

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
26 Defendant
27 Appeared in person.

28 **PARTIAL TRANSCRIPT OF PROCEEDINGS**

29 Reported by Diane Tesheneck, RPR

30 Official Court Reporter

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EXHIBITS

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Exhibit 21	23	23	23
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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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