 We were told the jury had quit for the day, that
6 they were going for dinner themselves and that we
7 could sort of stand down, so to speak.

8 Q. And would you just, please, briefly describe your
9 mood at dinner that night?

10 A. Well, it was the end of a six week trial, we were
11 obviously exhausted. And it was always a release
12 when you finish the closing arguments. You're
13 still on -- you're still tense, waiting for the
14 jury verdict, as we were in this particular case,
15 but once we were told that the jury had retired
16 for the night, we were able to relax a little
17 bit, and we were able to have a couple beers
18 for -- have dinner, and retire early, probably
19 was the plan.

20 Q. And is it fair to say that you felt that your
21 work was over for the night?

22 A. Yes.

23 Q. And then at some point that evening did you or
24 Mr. Strang receive a telephone call from Judge
25 Willis?

1 A. We did.

2 Q. And that was still while you were at the
3 restaurant?

4 A. Yes.

5 Q. Do you recall whether you spoke directly to Judge
6 Willis in that conversation when the judge
7 called?

8 A. Sure. My recollection, it's been two and a half
9 years, so it's a little unclear to me, but as I
10 pieced it together, my recollection is the first
11 call probably came in to my partner, Dean
12 Strang's cell phone. I don't know whether he
13 held it up to my ear, or whether -- I think more
14 likely he just spoke to the judge himself and
15 then relayed to me what information he was
16 getting, in that first call.

17 Q. And in that first call, at least as the
18 information was relayed to you, did you learn
19 that there was a problem with a juror?

20 A. Yes, I did. My understanding was that there
21 was -- there was a serious problem with one of
22 the jurors, a crisis, an emergency sort of
23 situation, that the juror's daughter or
24 stepdaughter had been in a serious car accident.

25 I don't recall whether -- I know that

1 the impression I had was not that she was
2 seriously injured. I don't recall whether she
3 was injured at all, but I knew that it was a very
4 serious accident. Maybe the car totaled,
5 something like that, and that the juror's wife
6 was upset at him that -- at how much of the time
7 during the trial he was apparently unavailable to
8 her.

9 And the situation was sort of like, here
10 it is, you know, now I'm alone, I have to deal
11 with this crisis. And there was apparently some
12 kind of reference to their marital problems and
13 that this was sort of the last straw, and he
14 wanted off. He had felt like he had to get off.
15 The impression I got was that the juror was just
16 really sort of falling apart and asking to be
17 excused.

18 Q. Now, do you recall, this information is imparted,
19 it's relayed to you, was there any discussion at
20 that point about how to handle the situation?

21 A. I think -- I don't recall whether the first phone
22 conversation, or whether it was the second one,
23 but I believe that at some point during that
24 first call Dean said, well, let me talk -- We'll
25 talk about it and we will get back to you

1 shortly.

2 And the impression was that we had to
3 talk quickly and get back to him within a few
4 minutes, 15, 20 minutes, something like that. I
5 don't know whether in that first call the option
6 came up that the judge could make some contact
7 with the juror himself, or whether that came up
8 as a way of dealing with it in the second call.

9 Q. What is your recollection about a second call,
10 how that came about?

11 A. I believe, and actually I checked my cell phone
12 records for this because I just couldn't recall
13 exactly the sequence, and just before 9:00 I
14 apparently made a phone call. I must have called
15 a number the judge gave me, and had, I believe it
16 was a 12 minute phone call.

17 The judge must have conferenced in
18 Mr. Kratz, because I don't think I knew how to do
19 that with my phone. At least I don't recall
20 doing that. But I'm sure he must have been on,
21 somehow involved in the conversation.

22 At some point, in one of those two
23 calls, the decision was made that the judge
24 would -- My impression was that this information
25 had come to the judge from one of the bailiffs,

1 that this juror was falling apart and that there
2 was this crisis. I had no indication that there
3 was any contact between the sheriff and the juror
4 or anything like that. I don't think I knew that
5 until much later.

6 But at any rate, my recollection is that
7 the judge suggested that perhaps he could contact
8 the juror, speak to the juror directly, and at
9 least verify that the information he was getting
10 was correct, that the juror was really
11 distraught.

12 And I don't recall exactly, my
13 recollection was that that was the judge's
14 suggestion, that he came up with. I don't
15 recall, certainly, suggesting it, but I can't be
16 sure who did.

17 Q. And so part of what was ultimately decided, if I
18 understand your testimony, is that the judge
19 would speak with the juror; is that correct?

20 A. Yes.

21 Q. Was there also an agreement that the judge would
22 be permitted, or you would agree that the judge
23 should remove the juror if the information was
24 confirmed or verified?

25 A. Yes. And the agreement was that that could be

1 done right then, that night. For some reason it
2 never occurred to any of us, I guess, to
3 reconvene in court.

4 The impression I got was that this was
5 the sort of crisis that needed to be resolved
6 immediately. And at the time, that seemed to be
7 the most efficient way to deal with it.

8 Q. So that night, then, as you are at the
9 restaurant, as the information comes in, as you
10 are making a decision what to do and the decision
11 is made, was it your understanding that the judge
12 would be speaking to the juror without either you
13 or Attorney Strang present?

14 A. That's correct.

15 Q. And was it your understanding that Mr. Avery
16 would also not be present?

17 A. That's correct.

18 Q. As this situation with the juror was discussed at
19 the restaurant, did you know which juror was
20 having the difficulty?

21 A. Yes, I did.

22 Q. And were you able to place that juror, you knew
23 which --

24 A. Oh, yes.

25 Q. -- juror was being talked about?

1 A. Yes.

2 Q. Had you formed an opinion about him over the
3 course of the trial?

4 A. Yes, I thought he was a favorable juror for the
5 defense. At the beginning of the trial he was
6 sort of a wild card, I would say. He struck me
7 as somebody who kind of traveled to the beat of
8 his own drum, so to speak, which in this sort of
9 a case I thought could cut either way. But as
10 the case went on, you know, sometimes it's
11 difficult to read from jurors the kind of
12 feedback you get during the trial.

13 But I was not pleased that he was one of
14 the ones who -- or the one that this happened to.
15 There was two or three others that I would have
16 been very pleased if I had heard they were --
17 wanted to be discharged, but certainly not this
18 one.

19 Q. So that night when you were forced into making a
20 decision on how to proceed, did you have a
21 strategic reason for wanting to get Richard
22 Mahler off the jury?

23 A. No, I had no -- no such reason to get him off; I
24 would have preferred he stay.

25 Q. You have been a criminal defense lawyer for a

1 number of years; isn't that right?

2 A. Twenty-eight.

3 Q. Twenty-eight?

4 A. Yes.

5 Q. Now, before Mr. Avery's case, had you ever
6 encountered a situation like this, where a
7 question rose during deliberations about a
8 juror's ability to continue to serve?

9 A. No.

10 Q. Had you previously had the need to research the
11 legal question about the procedure to follow when
12 a juror is asking to be removed?

13 A. No. I think that if this had happened during the
14 day, when we had been standing by waiting for
15 juror questions, or things of that nature, no
16 matter what the crisis or emergency might have
17 been, I think it would have been much easier.

18 My instinct would have been, well, let's
19 convene in court. Let's talk to the juror. But
20 this happening at whatever it was 8:30, 9:00 at
21 night, it did not occur to me that we should have
22 done that. Apparently nobody thought of that.

23 Q. So it's fair to say that when the situation came
24 up, while you were at the restaurant, you were
25 not familiar, for example, with the Supreme

1 Court's decision in *State vs. Lehman*?

2 A. Oh, no, absolutely not, when we got that call, I
3 had never -- never -- well, if I had read the
4 case, it would have been 20 years ago or
5 something when it first came out, but I had never
6 had the need to apply it before.

7 Q. And you testified here that you and Mr. Strang
8 did have some opportunity, although perhaps not
9 very long, but to confer about the information
10 you received --

11 A. Yes.

12 Q. -- talk about what to do. Do you recall in that
13 time you had for conferring, was there any
14 discussion between you two about whether
15 Mr. Avery had a right to be present during the
16 Court's questioning of the juror?

17 A. No.

18 Q. When you agreed that the Court should be able to
19 speak with Juror Mahler, and remove him if the
20 information was confirmed, were you aware of case
21 law indicating that Mr. Avery had a right to be
22 present, with his attorneys, when the Court
23 questioned the deliberating juror?

24 A. You know, I don't know if I was aware of specific
25 case law on that point, but I think, again, if

1 this had happened during the day, my instincts
2 certainly would have been that -- I did know
3 that, generally, a judge is not supposed to
4 confer with a deliberating juror without the
5 attorneys present.

6 That's why any questions that there
7 might be go back and forth in writing. The judge
8 would then convene the attorneys and say the
9 juror has a question and that sort of thing. And
10 then if it's answered in anyway other than a
11 written response, the juror is presented in court
12 with the defendant present.

13 I knew all of that, but somehow this
14 circumstance, this crisis emergency that seemed
15 to be presented just did not -- it didn't seem to
16 fit that same scenario.

17 Q. When you agreed to have the Court speak with
18 Mr. Mahler, had you consulted with Mr. Avery
19 about whether he wanted to be present?

20 A. No, we did not.

21 Q. And when you agreed that the Court could remove
22 this juror, had you consulted with Mr. Avery
23 about whether he wanted to have Mr. Mahler taken
24 off the jury?

25 A. No, we did not.

1 Q. That evening, when this information was conveyed
2 to Attorney Strang and then relayed to you, was
3 there any information passed along about how the
4 problem at home had come to the juror's
5 attention?

6 A. I don't actually recall. The impression I got
7 was that his wife had called. I think the
8 information was that his wife had called and
9 somehow got through to him, which I think was
10 sort of the other reason I thought that this was
11 really a crisis, an emergency, because I didn't
12 think that the jurors would be able to have any
13 contact, that the rules would not allow them to
14 have contact with somebody from home, unless it
15 was an emergency.

16 Q. And, again, at the time when you agreed that the
17 judge could speak with and remove Juror Mahler,
18 were you aware that Sheriff Pagel had spoken with
19 Mr. Mahler?

20 A. Absolutely not.

21 Q. Would it have concerned you, had you known
22 Sheriff Pagel was involved in the communications
23 with Juror Mahler that evening?

24 A. Very much.

25 Q. Why is that?

1 A. Sheriff Pagel was in no way anybody that I would
2 consider uninterested in the case, just the
3 opposite. He was the supervisor of the primary
4 investigators in the case, at least the Calumet
5 County part of it.

6 I was -- He was not sworn as a bailiff.
7 My understanding was that the only ones who would
8 be in contact with the jurors directly would be
9 the bailiffs. And my understanding of what
10 happened that night was that the bailiff, and the
11 bailiff only, spoke to the juror and handed the
12 phone -- or spoke to the judge directly. That
13 all communication went from the juror, to the
14 bailiff, to the judge, without any go between.

15 And, certainly, had I known that Sheriff
16 Pagel had any direct contact with any of those
17 jurors, not just Mr. Mahler but anybody, I would
18 have objected and probably moved for a mistrial.

19 Q. When you agreed to have the Court speak with the
20 juror, did you expect that Sheriff Pagel would in
21 any way be involved in that communication?

22 A. Absolutely not.

23 Q. That, for example, Sheriff Pagel would be
24 standing nearby when Richard Mahler spoke with
25 the judge?

1 A. Absolutely not. You know, I later learned that,
2 that he was nearby, I thought in the parking lot
3 or something like that, which struck me as kind
4 of odd. Even that struck me as sort of odd. You
5 know, maybe the nature of this case, where we had
6 to raise a police frame-up defense, made me
7 especially suspicious of any of the investigating
8 officers. So I would have been especially
9 attuned to any objection had I known that.

10 Q. So you didn't have any information that, in fact,
11 Sheriff Pagel had spoken with Juror Mahler inside
12 Mr. Mahler's private motel room?

13 A. No, I had no such information.

14 Q. If you had known that the information was going
15 from Mr. Mahler to Sheriff Pagel, to the judge,
16 how would you have responded?

17 A. I would have objected, as I said.

18 Q. And by objecting, is there anything you would
19 have insisted upon?

20 A. Probably a mistrial at that point. I don't know
21 that any remedy short of that would have
22 satisfied me. I obviously would have spoken to
23 my co-counsel about it, but from my own personal
24 view, there would have been nothing short of a
25 mistrial at that point because we just don't know

1 what kind of communication there might have been
2 with Mr. Pagel.

3 And I know, for instance, that we made a
4 big deal in our pre-trial motions about there not
5 being even any Manitowoc County deputies involved
6 as bailiffs in the case. And then when we
7 learned that the Court had two retired
8 individuals that were bailiffs and that had done
9 this before that were not employed by the Calumet
10 County Sheriff's Department at that point, or
11 Manitowoc, it was -- that was a comforting
12 arrangement that we were agreeable to.

13 Q. So just so the record is clear here, you knew
14 that Sheriff Pagel was the sheriff in Calumet
15 County?

16 A. Absolutely, yes.

17 Q. And that several of his employees had testified
18 as witnesses for the State in this case?

19 A. Certainly.

20 Q. Then, I would like to turn your attention to the
21 next day, March 16th, and specifically the record
22 shows that there was an in chambers conference
23 that morning with Judge Willis and the attorneys;
24 do you recall that?

25 A. Yes, I do.

1 Q. Was Mr. Avery present during that in chambers
2 conference?

3 A. No.

4 Q. By the time of that in chambers conference, had
5 you spoken with Mr. Avery about the juror's
6 removal?

7 A. No, we had not.

8 Q. Did you know, by that point, that Mr. Mahler had,
9 in fact, been taken off the jury?

10 A. Yes.

11 Q. Was there some discussion in that in chambers
12 conference of what options were available, given
13 that the deliberating juror had been removed?

14 A. Yes. I believe -- My recollection is there must
15 have been a third call, a brief call, perhaps to
16 Mr. Strang's phone later that night that told us
17 that the judge did, in fact, speak with the juror
18 and had confirmed it and excused him. But
19 somehow or another we knew that clearly.

20 We then were, I believe, told let's
21 discuss what we're going to do the next day and
22 that was kind of left at that. We went back to
23 our apartments where we were living. Mr. Strang
24 did some research, found the case of **State vs.**
25 **Lehman**. I believe I read it that night. We came

1 into the chambers the next day. We thought that
2 that case applied.

3 I think the judge might have also found
4 that case as well and presented it as what we
5 thought at the time were three options, which was
6 either a mistrial -- three options when a
7 deliberating juror is removed for cause, either a
8 mistrial; a proceeding with just 11 jurors; or
9 the defendant, and only if the defendant, agreed,
10 the third option would be to substitute in one of
11 the alternates to begin deliberations anew.

12 That's what the -- at the time of that
13 case, as I understood the case, **State vs. Lehman**,
14 the statute was silent on whether an alternate
15 juror could be brought in in the middle of
16 deliberations. And in that case the defendant
17 had objected and the Court reversed and ordered a
18 new trial.

19 In our case, I thought that was still
20 the status of the statute. I didn't do any
21 independent research. And Mr. Strang hadn't
22 discovered, apparently neither had the Court or
23 the prosecutor discovered, that the statute was
24 changed after the **Lehman** case.

25 The **Lehman** case was never reversed by

1 another court case. We knew that. We had
2 checked that. But somehow that the statute had
3 been changed and that the procedure for alternate
4 jurors had been changed, by statute, to require
5 them to be dismissed when the case goes to the
6 jury.

7 Q. So, in that conference that morning with the
8 Court and prosecutors, was there -- among those
9 three options was there some agreement reached as
10 to how the parties would like this to proceed?

11 A. In the chambers, before we spoke with Mr. Avery,
12 I don't know that we committed to anything. I
13 think we discussed the three options and
14 everybody seemed to think those were what was
15 available. And then we were, then, to go speak
16 with our client and discuss the options with him.

17 Q. Okay. So then you met with Mr. Avery at the jail
18 that morning?

19 A. Yes.

20 Q. And that would have been after the in chambers
21 conference?

22 A. Yes.

23 Q. And that was the first time that you had spoken
24 with him that day, correct?

25 A. Can I just clarify that the attorney/client

1 privilege has been waived for this portion of
2 the -- so that I can discuss the --

3 Q. Yes, my understanding is that by having made the
4 allegations that we did, that the attorney/client
5 privilege is waived to the extent of the
6 allegations made in the motion.

7 A. Sure. Yes, we did, then, have a discussion with
8 Mr. Avery.

9 Q. And do you recall approximately how long that
10 meeting lasted?

11 A. I would say 10 to 20 minutes, something like
12 that.

13 Q. Do you remember who did most of the talking, you
14 or Mr. Strang?

15 A. Probably Mr. Strang. I think he took the lead.

16 Q. And in that meeting, was that the time when
17 Mr. Avery first learned that a deliberating juror
18 had been removed?

19 A. Yes.

20 Q. Did you, in that meeting, tell Mr. Avery that he
21 could have a mistrial?

22 A. Yes, I'm sure we did.

23 Q. What advice did you give him about a mistrial?

24 A. I'm sure we talked about all three options. And
25 the one that was off the table from the

1 beginning, was to proceed with just 11 jurors.
2 That was never anything that I would have
3 advised, or Mr. Strang, and I think we told
4 Mr. Avery that.

5 So really, it came down to the two
6 remaining ones, which is a mistrial or substitute
7 in the alternate juror. And I think it was my
8 advice, ultimately, but I think we told him it
9 was his choice, but ultimately we were telling
10 him, both of us I think were telling him, that
11 probably we should proceed with the alternate
12 juror.

13 And, unfortunately, part of that
14 calculus, so to speak, involved the simple
15 financial economic reality that neither one of us
16 would be available on a retrial, if the case had
17 been mistried, and would have to start all over,
18 another six weeks, six months down the road, or
19 whatever, that realistically we were not going to
20 be able to be his attorneys.

21 And that was in the fee agreement, that
22 was something I felt bad about at the end, as I
23 walked out, I felt like it was kind of a
24 Hobbesian choice, so to speak, for Mr. Avery, a
25 difficult choice, that he either had to accept an

1 alternate juror, or he had to agree to a
2 mistrial, where he would no longer have his
3 attorneys, at the second trial, that he would be
4 left with a court -- or public defender or public
5 defender appointed counsel.

6 Q. So that was specifically something discussed with
7 Mr. Avery, in that --

8 A. It was.

9 Q. -- 10 to 20 minute meeting?

10 A. It was.

11 Q. And when you discussed with him the option of
12 substituting in the alternate, was that presented
13 as an option that was permitted by law?

14 A. Yes, we thought it was.

15 Q. By that next morning, you were familiar with the
16 **Lehman** decision you testified, correct?

17 A. Yes.

18 Q. But is it also correct, if I understand your
19 testimony, that you had not gone the step of
20 checking whether there had been any statutory
21 changes since **Lehman**?

22 A. That's correct.

23 Q. You also testified that going with 11, 11 jurors,
24 was off the table, so I take that to mean that
25 was something you expressly advised Mr. Avery

1 against; is that correct?

2 A. Yes, I'm sure we did. I don't even remember more
3 than a brief discussion. That was not really
4 even an option. I think we were pretty clear
5 that neither one of us would ever have agreed to
6 losing one addition -- you know, one -- one of --
7 one 12th of the minds required for a jury. So we
8 didn't really delve into that very much with him,
9 but it certainly was not presented to him as
10 something we would recommend.

11 Q. If the choices that actually had been allowed by
12 law would have been to proceed with 11 or to have
13 a mistrial, which of those two options would you
14 have recommended to Mr. Avery?

15 A. We would have recommended a mistrial, even with
16 the fact that we would not have been his
17 attorneys, unless somebody could have figured out
18 a way to pay us so that we could take care of our
19 responsibilities to our employees and the
20 financial requirements that we have as law firms.
21 Even given that, we would not have recommended
22 proceeding with 11 jurors.

23 Q. And based upon your experience representing
24 Mr. Avery over those many months, do you believe
25 that he would have taken your advice had you

1 recommended a mistrial?

2 A. He would have.

3 Q. On the morning of March 16, when a decision was
4 made not to take a mistrial, had you at that
5 point become aware that Sheriff Pagel had spoken
6 with Juror Mahler the night before?

7 A. No.

8 Q. Had you known that, would it have affected your
9 thinking about whether to take a mistrial?

10 A. It would have. It would have. I would have
11 immediately said this is a mistrial.

12 Q. I just want to, so the record is clear, show you
13 Exhibit 1 and ask if this is something that you
14 have seen before.

15 A. Yes, it is.

16 Q. And what I'm showing you is the Court's memo
17 dated March 16, 2007?

18 A. Correct.

19 Q. Do you recall how you became aware of the memo?

20 A. I don't clearly remember when we got this. I
21 think it was after the trial, after the verdict,
22 but I don't know for sure. My recollection was
23 that it was -- Well, it says right here that the
24 Court prepared this memo to elaborate on comments
25 I made on the record this morning, so that the

1 record concerning why the juror was excused would
2 be complete.

3 So it sounds like it was written after
4 we had had the in chambers conference, after we
5 had met with Mr. Avery, after we had gone back
6 reported what the decision was, and after we had
7 convened in court and announced the issue, and
8 colloqued Mr. Avery. And then it was -- We had
9 gone through all of that before this memo was
10 even prepared. And that would be consistent with
11 my recollection, that it was some time after all
12 of that.

13 ATTORNEY HAGOPIAN: I do not have anything
14 further.

15 THE COURT: All right. I think, Counsel,
16 we'll take our afternoon break at this time and
17 resume at quarter to four.

18 ATTORNEY HAGOPIAN: Thank you, your Honor.

19 ATTORNEY ASKINS: Thank you.

20 (Recess taken.)

21 THE COURT: Attorney Askins, are you going
22 to be taking this part of the direct examination?

23 ATTORNEY ASKINS: Yes, your Honor.

24 THE COURT: You may proceed.

25 DIRECT EXAMINATION, CONTD.

1 BY ATTORNEY ASKINS:

2 Q. Mr. Buting, I'm going to change direction here
3 and talk about some different subjects. Prior to
4 Mr. Avery's trial, there were a number of motions
5 filed by each side to outline or resolve
6 potential trial problems; is that correct?

7 A. Yes.

8 Q. And to resolve evidentiary or anticipate
9 evidentiary problems; would you agree?

10 A. Yes.

11 Q. And one of the areas in which the parties hashed
12 out this sort of thing was relating to so-called
13 **Denny** evidence; is that right?

14 A. Yes, it is.

15 Q. And do you recall that the Court ultimately
16 ordered the defense to be prohibited from
17 presenting evidence that any third party, other
18 than Mr. Brendan Dassey, participated in the
19 commission of the crimes against Ms Halbach?

20 A. That's correct.

21 Q. Now, did the Court's ruling have an affect on
22 your trial strategy?

23 A. Yes, it did, very much. The way -- the way we
24 analyzed it -- Let me just speak for myself. The
25 way I analyzed it, because of the pre-trial

1 publicity, specifically the press conference that
2 Mr. Kratz had when Brendan Dassey was arrested,
3 that presented a version of events that were so
4 horrific that we knew there was a great deal of
5 prejudice against Mr. Avery in the community, and
6 we knew that that version was simply false, we
7 knew that that version would not be presented by
8 the State at the trial because we could very
9 easily disprove it with all of the physical
10 evidence.

11 I felt that this could not be just a
12 reasonable doubt case, where you would pick apart
13 the State's case and leave all these unanswered
14 questions, that it was my feeling from early on,
15 that we really needed to win this case. We
16 really needed to be able to point the finger at
17 another suspect.

18 And that was -- We thought there were
19 several other suspects and that we -- I felt that
20 the -- that this became a sort of an O.J. Simpson
21 case where it was, you know, if O.J. Simpson
22 didn't do it, then who did, is what everybody
23 thinks. I felt that if it was the same way with
24 Steven Avery, that we would have a very hard time
25 getting a not guilty. Maybe a hung jury, but

1 certainly not a not guilty, and that's what we
2 were trying for.

3 So we really wanted to show the jury
4 that not only was he not guilty, but here's
5 another person there who could have been guilty,
6 or could be guilty, so that they could have some
7 sort of comfort level in returning a not guilty
8 verdict.

9 Q. Now, understanding that the ruling did not go the
10 defense way, might you have called other
11 witnesses, in addition to the witnesses you did
12 call?

13 A. Yes. It affected us two ways: One, in the way
14 that we would cross-examine the witnesses that
15 the State called. And also in the way that --
16 the decisions we had as to what witnesses to
17 call.

18 Q. Without going into a great amount of detail, can
19 you explain in what way cross-examination would
20 have been different?

21 A. Well, with two of the people that we believed
22 were prime suspects in the case, two of them were
23 State's witnesses, one of whom, in fact, was
24 quote, unquote, the star witness that the State
25 relied on a great deal, and that was Bobby

1 Dassey.

2 Bobby Dassey and Scott Tadych were --
3 had no alibi other than each other. We knew that
4 there was -- we believed that we could show that
5 Bobby Dassey was lying, that we had an
6 independent, disinterested witness in the school
7 bus driver, who could place Ms Halbach on the
8 Avery property an hour later than he had said.

9 But, we were not able to cross-examine
10 him, and in fact, in Mr. Kratz's closing argument
11 and perhaps the rebuttal -- must have been the
12 rebuttal, because I don't think the school bus
13 driver was mentioned in his first -- he weighed
14 the two against each other and said, you know,
15 Bobby Dassey's more credible than the school bus
16 driver.

17 Well, one reason Bobby Dassey might have
18 appeared more credible than the school bus driver
19 on the timing of all of this, is because we
20 weren't able to cross-examine Bobby Dassey as a
21 potential perpetrator. He was a witness, neutral
22 witness, unbiased. And yet, we had ways
23 of cross-exam -- or we would have used ways to
24 cross-examine that would have presented both him
25 and Mr. Tadych as potential suspects that the

1 jury should consider as perpetrators.

2 Q. Although Attorney Strang was able to
3 cross-examine Bobby Dassey, correct?

4 A. Sure. Actually, I believe he -- Mr. Strang
5 cross-examined both Tadych and Bobby Dassey. But
6 the way you cross-examine somebody when they are
7 an interested witness who is trying to save their
8 own skin, because they could be a guilty party,
9 is very different than the way you cross-examine
10 a witness when your hands are tied and you are
11 not allowed to do that.

12 So, you know, you may be able to present
13 inconsistencies in the versions -- various
14 versions of a witness, from one time to the next,
15 and I think he did that, but without showing a
16 motive for the witness to fabricate, you leave
17 the jury with, and you leave the State with the
18 ability to just argue, well, these are minor
19 inconsistencies. They don't matter. This is an
20 otherwise uninterested party.

21 Very different than you would if there
22 was, for instance, if it's a snitch in a case, an
23 informant, or somebody who is a suspect who,
24 therefore, has a motive, that a neutral witness
25 wouldn't.

1 Q. Now, you did the primary closing argument in this
2 case; do you recall your closing argument?

3 A. I do.

4 Q. Did the trial court's *Denny* ruling affect your
5 closing argument?

6 A. Very much.

7 Q. As an experienced defense attorney, what do you
8 try to accomplish in a closing argument?

9 A. Well, certainly reasonable doubt is where you
10 start. As I said, in this case, though, I wanted
11 to be able to do more. I wanted to be able to
12 give the jury not just reasons to doubt the
13 evidence the State had massed against Mr. Avery,
14 but also to consider that there were other
15 suspects, other people with opportunity, access,
16 and as much motive as Mr. Avery, which is to say
17 really none that anybody could divine. But that
18 was our argument, before the trial, about why we
19 thought we should be allowed to do that.

20 I believe at one point I was
21 interrupted, or there was an objection to my
22 cross-examination, by Mr. Kratz, when I had --
23 What I tried to do throughout the trial, in order
24 to try and get around, as best we could, the
25 *Denny* ruling, of course, the *Denny* ruling, we

1 knew there was *Kyles vs. Whitley*, U.S. Supreme
2 Court case that said that we could explore the
3 bias, investigative bias of the officers. And so
4 as a very weak substitute to being able to point
5 the finger at another suspect, we tried to show
6 that there were other suspects that the police
7 just didn't investigate.

8 We weren't able to cross-examine the
9 suspects themselves that way, but we could -- we
10 could point out to the jury that so and so didn't
11 have an alibi and wasn't asked, or claimed to
12 have an alibi and the police didn't follow up,
13 and that sort of thing. So I think I was at a
14 point in my closing where I was trying to
15 contrast Bobby Dassey's testimony with Lisa
16 Buchner, the bus driver.

17 And at one point I said, made reference
18 to Mr. Kratz's claim that Bobby Dassey was the
19 last person to see Teresa Halbach alive, and I
20 said, well, that may be true if he was the
21 killer, or something like that, and was objected
22 to.

23 And as I recall we -- I was allowed to
24 proceed to the end of the closing. We took a
25 break, and then the -- there was discussion about

1 Mr. Kratz wanted the jury to be instructed
2 about -- that I was -- I don't know, I don't
3 remember exactly how it was, the record would
4 show that. But somehow or another I was
5 basically squashed in my ability to try and paint
6 somebody else as a suspect, which I thought I
7 really couldn't do any way.

8 That, frankly, was just a slip of the
9 phrasing. I hadn't actually intended to go into
10 that in my closing, but clearly that was the
11 line, the line the State was drawing, and they
12 weren't going to let me go past it.

13 Q. Your understanding was you could not name
14 particular individuals in your closing argument
15 as alternative suspects?

16 A. The most I could do was argue that the State
17 failed to investigate other possible suspects. I
18 couldn't name any. I couldn't explain why
19 someone would lie because I believed they were a
20 suspect. I couldn't do any of that.

21 Q. Now, you were able, it seemed, to talk a little
22 bit about the so-called hustle shot; is that
23 correct, during the course of the trial?

24 A. Yes.

25 Q. And if I recall the testimony correctly, I think

1 maybe the receptionist at *Auto Trader*, or one of
2 the other individuals there, testified to what a
3 hustle shot is. Is that your recollection?

4 A. Yes.

5 Q. And you obviously were there, I'm reading the
6 transcript, I'm thinking that you were able to
7 get a little bit of information in about the
8 so-called hustle shot theory of the defense. Is
9 that -- Am I reading too much into that
10 transcript, or was there something there about
11 the hustle shot?

12 A. Well, one of the -- one of the theories that we
13 were working on was that the real killer was
14 somebody that she had done a hustle shot with, so
15 to speak, and that it seemed absurd that you
16 would call the office, leave a paper trail, you
17 know, here, come on out to Avery Road, and that
18 you would then kill that person, when you had
19 such an easy link.

20 But that I knew that hustle shots were
21 arrangements that the individual photographers
22 made on their own, rather than a referral for a
23 job from the front office. So, as I understood
24 this process, the only record of when one of the
25 photographers would hustle their own business, or

1 their own business, the only record of that and
2 who that person was would come after the fact,
3 when the photographer would then submit a bill to
4 *Auto Trader* and get paid double what they would
5 otherwise.

6 So, to me that made a lot more sense, as
7 the sort of scenario where somebody would have
8 killed her, if it was somebody in a situation
9 like that. I'm not sure when I first started
10 getting into that information, the State was --
11 knew where I was going with it, and whether, you
12 know, whether they knew that I was trying to
13 develop a possible other suspect theory without
14 really getting into who or naming anybody.

15 But that much I was able to get into,
16 and I argued that to the jury, that she had a
17 history of that, just within the last month. I
18 forget what it was, 10 or 12 cases like that
19 where she had hustled. She was good at her job,
20 obviously, and she was able to get that kind of
21 business. But I couldn't point the finger at any
22 particular individual as a suspect who did that.

23 Q. The trial court's ruling, then, did have an
24 affect on your development of the hustle shot
25 theory; is that correct?

1 A. Yes. If I could just explain how.

2 Q. Sure.

3 A. Specifically, we thought that she had -- was on
4 her way out from the Avery property, having
5 completed her job with Steven Avery, when one of
6 these other suspects flagged her down and
7 suggested that she take another picture, hey,
8 I've got another car over here, or truck, or
9 something, and that they, in fact, were the ones
10 that were the perpetrator, after that.

11 Q. And did you feel that you could have developed
12 that theory of other possible suspects had the
13 Court ruled for the defense in the *Denny* area?

14 A. Yes, I did.

15 ATTORNEY ASKINS: I have no further
16 questions for this witness.

17 THE COURT: Mr. Fallon.

18 ATTORNEY FALLON: Thank you.

19 **CROSS-EXAMINATION**

20 BY ATTORNEY FALLON:

21 Q. Mr. Buting, as I understand it, you have
22 practiced primarily criminal defense law for
23 approximately 28 years?

24 A. That's correct.

25 Q. The extent or the vast majority of your practice

1 is in criminal defense?

2 A. Almost exclusively.

3 Q. All right. And you have been in your own
4 business, your own law practice, for several
5 years now, correct?

6 A. Yes, it's 16 years.

7 Q. And prior to that time you worked at a couple of
8 different law firms; is that correct?

9 A. I worked at the Public Defender's Office,
10 Milwaukee Trial, for the first nine years of my
11 career, and then I was in a private firm for
12 about three or four years, and then I opened my
13 own practice.

14 Q. Then you opened your practice?

15 A. Right.

16 Q. And your practice is primarily state court
17 practice, or do you do some federal criminal
18 defense work as well?

19 A. I do some federal, but the great bulk is state
20 court.

21 Q. All right. You have argued cases before the
22 Wisconsin Court of Appeals?

23 A. Yes.

24 Q. And you have argued cases in front of the
25 Wisconsin Supreme Court, correct?

1 A. Yes.

2 Q. I believe you have also been admitted to the U.S.
3 Supreme Court bar?

4 A. Yes.

5 Q. Argued a case there?

6 A. I have not.

7 Q. You have not yet.

8 A. I have filed briefs and petitions, opposed
9 petitions, but not had a case actually accepted
10 in the Supreme Court.

11 Q. All right. And you have tried a significant
12 number of cases as a defense attorney, correct?

13 A. Yes.

14 Q. All right. Over a hundred?

15 A. Probably not. I was trying to think about that
16 the other night, probably somewhere in the area
17 of 50. I had a much higher volume when I was a
18 public defender.

19 Q. Public defender than private practice?

20 A. Right.

21 Q. Right. All right. I'm going to -- We'll start
22 with the juror issue, all right?

23 A. Sure.

24 Q. Okay. There's some background stuff that I just
25 want to talk about. We have kind of walked all

1 around it today, but we don't have anything on
2 the record. We'll get into more detail, but just
3 generally, at the time the call came in, as near
4 as you recollect or believed, you and Mr. Strang
5 were in the Appleton area having dinner?

6 A. Yes, I believe it was.

7 Q. And Mr. Kratz, as far as you knew, was at home?

8 A. I had no idea where he was.

9 Q. And he lives in the Appleton area, right?

10 A. I'm not sure I even knew that, but.

11 Q. All right. And since the jury had retired, you
12 knew that Judge Willis, or at least believed that
13 Judge Willis and his staff had returned here to
14 Manitowoc?

15 A. I assume so.

16 Q. All right. And that Mr. Gahn and I were
17 elsewhere, Chilton, or someplace else?

18 A. I had no idea exactly where you were.

19 Q. The point being is that when this all occurred on
20 the night of March 15th, we were all spread out
21 in different locations in the area?

22 A. That's fair to say, yes.

23 Q. Okay. Now, we have had some discussion, I think
24 from co-counsel and from yourself, that you had a
25 fee agreement to represent Mr. Avery through the

1 initial trial and sentencing; would that be fair?

2 A. Through the initial trial and in the event there
3 was a sentencing, we hoped there wasn't,
4 obviously, but, yes, I believe it went that far.

5 Q. And you obtained from him a fee for those
6 services, a flat fee agreement I believe it's
7 called?

8 A. Correct.

9 Q. All right. And the flat fee in this case that
10 was -- was split between you equally?

11 A. It wasn't exactly equal. There was -- I took a
12 lesser amount initially, with the understanding
13 that Mr. Strang's firm would be responsible for
14 any costs that exceeded the amount that they put
15 into a trust account as a reserve for costs.

16 Q. All right. And what was the amount that the fee
17 agreement was for?

18 A. I believe -- He had settled his civil rights case
19 for 400,000. By the time the -- those civil
20 rights attorneys took their share of it and the
21 costs, I think he came out with about 240,000.
22 And I took 100, Mr. Strang took -- I don't
23 remember exactly how much. I think there was 20
24 in reserve, so he was probably 120.

25 We knew even then, though, with the

1 amount of work that this -- although it initially
2 sounded like a lot, that when you break it down
3 to the amount of work we were going to have to do
4 on this case, we knew it wasn't going to be
5 enough, so there -- enough certainly to go
6 through it twice. And so that's why we put in
7 the fee agreement that this was going to be a one
8 trial only.

9 Q. One trial only deal. And so some of that money
10 had to be set aside for expenses associated with
11 the investigation and preparation for the ...

12 A. Correct.

13 Q. Not just your attorney time?

14 A. That's right.

15 Q. Right. Okay. All right. So let's back up. And
16 as I understand it, when you originally came on
17 in this particular case, the agreement was that
18 you and Mr. Strang would -- would do your
19 darnedest to obtain an acquittal in this case? I
20 think he used the phrase you weren't going to
21 just play for the fumbles, you were going to go
22 for the win.

23 A. That's right. And that was -- that was my view
24 all along, was that we were -- you know, that we
25 were going to try and win this with a not guilty

1 verdict, not just a hung jury or a mistrial,
2 because we thought that Mr. Avery was innocent
3 and that he had suffered 18 years of wrongful
4 conviction and that he deserved a resolution in
5 this one trial.

6 And that was our strategy all along.
7 That was one of the reasons why we were working
8 on the whole idea of trying to offer the jury
9 some other suspect.

10 Q. All right. And you had the feeling going in that
11 he deserved the best -- the very best defense
12 that could be mounted?

13 A. That's right.

14 Q. All right.

15 A. And I think we gave him the very best effort that
16 we could.

17 Q. All right. And you would agree that when you
18 have decisions to make as a lawyer in this
19 particular case, that some decisions are made in
20 conjunction with the client and his wishes?

21 A. That's right.

22 Q. All right. Some wishes -- some decisions are
23 made solely by the client?

24 A. That's right.

25 Q. All right. And in those situations, you do your

1 best to make a recommendation to them, and that
2 recommendation is based on what you think is in
3 his best interest?

4 A. That's right. And -- But we do try and present
5 the options fairly, and -- and, you know, present
6 to him what we think the law allows or what it
7 doesn't allow. And in the particular instance of
8 this alternate juror substitution in we, frankly,
9 got that wrong, I think. I think everybody did.

10 Q. And while we're on that point, but what it turns
11 out is, it did give you and Mr. -- you, meaning
12 you and Mr. Strang and Mr. Avery, it did give you
13 a third option that may or may not have been
14 there otherwise?

15 A. The *Lehman* case?

16 Q. Well, in terms of how we came to this decision in
17 this case, there was the third option of
18 proceeding with a substitute juror?

19 A. Right. We thought that that was still available
20 by law and that was what we recommended to him.

21 Q. All right. And you recommended it to him because
22 that third option was based on everything that
23 you knew at the time, that that was in
24 Mr. Avery's best interest to go with that option
25 rather than the other -- either one of the other

1 two?

2 A. We felt that, yes.

3 Q. All right. And that's because the -- I take it
4 from your comments on direct examination you are
5 not a fan, as it were, of proceeding with 11
6 jurors?

7 A. That's right.

8 Q. All right. And why not?

9 A. I don't think -- I don't think it's ever a good
10 idea to give up one 12th of your mind, collective
11 mind of a jury. Twelve people, that one extra
12 person can bring a perspective that the other 11
13 don't have. And I think there's a reason we have
14 got 12, we have always had 12. And I have never
15 agreed to a situation where we proceed with 11.

16 Q. And in this particular case, viewing that you had
17 three options, you did not believe that a motion
18 for mistrial, based on what you knew at the time,
19 was in the best interest, all things considered.

20 A. That was a very difficult choice because we knew
21 that he could -- could have gotten a mistrial and
22 that that would have been, frankly, a guaranteed
23 mistrial. And what made it so difficult is that,
24 you know, in most first degree homicide cases, if
25 you get to the point where you have a chance to

1 get a guaranteed mistrial, I think most of the
2 time I advise a client to do that.

3 In this case, though, we had the
4 difficult calculus that we knew that if we did
5 that he would have other counsel, and we had to
6 explain that to him. I think it would have been
7 unfair to say, okay, let's get a mistrial, and
8 say, oh, by the way, we're not going to be your
9 lawyers.

10 I didn't feel good about doing it
11 because I had a responsibility to Mr. Avery, and
12 we did our best. But we also had economic
13 realities of our own law firms, and our own
14 employees. And we had to, you know -- we
15 couldn't -- we already spent an entire year on
16 the case, probably were making \$10 an hour by
17 then. And so that made it difficult in this
18 case, and I don't know that I ever encountered
19 that dilemma before.

20 Q. And I think, as you said earlier, you thought
21 that you had done, under all circumstances, the
22 very best that you could with the presentation of
23 the case?

24 A. I did.

25 Q. All right. And it would be fair to say, looking

1 at it from your perspective, you meaning the
2 defense attorney's perspective, that the case
3 went in about as well as one could expect, all
4 things considered?

5 A. I did, with perhaps the one exception being the
6 EDTA FBI test, that was sort of sprung on us in
7 the middle of the trial, when we didn't have a
8 chance to redo our own test.

9 But otherwise, I thought that the --
10 that and the fact that the State, I think wisely,
11 decided not to call Brendan Dassey as a witness,
12 because I think the case might have gone in
13 better had that actually -- if we had just
14 brought in that elephant in the room and we had
15 just dealt with him, showed the jurors how that
16 information that they may have gotten elsewhere
17 and was hard to unring the bell that they had
18 heard, we were hoping that you would call Brendan
19 Dassey so we could expose the confessions as
20 false. And then that would have made the case go
21 in better. But absent that, I think the case
22 went in about as well as we could hope.

23 Q. And you realize, of course, you had no control
24 over what prosecution strategy would be selected
25 and implemented?

1 A. We didn't. Although we did consider calling
2 Brendan Dassey ourselves, and thought that that
3 was just too risky to do, so we did not.

4 Q. So the point being, is that all things
5 considered, evaluating, you were reasonably
6 comfortable with the status of the evidence that
7 the jury was now considering?

8 A. Sure.

9 Q. All right. And as you presented these options to
10 Mr. Avery, based on the effort that you have put
11 in and the amount of work, you believe that you
12 and Mr. Strang presented him with his best
13 opportunity at obtaining an acquittal, or perhaps
14 a mistrial if the jury came to that point?

15 A. Given the constraints that we had with the **Denny**
16 motion, and the EDTA test, yes.

17 Q. All right. And if, in fact, there had been a
18 retrial, then both sides would have the
19 opportunity to reevaluate each other's trial
20 strategies and adjust accordingly?

21 A. That's correct.

22 Q. All right. And as it pertains to Mr. Avery's
23 situation, all things considered, you thought it
24 was in his best interest for the current jury to
25 continue to deliberate on the status of the

1 evidence that they had been presented?

2 A. Given the information I had, yes.

3 Q. All right. In fact, the parties had contemplated
4 the very possibility that there would be a need,
5 or there might be a need for a substitute juror
6 by the manner in which the alternates were
7 removed from the panel, correct?

8 A. You know, I was trying to recall what sort of
9 discussions we had, and I haven't seen the whole
10 transcript myself, but I don't know whether it
11 was on the record or whether these were in
12 chambers discussions, what sort of discussions we
13 had as a group on what to do with the alternates.
14 And I don't think we ever -- I know none of us
15 ever saw the statute that says that they should
16 be dismissed once the case is submitted to the
17 jury. And I don't recall what discussions were
18 made for how that alternate juror would be
19 housed.

20 Q. All right. Let me try to jog your recollection
21 here. Is it not true that Mr. Strang, your
22 colleague, suggested that rather than removal
23 of -- rather than determining the identity of the
24 alternates by -- let me rephrase that. Once the
25 identity of the alternates was determined by lot,

1 he suggested that the parties each take one
2 peremptory challenge to remove the alternate,
3 such that there would be one left?

4 A. That's right.

5 Q. Right. And in that particular case, the defense
6 had their eyes on one particular juror who turned
7 out to be an alternate, that they did want
8 removed from the panel, correct?

9 A. That we did want removed?

10 Q. Yes.

11 A. Yes, there was one particular juror that we
12 thought had been talking about the case, should
13 have been removed in a voir dire that I think
14 that we had in chambers, and wasn't. I think
15 we're talking about the same one.

16 Q. And there was one other juror who was somehow --
17 in the middle of trial remembered some prior
18 association with a witness?

19 A. That's right.

20 Q. Right.

21 A. Yes.

22 Q. And so each of those jurors were removed in this
23 process of one peremptory for each team?

24 A. Correct. But as I recall, that discussion, I
25 actually wasn't initially party to that. I think

1 we had some conflict in chambers when I --
2 Mr. Strang had made an agreement that I wasn't
3 quite as comfortable with when we talked about
4 it.

5 But that was before the closings had
6 even begun. And that was back, I think the day
7 before the closings, when counsel was working
8 on -- with the Court on jury instructions. And I
9 think that's the way that came about.

10 Q. In any event, the lone remaining alternate was
11 agreeable to both sides?

12 A. Yes. And, actually, I thought that if -- if we
13 had to have her as a juror, that she would be an
14 all right juror for the defense. That was the
15 sense that I had.

16 Q. And the parties agreed that she would be
17 sequestered in the -- in the hotel, but in an
18 entirely different area from the rest of the
19 jurors, just in case a need did arise, correct?

20 A. You know that's the part I do not recall. I
21 don't know if I was absent for that part of the
22 discussion, but I -- for instance, I was trying
23 to consider what arrangements were made for her
24 security.

25 There was only two bailiffs that had

1 been sworn, and I don't know how exactly it was
2 agreed that that juror would be kept separate,
3 which -- who would eat dinner with her, would
4 there only be one bailiff with the other 12. I
5 just don't remember any of those kinds of
6 discussions, and so I don't know that -- that I
7 was actually part of that discussion or not. I
8 just can't recall.

9 Q. All right. In any event, when you came in the
10 next day, you were aware that the Court had
11 already excused Mr. Mahler?

12 A. I believe we learned that that night before, yes.

13 Q. Right. So you had the night to at least sleep on
14 it, as it were, and contemplate what was likely
15 to occur the next day?

16 A. Yes.

17 Q. And you did a little research, reviewed the
18 **Lehman** case?

19 A. I did none of the -- I did no independent
20 research. I know Mr. Strang did find -- did some
21 research, found **Lehman**. He Sheppardized it, as
22 they say, found that it wasn't overruled, it was
23 still good law, case law anyway. And so -- And
24 then when we came into chambers, I believe the
25 Court had also found that case, or maybe yourself

1 as well, so that was the basic extent.

2 Q. And the Court at that time, also in that early
3 morning conference in chambers, before you went
4 to talk with Mr. Avery, the Court filled us in as
5 to the -- more of the events of the night before?

6 A. I don't know what more of the events there were
7 that we were filled in, I don't recall that.

8 Q. Nothing?

9 A. I don't.

10 Q. At that particular point, then, you asked for
11 time to go consult with Mr. Avery, as to the
12 likely course of events?

13 A. Yes.

14 Q. And that particular time, you realized that
15 Mr. Avery, and only Mr. Avery, held the mistrial
16 key in his hand?

17 A. That's right.

18 Q. And whether or not the case was going to be
19 mistried, go with 11, or go with the substitute,
20 that decision was going to be his?

21 A. With our advice.

22 Q. With your advice?

23 A. Yes.

24 Q. All right.

25 A. Although I will say --

1 Q. Well, let me ask a question.

2 A. Okay. Go ahead.

3 Q. You also agree that the prosecution had really no
4 say in what any of those three options were, that
5 was entirely a defense call?

6 A. The prosecution's only say would have been to
7 present the new statute that said one of those
8 options wasn't on the table. And none of us
9 caught that, and so we presented the wrong set of
10 options to Mr. Avery.

11 Q. I understand your point of view. My question
12 was, on the options that you believe you had, and
13 the ones you presented to Mr. Avery, the
14 prosecution had no choice; it was entirely his
15 choice as to which of those three options?

16 A. The prosecution's choice could have been, excuse
17 me, Judge, the only option here is mistrial or
18 11. Other than that, I don't think the
19 prosecution could have controlled the decision,
20 but I think the prosecution could have corrected
21 it --

22 Q. And that's assuming, for the sake of argument,
23 that anyone knew of that particular change?

24 A. That's right.

25 Q. Based on the information that was presented,

1 however, that morning, the choice was

2 Mr. Avery's?

3 A. Yes.

4 Q. Okay. And when you sat down with Mr. Avery, you
5 recommended, rather quickly, against proceeding
6 with 11?

7 A. That's right.

8 Q. And the discussion then centered on, well, should
9 we mistry it or should we go with 12?

10 A. That's right.

11 Q. And, ultimately, you recommended to him that you
12 proceed with the substitute juror?

13 A. That's right.

14 Q. And at that particular time, and under the
15 circumstances as they existed, you believed that
16 that was in his best interest?

17 A. Yes.

18 Q. And he was agreeable with your recommendation?

19 A. He was. He was agreeable with virtually all of
20 our recommendations throughout the trial.

21 Q. He trusted you?

22 A. He did.

23 Q. All right. He believed that you were operating
24 in his best interests?

25 A. He did.

1 Q. And you were operating in his best interests?

2 A. We tried. We missed this particular point, but
3 we tried.

4 ATTORNEY FALLON: If I may have a moment,
5 Judge.

6 THE COURT: Go ahead.

7 ATTORNEY FALLON: Pass the witness.

8 THE COURT: Any redirect?

9 ATTORNEY HAGOPIAN: Just a very few
10 questions, please.

11 **REDIRECT EXAMINATION**

12 BY ATTORNEY HAGOPIAN:

13 Q. Now, you have testified that, in your view, the
14 alternate who was left was generally an agreeable
15 juror, from your perspective?

16 A. Yes.

17 Q. But before the situation arose on the night of
18 March 15th, you also viewed Mr. Mahler as an
19 agreeable juror, from your perspective?

20 ATTORNEY FALLON: Objection, asked and
21 answered. He already commented on what he thought
22 was Mr. Mahler's suitability.

23 THE COURT: He did. I guess I viewed the
24 question as foundational for another question. So
25 contingently, at least, I'm going to allow it.

1 Q. (By Attorney Hagopian)~ And in fact, you had
2 testified that you viewed Mr. Mahler as perhaps
3 favorable to the defense?

4 A. I did. And I think Mr. Avery preferred him. The
5 one thing that Mr. Avery was able to provide us
6 assistant with -- assistance with in the trial
7 was to try and -- that sort of -- the body
8 language that the jurors were showing, something
9 only a defendant can tell is, are you getting
10 good vibes or good feelings from particular
11 jurors.

12 They are not always accurate because
13 sometimes jurors can't be read that easily, but I
14 do recall that he was disappointed when we told
15 him, in the morning, that Mr. Mahler was gone,
16 because he thought that he was a juror that he
17 was comfortable with or was -- I don't remember,
18 specifically, if he was getting really good vibes
19 from him, but he thought that he was a favorable
20 witness -- or, I'm sorry, a favorable juror.

21 Q. You have also testified that you entered into
22 this case with Mr. Strang with the strategy that
23 you were trying for a not guilty verdict?

24 A. That's right.

25 Q. You wanted to win?

1 A. That's right.

2 Q. But would you also say, and I gleaned from your
3 testimony that there would be some instances
4 where you felt that you could no longer pursue
5 that goal, that a mistrial would be necessary?

6 A. Certainly. In fact, I think we made several
7 motions for mistrial during the process of the
8 case. Renewed them at the end, especially
9 involving the EDTA testing and that sort of
10 thing.

11 So we moved for mistrial. There were
12 some circumstances where we felt a mistrial would
13 be necessary, but it wasn't a goal sometimes you
14 shoot for as, you know, playing for the fumble,
15 or whatever it might be, to try and -- Sometimes
16 in a case, if you get a mistrial, there's a
17 potential for negotiations, better negotiations
18 than you had the first time. I never thought
19 that that was realistic in this case, so that
20 wasn't a strategy we were shooting for.

21 Q. Was it your thought that in the instances where
22 the goal of a not guilty verdict would have to
23 yield to the necessity for a mistrial, would be
24 when there was some error that you thought was so
25 grave that it really impacted the case --

1 A. Yes.

2 Q. -- severely?

3 A. And that would be true in the instance of any
4 contact between a juror and Mr. -- and Sheriff
5 Pagel, as I gave an example. I would have, even
6 though I wanted to win, and even though I thought
7 the case had come in well, had I known that, I
8 would have viewed that as so serious. Again, I
9 was hypervigilant, suspicious, conspiratorial,
10 whatever, about police involvement in this case,
11 because of what we -- the way we thought it
12 developed.

13 And if there had been any inkling that
14 Sheriff Pagel was having direct contact with
15 deliberating jurors, everything we -- I said
16 about wanting to win this case would have gone
17 out the door and I would have recommended a
18 mistrial. That's one example.

19 Q. You have also referred to your understanding of
20 the law about substituting in an alternate as a
21 mistaken view, correct?

22 A. I believe so now that I have looked at the
23 statute that was analyzed in *Lehman*, which was
24 silent on the issue, and then shortly thereafter,
25 the statute that was enacted which specifically

1 says that jurors -- alternates shall be
2 dismissed, I forget the exact phraseology, but
3 when the case is submitted to the jury.

4 I don't think if I had seen that
5 statute, and if I had known of it, I would have
6 suggested to Mr. Avery that he had that third
7 option.

8 Q. So that would have been another example of an
9 instance where your desire for a not guilty
10 verdict would have had to yield to the need for a
11 mistrial?

12 A. It would because, as I said, the 11 jury -- 11
13 juror option was never something I would
14 consider. And then he would have been left with
15 just mistrial or 11 jurors, and I would have
16 recommended mistrial.

17 ATTORNEY HAGOPIAN: That completes our
18 questioning.

19 THE COURT: Anything else, Mr. Fallon?

20 ATTORNEY FALLON: Tempting, but no.

21 THE COURT: All right. You are excused.

22 THE WITNESS: Thank you. Am I no longer
23 sequestered?

24 ATTORNEY HAGOPIAN: Yes, that would be my
25 view.

1 THE COURT: Yes, and free to leave as well?

2 ATTORNEY HAGOPIAN: Yes, free to leave.

3 Your Honor, may I request about a 10 minute recess.

4 THE COURT: Yes.

5 ATTORNEY HAGOPIAN: Thank you.

6 (Recess taken.)

7 THE COURT: Attorney Hagopian, are there
8 any further witnesses for the defense?

9 ATTORNEY HAGOPIAN: No, there are not.

10 THE COURT: Are there any witnesses for the
11 State?

12 ATTORNEY FALLON: Your Honor, the State has
13 decided not to pursue rebuttal witnesses on this
14 matter. However, we would ask the Court to engage
15 in a colloquy with Mr. Avery regarding his decision
16 not to testify in this post-conviction matter.

17 THE COURT: All right. Well, that's new
18 ground for me. I'm not sure what his rights are in
19 a post-conviction hearing. But Mr. Avery, assuming
20 that your rights are similar to what they are in a
21 criminal hearing, do you understand that --

22 Frankly, I'm hesitant to say that you
23 have a constitutional right to testify at this
24 hearing, because I don't know if you do. Do the
25 attorneys have any authority for such a right

1 existing?

2 ATTORNEY FALLON: Your Honor, I think there
3 is one by implication, similar to the trial right,
4 because this does involve evidentiary testimony. It
5 involves decision making that affected the outcome
6 in the case, and it is his case. And I think he
7 would have the right to testify or not to testify,
8 similar to a trial.

9 Secondly, and also by implication, there
10 is a creature in the common law known as
11 ineffective assistance of appellate counsel. And
12 I want to make sure -- we have just had that
13 experience -- they have conferred with him. And
14 I think prudence suggests that we go over the
15 matter with him. Because it is, in fact, his
16 case and his decisions, again, based on the
17 recommendations of counsel. And I would like the
18 record to reflect that they have been adequately
19 considered.

20 THE COURT: Very well. I'm certainly
21 willing to engage in a colloquy that I believe I can
22 word such as to cover the situation where there is
23 or is not a constitutional right.

24 Mr. Avery, let me ask you, first, it's
25 my understanding that you have just had some time

1 during the recent break to confer with your
2 attorneys about whether or not you would be
3 testifying at today's post-conviction motion
4 hearing; is that correct?

5 THE DEFENDANT: Yes, it is.

6 THE COURT: Do you feel that you have had
7 adequate opportunity to confer with your attorneys
8 about your decision whether or not to testify?

9 THE DEFENDANT: Yes, I did.

10 THE COURT: Do you understand that you may,
11 at least, have a constitutional right to testify at
12 this hearing, even if you didn't agree with your
13 attorneys, should they have advised you not to
14 testify?

15 THE DEFENDANT: Yes.

16 THE COURT: And let me ask you this, is it
17 your decision, even independent of any advice you
18 may have received from your attorneys, not to
19 testify at today's hearing?

20 THE DEFENDANT: Yes.

21 THE COURT: And do you make that decision
22 with the understanding that if you disagreed with
23 them and wanted to testify you may well have a right
24 to do so?

25 THE DEFENDANT: Yes, I do.

1 THE COURT: Do you feel you have had
2 adequate time to make your decision in this case?

3 THE DEFENDANT: Yes.

4 THE COURT: And do you have any questions
5 you wish to ask at this time of either me or your
6 attorneys about your right to testify at this
7 hearing?

8 THE DEFENDANT: No, I have no questions.

9 THE COURT: Very well, the Court will -- is
10 satisfied that, as I indicated, whether or not you
11 have a constitutional right to testify at this
12 hearing, that you have independently made the
13 determination, along with in consultation with your
14 attorneys, not to testify.

15 Otherwise, at this point, Counsel, my
16 intention would be to set a briefing schedule.
17 And I will ask the defense, first, how much time
18 you need to submit a brief in support of your
19 post-conviction motion?

20 ATTORNEY HAGOPIAN: Our preference, your
21 Honor, would be to write the brief, at least, and
22 have it in final form, once we have the transcript
23 from today's hearing.

24 THE COURT: That's a fair question. I
25 actually had a note to myself, which I neglected to

1 read, asking when we might have a transcript.

2 Diane, what do you think?

3 COURT REPORTER: I would say two weeks.

4 THE COURT: Okay. That puts us to -- let's
5 see -- October 12th.

6 ATTORNEY HAGOPIAN: Then I would ask that
7 we would have two weeks, then, upon receipt of the
8 transcript, to submit our brief.

9 THE COURT: All right. Let's say, assuming
10 that the transcript is to you by October 12th, we'll
11 set it at October 26th, with the understanding that
12 if for some reason the transcript is delayed, you
13 have the right to request an extension of that date.
14 Mr. Fallon, how much time for the State to respond?

15 ATTORNEY FALLON: I guess I was under the
16 impression, based on previous discussions, that
17 there was going to be a simultaneous briefing, so
18 that the Court would have adequate time to decide
19 the case and meet the December 1st deadline.
20 Counsel is now suggesting they want additional
21 briefing and reply brief --

22 THE COURT: Well, I'm perfectly willing
23 to -- What if we had both of you submit briefs by
24 the 26th and then replies by the -- how about the
25 4th of November, to give me -- that's about 10 days

1 to give me an opportunity to get it, because I think
2 I'm going to issue a written decision in this case
3 and I don't know that it's going to be short.

4 ATTORNEY HAGOPIAN: I have no objection to
5 the simultaneous briefing, but I would ask the Court
6 if we could have, and then the State as well, but we
7 really feel we would need two weeks to file a
8 response brief. And the reason, your Honor, is that
9 we have basically had our argument out here,
10 available to the State, for some time. And, they
11 understandably, have not submitted anything in
12 writing as to their position.

13 THE COURT: All right. So October 26th for
14 initial briefs and November 9 for replies?

15 ATTORNEY HAGOPIAN: That would be very
16 good.

17 THE COURT: Does that work for the State?

18 ATTORNEY FALLON: It's not very good for my
19 schedule, but I will just have to make it work.

20 THE COURT: All right. Is there anything
21 further either party believes needs addressing
22 today?

23 ATTORNEY FALLON: What day is November 9th,
24 if I could ask?

25 THE COURT: These are both Mondays. If

1 anybody has a different day request, now is the time
2 to make it.

3 ATTORNEY FALLON: Could I have until Friday
4 of that week?

5 THE COURT: All right. Why don't I do --
6 Let's do both of these then. Let's make it -- Just
7 to avoid the need for any adjournments, I'm going to
8 give you Friday, the 30th, for your initial briefs.
9 And I sure hope I'm looking at a 2009 calendar here,
10 this isn't my bench -- but, yes. I'm sorry, just a
11 second. Okay. The 30th -- Friday, the 30th, for
12 initial briefs, and Friday November 13th for
13 replies.

14 ATTORNEY FALLON: Thank you.

15 THE COURT: And if I have to request one of
16 the parties to ask for another extension from the
17 Court of Appeals, I will let you know.

18 ATTORNEY HAGOPIAN: Certainly.

19 THE COURT: Anything else?

20 ATTORNEY HAGOPIAN: No.

21 THE COURT: Very well, we're adjourned for
22 today.

23 ATTORNEY FALLON: Thank you.

24 (Proceedings concluded.)

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1 STATE OF WISCONSIN)
)ss
2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 9th day of October, 2009.

Diane Tesheneck, RPR
Official Court Reporter