

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

MOTION HEARING
JUROR QUESTIONNAIRE
Case No. 05 CF 381

5 vs.

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** JANUARY 29, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
Special Prosecutor
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
Special Prosecutor
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
Special Prosecutor
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG
Attorney at Law
18 On behalf of the Defendant.

19 JEROME F. BUTING
Attorney at Law
20 On behalf of the Defendant.

21 STEVEN A. AVERY
Defendant
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery, Case No. 05 CF
3 381. Will the parties state their appearances for
4 the record, please.

5 ATTORNEY KRATZ: The State appears by
6 Calumet County District Attorney Ken Kratz,
7 Assistant Attorney General Tom Fallon, Assistant
8 District Attorney Norm Gahn, all appearing as
9 Special Prosecutors.

10 ATTORNEY STRANG: Good morning, Steven
11 Avery is here in person. He's represented by Jerome
12 Buting of Buting and Williams, and Dean Strang of
13 Hurley, Burish and Stanton.

14 THE COURT: Very well. We had proceedings
15 set today to begin at 8:30 for the purpose of
16 administering jury questionnaires. Late last week
17 there were a few motions filed which needed to be
18 addressed before we begin the process of
19 administering the jury questionnaires. Therefore,
20 the Court set this matter for a hearing this
21 morning.

22 The first item to take up is a motion
23 that was filed by the defense to dismiss the
24 sexual assault, kidnapping, and false
25 imprisonment charges. Mr. Strang, I believe you

1 will be heard with respect to that motion.

2 ATTORNEY STRANG: Thank you. In chambers,
3 the Court had reached an understanding with counsel
4 that the State, as I understand that, that agreement
5 we reached in chambers, the State would announce
6 it's intention to call Brendan Dassey in its
7 case-in-chief, or not, by the close of business on
8 January 22, 2007, a week ago.

9 When that day passed and the next,
10 without word from the State, I concluded that
11 silence had to be taken as an intention not to
12 call young Mr. Dassey in the State's
13 case-in-chief and considered, then, what to do
14 about that.

15 This is something that has been close in
16 mind for me since March 10, 2006, the filing of
17 the Amended Information and the substantial
18 disagreement that the parties had over the
19 requirement, if any, that Wisconsin law imposed
20 for the State to show, at least probable cause,
21 for the first degree sexual assault, kidnapping,
22 and false imprisonment charges that the Amended
23 Information added, apparently by timing and by
24 content of the Dassey Complaint, solely or almost
25 solely on the strength of Brendan Dassey's

1 statements inculpatating himself.

2 Now, with the benefit of about 10
3 months, since March 10, and a review of the
4 discovery, it appears to me, at least, that
5 absent Mr. Dassey's testimony in Steven Avery's
6 trial, there is no evidence, none, to support the
7 charges of first degree sexual assault and
8 kidnapping.

9 And while it is, I concede, a somewhat
10 closer call, I don't think the State can support
11 the charge of false imprisonment either, which
12 includes an essential element of confinement or
13 restraint. And because coercion is another
14 essential element of false imprisonment,
15 necessarily, means confinement or restraint
16 during someone's lifetime, in their
17 consciousness, or at least during their lifetime.

18 I think the State's evidence of that, if
19 not naught, is clearly insufficient to sustain
20 any reasonable fact finder in concluding that one
21 or both of those essential elements of false
22 imprisonment could be proven here.

23 I, therefore, on January 24, submitted
24 our motion to dismiss the three counts that the
25 Amended Information added. And, indeed, as I

1 understand the evidence the State has disclosed
2 to the defense to date, as of March 10, 2006, not
3 only did the State have no corroboration for the
4 essential details of the first degree sexual
5 assault, kidnapping, and false imprisonment
6 charges filed by Amended Information, no
7 corroboration beyond Brendan Dassey, the physical
8 evidence that was known, or surely should have
9 been known to the State, for months, on March 10,
10 2006, tended to disprove, conclusively, some of
11 Brendan Dassey's allegations.

12 So when Brendan Dassey said that I got
13 off that school bus, and as picking up the
14 narrative that the special prosecutor regaled a
15 live TV audience with, and went down to the
16 Steven Avery trailer, and claimed that he heard
17 screaming coming from inside, and that he knocked
18 on the door and there was no answer for awhile,
19 and eventually a sweaty Steven Avery came to the
20 door, and there in the back bedroom, manacled to
21 a bed, was Teresa Halbach.

22 When those claims were being made on
23 live television, the State knew that the school
24 bus driver, who had dropped Brendan Dassey off
25 that very time, and has no conceivable reason to

1 have lied, being a school bus driver, said that
2 when she dropped him off, she saw Teresa Halbach,
3 or a woman, out taking photographs of a van. I
4 guess she wasn't manacled to a bed in Steven
5 Avery's trailer if she was standing outside
6 taking photographs as Brendan Dassey got off that
7 bus.

8 And on March 10, when this Amended
9 Information was filed, following eight and nine
10 days after the successive live news conferences,
11 the State had physical evidence, in its
12 possession, making it impossible to believe that
13 someone had been stabbed and slashed repeatedly
14 on Steven Avery's bed. There was no blood in
15 that bedroom.

16 And when Brendan Dassey said that we cut
17 off some of her hair, or I did, at Mr. Avery's
18 request, with a large knife, the State knew, or
19 should have known, that not one strand of Teresa
20 Halbach's hair was found anywhere in Steven
21 Avery's trailer; indeed, not one detectable trace
22 of Teresa Halbach's DNA, hair, blood, anything
23 else, anywhere in his trailer. Not an iota of
24 physical evidence to support the proposition that
25 she was ever in the trailer, let alone raped

1 there, imprisoned falsely there, held there as
2 the victim of a kidnapping. None.

3 Is there any other evidence in the
4 massive discovery, that I commend opposing
5 counsel for providing to us, any other evidence
6 at all, to support a claim of first degree sexual
7 assault, if we set aside Brendan Dassey as a
8 witness in this case? To my eyes, the answer is
9 no. None. Zero.

10 In 20 minutes, we're going to have a
11 jury panel brought in here and they will need to
12 be told, if we are to understand sensibly their
13 answers, and if they are to answer sensibly, a 12
14 or 15 page questionnaire, whatever it is. They
15 will need to be told what charges are to be
16 tried, what charges are we to hear, what
17 allegations is the State making against the man
18 accused.

19 And where there's no evidence,
20 evidently, I will stand corrected if there is,
21 and I'm sure counsel will correct me if I'm
22 wrong. But where in my line of sight there is no
23 evidence to support a first degree sexual assault
24 charge, or a kidnapping charge and insufficient
25 evidence at best to support a false imprisonment

1 charge, this jury should not be told that those
2 charges exist and, indeed, they ought be
3 dismissed.

4 We can address, then, whether that's a
5 sufficient remedy. I think it's not. I think
6 some further action will have to be taken by this
7 Court to counteract the affect of allegations
8 made against one young man, Defendant A, in a
9 separate case, that were imported, although
10 inadmissible, imported in the public mind, to
11 impugn the presumed innocence of Defendant B, in
12 an entirely separate case.

13 But the issue, first, is dismissal and,
14 then, what more would be required.

15 THE COURT: Mr. Kratz.

16 ATTORNEY KRATZ: Thank you, Judge. After
17 the State files an Information, the Defense has an
18 opportunity, and in most instances an obligation, to
19 bring a motion to dismiss. Mr. Strang did that on
20 the 3rd of May, when he brought a motion to dismiss
21 those three additional counts in the Information.

22 And this Court, after finding probable
23 cause, believed that the six counts against
24 Mr. Avery were supported by evidence that, if a
25 jury was to hear, could be believed and could

1 sustain a conviction. Let me remind the Court,
2 let me remind Mr. Strang, that it is the State's
3 decision what charges go forward against a State
4 defendant, not the defense attorney's and with
5 all due respect, Judge, not the Court's.

6 The decision, however, on what to go to
7 trial with and when that decision has to be made,
8 is something that is ripe for discussion this
9 morning. And although not a decision for the
10 Court, and not a decision at the urging of the
11 defense, this Court has to consider what factors
12 the State must take into consideration when
13 determining what charges go forward.

14 Necessarily in this case, and quite
15 unfortunately in this case, we then have to talk
16 about Brendan Dassey. I say, unfortunately,
17 because under most circumstances, in fact, save
18 this circumstance, I can't think of a time when
19 it would be appropriate, in open court, on
20 television, to discuss the status and the nature
21 of plea negotiations in an ongoing case, in an
22 ongoing criminal prosecution. I'm talking about
23 Mr. Dassey's prosecution.

24 But Mr. Strang has made some of those
25 things public. And in the Dassey case, some of

1 those things have been made public. So I'm going
2 to limit my discussion of the plea negotiations
3 in Dassey's case, to that which has already been
4 public.

5 This Court already knows that in May of
6 last year, 2006, a plea agreement had all been
7 reached with Mr. Dassey, which included Mr.
8 Dassey's deal, decision, agreement, to testify
9 truthfully, in the Steven Avery case. When
10 Mr. Strang so eloquently stands up and says the
11 State has no proof, perhaps Mr. Strang forgets
12 those times, or back to the time when Mr. Dassey
13 had, in effect and in and through his lawyer,
14 agreed to enter a plea and to testify against
15 Mr. Avery.

16 It wasn't until Mr. Kachinsky, through a
17 whole different story, was stripped of his
18 ability to handle felony prosecutions by the
19 State Public Defender's Office which, by the way,
20 was almost instantaneously reinstated after
21 Mr. Kachinsky agreed to get off of the Dassey
22 case, that new lawyers were appointed in the case
23 and plea negotiations began anew with Mr. Dassey.

24 This Court knows that those plea
25 negotiations have been ongoing. And this Court

1 knows that the deadline for those plea
2 negotiations was the 22nd of January. I agree
3 with Mr. Strang that that was the time when the
4 State was to hear from Mr. Fremgen, who is
5 Mr. Dassey's new lawyer, as to whether or not,
6 first of all, Mr. Dassey was going to change his
7 plea; and, secondly, and perhaps more
8 importantly, that if called as a witness in the
9 Avery case, what posture, what position, would
10 Mr. Dassey take.

11 This Court knows, that on the 24th of
12 January, two days after the deadline, I received
13 notification from Mr. Fremgen. I alerted the
14 Court, I sent the Court and counsel a copy of
15 Mr. Fremgen's letter setting forth what
16 Mr. Dassey's position would be, if he was called.

17 Importantly, Judge, that letter
18 indicates that Mr. Dassey, although if called in
19 the Avery case would invoke his Fifth Amendment
20 right against self incrimination, if granted use
21 immunity by the Court, presumably upon a
22 direction by the State, that Mr. Dassey would
23 testify, would testify in the State's
24 case-in-chief, would testify on rebuttal, or
25 would testify when the State chooses to call him.

1 And, therefore, there is evidence as to the two
2 counts that Mr. Strang claims, again, so
3 ferverently, that there's no evidence for, that Mr.
4 Dassey would testify.

5 Now, that doesn't stop the analysis by
6 the State. The three attorneys at this table
7 have had long discussions about whether we should
8 proceed with all six counts, or whether we should
9 proceed with the four counts that don't require
10 Brendan Dassey's testimony. That, again, Judge,
11 is a decision solely within the province of the
12 State, solely in the province of this table, as a
13 matter of fact, as to whether or not we're going
14 to proceed.

15 That decision doesn't have to be made by
16 law until jeopardy attaches, until the jury is
17 instructed by the Court as to what the charges
18 are. Now, I understand that it is this Court's
19 preference to tell the jury, today, what those
20 charges are going to be, that within the context
21 of the supplemental jury questionnaire to alert
22 the jurors as to what those counts are going to
23 be.

24 And so that puts us in a dilemma, if you
25 will, in that the State wished to wait until

1 Friday, the 2nd, as we have told you in
2 correspondence, as to whether or not we intended
3 to call Brendan Dassey. If put to that question
4 today, our inclination would be not to call
5 Brendan Dassey, to either save Brendan Dassey for
6 our case-in-chief, upon a grant of use immunity,
7 or to save Brendan for rebuttal testimony, again,
8 upon a grant of use immunity.

9 Certainly, though, this Court would
10 agree that he is available to testify in the
11 Steven Avery case. And so, if we're going to
12 instruct the jury as to what the charges against
13 Mr. Avery are going to be, it is the safer
14 position to just name the four charges from which
15 we do not need Brendan Dassey. Again, our
16 preference, if I can reiterate, is to wait until
17 the 2nd, is to wait until Friday, when the State
18 can decide how to proceed.

19 Would, or is it possible that Brendan
20 Dassey would change his mind about a plea
21 agreement, between now and Friday, absolutely.
22 Given the ongoing nature of the agreements,
23 that's always possible. But, for practical
24 purposes, if the Court wishes to know, wishes an
25 inclination by the State, I'm happy to give that.

1 But the bottom line is, this Court does
2 not have the authority to dismiss those two
3 counts. The State still could, if it chose, call
4 Mr. Dassey. Mr. Dassey was named as a witness.
5 When it was time to name our lay witnesses,
6 Brendan Dassey was named. He's included on our
7 witness list and so there shouldn't be any
8 surprise as to whether we can proceed with
9 Mr. Dassey or not.

10 We may choose to call any of those
11 witnesses that we have named. We may choose to
12 only call a subset of those witnesses, and
13 Brendan Dassey is certainly one of those people
14 that's within that category.

15 But to suggest that the State has no
16 evidence, to suggest even further than that, that
17 there need be some, what the defense has called,
18 "strong curative instruction", the State believes
19 is absolutely absurd. Any time use immunity is
20 conferred in a case, when there is two
21 defendants, which isn't unusual, those of us that
22 have been practicing criminal law for a long time
23 know that happens once in awhile, especially when
24 one defendant has given an inculpatory statement,
25 which inculpates another, those are called

1 interlocking confessions. And when that happens,
2 it is not usual for use immunity to be conferred.

3 To suggest, though, that the jury has to
4 be somehow informed, even before they are
5 selected, as to the nuance of the use immunity
6 statute, as to whether the State chooses to call
7 a witness or not, and, specifically, in this
8 case, that there should be some negative
9 inference taken, by the fact that the State
10 chooses not to call somebody, or that the State
11 chooses not to proceed on two counts, is simply
12 not supported by law.

13 We're asking, then, that the Court
14 reject, first of all, the Defense motion to
15 dismiss. We're asking that the Court reject the
16 inclination to provide some curative instruction,
17 which certainly would prejudice the State; the
18 prejudice to the State, Judge, should be obvious.

19 If we have to start this case swimming
20 upstream, if you will, in the face of some
21 instruction given to the jury that they should be
22 taking some negative view of the State, then we
23 intend to proceed on all six counts. We will.
24 If that's what this Court's inclination is, we
25 will go forward on all six counts. We will ask

1 the Court to grant Mr. Dassey use immunity and we
2 will proceed on those six counts.

3 If, however, the State is not so
4 inclined -- excuse me -- if the Court is not so
5 inclined, if the Court, like every other case, is
6 going to proceed to jury selection without
7 providing this strong curative instruction, or
8 not further contaminating the potential jury
9 pool, which recent pre-trial publicity, the State
10 believes and the State's argued already has, then
11 it is our inclination to proceed on the four
12 counts. Again, those four counts that do not
13 require Brendan Dassey, allowing us, as is within
14 our province, to make a decision as the trial
15 proceeds whether we call Brendan in our
16 case-in-chief, whether we call him in rebuttal,
17 or whether we choose not to call him at all.
18 Thank you, Judge.

19 THE COURT: Before I turn it back to
20 Mr. Strang, within your argument is there a motion
21 to dismiss the sexual assault and kidnapping
22 charges, or not?

23 ATTORNEY KRATZ: Not until the Judge rules
24 on this motion. And -- And I don't mean to be cute
25 with the Court, and I think you understand, Judge,

1 that it's the curative instruction, your inclination
2 that causes the State the most concern. I am, and I
3 have, as you know, been candid with the Court, as a
4 matter of courtesy. I have told you all along what
5 our intention was going to be.

6 Without that curative instruction, the
7 State, I will tell the Court, as I have told you
8 candidly, intends to proceed on four counts,
9 rather than six. But, if the Court is going to
10 give a curative instruction, then we do have that
11 objection.

12 THE COURT: I understand. Mr. Strang,
13 briefly.

14 ATTORNEY STRANG: All due respect to
15 counsel, the State is supposed to start every
16 criminal case swimming upstream. And the strong
17 current against which the State is supposed to be
18 swimming is a presumption of innocence. That
19 presumption of innocence has been eroded, if not
20 eliminated, here, by the spectre of Brendan Dassey
21 offering admissible, as opposed to inadmissible
22 evidence.

23 It is too late to sit on the fence here.
24 We can't very well tell this jury that there are
25 four counts to be tried, and then tell them on

1 next Monday, oh, by the way, there is also a rape
2 and a kidnapping. You can't do it. Neither can
3 either side, as a practical matter, give an
4 opening statement in this case, without knowing
5 whether the alleged accomplice is testifying or
6 not.

7 Now, Mr. Kratz was candid enough to
8 concede, if one listened carefully, that
9 Mr. Dassey is available to him, legally. The
10 State can move for use immunity, the Court, then,
11 grants that immunity. The case law suggests that
12 the Defense has very little to say about that
13 State request.

14 It is just too late, now, 10 months
15 after these charges were filed, to say we'll tell
16 you later. Because the jury questionnaire
17 process is beginning and we can't rely on the
18 answers these jurors give to whether they can try
19 this case fairly, unless they know what it is
20 they are trying, in outline. It is just too
21 late.

22 And I agree, as an abstract matter, with
23 much of what Mr. Kratz says about the black
24 letter. The State decides what charges it will
25 push forward on and which it will not.

1 And I, also, let me be clear, if Brendan
2 Dassey takes the witness stand on a similar
3 chair, one county over, he has admissible
4 evidence to offer, once he's sworn under oath.
5 It may hurt Mr. Avery; it may help Mr. Avery; it
6 may do a little of both. But it is admissible
7 evidence, once he takes the stand. And until he
8 sits down in a chair like that, nothing he's got
9 to say is admissible on the State's offering, or
10 at the State's instance, or over Defense
11 objection.

12 So the State has all the information it
13 needs today, it's had it for months, to decide
14 whether it's calling Mr. Dassey, to prove the
15 three charges it added in the Amended
16 Information, or not. This Court has a right, in
17 managing this trial, and in selecting a jury, and
18 ideally having it not be a waste of time, to know
19 what charges it's trying, with the jury it's
20 picking. And counsel have a right to be able to
21 assess the answers these jurors give, on the
22 knowledge that the jurors were given accurate
23 information about something as basic as what the
24 allegations are.

25 THE COURT: All right.

1 ATTORNEY STRANG: It's time to decide.

2 THE COURT: First, a couple of comments
3 with respect to the procedure for jury selection in
4 this case. Because of the large number of jurors in
5 the panel, the parties have previously agreed that
6 we're going to be using a procedure in which, in
7 large part, the questionnaire is taking the place of
8 questions that would typically be asked on general
9 voir dire.

10 It's a little different in the sense
11 that the questionnaire is going to be filled out
12 by the parties, off the record. But there
13 certainly are similarities between the questions
14 that are on the questionnaire and what typically
15 is asked in general voir dire.

16 In order for the jurors to give accurate
17 answers, and for the parties to assess those
18 answers, I think it's necessary that the jurors
19 be aware of the charges that the State will be
20 pursuing against the defendant. That's why I
21 would not feel comfortable giving the jurors a
22 preliminary instruction, before they fill out the
23 questionnaire, without the jurors knowing what
24 the charges are going to be against the defendant
25 in this case. So I don't think we can post --

1 postpone the time within which the jurors are
2 going to know the charges.

3 With respect to the curative instruction
4 issue, I will make the following comments: At
5 this point it would be difficult for the Court to
6 consider giving some type of curative
7 instruction, based on the evidence or lack of
8 evidence that the State has available to it to
9 produce that relates to the charges.

10 To be sure, in the course of these
11 proceedings, the Court has gleaned some
12 information concerning evidence which each side
13 may choose to produce, but that's not been
14 fleshed out in any great detail. I understand
15 from the representations that have been made to
16 the Court that the State has, or has not, as time
17 has gone on, had an idea of what type of evidence
18 it might hope to gain from Mr. Dassey.

19 I don't -- I'm not aware of anything to
20 suggest that the State has been acting in bad
21 faith in any regard. And quite simply put, I do
22 not believe that the State has engaged in any
23 conduct to this point which would warrant the
24 giving of some type of instruction unfavorable to
25 the State, should the State decide at this point

1 to dismiss some of the charges that have been
2 filed. And so I'm not going to -- Whatever
3 action the Court takes this morning, I'm not
4 going to give some type of an extra instruction,
5 I just haven't heard anything that would warrant
6 it.

7 With that background --

8 ATTORNEY KRATZ: Judge, may I be heard then
9 before --

10 THE COURT: Yes.

11 ATTORNEY KRATZ: -- you rule further?

12 THE COURT: Yes.

13 ATTORNEY KRATZ: If I could just have one
14 more moment.

15 THE COURT: Go ahead.

16 ATTORNEY KRATZ: With those findings,
17 Judge, the State is, at this time, because we
18 believe it within the province of the State, moving
19 that Counts, I believe it's 4 and 5, that is, the
20 first degree sexual assault as a party to the crime,
21 and the kidnapping, Count No. 5, be dismissed.

22 The State intends to proceed, then, on
23 Counts 1, 2, 3, and 6. I will be happy to
24 provide a Court with what will be called a second
25 Amended Information, which will actually make

1 Count 6, Count 4, so that the jury isn't confused
2 as to the number of counts or why there may be a
3 gap in the -- those charges. Count 4 will be
4 false imprisonment.

5 And the State intends, then, to proceed
6 on those four counts rather than -- rather than
7 the six counts. And I believe then, that
8 relieves the Court of the obligation of having to
9 rule upon this motion.

10 THE COURT: Mr. Strang, from the defense's
11 standpoint I understand that you, based on your
12 motion, were requesting the administration of the
13 curative instruction as well, but I take it that the
14 defense has no objection, given the Court's ruling
15 on the instruction issue, to the dismissal of Counts
16 4 and 5.

17 ATTORNEY STRANG: Provided that's a
18 dismissal with prejudice, which is the Court's
19 prerogative, once the State has moved to dismiss,
20 not the State's; we don't object to a dismissal with
21 prejudice of Counts 4 and 5.

22 THE COURT: I have dealt with this issue
23 before. There's a, frankly, question as to how much
24 power the Court has in that regard when a dismissal
25 is granted at this stage in the trial.

1 At this point, my inclination would be
2 to -- simply to grant the State's motion to
3 dismiss those counts. I'm not going to rule at
4 this time, nor do we have time to address the
5 issue, as to whether or not they would be with or
6 without prejudice. The law is, that the
7 dismissal, absent some other finding by the
8 Court, I believe is without prejudice. And I'm
9 not prepared today to do any more than that.

10 ATTORNEY STRANG: Here's the problem, and
11 here's why the Court needs to take some further
12 curative action. Since March 10, up through the
13 WFRV report last night, for example, Steven Avery
14 has been presented as the man who allegedly raped,
15 mutilated and murdered Teresa Halbach.

16 Now, the first question, I guess in a
17 bigger scale, this raises, is how many times will
18 Steven Avery be charged in Manitowoc County with
19 rapes he didn't commit, this makes two. And the
20 public, for 10 months, has been led to believe
21 that he's a rapist, in addition to all else they
22 might think about him.

23 Where do we go, you know, forget getting
24 the 18 years back on the first one, where do we
25 go to get the last 10 months back? Where do we

1 go to get our presumption of innocence back, from
2 a public who believes and has heard time and
3 again that he is an alleged rapist, even before
4 murder?

5 THE COURT: Right. I'm not precluding you
6 from advancing that argument at some point in the
7 future; I'm just saying I'm not prepared to make
8 that ruling today.

9 ATTORNEY STRANG: And I want to be clear,
10 then, on the record, that we are heading into a
11 potential for mistrial by going forward on the false
12 imprisonment count, if the Court's ruling permits
13 the State to do that. And if the State believes
14 that it will avail itself of the dismissal without
15 prejudice, later to call Brendan Dassey, and to
16 argue that there is no surprise and, therefore,
17 under Wisconsin Statutes, an amendment of the
18 Information should be permitted, or argue that it
19 wants the Information to conform to the evidence it
20 plans to adduce by calling Mr. Dassey, there will be
21 a mistrial motion, and it will be a serious motion.

22 ATTORNEY KRATZ: If I may interrupt, Judge.

23 THE COURT: Yes.

24 ATTORNEY KRATZ: I will concede, just out
25 of fairness to Mr. Strang and to the defense team,

1 that during the course of this trial, the State will
2 not ask the Court reinstate those charges, will not
3 ask the Court add the additional counts, even if
4 Brendan Dassey is allowed to testify, that should at
5 least get us through this proceeding.

6 THE COURT: All right. And with respect to
7 the defense extra motion to dismiss the false
8 imprisonment charge, I previously ruled, that given
9 the law in the State of Wisconsin on preliminary
10 examinations and the Court's duty and the ability of
11 the State to add a charge that's factually related
12 to the bindover, that the State has the right to do
13 that. And I'm also not, obviously, at this point in
14 the proceedings, in a position to say that the --
15 there's no evidence that the State can produce to
16 sustain that charge.

17 So the Court is denying the defense
18 motion to dismiss the false imprisonment charge.
19 I will grant the State's motion to dismiss
20 Count's 4 and 5, the first degree sexual assault
21 charge and the kidnapping charge.

22 ATTORNEY STRANG: That said, the State's
23 proposal of a second Amended Information makes
24 sense, given the state of the record and the Court's
25 rulings.

1 THE COURT: All right. It was my
2 understanding Mr. Fallon also wished to be heard on
3 the jury selection process before we bring the
4 jurors in for the questionnaires.

5 ATTORNEY FALLON: Yes, thank you, Judge.
6 Just a couple of preliminary thoughts. And I
7 realize, at least I recollect from our phone
8 discussion on Friday, that I think the balance of
9 this will have to be addressed on Friday afternoon,
10 I believe.

11 But I just wanted to point out that the
12 Court's intent to limit the parties to 10 to 15
13 minutes of individual voir dire, to follow up on
14 the juror questionnaire, which is about to be
15 filled out by the jurors today, would arguably,
16 and I note counsel and I, I think, are in
17 agreement on this, that the 15 minute was
18 arguably sufficient; although, I think both of us
19 had serious concerns about that.

20 But when I replied to the defense
21 submission on January 5th, as I represented I
22 would and hearing no objection from the Defense
23 and no objection from the Court, I was surprised
24 that many of the submitted questions by the State
25 were deleted, many were accepted.

1 So my concern is that, at best case
2 scenario, 15 minute individual voir dire was
3 marginally sufficient given what I expected the
4 supplemental juror questionnaire to contain; and
5 that is, many of the suggestions or several of
6 the suggestions that I agreed with from the
7 Defense, as well as many of the State, the Court
8 on its own chose to disregard several of the
9 submissions of the State.

10 And, presumably, that's in the Court's
11 prerogative as I'm aware that jury selection,
12 there is a vast amount of discretion afforded to
13 the trial court. But, again, not hearing any
14 objection from either the Court or opposing
15 counsel, I expected to see a little more robust
16 supplemental juror questionnaire.

17 However, the Court has exercised that
18 discretion and determined otherwise. Our comment
19 is that I would like the Court to address the
20 follow up voir dire procedures on Friday
21 afternoon, because I'm not sure, quite frankly,
22 that 10 to 15 minutes will allow counsel adequate
23 time to explore other matters not included in the
24 general -- or in the supplemental juror
25 questionnaire.

1 As I indicated earlier on, although it's
2 unusual and not advisable to use the supplemental
3 juror questionnaire as a stand in for general
4 voir dire, it certainly is possible, but -- and I
5 understand the Court's desire to not create an
6 unwieldily document for the prospective jurors.
7 But I would ask the Court to reconsider it's idea
8 as to how the follow-up voir dire is going to
9 occur.

10 I'm very concerned, that at least from
11 the State's perspective, that we will not have
12 adequate time to pursue other matters in that
13 time frame.

14 THE COURT: All right. We'll address that
15 further at the final pre-trial on Friday.

16 At this time, I think I'm going to ask
17 the parties to remain here. I will go back and
18 have the clerk bring in the jurors, then I will
19 come back out on the bench and give the jurors
20 the preliminary information prior to their
21 completion of the questionnaire.

22 And I believe there is agreement that
23 after the Court completes that process, we'll
24 take a short break to clear the courtroom so that
25 members of the press and members of the public

1 will be excused, since during the time the jurors
2 will be completing the actual questionnaires,
3 court will not be in session, and neither the
4 parties nor I will be present.

5 So if you just sit tight, I will check
6 on the process of the jurors and we'll get
7 started. I think all of the seating in the
8 courtroom, except for whatever is left in the
9 back, will be needed for members of the jury
10 panel.

11 (Brief recess.)

12 THE COURT: Ladies and gentlemen, this
13 morning we are commencing the jury selection process
14 in the case of State of Wisconsin vs. Steven A.
15 Avery, Case No. 05 CF 381. This is a criminal case.
16 In a moment I will read to you the crimes charged in
17 the Information in this case.

18 The Information is nothing more than a
19 written, formal accusation against a defendant,
20 charging him with the commission of criminal
21 acts. You are not to consider the Information as
22 evidence against the defendant in any way. It
23 does not raise an inference of guilt.

24 The Information in this case charges the
25 defendant, Steven Avery, with being a party to

1 the crime of first degree intentional homicide of
2 Teresa Halbach. Mr. Avery is also charged with
3 party to the crime of mutilating her corpse,
4 false imprisonment, and felon in possession of a
5 firearm.

6 To each of the charges I have just read,
7 Mr. Avery has entered a plea of not guilty, which
8 means the State must prove every element of the
9 offenses charged, beyond a reasonable doubt. The
10 law presumes every person charged with the
11 commission of an offense to be innocent. This
12 presumption attends the defendant throughout the
13 trial, and prevails at its close, unless overcome
14 by evidence which satisfies the jury of his
15 guilt, beyond a reasonable doubt. The defendant
16 is not required to prove his innocence.

17 The burden of proving the defendant
18 guilty of every element of the crimes charged is
19 upon the State. Before you can return a verdict
20 of guilty on any count, the State must prove, to
21 your satisfaction, beyond a reasonable doubt,
22 that the defendant is guilty on that count.

23 The case is being prosecuted by Special
24 Prosecutor Kenneth Kratz. Mr. Kratz, if you can
25 please stand up.

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ATTORNEY KRATZ: Good morning.

THE COURT: Thomas Fallon.

ATTORNEY FALLON: Good morning.

THE COURT: And Norman Gahn.

ATTORNEY GAHN: Good morning.

THE COURT: The defendant in this case is Steven Avery.

THE DEFENDANT: Good morning, ladies and gentlemen.

THE COURT: And Mr. Avery is being defended by attorneys, Dean Strang.

ATTORNEY STRANG: Good morning.

THE COURT: And Jerome Buting.

ATTORNEY BUTING: Good morning.

THE COURT: The trial itself is expected to take approximately six weeks. Sixteen members of the jury panel will be selected to serve on the jury. While only 12 members of the jury will arrive at the final verdict, 4 additional jurors are being selected to hear the case in the event members of the jury should have to be excused before the jury retires to deliberate. Should there be more than 12 jurors remaining at the close of the evidence, the alternate jurors will be selected by lot.

The process we are about to engage in is

1 called voir dire. Its purpose is to assure that
2 the jury ultimately impaneled to hear this case
3 is comprised of people who are not biased or
4 prejudiced. The jurors must be citizens who can
5 fairly and impartially decide the facts of the
6 case, based solely upon the evidence presented in
7 court, and will then follow my instructions as to
8 the law applicable to those facts.

9 We are using the proceeding today to
10 have all prospective jurors complete a written
11 questionnaire. Some jurors will be called back
12 for further individual questioning beginning next
13 Monday, February 5th. Whether and in what order
14 you will be called back is determined by a random
15 computer selection process.

16 Should you be required to return, the
17 Clerk's Office will contact you by telephone with
18 a time and date to return. Some of you may be
19 excused without participating in individual voir
20 dire. The voir dire process is going to require
21 that you disclose publicly, a certain amount of
22 personal information about yourselves and your
23 families, that you may otherwise want to keep to
24 yourself. It is, unfortunately, necessary.

25 In special circumstances, exceptions may

1 sometimes be made to insure the privacy of your
2 answers. You will have to indicate on the
3 questionnaire if you think you have a valid
4 reason to ask for an exception.

5 This morning we will proceed as follows:
6 In a few minutes the Clerk will hand each of you
7 a written questionnaire which you are to complete
8 under oath. Please take your time and answer all
9 questions as completely and accurately as you
10 can. If you are uncertain about how to answer
11 any question, please note your uncertainty in
12 your written answer.

13 I will not be available to individually
14 answer any questions you may have as you complete
15 the questionnaire.

16 When you have completed and signed your
17 questionnaire, return it to the Clerk, who will
18 turn all the completed questionnaires over to me.

19 After you complete your questionnaire
20 this morning, you will be excused for the
21 remainder of the day.

22 After some prospective jurors have been
23 brought in and questioned individually, next
24 week, the lawyers and I will confer to decide if
25 any juror should be excused for cause, that is,

1 for any legally sufficient reason. If I rule
2 that any prospective juror is to be excused for
3 cause, that particular panel member will be told
4 and released from further service in this case.

5 After a sufficient number of prospective
6 number of jurors have been questioned
7 individually, the lawyers will be permitted to
8 exercise their peremptory challenges upon those
9 remaining on the panel. Once the peremptory
10 challenges have been exhausted, a jury of 16
11 persons will be seated to hear the trial.

12 The process of jury selection will take
13 some time, as you can see. I ask you to be
14 patient while we are concerned with matters that
15 don't involve you personally. I strongly suggest
16 that you bring something back to read while you
17 wait next week, should you be called back for
18 individual voir dire.

19 It is estimated by the lawyers that it
20 will take six weeks to try the case once the jury
21 has been selected. You should all have received
22 a letter asking you to request to be excused in
23 advance, if a case of that length would cause you
24 any extraordinary personal hardship.

25 Those who responded that it would, and

1 whose reasons were found to be sufficient, have
2 already been excused. The Court understands that
3 serving on a jury for six weeks presents a
4 significant inconvenience to most people. That
5 is an unfortunate but necessary price we pay for
6 the system of justice that we enjoy.

7 If any of you has a reason, now, to
8 believe that you would suffer some exceptional
9 hardship, other than the convenience (sic) jury
10 service causes everyone to sit on a case of this
11 duration, please give specific reasons in your
12 response to the pertinent question on the
13 questionnaire.

14 This case has received a substantial
15 amount of publicity in the newspapers, and on
16 radio and television. That you are aware of the
17 publicity does not, by itself, disqualify you.
18 If, however, that publicity has caused you to
19 form some opinions about the case already, and
20 you think you might be unable to put those
21 opinions aside and listen to the evidence with an
22 open mind, please be candid about it on your
23 answers to the relevant questions on the
24 questionnaire, and when you are questioned
25 individually.

1 After the trial starts, it is absolutely
2 essential that the jurors who are chosen for the
3 case learn nothing whatsoever about it from any
4 source, other than the evidence presented in the
5 courtroom. The jury will be obliged to that end
6 not to read, listen to, or watch any news
7 accounts of the trial, nor to talk or let anyone
8 else, including one another, talk to them, about
9 any aspect of the case, until it is over.

10 I also instruct you that, for so long as
11 we are engaged in the process of jury selection,
12 you are not to read, listen to, or watch any news
13 accounts of this case or of the proceedings, nor
14 talk to anyone or let anyone else talk to you
15 about any aspect of the case. That means not
16 listening to radio accounts about the case, not
17 reading any newspaper accounts, and not watching
18 television news coverage of this matter.

19 As we conduct the voir dire process, you
20 will naturally be meeting each other and talking
21 among yourselves. It is extremely important,
22 however, that you do not discuss this case,
23 including the voir dire questions, or your
24 answers to any of those questions.

25 Do not share anything that you may know,

1 or any opinions or impressions you may have,
2 about the case, with any other prospective juror.
3 Do not talk about your individual answers to the
4 questionnaire or any questions you are asked in
5 open court with anyone. Both the State and
6 Mr. Avery are entitled to have a completely fair,
7 openminded and impartial jury sit in judgment in
8 this case.

9 You will be asked many questions
10 intended to enable me and the lawyers to draw
11 some inferences about your attitudes. As you
12 answer the questions, I ask you to ask yourself,
13 do I have any reason to question my own
14 impartiality, to suspect that I might be
15 prejudiced for or against the State or the
16 defendant, for any reason.

17 In other words, are you aware of
18 anything which would prevent you from rendering a
19 fair and impartial verdict, based solely on the
20 evidence presented in this courtroom, and the
21 instructions I will give you at the end of the
22 trial so -- as to the law applicable to this
23 case. If so, please be truthful in making that
24 known to us.

25 Finally, I want you to know that the

1 Court recognizes that each of the jurors selected
2 to serve in this case is being asked to perform
3 an important civic duty at a significant personal
4 sacrifice of time and attention. While it's not
5 the same as serving in the military, for example,
6 in a sense the jurors are being drafted into
7 government service for six weeks.

8 Your service in this case imposes a
9 greater burden than we ask of most citizens. I
10 would ask you to keep in mind, however, the deep
11 personal satisfaction that you can receive from
12 knowing, should you be selected as a juror, that
13 you answered the call of your government and
14 served with honor by rendering a verdict based
15 not on any preconceived motions -- or notions,
16 but only on the evidence introduced at trial and
17 the instructions given to you by the Court.

18 At this time, before we break, I'm going
19 to ask the Clerk to swear the panel.

20 THE CLERK: Would all of the jurors please
21 rise and raise your right hand.

22 (Jury panel sworn.)

23 THE CLERK: Please be seated.

24 THE COURT: All right. Members of the jury
25 panel, in a minute you are going to be coming back

1 here to complete your questionnaires. Because of
2 the fact Court will not be in session during that
3 time, we're going to clear the courtroom of everyone
4 else before we ask you to do so.

5 So at this time the clerks and the
6 bailiffs will escort you back to the other
7 courtroom that you started in. You will be there
8 for few minutes. You can take a rest stop if you
9 need to, and then you will be brought back here
10 to complete your questionnaires. You may stand
11 at this time and be escorted out.

12 (Jury panel not present.)

13 THE COURT: All right. The prospective
14 jurors have now all left the courtroom. Counsel,
15 anything else further before we go off the record?

16 ATTORNEY STRANG: The Court's instructing
17 on publicity, it probably would be a good idea to
18 add the internet.

19 ATTORNEY FALLON: Right, that was the only
20 thought I had.

21 THE COURT: All right. Thank you. We will
22 adjourn at this time, and I will see you back at
23 10:30.

24 ATTORNEY STRANG: Thank you.

25 (Court in recess.)

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(Second half of jury panel present.)

THE COURT: Ladies and gentlemen, this morning we are commencing the jury selection process in the case of State of Wisconsin vs. Steven Avery, Case No. 05 CF 381. This is a criminal case. In a moment I will read to you the crimes charged in the Information in this case.

The Information is nothing more than a written formal accusation against a defendant, charging him with a commission of criminal acts. You are not to consider the Information as evidence against the defendant in any way. It does not raise an inference of guilt.

The Information in this case charges that the defendant, Steven Avery, or the Information charges the defendant, Steven Avery, with being a party to the crime of first degree intentional homicide of Teresa Halbach. Mr. Avery is also charged with party to the crime of mutilating her corpse, false imprisonment and felon in possession of a firearm.

To each of the charges I have just read, Mr. Avery has entered a plea of not guilty, which means the State must proof every element of the offenses charged, beyond a reasonable doubt. The

1 law presumes every person charged with the
2 commission of an offense to be innocent. This
3 presumption attends the defendant throughout the
4 trial and prevails at its close, unless overcome
5 by evidence which satisfies the jury of his
6 guilt, beyond a reasonable doubt. The defendant
7 is not required to prove his innocence.

8 The burden of proving the defendant
9 guilty of every element of the crimes charged is
10 upon the State. Before you can return a verdict
11 of guilty on any count, the State must prove, to
12 your satisfaction, beyond a reasonable doubt,
13 that the defendant is guilty of that count.

14 This case will be prosecuted by Special
15 Prosecutor Kenneth Kratz. Mr. Kratz.

16 ATTORNEY KRATZ: Good morning.

17 THE COURT: Attorney Thomas Fallon.

18 ATTORNEY FALLON: Good morning.

19 THE COURT: And Attorney Norman Gahn.

20 ATTORNEY GAHN: Good morning.

21 THE COURT: The defendant, Steven Avery, is
22 present in court today.

23 THE DEFENDANT: Good morning, ladies and
24 gentlemen.

25 THE COURT: Mr. Avery, will be represented

1 by Attorney Dean Strang.

2 ATTORNEY STRANG: Good morning.

3 THE COURT: And Attorney Jerome Buting.

4 ATTORNEY BUTING: Hello.

5 THE COURT: The trial itself is expected to
6 take approximately six weeks. Sixteen members of
7 the jury panel will be selected to serve on the
8 jury. While only 12 members of the jury will arrive
9 at the final verdict, 4 additional jurors are being
10 selected to hear the case in the event members of
11 the jury should have to be excused before the jury
12 retires to deliberate. Should there be more than 12
13 jurors remaining at the close of the evidence, the
14 remaining alternate jurors will be selected by lot.

15 The process we're about to engage in is
16 called voir dire. Its purpose is to assure that
17 the jury ultimately impaneled to hear this case
18 is comprised of people who are not biased or
19 prejudiced. The jurors must be citizens who can
20 fairly and impartially decide the facts of the
21 case, based solely on the evidence presented in
22 court, and who will then follow my instructions
23 as to the law applicable to those facts.

24 We are -- We are using the proceedings
25 today to have all prospective jurors complete a

1 written questionnaire. Some jurors will be
2 called back for further individual questioning
3 beginning next Monday, February 5. Whether and
4 in what order you will be called back is
5 determined by a random computer selection
6 process.

7 Should you be required to return, the
8 Clerk's Office will contact you by telephone with
9 a time and date to return. Some of you may be
10 excused without participating in individual voir
11 dire. The voir dire process is going to require
12 that you disclose publicly, a certain amount of
13 personal information about yourself and your
14 families, that you might otherwise want to keep
15 to yourself. It is, unfortunately, necessary.

16 In special circumstances, exceptions may
17 sometimes be made to insure the privacy of your
18 answers. You will have to indicate on the
19 questionnaire if you believe you have a valid
20 reason to ask for an exception.

21 We'll proceed as follows: In a few
22 minutes the Clerk will hand each of you a written
23 questionnaire which you are to complete under
24 oath. Please take your time and answer all
25 questions as completely and accurately as you

1 can. If you are uncertain about how to answer
2 any question, please note your uncertainty in
3 your written answer.

4 I will not be available to individually
5 answer any questions you may have.

6 When you have completed and signed your
7 questionnaire, return it to the Clerk, who will
8 turn all the completed questionnaires over to me.
9 After you complete your questionnaire, you will
10 be excused for the remainder of the day.

11 After some prospective jurors have been
12 brought in and questioned individually, next
13 week, the lawyers and I will confer to decide if
14 any should be excused for cause, that is, for any
15 legally sufficient reason. If I rule that any
16 prospective juror is to be excused for cause,
17 that particular panel member will be told and
18 released from further service in this case.

19 After a sufficient number of prospective
20 jurors have been questioned individually, the
21 lawyers will be permitted to exercise their
22 peremptory challenges upon those remaining on the
23 panel. Once the peremptory challenges have been
24 exhausted, a jury of 16 persons will be seated to
25 hear the case.

1 The process of jury selection will take
2 some time, as you can see. I ask you to be
3 patient while we are concerned with matters that
4 don't involve you personally. I strongly suggest
5 that you bring something back to read while you
6 wait, should you be called back for individual
7 voir dire next week.

8 It is estimated by the lawyers that it
9 will take six weeks to try the case once the jury
10 has been selected. You should all have received
11 a letter asking you to request to be excused in
12 advance if a case of that length would cause you
13 any extraordinary personal hardship.

14 Those who responded that it would, and
15 whose reasons were found to be sufficient, have
16 already been excused. The Court understands that
17 serving on a jury for six weeks presents a
18 significant inconvenience to most people. That
19 is an unfortunate but necessary price we pay for
20 the system of justice that we enjoy.

21 If any of you has a reason, now, to
22 believe that you would suffer some exceptional
23 hardship, other than the convenience (sic) jury
24 service causes everyone to sit on a case of this
25 duration, please give specific reasons in your

1 response to the pertinent question on the
2 questionnaire.

3 This case has received a substantial
4 amount of publicity in the newspapers, and on
5 radio and television. That you are aware of the
6 publicity does not, by itself, disqualify you.
7 If, however, that publicity has caused you to
8 form some opinions about the case already, and
9 you think you might be unable to put those
10 opinions aside and listen to the evidence with an
11 open mind, please be candid about it in your
12 answers to the relevant questions on the
13 questionnaire and when you are individually
14 questioned.

15 After the trial starts, it is absolutely
16 essential that the jurors who are chosen for the
17 case learn nothing whatsoever about it from any
18 source, other than the evidence presented in this
19 courtroom. The jury will be obliged to that end
20 not to read, listen to, or watch any news
21 accounts of the trial, nor to talk or let anyone
22 else, including one another, talk to them, about
23 any aspect of the case, until it is over.

24 I also instruct you that, for so long as
25 we are engaged in the process of jury selection,

1 you are not to read, listen to, or watch any news
2 accounts of the case or of the proceedings, nor
3 talk to anyone or let anyone else talk to you
4 about any aspect of the case. That means not
5 listening to the radio news accounts about the
6 case, not reading any newspaper accounts, not
7 watching television news coverage of this matter
8 and not searching the internet for information
9 about the case.

10 As we conduct the voir dire process, you
11 will naturally be meeting each other and talking
12 among yourselves. It is extremely important,
13 however, that you do not discuss this case,
14 including the voir dire questions, or your
15 answers to those questions.

16 Do not share anything you may know, or
17 any opinions or impressions you may have, about
18 the case, with any other prospective juror. Do
19 not talk about your individual answers to the
20 questionnaire or to any questions you are asked
21 in open court with anyone, including your fellow
22 jurors. Both the State and Mr. Avery are
23 entitled to have a completely fair, open-minded
24 and impartial jury sit in judgment upon this
25 case.

1 You will be asked many questions
2 intended to enable me and the lawyers to draw
3 some inferences about your attitudes. As you
4 answer the questions, I ask you to ask yourself,
5 do I have any reason to question my own
6 impartiality, to suspect that I might be
7 prejudiced for or against the State or the
8 defendant for any reason.

9 In other words, are you aware of
10 anything which would prevent you from rendering a
11 fair and impartial verdict, based solely on the
12 evidence to be presented in this courtroom, and
13 the instructions I will give you at the end of
14 trial as to the law applicable to the case. If
15 so, please be truthful in making that known to
16 us.

17 Finally, I want you to know that the
18 Court recognizes each of the jurors selected to
19 serve in this case are being asked to perform an
20 important civic duty at a significant personal
21 sacrifice of time and attention. While it is not
22 the same as serving in the military, in a sense
23 the jurors are being drafted into government
24 service for six weeks.

25 Your service in this case imposes a

1 greater burden than we ask of most citizens. I
2 would ask you to keep in mind, however, the deep
3 personal satisfaction you can receive from
4 knowing, should you be selected as a juror, that
5 you answered the call of your government and
6 serve with honor by rendering a verdict based not
7 on any preconceived notions, but only on the
8 evidence introduced at trial and the instructions
9 given you by the Court.

10 At this time I will ask the Clerk to
11 swear the members of the jury panel. Will you
12 all please stand.

13 THE CLERK: Please raise your right hand.

14 (Jury panel sworn.)

15 THE CLERK: Please be seated.

16 THE COURT: Members of the jury panel,
17 because you are going to be completing a
18 questionnaire while court is not in session, we're
19 going to take a few minutes to clear the courtroom.

20 At this point, I'm going to ask you all
21 to stand and be escorted by the bailiffs and
22 court personnel back to the other courtroom for a
23 few minutes. Once the courtroom here is cleared,
24 you will be brought back here and given your
25 questionnaires.

1 As indicated earlier, after your
2 questionnaires are completed, you can hand them
3 to the Clerk and you will be free to leave for
4 the day. You may rise and be escorted back to
5 the other courtroom at this time.

6 (Jury panel not present.)

7 THE COURT: You may be seated. The members
8 of the jury panel have now left for the other
9 courtroom and the courtroom is clear.

10 Counsel, I would ask, this is our last
11 time on the record for today, I would ask you to
12 stop back in chambers after we're done, just so
13 we can clarify the agenda for the pre-trial on
14 Friday.

15 ATTORNEY BUTING: Judge, can I make one
16 question here?

17 THE COURT: Yes.

18 ATTORNEY BUTING: It didn't occur to me
19 when you read it the first time and as I listened
20 this time; do the jurors know that they will not be
21 sequestered for the full six weeks?

22 THE COURT: Well, they haven't been told
23 that they would be sequestered. They haven't been
24 told that they have not been. I suppose we'll have
25 to address that in individual voir dire. I will

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notify them of that fact at the outset.

ATTORNEY BUTING: Okay. Might just be something to be aware of if we get questionnaires where people talk about hardships, that maybe they are thinking it would be a bigger burden than it really will be, since they will be able to go home. Probably should have discussed this earlier, but it just slipped my mind.

THE COURT: All right. Thank you, anything else?

ATTORNEY KRATZ: No.

THE COURT: Very well, we're off the record for today.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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

Dated this 9th day of August, 2007.

Diane Tesheneck, RPR
Official Court Reporter

0	51/25	answered [2] 39/13 50/5
05 [4] 1/5 2/2 30/15 41/5	addressed [2] 2/18 27/9	answers [13] 7/13 18/18 19/21 20/17 20/18 34/2 36/23 37/24 38/3 44/18 47/12 48/15 48/19
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