

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

ANDREW L. COLBORN,

Plaintiff

v.

NETFLIX, INC., et al.,

Defendants.

Case No. 19-CV-484

DECLARATION OF APRIL ROCKSTEAD BARKER

STATE OF WISCONSIN)
) SS
COUNTY OF WAUKESHA)

April Rockstead Barker, being first duly sworn on oath, deposes and says:

1. I am one of the attorneys for Plaintiff in the above matter. This Declaration is submitted in support of Plaintiff's motions opposing summary judgement.

2. Attached as Exhibit 1 are excerpts of documents and emails produced by Defendant Netflix during the course of this litigation that were also marked in the deposition of Lisa Nishamura in exhibits 5 – 10 that begin with the prefix NFXCOL. Portions are redacted to protect confidential information and privacy.

3. Attached as Exhibit 2 are excerpts of documents and emails produced by Mary Manhardt and identified during her deposition in exhibits 64 and 68. Portions are redacted to protect confidential information and privacy.

4. Exhibit 3 is a comparison video of showing raw footage produced by defendants labeled CHRM 867 14:35 – 15:08 vs. Episode 5 Dkt. 120-5 at 55:31 –55:54. This exhibit has been sent via Federal Express to the Court.

5. Exhibit 4 is a comparison video of showing raw footage produced by defendants labeled CHRM 868 7:10 – 7:20 vs. Episode 7 Dkt. 120-7 at 24:20 – 24:30. This was produced as exhibit 47 in deposition. This exhibit has been sent via Federal Express to the Court.

6. Exhibit 5 are several videos of raw footage as identified below. This exhibit has been sent via Federal Express to the Court.

- Ex. 5A Chrome # 864 14:45 – 14:55 (10 seconds)
- Ex. 5B Chrome # 866 5:54 – 6:00 (6 seconds)
- Ex. 5C Chrome # 866 7:10 – 7:25 (15 seconds)
- Ex. 5D Chrome # 866 10:58 – 11:08 (10 seconds)
- Ex. 5E Chrome # 867 29:40 -30:21 (41 seconds)
- Ex. 5F Chrome # 867 31:00 – 31:17 (17 seconds)

7. Attached as Exhibit 6 are documents and emails produced by the defendants Ricciardi, Demos and Chrome with the prefix CHRM. CHRM 588, 395-397.

8. Attached as Exhibit 7 is a true and correct copy of an excerpted transcript of Jury Trial – Day 8, State of WI v. Steven Avery (Case No.: 05 CF 381) dated February 21, 2007.

9. Attached as Exhibit 8 is a true and correct copy of an excerpted transcript of Jury Trial – Day 21, State of WI v. Steven Avery (Case No.: 05 CF 381) dated February 21, 2007.

10. Attached as Exhibit 9 is a true and correct copy of excerpts of the deposition of Laura Ricciardi.

11. Attached as Exhibit 10 is a true and correct copy of excerpts of the deposition of Moira Demos.

12. Attached as Exhibit 11 is a true and correct copy of an excerpted transcript of Jury Trial – Day 24, State of WI v. Steven Avery (Case No.: 05 CF 381) dated March 15, 2007.

13. Attached as Exhibit 12 is a true and correct copy of an excerpts of the deposition transcript of former Sheriff Kenneth Peterson.

14. Attached as Exhibit 13 is a true and correct copy of excerpts from the deposition testimony of Mary Manhardt.

15. Attached as Exhibit 14 is a true and correct copy of excerpts from the deposition testimony of Andy Colborn.

16. Attached as Exhibit 15 is a true and correct copy of excerpts from the deposition testimony of Lisa Nishamura.

17. Attached as Exhibit 16 is a true and correct copy of excerpts from the deposition testimony of Adam Del Deo.

18. Attached as Exhibit 17 is a true and correct copy of the transcript of Jury Trial – Day 23, State of WI v. Steven Avery (Case No. 05 CF 381) dated March 14, 2007 including the beginning of closing arguments.

19. Attached as Exhibit 18 is a true and correct copy of the transcript of Jury Trial – Day 24, State of WI v. Steven Avery (Case No. 05 CF 381) dated March 15, 2007 including the closing arguments.

20. Attached as Exhibit 19 is a true and correct copy of Exhibit 62 to the deposition of Moira Demos.

21. Attached as Exhibit 20 are Defendants Ricciardi, Demos and Chrome’s Response to Plaintiff’s Sixth Request for Production of Documents

22. Attached as Exhibit 21 are excerpts of the Licensing Agreement between Netflix and Synthesis.

s/April Rockstead Barker
April Rockstead. Barker

4400685

MAKING A MURDERER NOTES - 9.29.14

There was a feature on Radio Lab in March with Penny Beernsten and the Avery Rape Case. <http://www.radiolab.org/story/278180-reasonable-doubt/>

It explains the case in 25 minutes and this notion of Reasonable Doubt. It was fast and succinct. Just an FYI of how to treat all the individual narratives in this series.

Episode 1 & 2

Link: <http://vimeo.com/album/2291116>

Password: sbdkc2014

Episode 3:

Link: <http://vimeo.com/album/3014156>

Password: sbdkc2014

This documentary series plays as a compelling narrative and to treat the episodes in that matter will allow us to thread the storyline effectively. Right now, both episodes lead in and end strong but feel disorganized in the middle. The disconnect is the set up of the episode and where it ends - the beginning does not allude to what the chapter/episode will be exploring and that needs to be fine tuned.

General Notes:

Introducing the Characters - We want to understand how each person comes in and out of the story and their role instead of it feeling like interviews are just inserted; let's make sure each "lead" character has a straight forward introduction (perhaps a title card) and then labeling them as they are weaved in and out of the story. The consistency of the characters can be marked as transition points to help the audience keep everything straight. Sometimes who is involved with what feels confusing as the story progresses and people come in and out of the picture.

Introduction: The first five minutes of the film is very strong. It gives us a peak into how this town has treated the Averys before the crimes. However, instead of having the first thing heard being everyone's impression of Steven, it may be more powerful to have Steven be the first voice the audience hears, for example when he is talking to Jodi in jail from episode 3 about how he is wrongly accused.

Episode 1 and 2 - Further down in the notes we suggested times to potentially split the episode. It currently runs at 1:18:03. Where is the break for episode 1 into 2 in the first cut?

Chapters: There are 4 key parts of this section that lead up to Teresa's murder: The police/community's dislike for Steve/Averys, the public exposure allegations, the Penny Beernsten rape allegations, and then Steve suing the county. When revisiting we should establish these chapters - at the moment, it feels like a long run-on sentence rather than beats of an arc.

Specific notes:

2:33 - There's a weird sound jump here. Check this spot with sound



- 12:47 - "Seven months after Steven's arrest" - This should be a transition card rather than subtitle.
- 16:28 - What are they showing as the background before introducing the image of Dean as Steve is on the phone - Why not show Dean at the beginning?
- 23:31 - We don't need this much of a set up to the prison. The images feel repetitive.
- 25:12 - "If I didn't I'd admit it right away" - maybe play this at the beginning of the pilot as we introduce Steve, giving the audience a voice to hear. *What made the STAIRCASE effective was seeing the accusatory and hearing his voice at the very start. Leading you to think he's innocent and then allowing yourself to be engrossed in discovering whether or not he was*
- 31:32 - Card re: Wisconsin Innocence Project - can we get more context what it is so the audience is aware of what they do?
- 34:33 - A transitional card going into Reesa's statement that the cops didn't apologize or acknowledge their mistake would make this feel smoother.
- 36:29 - Good lead in to highlighting Denis Vogel
- 38:57 - Let's introduce the Avery Task Force on a stronger note. To highlight what it does so it doesn't get lost in the lull of his accusations later on.
- 39:34 - Penny Beernsten statement is strong
- 40:30 - Label WI State Rep Mark Gundrum
- 44:43 - Should the episode 1 end here?
- 48:00 - Or maybe end the episode here at the end of the deposition about Andrew Colborn's telephone call about Gregory Allen
- 19:38 - Label this person
- 52:27 - The evaluation (Deposition October 26,2005) runs so slow. Is there a way we can set this up in a swifter manner? It lulls
- General:* From 52:00 to 56:00 the pacing feels slow. We get that the Manitowoc branch is under scrutiny. It shouldn't feel this long.
- 56:30 - This could be a cut off point as well for Episode 1 into 2 - when Teresa Halbach is stated missing.
- 57:36 - Teresa speaking about whenever she dies. I feel like this is a solid intro into episode 2 or 3 / whatever the next cut would be
- 1:03:29 - Pam Sherm (?)'s call should have subtitles

1:04:19 - "Do we have a body or anything yet?" - no "y" in anything.

Note: We see the police video inside of Avery's home, but we should have a card to preface that it was not warranted and out of nowhere.

1:12:25 - Transitional card to segue into the evidence found

1:15:40 - This cop is unnerving and this is a powerful scene. You hear in the cop's voice how accusatory and manipulative he is. The fact that he says "they know nothing about you (Steve)"

Episode 3

General Notes:

Introduction - The segue from the first two episodes into the third flows, but let's explore reframing it and establishing more of a solid, concrete introduction into episode 3. Perhaps replay that clip about Teresa speaking about dying at the beginning of the episode? It sets an ominous tone that juxtaposes Steve's voice later on the phone with Jodi telling her he wants out and to move out of town.

Characters - Will we learn more about Brandon and Jodi's respective background in their relationship with Steve as the series progress? It would be great to know a bit more about their characters to understand why Jodi is undoubtedly loyal to Steve and why Brandon fell into this, perhaps, misleading state. Let's also explore inserting a formal title card when lead characters are introduced (i.e. Dean Strang) to highlight the importance they play in the series and the case.

B Footage - Certain set up images and anecdotes feel repetitive. Let's revisit so certain scenes and statements don't lull the pace. For example, having the series of relatives say he's innocent throughout the episode feels tiresome. The scene where the parents read the letters highlights the opposing viewpoints of what the town thinks vs what they believe. That is strong enough - we don't need to later see his mother and brother distressed about his incarceration.

Ending - We like that it ends close to Brandon's statement "What if it's different" to his mother, regarding his version of the story vs. Steve's. This propels us to be curious about what will happen next in the state.

Specific Notes:

2:33 - Leading into the courtroom can be cut in half.

8:40 - Insert a transitional card before his parents' statement.

10:48 - The scene of his brother in the bar can be cut out. We get it, the family believes he's innocent

15:03 - Transitional card needed

16:16 - Steven on the phone with Glenn - are there different images we can use leading up to Dean Strang entering the building?

19:53 - "I hope the truth comes out on this so we can find out who did it." Hold a beat after this statement is said. It's powerful and supports his innocence and sympathy for Teresa's death.

21:23 - Is there anything we can use/show to clarify whether or not the cops had a warrant to search his property and allude to the fact that they may have planted something when they were there without permission?

26:19 - Cut straight to the courtroom (27:13) instead of watching everyone pile into hear Brandon's verdict.

32:53 - Transition Card / Insert the card that is at 33:17 here before Jodi is picked up from jail.

44:26 - Reesa Evans' statement should transition into the cops interrogating Jodi and Brandon. Don't need Yvonne's statement. Begin again at 45:53 with Jodi's statement and then the interview conducted by Detective Mark Weigert. Too many of these statements that are saying something similar (aka Steve is innocent) slows down the pace and we want to let this scene with the cop and Brandon play out.

53:59 - This is a key moment in this episode and the case when Brandon says "because I didn't think of it" after the cop points out he didn't mention Teresa was shot in the head. Let this sit a beat.

57:10 - When Brandon says: "what happens if his story is different...they got into my head"

From: Marjon Javadi [REDACTED]
Sent: Monday, November 10, 2014 4:52:44 PM
To: Adam Del Deo [REDACTED]
Subject: Re: Mom episode 1

will do

Marjon Javadi
Originals, Documentary and Comedy
Netflix

On Mon, Nov 10, 2014 at 4:51 PM, Adam Del Deo [REDACTED] wrote:

- > Episode 1 & 2 for Murder. Place these in the murder notes.
- >
- > LMK if you have any questions.
- >
- > Thanks,
- > Adam
- > ----- Forwarded message -----
- > From: Adam Del Deo [REDACTED]
- > Date: Mon, Nov 3, 2014 at 9:29 AM
- > Subject: Mom episode 1
- > To: Adam Del Deo [REDACTED]
- >
- >
- > - Need a great opening title sequence
- >
- > - Opening title sequence
- >
- > - Should be at least 84 minutes
- >
- > - Better balance and rhythm - some scenes feels cut short, other go on
- > too long. There need to an elevated approach to this. Currently, feels
- > novice at best, not expert.
- >
- > - tighten up the beginning. Currently it feels like it's a bit of a
- > run on sentence in the next pass let's try to make clear distinctions
- > from section to section and create some transitional devices. An
- > example is the section prior to meeting Sandra Morris for the first
- > time. Once we meet Sandra Morris we should turn using transitional
- > device to demarcate that we are moving into a new section of the
- > story.
- >
- > (find the timecode parentheses) - We should perhaps use a tape deck
- > when we are hearing Steven Avery talk throughout the series. It should
- > be a stylized tape deck something that is unique and interesting for
- > this project. The first time we should use it is when Steven Avery is
- > giving testimony about Sandy Morris. Specifically, when he says he

- > says he is upset with her that she was spreading rumors about him.
- >
- > 8:30 - do we have any great family pictures of the Avery's here? Let's
- > make them look like a very happy family.
- >
- > 11:05 - are there any pictures of Sandy Morris and Susan Dvoreck
- > together? This would establish them as very good friends.
- >
- > 12:00 - perhaps show/cut an intense scene of Stephen being arrested.
- >
- > Overall note-by using font or other VFX design let's try to identify
- > and mark all the various characters, specifically the sheriffs
- > department staff.
- >
- > 19:10 do we have any shots of the town getting rabid about the trial.
- > Newspapers, TV clips, or other witnesses separate of the defense
- > attorney talking about the town. Better to see than just hear Reesa
- > Evans.
- >
- > 19:35 - Who are the police? The lawyer says that the police told the
- > sheriffs county that they have the wrong guy but it's not certain who
- > the police are.
- >
- > 19:47 maybe when we show Gregory ounce picture for the first time we
- > juxtapose it next to Steven Avery's. The similar photos-or similar
- > likeness of the two individuals-will come across with a strong impact.
- >
- > 20:30 - we need to make a clear distinction between the Manitowoc
- > police department and the sheriffs department. is there a visual aid
- > they can help us with this - let's discuss.
- >
- > 23:04 - cut back to Steven when his dad says "I didn't do it!"
- >
- > 23:25 - it should hit harder when Steven is convicted to 32 years in
- > prison. That should really hit like a ton of bricks.
- >
- > 29:30 - can we see some of the excerpts described in the court of
- > appeals. Looks like we showing some of the court of appeals statements
- > might make them resonate more.
- >
- > 32:33 - Gregory Allen "hit" should feel bigger, not subtle.
- >
- > 32:40 - let show the process, legally, of Steven Avery getting out of
- > prison as opposed to just showing him walking out. Let's build up of
- > this and instill a little delayed gratification in the release of
- > Steven.
- >
- > 34:20 - let show more verite scenes of Steven went to gets home from
- > prison - let this play out more.
- >
- > 35:05 - do we have anyone separate if Reesa that knew the Sheriff's
- > we're pissed that Steven got off.
- >
- > 36:30 - any footage of shots or documents of Dennis Vogel trying

- > Gregory Allen two years before the Penny Beerntsen case? We need
- > better visuals here when we are hearing Vogel had to have known it was
- > Allen.
- >
- > 40:00 - the photos of Steven and his family feel displaced also the
- > music. Tonally he feels like it's off. Awkward and disjointed scene.
- >
- > 41:30 - need a graphics sequence here?
- >
- > 49:30 how do we, the audience, know Colburn was contacted. Why does
- > Colburn even mention it. Did it come up from the person who called
- > him? This is confusing.
- >
- > 55:00 - seems very thin that Colburn not having specific knowledge of
- > who called him would be the key to the case. Who called Colburn. No
- > email? Not fax? Could they track the call. If you are Colburn, why
- > even disclose.
- >
- > 1:00 is there any raw footage of the Stephen A. reinterview that's on
- > the news after Teresa Halback was murdered? Very interesting that
- > Steven invites the police into his house without hesitation. Would be
- > great to see the raw footage around that if the new station still has
- > it.
- >
- > Music is weak over Teresa Halback's mother. Feel like it would be better.
- >
- > 1:02:00 - The Halback search feels like it could be more kinetic
- >
- > 1:09:25 - good card re: The Avery's not allowed to be on their
- > property for 8 days.
- >
- > 1:09:40 better music over this scene
- >
- >
- >

GENERAL

LENGTH: Currently, the cut feels very long. At its current state of over an hour and 40 minutes, we feel the next pass should target to be much closer to one hour. At this juncture, this doesn't feel like a cut of the episode but rather a really long rough version (which it may very well be). The courtroom scenes are too drawn out, which slows the pacing and narrative experience for the viewer.

COURT SCENE: The back and forth between the state lawyer and Avery's lawyers lags. It must be more concise. Is there a way we can quicken these beats to give more momentum to the overview of this specific trial while still allowing an audience to take in the information for their own reference? For example, it takes 4 minutes to finally get to the point that Dean makes at 21:30 that after the 7th search of his home, the officer found the key.

COLD OPEN: This is strong so far. Great quote in Steve's voiceover that's used. It feels timely and appropriate for where we are in the series.

INTERROGATION INTERVIEW FOOTAGE: This interrogation between Steven Avery and the police officer (please label who this is) that is interwoven throughout the trial day needs to be given more context of when & where it was taken. While the footage label is there, a card describing the set up before the first clip of the series is introduced would be extremely helpful throughout the trial footage.

LABELING: With so many characters in and out of the story, it's important to stay consistent with labels throughout the series so the audience can keep track. At least at the beginning of the episodes, let's apply initial labels, even with his mother and family members that we recognize.

CLIP OF BOTH DEFENSE ATTORNEY'S OUT OF COURTROOM: The two shot interview of both defense attorney's, Dean Strang and Jerome (Jerry) Buting, feels out of place. The tone and look feels different from the other in-court footage. In addition, the prosecuting attorney's aren't given the same opportunity ability to post-summarize the trial so it feels like a subjective device. Please consider losing this two shot footage throughout.

3:13 - Let's hold a beat longer on this card about the pre-trial publicity. The language is verbose from the previous cards so we want to give the audience a chance to comprehend the information given before going into the next scene.

4:14 - Please label.

6:57 - The dismissal of those accounts is a good turning point to the next chapter. Great use of the title card to sum up that court scene and preface what trial is next.

10:01 - Please label.

21:02 - We need to get to this point much quicker about the discovered key and the 7th search of Avery's home. Is there a way to intercut or pull specific dialogue to expedite the scene without affecting the overall lead up? Let's discuss.

24:53 - Can we have a card placed here before going into this interview shots to provide a bit more context? It's a bit confusing.

25:23 - What's the difference between Angela and Dawn at Auto Trader? Is there more context/background that can be provided explaining why the specific two are chosen for the trial?

27:21 - The statement here clarifying that Dawn cannot confirm or deny that Theresa did not leave the Avery property to complete other hustle shots is important in the case. Again, we need to get to key points like this at a more succinct pace.

30:44 - "Bobby's vehicle is gone" - let's hold a beat on this. This is Brendan's older brother that we're about to hear from, and his statement will sound more confident (whether accurate or not) than Brendan's.

33:04 - You can cut out the news footage here before Dean speaks.

45:59 - 47:03 - Can we have subtitles during this call?

47:37 - Can we hold a bit longer on Colburn's face here. He looks caught. Same at 48:10 - 48:25. We know that this is court footage that may not exist. Just a suggestion.

49:54 - This is a turning point with the tape and Colburn getting caught in a lie (at least allegedly). Can we bring out the fact that the tape didn't have a timecode on it, especially when Dean says "it was given by the Manitowoc Police".

1:06 - 1:10 - This exchange between Jerry and Lynn runs way too long. Is there a way we can shorten this to get to the point about Steven's files? It's easy to lose focus here.

TO: MAKING A MURDER CREATIVE
FROM: NETFLIX CREATIVE
RE: MAKING A MURDER NOTES - Episodes 1&2, 3, 4
DATE: November 20th, 2014

MACRO NOTE:

Making A Murderer has all of the components to be an epic series with the potential to engage global viewers and to potentially affect public opinion over these two live cases. From day one we've been captivated with this unbelievable story and the incredible level of research, access, and information you have successfully amassed over the years. Currently the public appetite for crime based non-fiction has never been more primed. With the strong cult following of crime radio programs including "Serial" beginning to explode and our internal knowledge of an extremely high profile field/courtroom crime series set to debut in the marketplace in 2015, the opportunity and stakes have never been higher. Making A Murderer has all the elements to be the best of the lot, the story itself and surrounding footage is an absolute treasure trove.

The macro note is that the elements are all there, but the organization, structure and pacing of the parts needs to be re-examined and elevated entirely. The story begs for a more sophisticated editing style which will provide for an immersive and all-encompassing experience for the viewer including deft and unexpected foreshadowing of key elements, pitch perfect call-backs of evidence and breathtaking reveals.

We believe it's of the utmost importance to identify and employ the primary editing role at this time to address episodes 1 - 4 while you continue to shape episodes 5 - 8.

Critical Editor Suggestions:

1. ROCK PAPER SCISSORS TEAM - Angus Wall (SOCIAL NETWORK, GIRL WITH THE DRAGON TATTOO) and/or Grant Surmi (Cut TABLOID for Errol)
2. James Haygood (THE LONE RANGER, SEVEN, UNSCRIPTED) - loves docs
3. Kevin Tent (GIRL INTERRUPTED) - very interested in docs.
4. Fernando Villiena (EVERY LITTLE STEP) - Strong and accomplished doc editor.
5. Paul Crowder (DOGTOWN, ZBOYS)
6. Brad Fuller (S.O.P) - Cut many Errol Morris docs. Solid and steady.
7. Andrew Hulme (THE IMPOSTER) - Accomplished editor.
8. Chris Figler (MAD MEN, BIG LOVE, UNSCRIPTED) - Loves docs.
9. **As requested, waiting on additional MOM editor suggestions from directors

OPENING TITLE SEQUENCE/GRAPHICS/VFX: Currently, we need a great opening title sequence to establish a strong visual identity for the series. As we have discussed and agreed, finding the right person and/or company to handle the work with the critical eye to

create a heightened look to the overall series. Please provide resumes of those candidates who you'd like to consider. We'll do the same on our end to provide resumes as well of those we recommend.

RHYTHM/BALANCE: Currently, the cutting style in the episodes feel novice at best. Overall, from episode to episode and from scene to scene, many of the the sections feel out of balance as though they don't have a symbiotic relationship. In other words, there lacks an overall cohesiveness. Some sections seems overdeveloped, and others come across underdeveloped, and others simply go on too long. There needs to be an elevated approach to this terrific information - the effect should be heightened, intense, and entertaining. Further, should also drive and hold dramatic tension. Again, let's work to bringing a new expert editor to enhance the great work that has already been established.

GRAPHIC LOWER THIRDS TEXT: By using designed font or other VFX design, let's try to identify and mark all the various characters, specifically the sheriff's department staff so the audience can track all individuals throughout. In the last pass, often we would have to stop the take to make sure we were understanding who the characters were and if we had already seen them earlier in the series. Again, the use of cool ID/lower thirds text will help this tremendously.

DRONE PHOTOGRAPHY: The opportunity to use drone photography is exciting. It gives a new cinematic feel to the junkyard. However, currently it feels like its clustered on pods and used in an arbitrary way. In the next pass, let's discuss how to best strategize the drone footage for it's strongest impact. Let's explore utilizing them as a strong, strategic transitional devices.

MUSIC: Currently, it feels like sometimes the music works, sometimes it's off, and other times simply too slow of a pace. All in all, we do need to get a composer on board that understands a thriller atmospheric score.

EPISODE 1 & 2

GENERAL

SET UP: This first two episodes of the series plays as a compelling narrative with amazing twists and turns. The disconnect is the set up of the episode and where it ends - the beginning does not allude to what the chapter/episode will be exploring and feels muddled in the middle.

CHARACTER(S) INTRODUCTION - We want to understand how each person comes in and out of the story and their role, instead of it feeling like interviews are just inserted; let's make sure each "lead" character has a straight-forward introduction (perhaps a title card) and then

consistently labeling them throughout the story. The consistency of the characters can be marked as transition points to help the audience keep everything straight. Sometimes who is involved with what feels confusing as the story progresses.

INTRODUCTION: The first five minutes gives us a peek into how this town has treated the Averys before the crimes. However, instead of having the first thing heard being everyone's impression of Steven, it may be more powerful to have Steven be the first voice the audience hears, for example when he is talking to Jodi in jail from episode 3 about how he is wrongly accused.

Let's also tighten up the beginning. In the next pass, let's try to make clear distinctions from section to section and create some transitional devices. An example is the section prior to meeting Sandra Morris for the first time. Once we meet Sandra Morris we should try using a transitional device to demarcate that we are moving into a new section of the story.

EPISODE 1 AND 2 (currently in one episode) - Further down in the notes we suggested times to potentially split the episode. It currently runs at 1:18:03. Where is the break for episode 1 into 2 in the first cut? Suggestions given in the specific notes below.

CHAPTERS: There are 4 key parts of this section that lead up to Teresa's murder: The police/community's dislike for Steve/Averys, the public exposure allegations, the Penny Beernsten rape allegations, and then Steve suing the county. When revisiting we should establish these chapters - at the moment, it feels like a long run-on sentence rather than beats of an arc.

RUNNING TIME: As discussed, let's revisit the running times for each episode (notably the pilot). Let's generally target 90 minutes for two (45min each).

SPECIFIC

2:33 - There's a weird sound jump here. Check this spot with sound.

5:23-6:42 - We should perhaps use a tape deck when we are hearing Steven Avery talk throughout the series. It should be a stylized tape deck something that is unique and interesting for this project. The first time we should use it is when Steven Avery is giving testimony about Sandy Morris. Specifically, when he says he is upset with her that she was spreading rumors about him.

8:30 - Do we have any great family pictures of the Avery's here? Let's make them look like a very happy family.

11:05 - Are there any pictures of Sandy Morris and Susan Dvoreck together? This would establish them as very good friends.

12:00 - Perhaps show/cut an intense scene of Steven being arrested here.

12:47 - "Seven months after Steven's arrest" - This should be a transition card rather than subtitle.

16:28 - What are they showing as the background before introducing the image of Dean as Steve is on the phone - why not show Dean at the beginning?

19:10 - Do we have any shots of the town getting rabid about the trial? Newspapers, TV clips, or other witnesses separate of the defense attorney talking about the town? Better to see than just hear Reesa Evans.

19:35 - Who are the police? The lawyer says that the police told the sheriffs county that they have the wrong guy but it's not certain who the police are.

23:04 - Cut back to Steven when his dad says "I didn't do it!"

20:30 - We need to make a clear distinction between the Manitowoc police department and the sheriff's department. Is there a visual aid they can help us with this? Let's discuss.

23:25 - It should hit harder when Steven is convicted to 32 years in prison. That should really hit like a ton of bricks.

23:31 - We don't need this much of a set up to the prison. The images feel repetitive.

25:12 - "If I didn't I'd admit it right away" - maybe play this at the beginning of the pilot as we introduce Steve, giving the audience a voice to hear. Hearing/Seeing the accusatory is a strategic mechanism to draw an audience into the story of the character who may be wrongly accused.

29:30 - Can we see some of the excerpts described in the court of appeals? If we are showing some of the court of appeals statements, it might make them resonate more.

31:32 - Card re: Wisconsin Innocence Project - can we get more context what it is so the audience is aware of what they do?

32:33 - Gregory Allen "hit" should feel bigger, not subtle.

32:40 - Let's show the process, legally, of Steven Avery getting out of prison as opposed to just showing him walking out. Let's build up of this and instill a little delayed gratification in the release of Steven.

34:20 - Let's show more verite scenes of Steven when he gets home from prison - let this play out more.

34:33 - A transitional card going into Reesa's statement that the cops didn't apologize or acknowledge their mistake would make this feel smoother.

35:05 - Do we have anyone separate if Reesa that knew the Sheriffs' we're pissed that Steven got off?

36:29 - Good lead in to highlighting Denis Vogel. Any footage of shots or documents of Dennis Vogel trying Gregory Allen two years before the Penny Beernsten case? We need better visuals here when we are hearing Vogel had to have known it was Allen.

38:57 - Let's introduce the Avery Task Force on a stronger note to highlight what it does so it doesn't get lost in the lull of his accusations later on.

39:34 - Penny Beernsten statement is very strong. Let's hold a beat here.

40:00 - The photos of Steven and his family feel displaced. Also, the music tonally feels like it's off. Generally, it's an awkward and disjointed scene.

40:30 - Label WI State Rep Mark Gundrum.

41:30 - We need a graphics sequence here - let's explore and discuss.

44:43 - This could be perhaps a good place to technically end episode 1.

48:00 - This could be an alternative place to end episode 1: at the end of the deposition about Andrew Colborn's telephone call about Gregory Allen.

49:30 - How do we, the audience, know Colburn was contacted? Why does Colburn even mention it? Did it come up from the person who called him? This is confusing.

52:00-56:00 - The pacing feels slow. We get that the Manitowoc branch is under scrutiny. It shouldn't feel this long.

52:27 - The evaluation (Deposition October 26,2005) runs so slow. Is there a way we can set this up in a swifter manner? It lulls.

55:00 - Seems very thin that Colburn not having specific knowledge of who called him would be the key to the case. Who called Colburn? No email? Not fax? Could they track the call? If you are Colburn, why even disclose?

56:30 - This could be a cut off point as well for Episode 1 into 2 - when Teresa Halbach is stated missing.

57:36 - When Teresa is speaking about whenever she dies - this feels like this is a solid intro into episode 2 or 3 / whatever the next cut would be. Let's discuss.

1:00:00 - is there any raw footage of Steven's reinterview that's on the news after Teresa Halbach was murdered? Very interesting that Steven invites the police into his house without hesitation. Would be great to see the raw footage around that if the new station still has it.

Music is weak over Teresa Halbach's mother. Let's revisit and strengthen it.

1:02:00 - The Halbach search feels like it could be more kinetic. Let's look to add energy into this section.

1:03:29 - Pam Sherm's call should have subtitles.

1:04:19 - "Do we have a body or anything yet?" - no "y" in the subtitle for anything.

Note: We see the police video inside of Avery's home, but we should have a card to preface that it was not warranted and out of nowhere.

1:09:25 - This was a good card regarding the Avery's not allowed to be on their property for 8 days.

1:09:40 - Better music over this scene.

1:12:25 - Transitional card to segue into the evidence found

1:15:40 - This cop is unnerving and this is a powerful scene. You hear in the cop's voice how accusatory and manipulative he is. The fact that he says "they know nothing about you (Steve)" is unveiling.

EPIISODE 3

GENERAL

INTRODUCTION - The segue from the first two episodes into the third flows, but let's explore reframing it and establishing more of a solid, concrete introduction into episode 3. Perhaps replay that clip about Teresa speaking about dying at the beginning of the episode? It sets an ominous tone that juxtaposes Steve's voice later on the phone with Jodi telling her he wants out and to move out of town.

CHARACTERS - Will we learn more about Brendan and Jodi's respective background in their relationship with Steve as the series progress? It would be great to know a bit more about their characters to understand why Jodi is undoubtedly loyal to Steve and why Brendan fell into this, perhaps, misleading state. Let's also explore inserting a formal title card when lead characters are introduced (i.e. Dean Strang) to highlight the importance they play in the series and the case.

B FOOTAGE - Certain set up images and anecdotes feel repetitive. Let's revisit so certain scenes and statements don't lull the pace. For example, having the series of relatives say he's innocent throughout the episode feels tiresome. The scene where the parents read the letters highlights the opposing viewpoints of what the town thinks vs what they believe. That is strong enough - we don't need to later see his mother and brother distressed about his incarceration.

ENDING - We like that it ends close to Brendan's statement "What if it's different" to his mother, regarding his version of the story vs. Steve's. This propels us to be curious about what will happen next in the state.

SPECIFIC:

2:33 - Leading into the courtroom can be cut in half.

8:40 - Insert a transitional card before his parents' statement.

10:48 - The scene of his brother in the bar can be cut out. We get it, the family believes he's innocent.

15:03 - Transitional card needed.

16:16 - Steven on the phone with Glenn - are there different images we can use leading up to Dean Strang entering the building?

19:53 - "I hope the truth comes out on this so we can find out who did it." Hold a beat after this statement is said. It's powerful and supports his innocence and sympathy for Teresa's death.

21:23 - Is there anything we can use/show to clarify whether or not the cops had a warrant to search his property and allude to the fact that they may have planted something when they were there without permission?

26:19 - Cut straight to the courtroom (27:13) instead of watching everyone pile into hear Brendan's verdict.

32:53 - Transition Card / Insert the card that is at 33:17 here before Jodi is picked up from jail.

44:26 - Reesa Evans' statement should transition into the cops interrogating Jodi and Brendan. Don't need Yvonne's statement. Begin again at 45:53 with Jodi's statement and then the interview conducted by Detective Mark Weigert. Too many of these statements that are saying something similar (aka Steve is innocent) slows down the pace and we want to let this scene with the cop and Brendan play out.

53:59 - This is a key moment in this episode and the case when Brendan says "because I didn't think of it" after the cop points out he didn't mention Teresa was shot in the head. Let this sit a beat.

57:10 - When Brendan says: "what happens if his story is different...they got into my head" - this is a moment to hang onto to further suggest the story is unclear from all parties involved against Steve Avery. Hold this beat to let it sink in.

EPISODE 4

GENERAL

INTERROGATION: Brendan's interrogation during this episode serves as na intricate piece to the truth of the accusation of both him and Steven. We see from both Tom and Mark their manipulative ways to spin Brendan's reaction into something that is more positive on their end (ie. Steven being guilty) vs what the reality may be. Especially at 30:56 where they use his relationship with his mother to manipulate him telling a potential falsehood. These interviews and his conversation with his mother need to be intercut more effectively.

PACE & TIGHTENING: Again, a new editor can help push forward the pace and intercut Brendan's interrogation in a more thrilling and dramatic manner: to include his appeal for a new lawyer, and the conversations with his mother - once claiming he's guilty, once not. Also the blood being found and the needle add incredible elements to this case. There is so much

good content in this episode that pushes the story forward, we need to feel that forward movement more.

TONE & TENSION: Needs to feel more intense and atmospheric. In other words, we need to hold more tension since, currently, it feels flat and lags in spots as we go through Brendan's interviews and discourse.

SPECIFIC

22:31 - This is a turning point here - Brendan not putting Teresa in the statement.

25:16 - The interrogation scene with Brendan and Mike O'Kelley could've moved much faster. Understandably you have to hold beats at times, but it felt too flat and elongated.

33:32 - After this conversation with Brendan and his mom, let's hold a beat and include a title card to the next chapter.

43:59 - Date and title card here before Barb speaks to Brendan.

46:14 - This dialogue between Brendan and his mom (Barb) highlights Brendan's vulnerability and how easily manipulated he can be. This is great to have.

47:09 - Before we go into the explanation of Brendan's letter being submitted, can we have a card prefacing what we're about to dive into?

54:12 - Loren's statement is effective, but feels out of place: "That perfect murder story." Is there another place in this episode we can insert her interview of why the Steven Avery case is compelling?

1:04:40 - This section about the blood in the car (with none of Avery's fingerprints in the car) should be earlier in the episode. We want to rapidly build up to this moment because we become hooked then Steven Avery may have been framed.

1:15:45 - Let's hold a beat on the image of the needle hole in the test tube. This is the major turning point.

GENERAL

LENGTH: Currently, the cut feels very long. At its current state of over an hour and 40 minutes, we feel the next pass should target to be much closer to one hour. At this juncture, this doesn't feel like a cut of the episode but rather a really long rough version (which it may very well be). The courtroom scenes are too drawn out, which slows the pacing and narrative experience for the viewer.

COURT SCENE: The back and forth between the state lawyer and Avery's lawyers lags. It must be more concise. Is there a way we can quicken these beats to give more momentum to the overview of this specific trial while still allowing an audience to take in the information for their own reference? For example, it takes 4 minutes to finally get to the point that Dean makes at 21:30 that after the 7th search of his home, the officer found the key.

COLD OPEN: This is strong so far. Great quote in Steve's voiceover that's used. It feels timely and appropriate for where we are in the series.

INTERROGATION INTERVIEW FOOTAGE: This interrogation between Steven Avery and the police officer (please label who this is) that is interwoven throughout the trial day needs to be given more context of when & where it was taken. While the footage label is there, a card describing the set up before the first clip of the series is introduced would be extremely helpful throughout the trial footage.

LABELING: With so many characters in and out of the story, it's important to stay consistent with labels throughout the series so the audience can keep track. At least at the beginning of the episodes, let's apply initial labels, even with his mother and family members that we recognize.

CLIP OF BOTH DEFENSE ATTORNEY'S OUT OF COURTROOM: The two shot interview of both defense attorney's, Dean Strang and Jerome (Jerry) Buting, feels out of place. The tone and look feels different from the other in-court footage. In addition, the prosecuting attorney's aren't given the same opportunity ability to post-summarize the trial so it feels like a subjective device. Please consider losing this two shot footage throughout.

3:13 - Let's hold a beat longer on this card about the pre-trial publicity. The language is verbose from the previous cards so we want to give the audience a chance to comprehend the information given before going into the next scene.

4:14 - Please label.

6:57 - The dismissal of those accounts is a good turning point to the next chapter. Great use of the title card to sum up that court scene and preface what trial is next.

10:01 - Please label.

21:02 - We need to get to this point much quicker about the discovered key and the 7th search of Avery's home. Is there a way to intercut or pull specific dialogue to expedite the scene without affecting the overall lead up? Let's discuss.

24:53 - Can we have a card placed here before going into this interview shots to provide a bit more context? It's a bit confusing.

25:23 - What's the difference between Angela and Dawn at Auto Trader? Is there more context/background that can be provided explaining why the specific two are chosen for the trial?

27:21 - The statement here clarifying that Dawn cannot confirm or deny that Theresa did not leave the Avery property to complete other hustle shots is important in the case. Again, we need to get to key points like this at a more succinct pace.

30:44 - "Bobby's vehicle is gone" - let's hold a beat on this. This is Brendan's older brother that we're about to hear from, and his statement will sound more confident (whether accurate or not) than Brendan's.

33:04 - You can cut out the news footage here before Dean speaks.

45:59 - 47:03 - Can we have subtitles during this call?

47:37 - Can we hold a bit longer on Colburn's face here. He looks caught. Same at 48:10 - 48:25. We know that this is court footage that may not exist. Just a suggestion.

49:54 - This is a turning point with the tape and Colburn getting caught in a lie (at least allegedly). Can we bring out the fact that the tape didn't have a timecode on it, especially when Dean says "it was given by the Manitowoc Police".

1:06 - 1:10 - This exchange between Jerry and Lynn runs way too long. Is there a way we can shorten this to get to the point about Steven's files? It's easy to lose focus here.

From: Adam Del Deo [REDACTED]
Sent: Friday, June 26, 2015 12:40:28 AM
To: Benjamin Cotner [REDACTED]
Cc: Lisa Nishimura <[REDACTED]>
Subject: Re: Episode Breakdown

Great, thanks Ben. Look forward to us all chatting tomorrow.

Fun night, get some rest!

Sent from my iPhone

On Jun 26, 2015, at 12:10 AM, Benjamin Cotner [REDACTED] wrote:

Here is a basic breakdown of what I felt were the important plot points and potential cliffhangers for each episode.

EPISODE BREAKDOWN

-

Episode 1:

Plot points:

- Dispute with cousin/masturbating on the lawn
- Penny is assaulted
- Because of bad blood with police they point the finger at Steven
- Steven has alibi and wasn't even in the area.
- Steven is convicted despite no physical evidence.
- Steven's marriage ends.
- New DNA (allele) evidence is introduced but denied on appeals.

Cliffhanger: Innocence Project tests pubic hair and it matches Gregory Allen and Steven is released.

(Currently no episode break here yet)

Episode 2:

Plot points:

- Cops covered up evidence about Gregory Allen.
- Governor and legislature back police reform and award Steven \$450k.
- State AG finds no wrong doing on the part of the police despite evidence otherwise.
- Steven files \$36m lawsuit
- Cover-up is revealed (1995 phone call....this is weak revelation to me)
- Teresa is reported missing.
- Steven is fingered as a potential suspect and quickly revealed that he was the last to see her.
- Search party focuses on area around Steven's property.
- Teresa's car is found on Avery property.
- Police kick them out and search property for 8 days.
- On day 4 they find the key in Steven's room and then find her remains.

Cliffhanger: Steven is arrested and charged.

-

-

Episode 3:

Plot points:

- Steven claims that he is being framed.
- Judge finds that there is enough evidence and sets bail high.
- The police officer that found the key knew about Steven's wrongful conviction.
- Community is divided.

- Steven talks about suicide.
- Steven settles the civil suit to cover his legal bills.
- Gets lawyers.
- Brendan confesses to helping Steven.

Cliffhanger: Brendan is arrested and charged.

-
-

Episode 4:

Plot points:

- Phone calls reveal that Steven was talking to his girlfriend who was in jail the night of the murder and he sounds totally normal.
- Brendan's lawyer try to get him to accept plea deal and testify against Steven.
- Brendan's confession is ruled admissable.
- Detectives convince Brendan to confess to his mother.
- Brendan requests new lawyer but is denied.
- Lawyers changed, venue changed, etc

Cliffhanger: They find a tampered with blood vial.

-
-

Episode 5:

Plot points:

- Trial starts.
- Brendan's brother testifies.
- Manitowac Police didn't obey the order to not go to property alone.
- Key to the car wasn't found until the 7th search of his bedroom.
- Explanation of the search and the fact that Pamela Sturm went straight to the car.
- Sergeant Colborn had called dispatch and called in Teresa's license plate before the missing car was found. (potential cliffhanger)***
- Evidence that she was killed off the property.

Cliffhanger: * or combine with Episode 6

-

Episode 6:

Plot points:

- Bullet found in garage with her DNA - no blood splatter there.
- DNA test control was contaminated by the technician.
- Cremains were transferred after burning, body was burned elsewhere.
- Timeline called into question by busdriver and another witness.
- Someone was harassing Teresa and erasing her VM.

Cliffhanger: FBI comes up with the EDTA test and "proves" that the blood wasn't from the tampered with vial. (this is brought up from Episode 7)

Episode 7:

Plot points:

- Closing arguments including many contradictory statements by the prosecution.
- Steven decides not to testify.
- Brendan found guilty.

Cliffhanger: ? (combine with Episode 8?)

Episode 8:

Plot points:

- Steven loses all of his appeals.
- Steven gets together with Sandy.
- Brendan tries to get a new trials base on the fact that Kachinsky coerced him to plead guilty.
- Brendan revealed looking like a different person.
- The DA has women come forward against him, he resigns.
- Steven tries to appeal to Federal court.

From: Adam Del Deo [REDACTED]
Sent: Friday, June 26, 2015 1:54:16 PM
To: Adam Del Deo [REDACTED]

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- Steven's marriage ends.
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*Cliffhanger: Steven is arrested and charged. *

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-The police officer that found the key knew about Steven's wrongful conviction.

-Community is divided.

-Steven talks about suicide.

-Steven settles the civil suit to cover his legal bills.

-Gets lawyers.

-Brendan confesses to helping Steven.

Cliffhanger: Brendan is arrested and charged.

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Plot points:

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-Brendan's lawyer try to get him to accept plea deal and testify against Steven.

-Brendan's confession is ruled admissible.

-Detectives convince Brendan to confess to his mother.

-Brendan requests new lawyer but is denied.

-Lawyers changed, venue changed, etc

*Cliffhanger: They find a tampered with blood vial. *

*Episode 5: *

Plot points:

-Trial starts.

-Brendan's brother testifies.

-Manitowac Police didn't obey the order to not go to property alone.

-Key to the car wasn't found until the 7th search of his bedroom.

-Explanation of the search and the fact that Pamela Sturm went straight to the car.

*-Sergeant Colborn had called dispatch and called in Teresa's license plate before the missing car was found. (potential cliffhanger)**

-Evidence that she was killed off the property.

*Cliffhanger: * or combine with Episode 6*

*Episode 6: *

Plot points:

-Bullet found in garage with her DNA - no blood splatter there.

-DNA test control was contaminated by the technician.

-Cremains were transferred after burning, body was burned elsewhere.

-Timeline called into question by busdriver and another witness.

-Someone was harassing Teresa and erasing her VM.

Cliffhanger: FBI comes up with the EDTA test and "proves" that the blood wasn't from the tampered with vial. (this is brought up from Episode 7)

*Episode 7: *

Plot points:

-Closing arguments including many contradictory statements by the prosecution.

-Steven decides not to testify.

-Brendan found guilty.

Cliffhanger: ? (combine with Episode 8?)

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Plot points:

-Steven loses all of his appeals.

-Steven gets together with Sandy.

-Brendan tries to get a new trial based on the fact that Kachinsky coerced him to plead guilty.

-Brendan revealed looking like a different person.

-The DA has women come forward against him, he resigns.

-Steven tries to appeal to Federal court.

From: Lisa Nishimura [REDACTED]
Sent: Thursday, July 16, 2015 1:05:25 AM
To: Benjamin Cotner [REDACTED] Adam Del Deo [REDACTED]
Subject: Murderer: music notes ep 1
Attachments: MakingAMurder_MusicNotes_Ep1.docx

i took an initial stab at the music notes for Mam. Still rough, but let's discuss.

I think we need to let them know where we think it's working and perhaps tomorrow take another stab at trying to explain what qualitative is working and what is not. (eg, for me some of the guitar tones and styles are just a miss to the subject matter)

Looking forward to discussing.

L

5:40 -
solid underlying music / atmospherics

Some kind of dark undertone should punctuate the first time we meet Sheriff Petersen. We see a young photo of him reflecting the time of Steven's first arrest dissolving into his deposition. We should sense that something is afoot.

24:30 – 24:45
music bed under the phone call with Steven is directionally solid. The change up from the lulling guitar helps the pace

25:20: Reesa interview about the illegal actions of the Manitowoc police station, specifically the Sheriff keeping Steven away from his phone call, his attorney and his rights. Punctuate musically within the guitar music bed

27:20 – the only time in 20 years that I've seen a Sheriff get involved that early – punctuate, rather than have the comment be part of a roll of facts. More ominous.

28:00 – so out of character for Steven to do it, but people believed he did – bc he's an Avery. Hard out with single punctuation.

31:48 – The Sheriff was told, "you have the wrong guy" – punctuate. You need to know about this guy Gregory Allen – dread.

34:10 – When Walter Kelly is recounting the Bergner disclosure to Kocourek re: Gregory Allen and the employees going to Vogel about Gregory Allen, let's punctuate at a key point rather than having it be consistent throughout.

36:00 – Allan talking about Steven being convicted and knowing that he's innocent – that he was with him. This music feels off... again too lulling

Potentially a different musical shift specifically when sentences are chiron'd.

Weird audio of Dorothy and Allan talking over each other at 38:20

43:00 Punctuate moderately - some hope at the discovery of DNA evidence; fingernail evidence provides potential new hope

45:40 – Steven Glynn talking about how this case is a perfect example at how the system is set up to perpetuate a bad conviction, and that you would have thought that Steven Avery was the most guilty person in the history of the criminal justice system – punctuate.

50:00 – finally Steven gets the Innocence project on board. We're re-entering the pubic hair / sex crimes kit – music should be wildly punctuated leading to reveal! They got a cold hit! Gregory Allen! Keith Findley delivers all of this information very succinctly, calmly, and overly-evenly. The music must do the heavy lifting to make one realize the magnitude of this information.

Steven walking out of prison directly after this development should have more triumphant tone.

54:22 – discovery that Denis Vogel was aware of Gregory Allen should be punctuated

57:40 – law enforcement is vulnerable. . . . ominous punctuation

59: really compelling recounting of the Gregory Allen information that should have been investigated and known is told in a very measured and overly sleepy way – assist with stronger musical bed rather than repetitive drum beats, in particular the realization that Allen has sexually assaulted others while Steven was wrongfully imprisoned, should be far greater punctuation.

1:02 - Is there something more dramatic that's appropriate for the Penny Beersten

1:02 – the acoustic guitar style jingle happy tune has never been really great for me – thoughts??

1:05 – discuss different quality to the guitar music here vs. above at 1:02

1:06 into 1:07 – more effective use of built up to verdict (though not quite perfect)

1:07:30 – musical bed over drone footage, moving in the right direction. Build, and atmospheric.

1:09 – you could end up getting charged with murder – WAY more punctuation required.

Peaks and valleys!

From: Adam Del Deo [REDACTED]
Sent: Thursday, July 16, 2015 6:42:02 PM
To: Lisa Nishimura [REDACTED]
Cc: Benjamin Cotner [REDACTED]
Subject: Fwd: MOM - 8-9-10 comments

----- Forwarded message -----

From: Adam Del Deo [REDACTED]
Date: Thu, Jul 16, 2015 at 6:39 PM
Subject: MOM - 8-9-10 comments
To: Benjamin Cotner [REDACTED]

Episode 8

-

Jerry Butting doing a contextual summary, after Kratz opening remarks, feels forced when providing. Cut this interview.

-

If we know the verdict is going to be read, do we need to see people reporters running into the court. Feels redundant. use one or the other.

-

The reading of Steven's guilty verdict feels slow and anti-climatic. The non-musical and low key nature of it currently is too subtle and not impactful enough.

-

After the verdict, the press conference really drags on as well we as Jerry's conversation with w/ Steven's parents.

-

"These Sleazy Bastards get away with it" - Civil Rights Lawyer says this but it feels very subjective. Consider losing.

-

MUSIC DOESN'T WORK

-

GOOD RUNNING TIME

Episode 9

-

Use the time line graphic with Brendan tape playback - this can establish one of the different timelines.

-

Brendan's attorney is good examining the investigator - poking at the recollection works well.

-

Why didn't Brendan Dassey's mom take the stand and tell the jury she wasn't allowed to sit with Brendan.

-

Strong Editing in the Kaley Dassey courtroom scene. The cut aways to news footage showing the specifics of the murder work well.

-

Graphic when Brendan is describing where everyone lives might work well.

-

Also, TIME LINE that Brendan maps out is very important to add when Brendan is on the stand explaining what he does when he arrives home from school.

-

NEED A GOOD GRAPHIC THAT CAN SHOW THE RASHOMON TIME LINES

-

KISS THE GIRLS descriptions of murdering - does it match with Brendan's testimony. Also, separate of the writing in Kiss the Girls are there images. Let's discuss.

-

Add suspense music when everyone is scrambling to get into courtroom to hear verdict (a la INSIDER score when Jeffery Wigan is deciding to testify).

-

Andy Colburn is there, again? Maybe worth ID'ing him.

-

Was this trial held given that it was a Madison Jury?

-

Add a suspense beat and ID Tag "Sentencing" just so they are clear

Episode 10

-

What's the Kratz letter say? Tough to say.

-

Lose Pete Baetz in Episode 10? Also, lose Pete Baetz overall.

-

Cut or trim current girlfriend, Sandy, and his mother. Too slow so look to trim if possible.

-

Also, the subsequent scene w/ Steven's girlfriend only we could probably lose as well.

-

53 Min in - the slack key guitar needs to be replaced. Sooo sleepy. Totally not right.

From: Benjamin Cotner [REDACTED]
Sent: Thursday, August 27, 2015 3:11:53 AM
To: Lisa Nishimura [REDACTED]
Cc: Adam Del Deo [REDACTED]
Subject: Re: Episodes 5 & 6

I'm glad you said that about the end of 6 - i was on the fence about it. It feels very speculative and I don't think they ever deliver enough of a silver bullet to be able to make this direct of a claim about Lenk.

On Wed, Aug 26, 2015 at 9:30 PM, Lisa Nishimura [REDACTED] wrote:

- > Agree with all your points, in particular the need to have music do some
- > heavy lifting to help keep us engaged in these far more dense courtroom
- > episodes. Macro question on music, did you discuss on your call last week
- > whether what we are hearing is the final sound design or are they planning
- > to have someone come in and refine after picture lock?
- >
- > Few additional points -
- > Episode 5 -
- > I liked the addition use of music under Bobby Dassey's testimony when he
- > says, "I saw Teresa walk toward Steven's trailer". I don't know that I saw
- > them use this method again however. Given the density of the testimony
- > footage, it would be a good technique to further employ. (e.g. Ryan
- > Hillegas testimony or Fassbender testimony when he admits that he did not
- > question Scott the roommate)
- >
- > New footage of Kratz further on his heels in the press conference post the
- > Ryan Hillegas testimony re: Teresa's voicemails.
- >
- > The much abridged interview with Dolores and Allan after the Bobby Dassey
- > testimony section is far more effective.
- >
- >
- > Episode 6:
- > Question to both of you - what do you think of this ending? The last 5
- > minutes of this episode? Is there enough attached to Lenk taking the stand
- > to really keep you hooked? This coming off of terrific closes in episode 4
- > & 5.
- >
- > Looking forward to your thoughts so we can get these notes over to them
- > asap. T/hanks!
- >
- >
- > On Wed, Aug 26, 2015 at 7:25 PM, Benjamin Cotner [REDACTED] wrote:
- >
- >> Here are some notes on Final Episodes 5 & 6. Overall, I think it would
- >> really help if they did something more interesting with the music to carry
- >> us through these two very technical episodes. Just punctuating the
- >> interesting points and using music to go in and out of scenes is actually
- >> highlighting how segmented these episodes are. I think they just need
- >> someone more experienced with music design to help.

>>
>> Episode 5
>>
>> Runtime 57:50
>>
>> 00:58 - Should the card say "develop a NEW chemical test"?
>>
>> 47:52 - Like the cards saying that Earl gives permission - this helps!
>>
>> 54:20 - setting Colburn up as the potential cop to plant the car works
>> really well now. Great end to this episode.
>>
>>
>> Episode 6
>>
>> Runtime 1:00:45
>>
>> 13:20-14:22 - Please consider trimming down Allan entering the courtroom
>> here.
>>
>> 17:46-18:15 - Possibly cut down this montage of b-roll.
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>> 29:57-30:35 - Buting's commentary is weak here - he doesn't make his
>> point articulately and we spent so much time in court with him arguing this
>> already that this seems redundant.
>>
>
>
>
>
> --
> Lisa Nishimura
> VP, Original Documentary & Comedy Programming
> [REDACTED]
> [REDACTED]
>

Making a Murderer

CURRENT:

Cold open:

Episode 5.

SUGGESTIONS:

- Drop sexual assault charges against S.A.
 - Day 1 of trial.
 - Opening statements (a lot about VM messages)
 - Det Jacobs call (do we have a body?)
 - S.A. questioned about T.H.'s appointment.
 - Bobby says he was asked to help get rid of body.
 - Debate about VMs.
 - Judge blocks from talking about other suspects.
 - Dean asks about roommate.
 - Ryan H admits to figuring out her password.
 - Boss (Sheriff?) says to search Avery property.
 - Review of finding Rav4 and what followed (Pam)
 - Dolores shows us where the car was found.
- Cliffhanger: Colburn testifies about calling in the license plate before the Rav4 is discovered.



Episode 5 - Detail (57:50 min)

08.28.2015

00:58 - Should the card say "develop a NEW chemical test"?

20:52 - The addition of music under Bobby Dasseey's testimony when he says, "I saw Teresa walk toward Steven's trailer" is really effective! Can we explore the use of this subtle, almost subconscious use of music in other key testimony, (e.g. Ryan Hilegas testimony or Fassbender testimony when he admits that he did not question Scott the roommate). Given the density of the testimony footage, it would be a good technique to further employ.

27:00 - The much abridged interview with Dolores and Allan after the Bobby Dasseey testimony section is far more effective.

28:00 "In a pre-trial hearing about a third party liability, Judge Willis rules that the Defense cannot offer any alternative suspects to be jury by name except Brenden" - Is there a way to simplify this card? The audience may, perhaps, need just a little more clarity on "third party liability." Please consider.

42:45 - With re. to Jerry, do we need to hear him give follow up commentary say "this was a peculiar witness"? It's pretty obvious Hilegas a peculiar witness via his testimony.

47:52 - Like the cards saying that Earl gives permission - this helps!

54:20 - Setting Colburn up as the potential cop to plant the car works really well now. Sensational and strong end to this episode.

CURRENT:

Cold open: Card says one day after Brendan's arrest there is a press conf. Kratz describes how S.A. instructed Brendan to cut T.H.'s throat. Police search residence and garage for new evidence. Kratz claims physical evidence now makes sense.

Episode 6.

SUGGESTIONS:

- Bullet found in garage - Lenk was present.
- No T.H. DNA found in trailer or garage.
- Bobby only thing placing her inside.
- Skull fragments.
- Sherry: blood on bullet matches despite botching
- Defense tried to have labwork monitored, denied.
- Everyone reiterates there would have been blood
- Bones and barrels conversations.
- Bloody hair in trunk.
- Timeline debate (Bobby D, bus driver, Scott T.)



Cliffhanger: School bus driver has a different timeline than Bobby. Lawyers explain that the prosecution still hasn't put forth a theory about when and where she was killed.

Episode 6 - Detail (60 min)

08.28.2015

Approx. 9:40 - Let's discuss a graphical timeline in this area to clarify key points of evidence/milestones being laid out from the Fassbender questioning and testimony? Lots of facts coming so this could provide a stabilizing effect.

13:20-14:22 - Please consider trimming down Allan entering the courtroom here.

17:46-18:15 - Possibly cut down this montage of b-roll.

29:57-30:35 - Buting's commentary is weak here - he doesn't make his point articulately and we spent so much time in court with him arguing this already that this seems redundant. Can we cut Jerry's post follow up (Specifically, the "...they think we're a bunch of country bumpkins" section. But, again, ideally all of it.)

Close:

We would love to discuss the close. Coming off of the extraordinary cliff hangers in episodes 4 & 5 with the blood vial and Colburn on the stand, the relative weight of Lenk just taking the stand feels a little light. Can we discuss if there is a little more weight we can provide around the Lenk narrative, the close feels a bit abrupt.

Making a Murderer

CURRENT:

Episode 8 - 45min 23sec

SUGGESTIONS:

Cold open: Allan walking around barn looking for Steven's name on the floor. Dean talks about the fact that S.A. never committed these crimes: "What you can hope to get is your liberty back, eventually."

- Closing arguments.
- Buting, Dean say he was framed.
- Kratz says shouldn't matter if key was planted!
- News reports. Dolores talks to S.A. (b-roll)
- Jury leaves for night. Juror is replaced.
- S.A. talking on tape about how he feels.
- Family warned about blowback.
- Verdict.
- Dean/Buting sad, believe killer is on the loose.
- Allan talks about Manitowoc winning.
- Colburn makes statement.
- Scott T: He had it coming.
- Buting says 7 votes for innocent at start.
- Excused Juror feels terrible.
- Commentary from Pete, Kim and Stephen Glynn.
- Brendan's trial in 2 weeks. New lawyers discuss.

New ending: Brendan is led into court and we hear his call with Barb.

Episode 8 - Detail 08.23.2015

- 4:30 - 9:27 - The closing arguments are running too long to sustain engagement. Is there any way to trim them down? The content is great, but 5 minutes of straight speech is too much. Perhaps cut Strang's lines about Lenk lying since we covered that in trial? Do we need as much detail about Buting's theory on the burn barrels?
- 6:59 - Dean Strang - At "Would Lieutenant Lenk lie?" - perhaps a quick cut away to a Lenk (photo or footage) would be impactful since it would put a face to him in this defining moment. Take a look at it both ways and see what works better.
- 9:05 - Probably best to ID both Lenk and Colborn in the two shot photo.
- 13:05 - 13:48 Consider cutting Jerry Buting's post trial epilogue section. From a pacing perspective, it's a bit slow and he doesn't add any significant new information which was not covered in the closing statements.
- 17:32 - Explanation of replacing the verdict is much more clear! Great job.
- 18:14 - Buting's commentary still seems unnecessary here
- 18:29 - When Steven says "If they finding me guilty, it's gonna be hard.....why I have my family go through all of this, and everything else...." is powerful but doesn't resonate as strong as it could as currently juxtaposed against the B-roll shots of his parents only. Maybe add a few shots/photos of his kids and ex-wife and girlfriend to remind the audience what Steven has lost already for going away for a crime he didn't commit, all of which is on the line yet again. The additional shots may add some further emotion to the sequence.
- 26:37 - 28:55 - THE VERDICT - The reading of the guilty verdict of Steven still doesn't feel climactic enough given the entire series has been building to this moment. Perhaps enhancing the music and/or cutting to other members of the Avery family in the courtroom showing strong disappointment on their faces (conversely, maybe adding any shots of Kratz, Colburn, Fassbender, etc. and their team showing satisfaction would work too), and an overall intensifying of the cutting style would help drive this into a more climactic

Episode 8 - Detail

(cont.)

moment. Currently the beat emits anger and we feel injustice was done, but given the overall investment made in watching 8 hours thus far, the audience should be feeling more intense anger, sadness, bewilderment, and perhaps even fury at this jury decision. Take a look and see if it can be ratched up.

- 27:59 - Great use of music to subtly accentuate when Steven chokes up here!
- 33:30 - 34:30 - Music is lulling. Would a version of the cue at 18:42 work here as well?
- 37:28 - Off of Mr. Beatz interview, do we have a photo or any footage of Ken Kratz getting an award for winning this case? If so, it would be satisfying and impactful to use it.
- 37:53 - 39:44 - Pete and Kim and Stephen Glynn together is too much commentary, please trim.
- 41:21 - new atmospheric and haunting music under Brendan's walk into the court is much better

Episode 9 (1hr3min)

SUGGESTIONS:

Cold open: Buting quote: the question is whether Brendan is going to confess to a murder he didn't commit.

- Kratz opening statement.
- Mark opening statement.
- Play BD's first statement.
- Weigert
- Lots of discussion of his coercion.
- Only play first half of his confession.
- Kayla's retraction. TH brother talks to press.
- Brendan testifies.
- Tape of his call to mom, he says he made it up.
- Mike Halbach talks to press.
- Closing arguments. Judge reads jury instructions
- Judge reads verdict. Mom freaks out.
- Strang comment.
- Dolores cries.
- Theresa Halbach video.
- Mike Halbach reads statement in SA sentencing.
- S.A. reads his own statement.

Cliffhanger: Judge reads statement for Steven and how dangerous he is. Dean comments: "Tragic lack of humanity." Buting: [Could happen to any of us.]

Episode 9 - Detail (1hr3min)

- 4:00 - Still think that someone should explain that Kratz claims Teresa was murdered in a completely different location in Brendan's case. This is shocking and not completely obvious unless it is pointed out.
- new music under the end of Kratz's opening statement is powerful.
- 7:39 - 8:50 - It might be better to take out the audio playback of Brendan's first interview. It is hard to understand and slows things down.
- 15:00 - during the smoke break with Barbara, Richard Mahler, Carla Chase and Peter Dassey, the comments from Carla and Peter don't really add to the conversation meaningfully. Richard's point about the lack of DNA evidence and Barbara saying that Weigert is lying about giving her the opportunity to be present during Brendan's interrogation are the key bits. Consider trimming, especially because there is a solid segment with Peter Dassey later in the episode.
- 17:43 - Is there any footage or documents (maybe a corporate training video) from John E. Reid & Associates showing their interrogation techniques? It may sell the line attorney Fremgen better.
- 39:57 - 40:06 - awkward pause here as he is putting the slide up.
- 41:00 - 41:17 - Would it be possible to cut this setup of Brendan denying talking to Kayla and just start with him saying "How is it that you and Kayla came up with seeing body parts in the fire?"
- 44:44 - 44:58 - Consider taking out shots of them walking into the courtroom.
- 51:20 - Good "danger" music when Colburn is walking him out.
- 53:55 ID both Colburn and Petersen - amazing, given the conflict of interest, that they are now walking Brendan out of court.
- 54:15 - Could we subtitle what Barb is yelling in this section? Who does she say set it up?
- 1:01:05 - ID that Colburn is walking Steven Avery out of the court. Again, huge conflict of interest given he was always a suspect in tampering with evidence.
- Playing Teresa's home video in the courtroom during the sentencing is affecting. Separate from this, when will we see the video of Teresa talking about her own death?

From: Lisa Nishimura [REDACTED]
Sent: Friday, September 4, 2015 9:40:30 AM
To: Benjamin Cotner [REDACTED]
Cc: Adam Del Deo [REDACTED]
Subject: Re: MAM Final Ep7

I agree with all your notes, in particular providing a visual timeline around the site visit logs of Teresa's Rav 4.

Also question - is it worth investigating and confirming that not only has the EDTA test not been used since OJ, but ALSO that no court has admitted this testing methodology SINCE the use here for Steven Avery (Not sure if it's true - but curious if you feel it is worth making this point).

The episode is for sure a factual slow w/o any singular smoking gun, but the evidence and testimony is so overwhelmingly disconcerting - that I believe the additive effect of it all will be powerful in pushing the narrative forward regarding police bias.

Do you want to put the notes together? I'm not sure if Adam has connectivity on this flight and doesn't get in until later this afternoon.

Thanks!

On Fri, Sep 4, 2015 at 7:42 AM, Benjamin Cotner [REDACTED] wrote:

- > They cut 2-3 minutes out and every little bit helps. This is a bridge
- > episode that really covers a lot of the weaker arguments (key falling on
- > the floor, police log, access to Clerk's office, EDTA...). So, it is a lot
- > of information that is important without any real smoking guns. As a
- > result, this is probably the most dry episode. I'm not sure there is any
- > getting around it at this point. Here are my few little notes.
- >
- > 20:20 - Music hear has a distinctly western sound that stands out a little
- > bit from the palate of the rest of the film.
- > 30:00 - I still think a simple timeline graphic listing the times related
- > to the police log would help this scene along a lot. Just listing a) time
- > the log was created and time officers arrived and times they departed (or
- > claimed they arrived or departed) would help the audience understand why
- > all of this matters. Without a timeline putting it into context, it just
- > feels speculative and grasping for conspiracy when it really could have
- > just been a simple oversight that Lenk didn't sign in.
- > 37:00 - Music might be a little bit over the top here.
- >
- > If you let me know any additional ones I can put it together in a
- > document.
- >
- >
- >

--
Lisa Nishimura
VP, Original Documentary & Comedy Programming
[REDACTED]
[REDACTED]

From: Benjamin Cotner [REDACTED]
Sent: Thursday, July 23, 2015 11:32:22 PM
To: Adam Del Deo [REDACTED]
Cc: Lisa Nishimura <[REDACTED]>
Subject: Re: MAM Episode 3 Notes

Adding this note for the music at the crucial moment:

56:43 - After he says "By being honest you can at least sleep at night" it would be nice to bring in an emotional music cue - this is really sad that they are doing this to him - and it could carry us through until we drop out the music at 57:47 when Barb says "Did you?" so that the silence is deafening when he says "Not really...they got into my head"

On Thu, Jul 23, 2015 at 11:22 PM, Benjamin Cotner [REDACTED] wrote:

> I think it is a really valid point but I would rather leave it in for now
> - it is something we can always pull out later, but I am so happy that they
> finally have a point of view. I hope people know that it is just a theory...

>
> On Thu, Jul 23, 2015 at 11:01 PM, Adam Del Deo [REDACTED]

> wrote:

>
>> I hear you. Let me try to clarify.

>>
>> I think the statement as Jerry currently communicates it comes across, to
>> me, as a matter of fact the officers did it (as oppose to highly likely
>> they did it). In other words, I think if Jerry's statement involving the
>> officers can come across as a highly possible/very likely scenario (since
>> the officers had a very strong motive to kill Steven) it would be
>> convincing that someone else, most likely one of/some of the officers, were
>> involved.

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>> I think we're saying the the same thing. However, I just wanted to make
>> sure Jerry isn't saying the officers killed as a matter of pure fact since
>> there's no physical evidence to really prove the officers were there,
>> rather just very strong motive. Take a look at Jerry's statement again and
>> see if you agree. If not, leave the way it is.

>>
>> Thanks,
>> Adam

>> On Thu, Jul 23, 2015 at 10:36 PM, Benjamin Cotner [REDACTED]

>> wrote:

>>
>>>
>>> I will do a last pass and draft an email for you, Lisa, to review and
>>> send in the morning.

>>>
>>> Adam, I am kind of worried that this note goes contrary to the direction
>>> we've been pushing them in. I've been under the impression that we are
>>> desperate to say that someone else could have done it. I'm afraid that if
>>> we tell them to soften something it is going to really confuse the
>>> filmmakers. Is there a specific element that you think is overly

>>> subjective? I don't think subjective is necessarily bad, but if it is
>>> completely unfounded then you might be right. Let me know what you think
>>> and I will happily add if that is what you meant.

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>>> On Thu, Jul 23, 2015 at 10:27 PM, Adam Del Deo [REDACTED]
>>> wrote:

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>>>> Ben/Lisa:

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>>>> This episode made great progress and, for me, after a long period of
>>>> years I feel like it's finally starting to take great and impactful shape.
>>>> Agree with your notes, well done. Just one piece of feedback to add before
>>>> sending.

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>>>> - 20:33 - 20:57 - In this sequence, it feels like Jerry Buting, on an
>>>> almost definitive basis, is accusing the officers. Although I think the
>>>> officers have the strongest motive, I think Jerry's statement come across
>>>> at fact. ..they thought, for sure, we're going to make sure he's
>>>> convicted." It may be worth soften his statement so it doesn't come across
>>>> so subjective.

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>>>> Ben, can you add that.

>>>>

>>>> Great work - this is going to be a great series.

>>>>

>>>> Thanks,

>>>> Adam

>>>>

>>>>

>>>>

>>>> On Tue, Jul 21, 2015 at 8:18 AM, Benjamin Cotner [REDACTED]
>>>> wrote:

>>>>

>>>>> Notes on Episode 3 Fine Cut in the Deck
>>>>> <https://docs.google.com/presentation/d/1SJPtq2miuPcUCufUD-iDpAVUbJlfdAzKFgzCltczDJw/edit#slide=id.ga29c94257_0_31>

>>>>>

>>>>> Also pasting text here in case you can't read the deck where you are:

>>>>>

>>>>> Structure notes:

>>>>>

>>>>> Cold Open Changed...The new cold open is great, really turns the
>>>>> tables on Steven with the \$450k payment being cancelled and law enforcement
>>>>> closing in on him. And the music really drives it home!

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>>>>> Preliminary hearing is getting tight. Great

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>>>>> Good closing - very clear that Brendan is being forced to testify
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>>>>>

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>>>>>

>>>>>

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>>>>>

>>>>> 3:30 - Music is great - really ups the stakes.

>>>>> -

>>>>>

>>>>> 10:30 - Music under news clips is effective, really keeps tension

>>>>> up, especially after the poignant moment of SA saying "poor people lose" -

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>>>>> done it - too many. Maybe lose Yvonne?

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>>>>> 13:30-13:50 - People seem to get confused between the \$450k

>>>>> awarded by the legislature (before being cancelled) and the \$425k

>>>>> settlement from the \$36m lawsuit. Maybe a simple graphic could track

>>>>> Steven's various avenues for recourse and each of their outcomes.

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>>>>> 14-1430 - Like the townspeople commenting in the pool hall, but

>>>>> probably one too many. The guy in the middle seems the least expository

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From: Adam Del Deo [REDACTED]
Sent: Thursday, July 23, 2015 11:37:24 PM
To: Benjamin Cotner [REDACTED]
Cc: Lisa Nishimura [REDACTED]
Subject: Re: MAM Episode 3 Notes

Ok w/ me.

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From: Lisa Nishimura [REDACTED]
Sent: Wednesday, July 10, 2013 5:32:48 PM
To: Adam Del Deo [REDACTED]
Bcc: Lisa Nishimura-Seese [REDACTED]
Subject: Projects!
Attachments: MAKING-A-MURDERER-AnEightPartSeries.docx; Making a Murderer - Eight Part Structure (1).pdf

They're trying to figure out whether we can push the overall start date past May, (would miss Emmy qualifying for 2013), or else restructure such that there is now episodes 1 - 7, and convert the final episode 8 to episodes 8 & 9 to be released at a later date. The beauty of our technology is that we can add new episodes at will. I just want to be extremely thoughtful to what this might do to the overall arc of the storytelling and how we would think about this from a marketing perspective, and to some degree awards qualifying perspective. Their concern is about being on location shooting in September, while simultaneously trying to work with three editors in post to deliver the rest of the program. Episodic detail attached.

**Non-Responsive-- This portion of email
relates to a completely different,
confidential Netflix project**

Speak soon.

Lisa

On Wed, Jul 10, 2013 at 5:11 PM, Adam Del Deo [REDACTED] wrote:

> Got it. Thanks. Call whenever you're free. If can't pick up (because Jim
> may be in front of me), I will call you back asap. Talk soon!

>

>

> On Wed, Jul 10, 2013 at 4:25 PM, Lisa Nishimura [REDACTED] wrote:

>

>> Let's discuss. . . bringing you into the loop of the day to day.

>>

>> ----- Forwarded message -----

>> From: Eleonore [REDACTED]

>> Date: Wed, Jul 10, 2013 at 10:38 AM

>> Subject: Re: Making a Murderer - 2 questions and finalizing term sheet

>> To: Lisa Nishimura [REDACTED]

>>

>>

>> Ok Not a reshoot but additional shooting- episode 8 is either an epilogue
>> that brings us yo the present or a more ambitious investigation of who may
>> be behind the murder - we plan to shoot for 3 weeks for that and obviously
>> that affects the timeline of post and delivery (especially with the
>> subtitling and dubbing).
>> Any suggestions to alleviate delivery date or elements would be very

>> helpful.
>> Tx!
>>
>> Sent from my iPhone
>>
>> On Jul 10, 2013, at 10:19 AM, Lisa Nishimura [REDACTED]
>> wrote:
>>
>> Hi Eleanore,
>> Super to hear from you. Will get back to you on the preferred sub and sub
>> houses today. Delivery is a little more challenging as we post all eps up
>> at once. Which episode requires a reshoot?
>>
>> Best,
>> Lisa
>>
>> Apologies for the thumbs - sent from my iPhone
>>
>> On Jul 10, 2013, at 10:11 AM, Eleonore Dailly [REDACTED] wrote:
>>
>> Hi Lisa:
>>
>> I know you're slammed. I left you messages with 2 questions and things
>> are rather urgent on our end if we want to dive into full post next Monday.
>>
>> 1 - Netflix preferred vendors for subtitling in the required languages
>> and dubbing (Spanish and Portuguese) so I can call and get pricing for that
>> part of the deliverables
>> 2 - Delivery date for all 8 episodes - Moira and Laura would like to
>> discuss the date - they'd like to shoot for Emmy consideration but are
>> concerned about the very tight schedule to deliver all 8 - can we push the
>> date, or is there a way that we can stagger episode 8 delivery (it's the
>> one that requires additional shooting).
>>
>> I think there were a few points from Ron in his previous comments that
>> should be easily addressed.
>>
>> We're ready to go and finalize the term sheet so we can move forward and
>> meet the tight deadlines.
>>
>> Thanks!
>> Eleonore Dailly | Executive Producer
>> Film Invaders
>> [REDACTED]
>>
>>
>>
>> --
>> Lisa Nishimura
>> VP, Content Acquisitions
>> [REDACTED]
>> [REDACTED]
>>
>
>

--
Lisa Nishimura
VP, Content Acquisitions
[REDACTED]
[REDACTED]

From: Benjamin Cotner (Google Docs) k+ <MTA0OTQzODk5MTIyOTc2Nzc1MjQx-MTA0NjYxNTU3MzMzMjMwMDI1OTYz@docs.google.com>
Sent: Sunday, July 5, 2015 6:30:03 PM
To: [REDACTED]
Subject: WORK IN PROGRESS - Making a Murderer Breakdown

Benjamin Cotner added comments to WORK IN PROGRESS - Making a Murderer Breakdown
(<https://docs.google.com/a/netflix.com/presentation/d/1SJPTq2miuPcUCufUD-iDpAVUbJifdAzKFgzCltczDJw/edit?disco=AAAAAQ24mT0>)

Lisa Nishimura

| The testimony about this phone call and report (which we touch on several times throughout the series) is confusing - could a graphic help chart the related events and make it less necessary to keep repeating the story? It feels like they really land this with the linear time graphic between 1995 and the day after SA is released. Are you proposing that we minimize repetition and rely primarily on the testimony where the graphic is presented?

Benjamin Cotner

I will try to clarify this - I'm talking about the need to chart out the connection between all of the various law enforcement officers when this call comes in. The timeline is clear, but who knows what gets really muddy.

Reply (Reply

<k+AORGpRdka3mHrN9VIgfJxivGdsF_TTmbmdxH3ZF4LhVzhU4qFRzhP_HDGdAeZqlbhDgZ8_mtaNOn@docs.google.com>)

Open

(<https://docs.google.com/a/netflix.com/presentation/d/1SJPTq2miuPcUCufUD-iDpAVUbJifdAzKFgzCltczDJw/edit?disco=AAAAAQ24mTw>)

Lisa Nishimura

| Is it worth considering using the new evidence (pubic hair) as a cliffhanger. So, ending after we know that S.A. is innocent, but before we know that he is going to be freed. This would obviously require changing the cold open, but would create a very tight Episode 1 that pulls the audience back immediately for more.

Alternatively, should there be a more direct ending that makes it explicit that in the next episode the cops are going to seek revenge?

We should have a really tight Episode 1 w...

Emphasize the relationship between Sheriff Tom Kocourek's wife and Penny B. Motive.

I agree that ending with the statement that out of 12 pubic hairs it came down to one. . . is a great cliffhanger. Will need to advise on best way to cold open Ep 1 if we decide not to resolve directly to exoneration in Ep1.

Benjamin Cotner

I'm adding the emphasis on the Sheriff's relationship with Penny down in the detailed notes.

Reply (Reply

<k+AORGpRe1ob52ILcsiV2Gb4BprocxmHSK-IEXhznqbs0aaVspLUEmcGaU5wIP0mSi1Rez5uj_smW@docs.google.com>)

Open

(<https://docs.google.com/a/netflix.com/presentation/d/1SJPTq2miuPcUCufUD-iDpAVUbJifdAzKFgzCltczDJw/edit?disco=AAAAAQ24mTk>)

Lisa Nishimura

| Maybe it would be better to bring some of the innocence project's explanations about why this was so egregious from Ep10. It would help clarify the fact that Michael O'Kelley is supposed to be working FOR B.D. and also deal with it in one place instead of multiple times. And ending on

such deep analysis of the issue is somewhat anti-climatic. Splitting it up between this section and the motion for a new trial would possibly be more efficient.

I would love to discuss and explore how we can bring the clarity of Steve Drizin and his team into the earlier episodes without disrupting the flow of reveals.

Benjamin Cotner

I agree, I think here and the hearing for the new trial in 8-9 are the most natural places since they are primarily talking about Brendan's coercion.

Reply (Reply

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Open

(<https://docs.google.com/a/netflix.com/presentation/d/1SJPtq2miuPcUCufUD-iDpAVUbjIfdAzKFgzCltczDJw/edit?disco=AAAAAQ24mT0>)

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what Google sends you.

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Episode 5.

SUGGESTIONS:

CURRENT:

Cold open:

- Drop sexual assault charges against S.A.
 - Day 1 of trial.
 - Opening statements (a lot about VM messages)
 - Det Jacobs call (do we have a body?)
 - S.A. questioned about T.H.'s appointment.
 - Bobby says he was asked to help get rid of body.
 - Debate about VMs.
 - Judge blocks from talking about other suspects.
 - Dean asks about roommate.
 - Ryan H admits to figuring out her password.
 - Boss (Sheriff?) says to search Avery property.
 - Review of finding Rav4 and what followed (Pam)
 - Dolores shows us where the car was found.
- Cliffhanger: Colburn testifies about calling in the license plate before the Rav4 is discovered.



Episode 5 - Detail (57:50 min)

08.28.2015

00:58 - Should the card say "develop a NEW chemical test"?

20:52 - The addition of music under Bobby Dasse's testimony when he says, "I saw Teresa walk toward Steven's trailer" is really effective! Can we explore the use of this subtle, almost subconscious use of music in other key testimony, (e.g. Ryan Hillegas testimony or Fassbender testimony when he admits that he did not question Scott the roommate). Given the density of the testimony footage, it would be a good technique to further employ.

27:00 The much abridged interview with Dolores and Allan after the Bobby Dasse testimony section is far more effective.

28:00 "In a pre-trial hearing about a third party liability, Judge Willis rules that the Defense cannot offer any alternative suspects to be jury by name except Brendan" - Is there a way to simplify this card? The audience may, perhaps, need just a little more clarity on "third party liability." Please consider.

42:45 - With re: to Jerry, do we need to hear him give follow up commentary say "this was a peculiar witness"? It's pretty obvious Hillegas a peculiar witness via his testimony.

47:52 - Like the cards saying that Earl gives permission - this helps!

54:20 - Setting Colburn up as the potential cop to plant the car works really well now. Sensational and strong end to this episode.

Episode 5 - Detail (57min)

PREVIOUS NOTES:

This episode has come a long way. The new edits around the blood vial are much improved, however the top of the episode still feels very slow to start because of the opening statements, but once the ball gets rolling it uncovers a lot of the evidence. It is doing a much better job of painting the picture that there were several other potential suspects who were not investigated.

What is the context of him saying "If the defense wants to put forth their defense then they do so at their own peril."? This statement feels clunky, out of place and perhaps unnecessary.

07:05 – Buting and Strang discussing the jury questionnaires – they're frustration is coming through in an almost pissy/sarcastic way and feels pretty long.

8:30 – Something bumps in the cut of Dolores watching the news coverage, something missing in the stitching to make it a convincing cheat.

Episode 5 - Detail (cont.)

09:00 – 09:50 – Check the chyron - it reads Feb 12, 2005 first day of court. I believe this is meant to be 2007. Do we need the b-roll of the empty courtroom and the press room? Music scales up over this rather than over people entering courtroom. As a result, it lulls back down before Kratz' opening statement.

09:50 - 12:45 – Kratz' opening statement goes on a long time and seems to meander a bit.

Review to tighten - specifically?

11:45 - Please recall at this early stage - they don't know if a body is involved in this case, was to find Teresa Halbach - remove. Go straight to the photo & remembering the humanity

12:45 – 13:00 – Do we need the judge giving instructions not to discuss the case?

15:30 – “Both were questioned about their own activity and conduct with respect to Mr. Avery's imprisonment.” Is there a sound byte here that references that this is in relation to the older rape charges? The year is easy to miss and this could be confusing for people not really familiar with the timeline.

15:30 – 19:55 – All of Strang's opening statement is really important, but look at tightening – even tiny trims will help. This much talking in a courtroom begins to make for a really dry episode. Perhaps music could help? This episode is naturally so courtroom heavy that we need to try really hard to help people through it.

Episode 5 - Detail (cont.)

23:15 – Great cut between Bobby Dassesey testimony and the news coverage – and the music nails it!

26-27:00 – Well cut/music works to show the press' doubt on the Bobby Dassesey testimony in contrast with the Judge's ultimate decision not to call a mistrial or instruct the jury to disregard. Would look to have the music hit slightly harder w/the card stating that the judge does not call a mistrial or direct the jury to disregard.

28:20 - How important is it to have this interview w/Dolores and Allen re: Bobby Dassesey? She says, "half of that stuff isn't even true, implying that half of it is - feels too vague to make a point."

36 – 36:45 – They are arguing about whether or not the judge will allow the cell phone testimony in front of the jury, but we don't see his decision.

37:30 – 38:15 – Strang's comments seem a bit preachy and obvious – do they really further the story or raise a question that the material doesn't naturally raise?

49:00 – Did Pam and Nicole search the junkyard after the Sheriffs got the Averys' permission? Did Steven give them permission?

53:00 – The Tammy Webber information is interesting, but without knowing who she is or how much weight this holds it could be confusing. Do we have more information on who she is or should we consider taking this out?

The Colburn ending is terrific! - can we add music to help emphasize further? He goes from being so sure and then is caught in a clear lie about the origin of the car make and model.

Episode 5 - Detail (cont.)

Question - where are we utilizing the Teresa Halbach home video of her talking about life, and how she would feel if she died now? Is there a strategic place to put within this episode or do you have plans to utilize strategically elsewhere? It's extremely powerful, particularly once the viewer has established a connection.

It should be knowable when Teresa made that video. Do we have that information? Could we accurately lay it within an episode to coincide with the actual events of that time.

Was it ever administered as evidence in the trial? If so, when?

CURRENT:

Cold open: Card says one day after Brendan's arrest there is a press conf. Kratz describes how S.A. instructed Brendan to cut T.H.'s throat. Police search residence and garage for new evidence. Kratz claims physical evidence now makes sense.

Episode 6.

SUGGESTIONS:

- Bullet found in garage - Lenk was present.
- No T.H. DNA found in trailer or garage.
- Bobby only thing placing her inside.
- Skull fragments.
- Sherry: blood on bullet matches despite botching
- Defense tried to have labwork monitored, denied.
- Everyone reiterates there would have been blood
- Bones and barrels conversations.
- Bloody hair in trunk.
- Timeline debate (Bobby D, bus driver, Scott T.)



Cliffhanger: School bus driver has a different timeline than Bobby. Lawyers explain that the prosecution still hasn't put forth a theory about when and where she was killed.

Episode 6 - Detail (60 min)

08.28.2015

Approx. 9:40 - Let's discuss a graphical timeline in this area to clarify key points of evidence/milestones being laid out from the Fassbender questioning and testimony? Lots of facts coming so this could provide a stabilizing effect.

13:20-14:22 - Please consider trimming down Allan entering the courtroom here.

17:46-18:15 - Possibly cut down this montage of b-roll.

29:57-30:35 - Buting's commentary is weak here - he doesn't make his point articulately and we spent so much time in court with him arguing this already that this seems redundant. Can we cut Jerry's post follow up (Specifically, the "...they think we're a bunch of country bumpkins" section. But, again, ideally all of it.)

Close:

We would love to discuss the close. Coming off of the extraordinary cliff hangers in episodes 4 & 5 with the blood vial and Colburn on the stand, the relative weight of Lenk just taking the stand feels a little light. Can we discuss if there is a little more weight we can provide around the Lenk narrative, the close feels a bit abrupt.

Episode 6 - Detail (59min)

PREVIOUS NOTES

- Opening chyron - propose to change to read that Kratz and Pagel HOLD a press conference (versus held) to keep it present tense.
- 1:20 - Music at end of Kratz' press conf is fantastic.
- 08:02 - Good sound design punctuation on the end of Remiker's testimony, can we further add a musical cue when it's confirmed that Remiker saw Lenk on the property?
- 16:20 - Do we need this press conf from Kratz? Seems it would be powerful to go straight to photo of Teresa.
- 22:24 - Possible to trim down people entering courtroom/walking around press room and get straight back to Sherry?
- The entire burn barrel testimony is still very long.
- 46:00 - **Dorothy and Allan visiting Steven; is this scene necessary?**
- 48:37 - 49:39 - Buting isn't very concise here. Is it possible to do some dialogue trims and get him to the point faster?
- 58:45 - Are there too many quotes at the end? Could we end with Buting's line "I'm still waiting."? That might achieve the same result as "Spring it on us at the last minute.", but without the redundancy.
- You've just come off terrific cliffhanger closes with the blood vial in ep 4, and Andy Colburn caught in a lie in ep 5. Comparatively, this close doesn't feel as impactful or urgent. One suggestion would be to pull up the open of 7, eg Manitowoc police being on site when they weren't supposed to be part of the investigation.

Episode 6 - Detail (59min)

key moments of testimony where music cues can be added:

- Ryan - 1) has Teresa's vm pw 2) can't remember what time of day he saw Teresa last
- Sherry Culhane - 1) confirming that Fassbender specifically asked her to try to find DNA of Teresa in Steven's trailer. 2) Her deviation from protocol. 3) She never found Teresa's DNA in Steven's trailer AND also did not find Brendan Dassey's DNA there either
- Scott Tadych - after he is so confident about the time he left (2:45), then Dean has him read his statement to police 16 months earlier, time is 3:15 and the flames are 3 ft. versus 10 ft.
- Bobby Dassey - testimony about being so confident that he and Scott ident one another precisely at 2:45, but under oath say that the two of them did not coordinate or talk about this statement.

Episodes 1 & 2 (Pilot) – A Challenge to the Status Quo

- We have the assembly that you have seen
- We have notes that we would like to address from screenings we have held and from editors
- We would like to get any notes from Netflix that you have at this stage before diving back in
- We have new footage and many new archival photos from our recent trip to Wisconsin that are ready to be worked into the cut
- Our upcoming fall shoot will provide footage that we need for the re-cut

Episode 3 – Plight of the Accused

- We have the assembly that you have seen
- We would like to get notes from Netflix
- We plan to get other feedback and incorporate footage from our upcoming trip before re-cutting

Episode 4 – Indefensible

- We have several scenes cut
- We have pulls for different characters' arcs and story arcs within the episode
- We have reviewed transcripts of all relevant court dates and phone calls
- Our upcoming fall shoot will provide footage that we need for this episode

Episodes 5 & 6 – Challenging the Evidence & Truth on Trial

- The multi-camera courtroom footage for all the key witnesses is synched
- We have selects pulled for the most important witnesses
- We have selects pulled for out of court material for the trial
- We have Steven's case file including crime lab reports, police reports and 1700 "crime scene" photos scanned, reviewed and selected
- We have 1st cuts of a few sequences

Episode 7 – Lack of Humility

- We have 1st cuts of several scenes
- The multi-cam footage from Brendan's trial is synched
- Pulls have been made for key witnesses

Episode 8 – Fighting for their Lives

- Brendan's 5-day post-conviction motion hearing is synched and marked
- We have researched the relevant news reports for the Kratz's sexting scandal, including the raw audio of an AP reporter's interview with Kratz
- We have done three shoots with Steven's fiancé Sandy (1 sit down, 2 verité)
- We have done one shoot with Brendan's appellate attorney Laura Nirider of the Center on Wrongful Convictions and have discussed additional shooting at the Center with her and her colleagues in action
- We have done one post-verdict shoot with Pete

- All of these shoots have been reviewed and marked
- We have lawyers in Wisconsin working on getting us in to shoot with Steven and Brendan
- We are looking into the procedure for getting access to the blood vial for testing.
- We are reworking the outline and planning shoots for the Winter and Spring

From: Lisa Nishimura <[REDACTED]>
Sent: Saturday, June 21, 2014 7:12:49 PM
To: Laura Ricciardi <[REDACTED]>
Cc: [REDACTED] Moira Demos
[REDACTED]
Subject: Re: Spoke with Steven Avery

Wow incredible news!! We can't wait to hear how the phone call went last week. We're just back in town from a week on the road and look forward to scheduling a time to come see all of your progress! As always, thank you for sharing.

Best,
Lisa

Sent from my iPad

On Jun 21, 2014, at 6:58 PM, Laura Ricciardi <[REDACTED]> wrote:

Dear Lisa & Adam,

Good news, Steven was able to add us to his call list at the new facility. He called us this past week, and we spoke with him for a half hour.

We plan to continue to the calls and record interviews by phone.

Also, we spoke with Steven's former lawyer, Jerry, who had recently visited Steven. The three of us discussed the idea of re-testing the bloodstains found in Teresa's car. Jerry is researching the current state of the science involved and possible labs - including our Texas lead - that could perform the necessary tests. We'll keep you posted.

In other news, we plan to move into our post facility next weekend and we'd like to find a time for you to visit.

Best,

Laura & Moira

Synthesis Films LLC
www.synthesisfilms.com

[REDACTED]
[REDACTED]

From: Marjon Javadi [REDACTED]
Sent: Thursday, November 20, 2014 5:59:01 PM
To: Lisa Dennis
[REDACTED]
Cc: Lisa Nishimura [REDACTED]; Adam Del Deo [REDACTED]; Zana
Lawrence [REDACTED]
Subject: Making a Murderer Notes - Eps 1-4
Attachments: MakingaMurdererNotes_ep1-4.pdf

Hi Team,

As promised, attached please find attached our feedback on the first four episodes. We look forward to discussing and getting the second editor on board as soon as possible.

Please let us know if you have any questions.

Thank you,
Lisa, Adam, & Marjon

TO: MAKING A MURDER CREATIVE
FROM: NETFLIX CREATIVE
RE: MAKING A MURDER NOTES - Episodes 1&2, 3, 4
DATE: November 20th, 2014

MACRO NOTE:

Making A Murderer has all of the components to be an epic series with the potential to engage global viewers and to potentially affect public opinion over these two live cases. From day one we've been captivated with this unbelievable story and the incredible level of research, access, and information you have successfully amassed over the years. Currently the public appetite for crime based non-fiction has never been more primed. With the strong cult following of crime radio programs including "Serial" beginning to explode and our internal knowledge of an extremely high profile field/courtroom crime series set to debut in the marketplace in 2015, the opportunity and stakes have never been higher. Making A Murderer has all the elements to be the best of the lot, the story itself and surrounding footage is an absolute treasure trove.

The macro note is that the elements are all there, but the organization, structure and pacing of the parts needs to be re-examined and elevated entirely. The story begs for a more sophisticated editing style which will provide for an immersive and all-encompassing experience for the viewer including deft and unexpected foreshadowing of key elements, pitch perfect call-backs of evidence and breathtaking reveals.

We believe it's of the utmost importance to identify and employ the primary editing role at this time to address episodes 1 - 4 while you continue to shape episodes 5 - 8.

Critical Editor Suggestions:

1. ROCK PAPER SCISSORS TEAM - Angus Wall (SOCIAL NETWORK, GIRL WITH THE DRAGON TATTOO) and/or Grant Surmi (Cut TABLOID for Errol)
2. James Haygood (THE LONE RANGER, SEVEN, UNSCRIPTED) - loves docs
3. Kevin Tent (GIRL INTERRUPTED) - very interested in docs.
4. Fernando Villiena (EVERY LITTLE STEP) - Strong and accomplished doc editor.
5. Paul Crowder (DOGTOWN, ZBOYS)
6. Brad Fuller (S.O.P) - Cut many Errol Morris docs. Solid and steady.
7. Andrew Hulme (THE IMPOSTER) - Accomplished editor.
8. Chris Figler (MAD MEN, BIG LOVE, UNSCRIPTED) - Loves docs.
9. **As requested, waiting on additional MOM editor suggestions from directors

OPENING TITLE SEQUENCE/GRAPHICS/VFX: Currently, we need a great opening title sequence to establish a strong visual identity for the series. As we have discussed and agreed, finding the right person and/or company to handle the work with the critical eye to

create a heightened look to the overall series. Please provide resumes of those candidates who you'd like to consider. We'll do the same on our end to provide resumes as well of those we recommend.

RHYTHM/BALANCE: Currently, the cutting style in the episodes feel novice at best. Overall, from episode to episode and from scene to scene, many of the the sections feel out of balance as though they don't have a symbiotic relationship. In other words, there lacks an overall cohesiveness. Some sections seems overdeveloped, and others come across underdeveloped, and others simply go on too long. There needs to be an elevated approach to this terrific information - the effect should be heightened, intense, and entertaining. Further, should also drive and hold dramatic tension. Again, let's work to bringing a new expert editor to enhance the great work that has already been established.

GRAPHIC LOWER THIRDS TEXT: By using designed font or other VFX design, let's try to identify and mark all the various characters, specifically the sheriff's department staff so the audience can track all individuals throughout. In the last pass, often we would have to stop the take to make sure we were understanding who the characters were and if we had already seen them earlier in the series. Again, the use of cool ID/lower thirds text will help this tremendously.

DRONE PHOTOGRAPHY: The opportunity to use drone photography is exciting. It gives a new cinematic feel to the junkyard. However, currently it feels like its clustered on pods and used in an arbitrary way. In the next pass, let's discuss how to best strategize the drone footage for it's strongest impact. Let's explore utilizing them as a strong, strategic transitional devices.

MUSIC: Currently, it feels like sometimes the music works, sometimes it's off, and other times simply too slow of a pace. All in all, we do need to get a composer on board that understands a thriller atmospheric score.

EPISODE 1 & 2

GENERAL

SET UP: This first two episodes of the series plays as a compelling narrative with amazing twists and turns. The disconnect is the set up of the episode and where it ends - the beginning does not allude to what the chapter/episode will be exploring and feels muddled in the middle.

CHARACTER(S) INTRODUCTION - We want to understand how each person comes in and out of the story and their role, instead of it feeling like interviews are just inserted; let's make sure each "lead" character has a straight-forward introduction (perhaps a title card) and then

consistently labeling them throughout the story. The consistency of the characters can be marked as transition points to help the audience keep everything straight. Sometimes who is involved with what feels confusing as the story progresses.

INTRODUCTION: The first five minutes gives us a peek into how this town has treated the Averys before the crimes. However, instead of having the first thing heard being everyone's impression of Steven, it may be more powerful to have Steven be the first voice the audience hears, for example when he is talking to Jodi in jail from episode 3 about how he is wrongly accused.

Let's also tighten up the beginning. In the next pass, let's try to make clear distinctions from section to section and create some transitional devices. An example is the section prior to meeting Sandra Morris for the first time. Once we meet Sandra Morris we should try using a transitional device to demarcate that we are moving into a new section of the story.

EPISODE 1 AND 2 (currently in one episode) - Further down in the notes we suggested times to potentially split the episode. It currently runs at 1:18:03. Where is the break for episode 1 into 2 in the first cut? Suggestions given in the specific notes below.

CHAPTERS: There are 4 key parts of this section that lead up to Teresa's murder: The police/community's dislike for Steve/Averys, the public exposure allegations, the Penny Beernsten rape allegations, and then Steve suing the county. When revisiting we should establish these chapters - at the moment, it feels like a long run-on sentence rather than beats of an arc.

RUNNING TIME: As discussed, let's revisit the running times for each episode (notably the pilot). Let's generally target 90 minutes for two (45min each).

SPECIFIC

2:33 - There's a weird sound jump here. Check this spot with sound.

5:23-6:42 - We should perhaps use a tape deck when we are hearing Steven Avery talk throughout the series. It should be a stylized tape deck something that is unique and interesting for this project. The first time we should use it is when Steven Avery is giving testimony about Sandy Morris. Specifically, when he says he is upset with her that she was spreading rumors about him.

8:30 - Do we have any great family pictures of the Avery's here? Let's make them look like a very happy family.

11:05 - Are there any pictures of Sandy Morris and Susan Dvoreck together? This would establish them as very good friends.

12:00 - Perhaps show/cut an intense scene of Steven being arrested here.

12:47 - "Seven months after Steven's arrest" - This should be a transition card rather than subtitle.

16:28 - What are they showing as the background before introducing the image of Dean as Steve is on the phone - why not show Dean at the beginning?

19:10 - Do we have any shots of the town getting rabid about the trial? Newspapers, TV clips, or other witnesses separate of the defense attorney talking about the town? Better to see than just hear Reesa Evans.

19:35 - Who are the police? The lawyer says that the police told the sheriffs county that they have the wrong guy but it's not certain who the police are.

23:04 - Cut back to Steven when his dad says "I didn't do it!"

20:30 - We need to make a clear distinction between the Manitowoc police department and the sheriff's department. Is there a visual aid they can help us with this? Let's discuss.

23:25 - It should hit harder when Steven is convicted to 32 years in prison. That should really hit like a ton of bricks.

23:31 - We don't need this much of a set up to the prison. The images feel repetitive.

25:12 - "If I didn't I'd admit it right away" - maybe play this at the beginning of the pilot as we introduce Steve, giving the audience a voice to hear. Hearing/Seeing the accusatory is a strategic mechanism to draw an audience into the story of the character who may be wrongly accused.

29:30 - Can we see some of the excerpts described in the court of appeals? If we are showing some of the court of appeals statements, it might make them resonate more.

31:32 - Card re: Wisconsin Innocence Project - can we get more context what it is so the audience is aware of what they do?

32:33 - Gregory Allen "hit" should feel bigger, not subtle.

32:40 - Let's show the process, legally, of Steven Avery getting out of prison as opposed to just showing him walking out. Let's build up of this and instill a little delayed gratification in the release of Steven.

34:20 - Let's show more verite scenes of Steven when he gets home from prison - let this play out more.

34:33 - A transitional card going into Reesa's statement that the cops didn't apologize or acknowledge their mistake would make this feel smoother.

35:05 - Do we have anyone separate if Reesa that knew the Sheriffs' we're pissed that Steven got off?

36:29 - Good lead in to highlighting Denis Vogel. Any footage of shots or documents of Dennis Vogel trying Gregory Allen two years before the Penny Beernsten case? We need better visuals here when we are hearing Vogel had to have known it was Allen.

38:57 - Let's introduce the Avery Task Force on a stronger note to highlight what it does so it doesn't get lost in the lull of his accusations later on.

39:34 - Penny Beernsten statement is very strong. Let's hold a beat here.

40:00 - The photos of Steven and his family feel displaced. Also, the music tonally feels like it's off. Generally, it's an awkward and disjointed scene.

40:30 - Label WI State Rep Mark Gundrum.

41:30 - We need a graphics sequence here - let's explore and discuss.

44:43 - This could be perhaps a good place to technically end episode 1.

48:00 - This could be an alternative place to end episode 1: at the end of the deposition about Andrew Colborn's telephone call about Gregory Allen.

49:30 - How do we, the audience, know Colburn was contacted? Why does Colburn even mention it? Did it come up from the person who called him? This is confusing.

52:00-56:00 - The pacing feels slow. We get that the Manitowoc branch is under scrutiny. It shouldn't feel this long.

52:27 - The evaluation (Deposition October 26,2005) runs so slow. Is there a way we can set this up in a swifter manner? It lulls.

55:00 - Seems very thin that Colburn not having specific knowledge of who called him would be the key to the case. Who called Colburn? No email? Not fax? Could they track the call? If you are Colburn, why even disclose?

56:30 - This could be a cut off point as well for Episode 1 into 2 - when Teresa Halbach is stated missing.

57:36 - When Teresa is speaking about whenever she dies - this feels like this is a solid intro into episode 2 or 3 / whatever the next cut would be. Let's discuss.

1:00:00 - is there any raw footage of Steven's reinterview that's on the news after Teresa Halbach was murdered? Very interesting that Steven invites the police into his house without hesitation. Would be great to see the raw footage around that if the new station still has it.

Music is weak over Teresa Halbach's mother. Let's revisit and strengthen it.

1:02:00 - The Halbach search feels like it could be more kinetic. Let's look to add energy into this section.

1:03:29 - Pam Sherm's call should have subtitles.

1:04:19 - "Do we have a body or anything yet?" - no "y" in the subtitle for anything.

Note: We see the police video inside of Avery's home, but we should have a card to preface that it was not warranted and out of nowhere.

1:09:25 - This was a good card regarding the Avery's not allowed to be on their property for 8 days.

1:09:40 - Better music over this scene.

1:12:25 - Transitional card to segue into the evidence found

1:15:40 - This cop is unnerving and this is a powerful scene. You hear in the cop's voice how accusatory and manipulative he is. The fact that he says "they know nothing about you (Steve)" is unveiling.

EPIISODE 3

GENERAL

INTRODUCTION - The segue from the first two episodes into the third flows, but let's explore reframing it and establishing more of a solid, concrete introduction into episode 3. Perhaps replay that clip about Teresa speaking about dying at the beginning of the episode? It sets an ominous tone that juxtaposes Steve's voice later on the phone with Jodi telling her he wants out and to move out of town.

CHARACTERS - Will we learn more about Brendan and Jodi's respective background in their relationship with Steve as the series progress? It would be great to know a bit more about their characters to understand why Jodi is undoubtedly loyal to Steve and why Brendan fell into this, perhaps, misleading state. Let's also explore inserting a formal title card when lead characters are introduced (i.e. Dean Strang) to highlight the importance they play in the series and the case.

B FOOTAGE - Certain set up images and anecdotes feel repetitive. Let's revisit so certain scenes and statements don't lull the pace. For example, having the series of relatives say he's innocent throughout the episode feels tiresome. The scene where the parents read the letters highlights the opposing viewpoints of what the town thinks vs what they believe. That is strong enough - we don't need to later see his mother and brother distressed about his incarceration.

ENDING - We like that it ends close to Brendan's statement "What if it's different" to his mother, regarding his version of the story vs. Steve's. This propels us to be curious about what will happen next in the state.

SPECIFIC:

2:33 - Leading into the courtroom can be cut in half.

8:40 - Insert a transitional card before his parents' statement.

10:48 - The scene of his brother in the bar can be cut out. We get it, the family believes he's innocent.

15:03 - Transitional card needed.

16:16 - Steven on the phone with Glenn - are there different images we can use leading up to Dean Strang entering the building?

19:53 - "I hope the truth comes out on this so we can find out who did it." Hold a beat after this statement is said. It's powerful and supports his innocence and sympathy for Teresa's death.

21:23 - Is there anything we can use/show to clarify whether or not the cops had a warrant to search his property and allude to the fact that they may have planted something when they were there without permission?

26:19 - Cut straight to the courtroom (27:13) instead of watching everyone pile into hear Brendan's verdict.

32:53 - Transition Card / Insert the card that is at 33:17 here before Jodi is picked up from jail.

44:26 - Reesa Evans' statement should transition into the cops interrogating Jodi and Brendan. Don't need Yvonne's statement. Begin again at 45:53 with Jodi's statement and then the interview conducted by Detective Mark Weigert. Too many of these statements that are saying something similar (aka Steve is innocent) slows down the pace and we want to let this scene with the cop and Brendan play out.

53:59 - This is a key moment in this episode and the case when Brendan says "because I didn't think of it" after the cop points out he didn't mention Teresa was shot in the head. Let this sit a beat.

57:10 - When Brendan says: "what happens if his story is different...they got into my head" - this is a moment to hang onto to further suggest the story is unclear from all parties involved against Steve Avery. Hold this beat to let it sink in.

EPISODE 4

GENERAL

INTERROGATION: Brendan's interrogation during this episode serves as na intricate piece to the truth of the accusation of both him and Steven. We see from both Tom and Mark their manipulative ways to spin Brendan's reaction into something that is more positive on their end (ie. Steven being guilty) vs what the reality may be. Especially at 30:56 where they use his relationship with his mother to manipulate him telling a potential falsehood. These interviews and his conversation with his mother need to be intercut more effectively.

PACE & TIGHTENING: Again, a new editor can help push forward the pace and intercut Brendan's interrogation in a more thrilling and dramatic manner: to include his appeal for a new lawyer, and the conversations with his mother - once claiming he's guilty, once not. Also the blood being found and the needle add incredible elements to this case. There is so much

good content in this episode that pushes the story forward, we need to feel that forward movement more.

TONE & TENSION: Needs to feel more intense and atmospheric. In other words, we need to hold more tension since, currently, it feels flat and lags in spots as we go through Brendan's interviews and discourse.

SPECIFIC

22:31 - This is a turning point here - Brendan not putting Teresa in the statement.

25:16 - The interrogation scene with Brendan and Mike O'Kelley could've moved much faster. Understandably you have to hold beats at times, but it felt too flat and elongated.

33:32 - After this conversation with Brendan and his mom, let's hold a beat and include a title card to the next chapter.

43:59 - Date and title card here before Barb speaks to Brendan.

46:14 - This dialogue between Brendan and his mom (Barb) highlights Brendan's vulnerability and how easily manipulated he can be. This is great to have.

47:09 - Before we go into the explanation of Brendan's letter being submitted, can we have a card prefacing what we're about to dive into?

54:12 - Loren's statement is effective, but feels out of place: "That perfect murder story." Is there another place in this episode we can insert her interview of why the Steven Avery case is compelling?

1:04:40 - This section about the blood in the car (with none of Avery's fingerprints in the car) should be earlier in the episode. We want to rapidly build up to this moment because we become hooked then Steven Avery may have been framed.

1:15:45 - Let's hold a beat on the image of the needle hole in the test tube. This is the major turning point.

From: Lisa Nishimura <[REDACTED]>
Sent: Friday, February 27, 2015 11:35:13 AM
To: Moira Demos <[REDACTED]>; Laura Ricciardi <[REDACTED]>;
[REDACTED]; Lisa Dennis <[REDACTED]>
Cc: Adam Del Deo <[REDACTED]>; Marjon Javadi <[REDACTED]>
Subject: MAM: Notes v2. Pilot Episodes 1-2
Attachments: Notes_Pilot_v2.pdf

Hello Moira, Laura & Lisa,
Hope this finds you all very well! Attached please find our notes for discussion on v2. Pilot episodes 1-2. Looking forward to connecting this afternoon and digging in.

Best,
Lisa

GENERAL:

The cut continues to show strong progress. The introduction of key & additional characters earlier in the episode create a level of investment and intrigue for the viewer that is quite effective. Further you've done a great job establishing the city and county areas surrounding Manitowoc, and the socio/demo dividing lines which become a character unto themselves. Stronger set up of Steven, particularly childhood photos and the way you establish his IQ level is extremely helpful in informing how he might uniquely process everything he is about to encounter. Also the addition of the interview with the woman who was assaulted by Gregory Allen while Steven Avery was wrongfully behind bars is extremely powerful in expressing that the mis-policing affected far more than just Steven.

As previously discussed, these notes are provided based upon what we have seen to date. We believe that we all understand that the timing & pacing of information reveals in any given episode may shift depending upon outer episodes, that said let's dive into this latest cut of the pilot episode.

SET-UP: This new cold open is working more effectively to show Steven coming home after his first exoneration. In addition, we better understand Sandy Morris' role more in the initial "alleged danger" of Steven Avery. Great job ending on 1:38 with "Be careful, Manitowoc County is not done with you." - it sets the tone well.

OPENING TITLE SEQUENCE: The goal would be for this opening title sequence to be unique and iconic. We like the direction, but would like to explore further.

TRIAL OF PENNY BEERNSTEN: We need to get through the trial of Penny Beernsten faster. The beats can't lag. It needs to move in a swifter manner where the audience is getting fact after fact.

MACRO/END: For discussion once the outer episodes are more established, do we currently give 'just enough' information about the possibility of how Steven's blood may have arrived in Teresa Halbach's Rav to compel you to the next episode? or should we tip a hat a little more to the idea of the tampered blood vial. Currently, the main reference is Steven's vehement interrogation tape saying that tons of his blood was taken during his incarceration. Similar note for the discovery of the key. Let's note to discuss once 3-5 are more solidified.

PILOT TIMESPAN:

We'd like to have an open discussion about the best way to introduce this series to viewers. Over the past year, we have all grown very accustomed to the notion of the combined episodes 1 -2 pilot, however given the level of complexity - from sheer number of characters, to the 2-decade+ span of time, and the extreme detail of evidence that is being presented to a first time viewer, we'd like to discuss strategically whether the narrative is best expressed as two separate episodes. There are moments when the density of detail feels rushed, and perhaps the breathing room afforded by two full and separate episodes may better support this level of ambitious storytelling. Again, we have the great benefit of our distribution platform where all episodes will be made available simultaneously,

therefore the traditional notion of an extended network/linear pilot is not required in the same way.

Part of us feels if we're going to treat this as a true crime procedural and get into the nitty gritty details of the court scenes, which for true fans will have some appeal, we should split the pilot into 2 proper episodes and allow the nuance and details of some key testimonies to show the extreme bias and frankly in some cases - pretty damning testimony coming out of some key law enforcement. If we feel its smarter to keep the 2-ep extended pilot, then we think we need to push for more editing and pacing at the cost of losing some testimony nuance. Let's discuss what's in the best interest of the story.

If we ultimately feel the combined 1-2 pilot is the better route, we should be more selective about which court scenes are necessary and how much of these scenes need to be played out to have the impact the audience needs - it's incredible footage to have for such a story, but allowing them to run in an extended way can, at times, hinders the audience's ability to digest the facts and react. In other words, we would want to examine a further edit to the scenes while retaining the vital information and dramatic impact.

MUSIC: Confirming that overall the music is still temp. The score will have an incredibly powerful effect throughout every element of this series, so let's make sure to be highly aligned on the vision overall.

SPECIFIC:

3:53 - Can you ground the viewer on where within the trial Judge Fred Hazelwood is speaking at this point? It's floating a bit temporally. Also, can we make a stronger connection to his association to Steven's run-ins with the law from the outset. We see at 1:00:06 his name pop up on Gregory Allen's file again - let's find a way to provide more of a specific indicator with respect to his involvement is with the characters.

5:00 - Ident modern day Sandy Morris as she looks so different now.

11:20 - Review for repeated photograph usage, this photo is used multiple times as noted below

12:25 - Review for repeated photo usage.

14:28 - Great job setting up his family and transitioning to what's next.

14:51 - Not necessary to say "Penny was the fitness instructor at the YMCA here in Manitowoc," The line feels shoehorned. Further, this is mentioned later in the cut that Penny works at YMCA. (is this specifically to justify why she is jogging on the beach?)

16:29 - More context on Walter Kelly? Was he involved with the trial or investigation around Penny Beersten? Why did we choose him to be an appointed interview? Perhaps we can apply an extended descriptive note on these characters and their connection to the situation they're describing.

22:00 - Who is the male v/o in this section - is it an actual radio news reporter? Ident.

22:08 - Third time we're seeing the same photo used.

25:13 - Let's specify that he's the attorney for this case at the time.

25:32 - This excerpt on Gregory Allen - can we play this out a bit more?

22:42 - Consider pulling the shot of Steven's dad in the golf cart during this transitional sequence. He looks so much like Steven at certain points of his life, that it's a bit confusing particularly as it follows his sister saying, "it was so out of his character but people wanted to believe he did it b/c he was an Avery".

27:00 - Assuming that we'll be working to refine the graphic treatments of timelines.

27:45 - 4th time we see the same photo.

30:00 - Who brought Penny Beernsten roses in the courtroom before the verdict is rendered?

40:00 - Review music bed under the new DNA evidence and battery of evidence to make it even more extreme when he is denied his appeal by Judge Hazelwood.

43:00 - Just a note that for some of the Steven phone call recordings - they currently pan 100% to the left. (We're sure this will be adjusted in final sound mix, just an FYI).

46:54 - Can we have more context on the Wisconsin Innocence Project - even if it's a quick flashcard?

47:40 - Cold DNA hit; key point of elevated music / dramatic pause.

50:40 - typo - Michael Griesbach (MI)

52:23 - This is a key moment to highlight regarding discovering Gregory Allen's history and how it may have been overlooked. The underscore music helps heighten this moment. Can we get to this part quicker?

1:00:40 - Here too where we see fact after fact about all the preceding clues that would've pointed to Gregory Allen to be, at the very least, put on trial instead of Avery - we need this to move faster and for the audience to be feel shocked by what has just been revealed rather than listening and processing. The revelation and how appalling the ignorance is should have a harder hit - and this can be achieved by a quicker pace and this point expressed sooner rather than later. We're now an hour into the pilot and still haven't wrapped up the first misled conviction.

1:06:54 - Better transition into Steven Avery walking into court with his fiance. It's a monumental moment for him and for what his identity stood for pre-Teresa Halbach, post-Beernsten release. Let's set it up a bit more - perhaps a card before.

1:09:33 - 1:20:58 - The chapter of Steven's filing a complaint and bringing the officers (Kocourek, Vogel featuring Rohrer, Colburn, Petersen, Kusche and Dvorak) to court highlighting how they essentially ignored evidence that suggested Gregory Allen was guilty over Avery as well as almost curating Steven's conviction runs way too long. It holds important facts but could be a quick 2-3 minute scene ending with the Steven's lawyer summarizing all of this up by saying, "They made the case against Steve Avery themselves." (which he says at 1:20:58). We don't need 10 minutes of courtroom dialogue - instead, let's find a way to showcase each person, prime dialogue stated, and move forward to the next. At it's current length, we lose sight of the "why" of this scene. 1:35:33-1:36:00 provides a solid timeline of all those deposed - let's use this sooner.

1:26:00 - Timeline for Andrew Colborn phone call re: Gregory Allen - update graphic.

1:26:45 - Odd swell of music under Griesbach's testimony on Colborn.

1:32:10 - Music doesn't feel quite right.

1:33:45-1:33:48 - The junkyard scenes intercut here feel out of place.

1:30 - 1:34 - Key courtroom case where we're hitting a peak moment for Steven where all the evidence is lining up in his favor to support a big civil suit, and even Glynn describes it as a high - let's really work with the pacing of edit (and music) to make this an extreme high, and then huge visceral transition with the introduction of Halbach. Can we replace the static low-res images of Vogel and Kocourek with moving images of them that freeze for effect?

1:34:22 - Hold a beat here before transitioning into the tape of Teresa leaving a voicemail on Avery's machine. This is the next chapter of Steven's story. We should discuss the best way to transition from winning his complaint to what's about to happen next.

1:35:20 - This particular scene where Teresa Halbach talks about dying before 30 is perhaps one of the eeriest. Is it more effective to have it placed here before transitioning into the search for her, or at the end of the episode to leave it with a bit more of an eerier effect?

1:35:30 - Update timeline graphic.

1:45:45 - Who is in that quick shot with Kent Kratz right after he says he's there to abolish any concern for conflict of interest?

1:47:12 - The cop saying "We should take all of those shoes in case we have any unsolved burglaries with foot impressions" will leave an audience speechless as well as set up the audience being skeptical over whether Avery is guilty in a new scenario. Who is this female officer?

1:48 - Review the music here for more impact. Provide viewer with some context of connection with Mishicot and Calumet County in relation to Manitowoc.

1:54:00 - Odd hold on young male journalist during press conference.

From: Marjon Javadi <[REDACTED]>
Sent: Monday, March 9, 2015 10:52:52 AM
To: [REDACTED]; Mary Manhardt
[REDACTED]; Lisa Dennis [REDACTED]
Cc: Lisa Nishimura [REDACTED]; Adam Del Deo [REDACTED]
Subject: Making a Murderer Notes Ep 6 v1
Attachments: MaMNotes_Ep6v1.pdf

Dear Team,
Attached please find our notes for Episode 6. Looking forward to discussing later today.
Thank you!
Lisa, Adam, Marjon
Marjon Javadi

Originals, Documentary and Comedy

[REDACTED]

[REDACTED]

[image: AgdHAae.png]

MAKING A MURDERER

Ep 6 v1 / 3.9.15

GENERAL:

Length: This episode is an hour and 30 min. While the court scenes are captivating we need to ensure that we're providing the essential evidence, of which there is a bounty! Let's trim where we can to ensure continued engagement and keep the pace and transition in a way that we don't lose folks in unnecessary detail unless it will play into key evidence in later episodes.

We're in a lot of detail until at around minute 39, we speak to the fact that they're at day 18 of testimony & provide a summary of facts to date via the defense attorneys. This is a welcome organizing moment to help the viewer ground all of the testimony, but let's make sure that viewers get there and are not lost before.

As an example, Dr. Leslie Eisenberg: Forensic Anthropologist, her testimony in particular is important and thoughtful, but comparatively very boring and lulling. Can we cut directly to her admitting that she can't reasonably support that there might be more than 1 burn site? When combined by the later testimony of Dr. Scott Fairgrieve: Author of "Forensic Cremation Recovery & Analysis" saying that he actually finds the evidence to be more supportive of the theory that the body was burned elsewhere and brought over is powerful. We need to really build and hold this moment.

Pete: An overall note as he appears across multiple episodes. Can we do something to help further substantiate who he is and why his POV is valid? He does such a good job of providing context and articulating just how out of normal protocol and extraordinary the investigation has been to date. Let's make sure he is substantiated and believable based upon his past history.

Opening Credit Sequence: Let's discuss today next steps for the graphics treatment.

Beginning: Instead of just the date, can we provide another line of context of who and what we're about to see? It's important that these cards reset the scene for the viewer, especially to remain consistent from where the viewer left off in the previous episode. Also to relabel the characters at the beginning.

Avery's Parents: It's heartbreaking and effective to have this up close look at parents watching their innocent son in this situation. However, it feels that we're leaning in on Avery's parents too much overall. For example, we don't need the scene of Steven's dad talking about how much blood a deer holds. Please revisit overall.

AMOUNT OF QUARTS OF BLOOD: During the testimonies, there seems to be a different number. Please review just to be sure.

SPECIFIC:

7:33 - Relabel Steven's lawyers here. Again, to have them relabeled at their first appearance at the beginning of each episode will be helpful for the audience, even if some of these characters are consistent in each.

17:40 - 17:55 - Can we label these exhibits? Where/what? Even if there's someone describing at certain parts, it'll be helpful to both see and hear.

45:00 aprx - in this area, the testimony of Linda Eisenberg starts to really drag. The defense attorney, Strang, drags in his line of questioning as well, specifically, in his summary of events at approximately 47 minutes. We know this is an important narrative, however is there perhaps a way to make this just as impactful, but also more concise.

52:19- 55:00 - Feels like this section is lagging a bit overall. Can see if maybe speeding up Dr. Scott Fairgrieve testimony will help? It's important information but, again like Eisenberg, could if possible, use some tightening.

1:06 - Brendan Dassey's testimony section feels long - if possible, perhaps an area to tighten. Please revisit.

1:09:00 - Love the character of the woman bus driver, Buchner. She gives impactful testimony and comes across very credible.

1:12:03- The transition into FBI witness, Lebeau, feels very low energy. Can we explore ways to transition stronger into this FBI witness, maybe in a kinetic way? Since this is another significant witness, if we can transition into him in a stronger, more interesting way it should set him up better (especially for his statement at 1:15:35).

1:17:00- BIG QUESTION: Why would the FBI have a specific interest in covering up for and possibly aiding and abetting with Manitowoc County? Seems like we would maybe need to know that Manitowoc had some deep history with Lebeau/other FBI officials for them to testify in the case in such a subject manner. We are not saying we shouldn't do this arc, it just feels unlikely. This was something we bumped on. Let's discuss.

From: Laura Ricciardi [REDACTED]
Sent: Monday, March 16, 2015 9:55:37 AM
To: Marjon Javadi [REDACTED]; Mary Manhardt [REDACTED]
Cc: Moira Demos [REDACTED]; Lisa Dennis [REDACTED];
[REDACTED]; Lisa Nishimura [REDACTED]; Adam Del Deo [REDACTED];
[REDACTED]; Zana Lawrence [REDACTED]
Subject: Fwd: Making a Murderer - Ep 3v2
Attachments: MakingAMurderer-Ep3v2.pdf; [Untitled Attachment]

Thanks, Marjon.

Looping in Mary.

Sent from my iPhone

Begin forwarded message:

From: Marjon Javadi [REDACTED]
Date: March 16, 2015 at 9:27:39 AM PDT
To: [REDACTED]
[REDACTED] Lisa Dennis [REDACTED]
Cc: Lisa Nishimura [REDACTED]; Adam Del Deo [REDACTED]; Zana Lawrence [REDACTED]
Subject: Making a Murderer - Ep 3v2

Hi Team,

In anticipation to today's call, please find attached our notes for episode 3, version 2.

Looking forward to discussing.

Best,
Lisa, Adam & Marjon

Marjon Javadi
Originals, Documentary and Comedy
[REDACTED]



3/16/15

Making a Murderer - Episode 3 v2

As previously discussed, these notes are provided based upon what we have seen to date. We believe that we all understand that the timing and pacing of information reveals in any given episode may shift depending upon outer episodes.

GENERAL:

The cut for Episode 3 continues to show progress, however due to some pacing concerns, this episode feels long and can lose the attention of the viewer at several points. There are some incredibly vital themes, evidence and characters introduced in this episode, therefore we would recommend on the next pass that a strong focus be placed on tightening the pacing and re-calibration of emphasis at key moments for the viewer.

One macro element which may be leading to the slower pace and potential for viewer disengagement is the very abundant use of exterior shots during transitions. While these shots are beautiful and are very helpful in providing a sense of the season, and the economic disparity of the county, we would recommend reviewing their frequency. In particular, the Avery Salvage Yard exterior shots are shown repeatedly during nearly all of the telephone call v/o's from Steven in prison. We would ask that you take another pass and work to provide more visual variety during these calls in a way which may even further support the subject matter of those calls. As an example, there is a great opportunity during the first call between Steven and Barb Yanda after news breaks of Brendan's arrest (~ 39:00) where instead of shots of just the salvage yard, photos of Brendan as a child growing up, or sweet photos of Brendan and Steven and the family all together would further reinforce the sense of injustice and calamity. This phone call starts as hostile as one can imagine and somehow ends warmly, with Steven saying, "I love you" to his sister. Let's try to visually support this arc. Another opportunity for this is at ~19:00 when Steven is on the phone with his mother and it's clear that he's near the breaking point. He talks about giving up in 2 weeks, and it feels very ominous. His mother turns it around by reminding him that he's innocent and says she'll poke him in the nose through the phone, and now she's hurt her finger. They both laugh at this impossible time and there's clear sweetness and it sounds almost as though Dolores is speaking with a young child versus her adult son who is again behind bars. Can we get creative with something other than exterior shots? *One question – was there ever any home video footage of the Avery family, or did they only take still photos?*

SET-UP: Allan's line in the cold open, "We went through this 20 years ago and we're going through it now again" before the title sequence is very powerful. That said the very opening scene in the interrogation room with Steven is a little more confusing. Some of it may improve with a better audio mix, but I believe there is also a second investigator off camera in the room speaking/asking questions – so it's difficult to track the conversation and feel the full impact of Steven claiming his innocence.

PRELIMINARY TRIAL: Lots of new characters being presented with the State presenting witness after witness. You've made the decision not to identify characters, but rather create a montage of mounting evidence. It feels quite ominous, but then Walt Kelly's characterization of the evidence as

'thin' helps re-calibrate. I would hold a beat on his comment that it will cost a tremendous amount of money to mount the kind of defense that Steven will need. Strong foreshadow to Steven later settling with the Manitowoc police dept for a fraction of his civil lawsuit (\$240k vs \$36M) to cover these costs.

Making the BIG REVEALS Count: The big reveal in this episode is Brendan Dassey. The key elements feel like: 1) timing of how the police turn their attention from Jodi to Brendan 3 days after she puts in a formal request to no longer meet with the detectives who are attempting to turn her against Steven. 2) Brendan's incredibly suggestive video taped confession, 3) the fact that this is the 2nd time the police have interviewed Brendan, after a very benign interview four months before, 4) the fact that as a minor he is never provided with an attorney nor permitted to have an adult present during the interview, and 5) Dean Strange's pitch perfect articulation that to turn Brendan from a key defense witness and key alibi for Steven into a prosecution witness is a "two-fer".

These are massive moments that currently feel a bit too buried in the back of the episode, and rushed at the end. This may be resolved when the upfront pacing issues are addressed, but we want to make sure the audience gets to these incredibly riveting reveals.

MUSIC: The score will play a key role in foreshadowing, and helping to drive emphasis on key information and characters as they emerge.

PUBLIC OPINION VIA THE PRESS: We understand the importance of expressing how much of Steven's case felt tried in the court of public opinion via the press (e.g., through the way Steven was dressed "like he jumped off a Monopoly board" in court,) however we'd like to see if on the next pass we can trim up some of those pieces. E.g. – the scene in the townie tavern with Chuck playing pool. It's important to understand the divide and that there are folks who side with Steven and the notion of a police frame-up at this point, but this scene is an example of where we seem to run long.

NARRATIVE TWIST: Would like to discuss the creative choice of the narrative twist of "what would have happened if Steven wasn't wrongfully imprisoned for 18 years?". POV from: Reesa, Robert Hermann (under sheriff), Rep Marc Gundrum. . . is this to plant questions in the viewer? Similar question on the juxtaposition of Chuck Avery's character who is unwavering and willing to put up property etc., and then has a narrative v/o while working in the garage of whether Steven might have been a changed man after 18 years in prison and may have killed Teresa Halbach.

ENDING: Strong ending with Barb saying that if Brendan testifies against Steven he'll get 20 years + parole, and if he doesn't he'll get life without parole. Please see our note below.

SPECIFIC:

14:10 - 15:52 - Not sure if we need to see three different individuals at a bar all discussing they think it's Manitowoc county - it feels too long, maybe there is a way to cut it in a snappier fashion.

17:12 - 19:19 - The phone call sequence drags too long. Maybe we need even more cutaways here in order to visually pick up the pace. Let's discuss.

24:00 - When we cut to Steven's brother and mother, let's perhaps use a timestamp. It would be helpful to know how long Steven has been in there.

26:26 - This was a bumpy transition into Dean Strang and Jerry Buting. Rather than cutting to them investigating right out of the gate, perhaps a smoother way can be applied into introducing them.

31:45 - Stylistically, the shot of the police car lights and music has a strong, cinematic feel. Can we use more of this style and type of music, through the series?

44:30 - Jodi getting into the prison takes a long time - trim this section.

55:20 - The transition feels slow after the line "I'd be suing." Music was slow as well as the long cut images (fields and sheriffs office) feel slow. Let's cut quicker through this section.

59:11 - Dr. Larry White - "Professor of Psychology and Legal Studies" - where does he work, do know how credible he is? Does it make sense if we get a stronger voice instead like Alan Dershowitz?

Last 10 minutes - It feels like Brendan's testimony needs to be more dramatic and hit even harder than it already does. Maybe the score can help give the narrative an incremental lift. Also, since it's mentioned by Jerome Buting that Brenden describes the rape and blood, very curious to see the footage of that since it's suggested.

From: Marjon Javadi [REDACTED]
Sent: Friday, April 17, 2015 11:30:02 AM
To: [REDACTED]; Lisa Dennis [REDACTED]; Mary Manhardt
Cc: Lisa Nishimura [REDACTED]; Adam Del Deo
[REDACTED]; Zana Lawrence [REDACTED]
Subject: MaM Notes 107 v1
Attachments: MaM107v1Notes .pdf

Hi Team,
Attached are our notes for episode 7 version 1 - per our conversation last week, we look forward to reviewing the first pass at episode 8 to see how both play out together.

Looking forward to our call today.

Thank you -
Lisa, Adam, Marjon
Marjon Javadi

Originals, Documentary and Comedy

[REDACTED]

[REDACTED]

[image: AgdHAae.png]

GENERAL

You cover a tremendous amount of ground in Episode 7! As discussed on our call, we would like to review your first pass of Episode 8 to see if there is a way to allow a bit more breathing room for each of the distinct storylines (i.e. Steven's narrative and Brendan's narrative) across these last two episodes. Both of their trials and convictions feel like they deserve a little bit more of their own moments of true disbelief and shock to fully capture the gravity of each individual case. We believe there may be an interesting structural opportunity to intercut the two cases, playing with timing of the reveals to increase anticipation and engagement, all while staying true to the facts of the case. It could be a highly creative and effective form of storytelling and a compelling way to wrap the end of the series.

PACING: We know this is the first cut; lengthy trial material is always tricky to determine what must be included and what can be left out. However, one of two things should be considered. A. Either cut the total running time down which would involve a lot of trimming of both the prosecuting and defense attorneys (also, better use of intercutting the opposing sides of the table) B. cut the episode into two. First being Steven's Episode, and the next being Brandon's - If this were considered, to be clear there wouldn't be additional monies since conceptually the idea would be to divide them with minor impact.

MUSIC: In this version, it's underutilized. As this episode has a large opportunity to shape overall impact of the episode, look to punctuate musically in a more strategic manner.

AVERY TRIAL: Currently, with the closing statements being presented straight through at the top of the episode, it is not playing as immediately engaging or riveting as the previous episodes. We don't feel as emotionally connected, and the first real visceral connection to Steven is at minute 31:30 when his guilty verdict is read.

DASSEY TRIAL: This section is way too long and faces pacing issues. We know we need to get to points such as Fassbender manipulating Brendan, and hearing the voice recordings that clearly show he's being bullied. We should get through this in a much quicker manner so we don't lose the audience's attention. While all details are important, let's brainstorm a more efficient way to lay out this trial. For instance, at 1:21:00, we get to Brendan's confession and honest raw appeal that he didn't see anything - these moments are captivating and we need to feel a quicker anticipation so the audience can digest. The hour's pacing set up needs a refreshed approach.

BRENDAN'S STORY LINE/FAMILY : Per our discussion, let's find a better way to balance out both Steven's verdict and Brendan's verdict - Brendan's storyline and the information is all very powerful, especially his direct family element, but gets lost in all the information being thrown at the audience. Let's explore both the family ties as well as their resulting verdicts.

SPECIFIC:

11:50 - Dean Strang's statement here about Steven Avery being given reasonable doubt should hit harder.

12:28 - 18:07 - Steven's trial drags. Is there a way we can clip bits and pieces together?

27:38- 28:4 - Whose camera is this on Steven so intimately, interviewing him about how he feels about the length of the trial? Is Jerry interviewing him? Can we please clarify?

28:50 - Maybe we can add a music/momentum shift here since the decision is coming in - is there away to better build anticipation? Feels flat given the enormity of the moment.

29:00 - Strange image of man on phone in hallway with v/o of "20 hours of deliberation, the jury has a verdict." Perhaps switch this out.

31:58 - Guilty of murder. Non guilty of mutilating the corpse. Guilty of a possession of a firearm - when these verdicts are stated you see how Steve is genuinely distraught.

However, can the reading of the counts be more impactful. This is such a large moment and doesn't carry the emotionality weight it should. This the the moment of "Making a Murderer."

36:20 - Richard Mahler - excused Avery Juror: feels like there's much more that can be done with him. He makes a brief appearance later in the episode, but is there more to flesh out?

55:00 - The jury does not see the last 1 hour and 38 minutes of the recording. This last section of the tape includes when Brendan is informed that he is being arrested and when he talks to his mother.

Do our viewers ever learn why did the defense agrees to this? Does Barb Yonda ever get the opportunity to refute the testimony of the detective and tell the jurors that she tried to be present for Brendan's interrogation and was denied?

58:37 - It might be effective to intercut Brendan's confession with Ray Edelstein and Det. Mark Wiegert - seems like a great opportunity to elevate the piece with some creative editing.

1:00:23 - "We love the police" statement by Halbach's brother is a bit haunting. Are there more images we can of his family during this statement?

1:05:21 - Kayla's trial is one of the most powerful scenes. Great job.

1:09:32 - Brendan's trial begins. Can we get here faster?

1:17:44 - Brendan's statement here "I never saw her there," is a turning point - realizing there is a potential that it was all made up or manipulated by the police. How can we elevate this a bit more?

1:33 - Brendan walking on shackles should have music.

1:36 - Brendan's verdict is anti-climatic and not as emotional as it should be considering the investment into the series the audience has made.

1:36:32 - What is it here that Brendan's mom says when she gets out of the car before she leaves? Can we place subtitles?

1:36:56 - This is helpful. Let's also apply a summary card at 31:58 after Steven's verdict was decided.

1:44:00 - When Judge Willis states to Steven, "Society would never be safe from your crimes." - it's infuriating. Steven was innocent from his last eviction. Judge Willis is on the side of society - he's biased. How can we bring this out more?

That said, The fact that the judge doesn't mention Steven was wrongly convicted, is awful. Can we foreshadow the judge is biased, good or bad - maybe something more to be had with this? Again, that judge feel very biased - it's surprising and sad.

Making a Murderer - Ep 8 v1 Notes

GENERAL

COLD OPEN: Let's label whose home this is as we start showing the opening images. Is it Steven's home? Let's discuss other ways can we set up the episode before going into the credits.

SANDY GREENMAN: This is the first time we see Sandy Greenman. Although context is given to her relationship with Steven, we don't have closure with Jodi who was in the first few episodes. What happened to that relationship? Is there a statement we have of Jodi explaining the break up - even further, whether she believes he's still innocent? (we believe you're addressing in episode 4, but let's discuss). Also, the fact that Sandy hasn't had physical contact with Steven (until he is moved to Waupun Correctional Institution) is a shocking fact given that they're engaged. Let's discuss her introduction to the series and her significance in his life (along with her relationship with his family), and also calibrate how much screen time we want to allocate to her narrative specifically. Currently, she is a substantial part of the episode and we believe we may be able to pull back her overall narrative a bit while still having her role be incredibly impactful.

PACING: As discussed before with previous episodes, pacing is an issue. There's new information being squeezed into this final episode (Sandy, Brendan's case with the Innocence Project, etc). Let's figure out a way to create proper chapters so the storylines are interwoven as well as explore shortening certain court scenes and b-roll so information doesn't drag. In other words, many of the sequences feel long with run-on narratives. As a result the cadence of episode 8 feels inconsistent with episodes 1-7.

Episode 8 presents a meaningful challenge to deftly navigate a large expanse of time, as well as working to weave back and forth between Steven and Brendan's storylines. Given the sheer volume of information, as well as the climax of the verdicts and sentencing of both Brendan and Steven across episodes 7 & 8, let's explore how best to present those key pieces of information across these final 2 episodes. As an example, do we reveal the verdict for either Steven or Brendan in episode 7 and then the other in episode 8 along with sentencing for both?

NORTHWESTERN CLASS/STUDENTS: Please strongly consider removing the this entirely. While interesting, the students pov doesn't add authenticity to Brendan's innocence and tonally it feels like it belongs in a different film. Treating it as a classroom case study feels too basic and inconclusive. Brendan's defense attorneys are amazing and incredibly articulate - particularly Laura, Steven, Robert are powerful and remarkably effective at communicating the level of injustice that has taken place throughout the course of Brendan's case. Let them shine through this section - they bring great clarity and are very satisfying to watch. In parts the students pov dilutes the clarity presented by their instructors.

JUDGE ELLIS: Let's discuss how we can elevate his character at the beginning of the episode. We left off episode 7 seeing how biased he was against Steve - and it comes up again (at 45:00). He essentially is a key figure in preventing Steven's innocence to be explored.

ENDING: Currently, given the investment the audience has made in the 8 episodes, the ending feels anti-climactic. Perhaps there's new promising up-to-date information we can add that presents more of a light at the end of the tunnel, some hope, for Brendan and Steven, or work to amplify the positive turns (new defense team for both Brendan and Steven, Steven successfully moving to Waupun and educating himself and driving his own case effectively enough to earn a court appointed attorney). Further, stylistically how can we generate more anger and urgency. Using Steve's V.O. works very effectively throughout, can we build a bigger narrative around his own words for the ending? Also, it would be helpful to explain Tom Acquino's status on the case given how new he is to Steven's defense.

Also, we think doing a round up (eg., where are they now) of Kratz and all the investigators involved would be interesting. Our audience needs to be left not only feeling extremely upset and saddened for Steven and Brenden, but also incredibly angry.

To close, remember, we're looking for people to feel terrified and enraged; to feel as though it's their responsibility & need to discuss this case, to raise it in the social consciousness and to drive awareness and potentially a new legal look in the same way society did for The West Memphis Three. Leave the audience feeling angry!

SPECIFIC

6:09: This is the first time we see Sandy, as Steven's fiance no less. What happened to his other girlfriend? Why did she start visiting him? What was the initial connection?

8:45 - Is there a better transition we can use here between Sandy's interview and Richard Mahler's interview (rather than the dock?) Is there a picture at all of Sandy and Steve we can insert? (not sure that exists)

13:29 - Do we need this interview with Barbara here? It may be better suited for the end. What month is this in 2010?

17:13 - We don't need this much of a set up for Brendan's trial. It drags - let's cut to the trial instead of spending so much time on b-roll seeing people file in and get their bearings.

47:00 - Can we find a better way to transition into Kratz's misconduct?

49:08 - Again, we need a better way to transition out of Kratz being taken off the case because of his misconduct. These two scenes (Len Kachinsky being removed) feel too dropped in rather than strategically connected.

51:40 - Let's label Sandy's home here.

53:44 - This scene is really long and it feels that the information is familiar and not propelling the story forward. Perhaps there is a way to make this feel more kinetic in nature. Also, once it's been cut more efficiently, can we ID of the description/location/who's in this scene? Lastly, will we need to remind folks what "EDTA" is at this point in the story? Will they remember from previous episodes?

55:22 - Perhaps we can show a graphic here to visually see how both cases are parallel.

1:00:34 - He says "this much" and the subtitle reads "this one"

1:01:11 - Please label. Why is he revisiting Steve's house - under what context, when, etc? We need a stronger set up.

1:09:09 - 1:13:14 - This scene with Steven's mother and Sandy drags on and doesn't move the story along. Let's consider cutting.

1:15:01 - 1:20:55 - Per above, please consider removing this classroom scene from Northwestern analyzing Brendan's demeanor and status within the case. It feels irrelevant to the story overall.

1:15:50 - Another example, this professor explaining "what we look at when analyzing a confession" comes off rather overplayed and exaggerated.

1:22:55 - This scene of Steven's father walking around his garden, while sweet feels out of place and slows the pace. What's the underlying purpose?

Instead, cut to 1:24:20 with Steven talking about his dream of where to live and what he wants - it's showing shots of the garden that we were just walked through but let's see more images of him and his family and Sandy - let's create the hopeful tone for the life he doesn't have that he's yearning for.

1:24:13 - When in 2014 is this?

1:27:48 - Is there a better way we can say "Steven is in a maximum security prison" without saying "not super max" - to provide context of the difference of where he was before?

1:28:29 - When Sandy says here that she has never actually had physical contact with Steven, this is an important fact for the audience to know given that she's been labeled as his fiance the entire episode. Why is that fact stated here at the end of the episode rather than when we're first introduced to her character?

1:31: The last statement he says "I want my life but they keep on taking it" - this is the note we end the series on and it is powerful. Let's explore different imagery to use here and ways to lead up to this closing statement.

From: Lisa Nishimura [REDACTED]
Sent: Saturday, May 30, 2015 12:26:59 PM
To: Laura Ricciardi <[REDACTED]>; Moira Demos
[REDACTED]; Mary Manhardt [REDACTED]; Lisa
Dennis [REDACTED]
Cc: Adam Del Deo [REDACTED]
Subject: Making A Murderer Notes: Ep4 v2
Attachments: MakingAMurderer_Ep4v2_Notes.pdf

Moira, Laura, Mary -

Thanks very much for the great call yesterday. Attached please find the formalized notes, much of which we discussed live. As always, please do not hesitate to contact us with any questions. Looking forward to seeing how you propose to evolve from a single episode 5 to a 2-part episode 5 & 6 for that meaty trial segment.

Best,
Lisa & Adam

TO: MAKING A MURDER CREATIVE
FROM: NETFLIX CREATIVE
RE: MAKING A MURDER NOTES - Ep4 v2
DATE: May 29, 2015

GENERAL:

The overall narrative story arc of episode 4 is developing really well. Getting stronger and making solid overall progress!

PACING: Although much better than v1, the overall tempo still feels a bit slow on the whole. Wherever possible, pull in the slack. There are scenes proposed below that would be good to review. As VFX and overall visual language will start to take shape, this component will help deliver better information and tone and hopefully allow the pace to increase. As a result, the total run time should tighten.

COLD OPEN SET UP:

Power choice to open with the recorded phone call of Steven speaking about Brendan being only 16 years old and being manipulated by the police. You're immediately thinking of Steven with his voice, but he's putting your attention towards Brendan and setting up the episode on how their two fates are entwined.

Suggestion to consider, rather than having the entire call play out over a visual montage of the wrecking yard, could we instead incorporate childhood photographs of Brendan? He's such a physically big teenager, that sometimes one forgets that he's just a kid, and a mentally challenged one at that. Do we have photos of him doing child-like things? He talks later in the episode about sharing the same "favorite animal" to his defense attorney Len. He's in jail asking about watching Wrestlemania and clearly not understanding the gravity of his situation.

He's clearly viewing the world through an extremely childlike lens. It would be powerful and emotionally investing if we could visually establish his vulnerability out of the gate.

BRENDAN'S STORYLINE:

The psychology of Brendan over the course of time is a deeply engaging and vital core to this episode. You're providing the viewer with multiple opportunities to experience Brendan's nature, limited intellect, confusion and desire to please, particularly through the various video taped interviews with Fassbender, Weigert and later with O'Kelly. Interweaving the numerous phone calls between Brendan & Barb as the course of his case proceeds is extremely impactful as we are able to witness his extreme highs and lows, the inconsistency of his storyline throughout, Barb's attempts to follow along and support, and ultimately just how vulnerable they both are throughout this process.

In the next pass can we try to firmly establish Brendan's limited mental capacity in the way that Resa did for Steven in the earlier episodes. For the viewer, despite seeing strong evidence of his limited capacity, we believe it would really ground and

support the extreme level of exploitation and emotion around what is being done to Brendan if we could show that he has a recorded IQ of 70, or if there is someone like a teacher or a report which indicates that he is extremely shy, lacks confidence, is overly driven to please/overly-compliant and has extremely limited coping and cognitive reasoning skills.

The viewer understands this in episode 8 with Laura Niride clearly articulating that Brendan was confused throughout and could not tell at any given time whether he was talking to was his defense attorney or a police officer. Frankly given the behavior of his defense team, a persona of reasonable intellect would also be confused - so establishing that Brendan doesn't stand a chance is of great import.

Brendan as a Minor: later in episode 8 when we get to engage with Steven Drizin and learn so much about minors rights during these types of cases, however in episode 4 we're left not really understanding his rights as a minor. In an interview Len, his own defense attorney is saying on the news that it's not uncommon for a minor to be interviewed without a parent. Is this true?

LEN KACHINSKY:

This pass has done a much better job of establishing Len as an opportunistic media hound, and as wildly ineffective, and through what is perceived as a lack of intellectual rigor, easily manipulated and ultimately highly damaging to his own client, Brendan.

MICHAEL O'KELLY & LEN KACHINSKY:

The filmed interview and leading nature of Michael O'Kelly is remarkable and some of the most incensing footage in the entire series. You learn later in episode 8, that this is really the first domino which leads to the phone call confession that is the final nail in the ultimate conviction - therefore we need to really drive this home.

There is such an assumption of his guilt by Michael O'Kelly, despite Brendan saying that he didn't do anything, and it's painful to witness as Brendan goes to great lengths to try to please him. This interaction is so outlandish that it can be confusing to the viewer. Based on behavior, it's not illogical for the viewer to believe that O'Kelly works for the prosecution, and the first time I saw this scene - i had to rewind to make sure I read the chyron correctly (that O'Kelly was a Defense Investigator working for Brendan).

Without being too on the nose or pedestrian, can we explore a way to clarify to viewers that O'Kelly is indeed intended to be working for Brendan and what they're seeing is really that absurd.

JODI:

Jodi citing the times when when she called and spoke with Steven during the the time frame of the Halbach murder is powerful evidence, supported further by the fact that the calls were made from jail and recorded. Were these admitted to court? Did she testify in his case? If she did not testify, why?

JODI: Currently, it feels to take a lot of screen time up and gets a lot of attention, especially around 47-48 minutes. For pacing, please explore keeping only the most vital parts of her narrative. In the most efficient way, let's establish her devotion to Steven, and how she is being aggressively targeted by police so they can control her contact with Steven and ultimately how the police are successful in breaking up their relationship.

Let's see if we can also land the break up between them with a little more context. Currently the jump from Jodi's interview with the police officer about how she's trying to get her life on the tracks and how she now has a job to the call between Steven and (his brother?), when his brother informs him that Jodi has left him feels unnaturally abrupt. Perhaps through a graphic card, the viewer can better understand how long the police enforced the 'no contact' order, and how many times the police interviewed her before they finally broke them. (minute 1:07 on).

IMAGERY FOR CALLS:

We understand that there is likely a limited number of photos or alternatives for imagery to present during the key phone calls, however it would be great if there is any way to incorporate additional images versus pure outdoor montage.

Similar to the suggestion to add photos of Brendan as a child for the open, perhaps there are images of Brendan as a kid with his mom during their critical call when he tells her that he didn't murder Teresa and that he was guessing during his confession and that he is stupid. Also, when Steven has been told that Jodi has left him, and he says he has no reason to continue, is there an image of Steven and Jodi together that can be utilized?

CLOSE:

This close with the tampered blood is so powerful. Let's make sure we're nailing the accompanying music when we get there. Terrific scene!

MUSIC:

Vital to utilize score throughout to help with pacing, driving focus for viewer, foreshadow. We understand you're still in early stages so we will continue to revisit as this becomes more robust.

PACING:

Specific to transitions, particularly in the 1:09 range there are segments of outdoor which allow for a great narrative pause, but feel like they run longer than necessary e.g. Dolores driving in the golf cart.

Please also consider removing or meaningfully editing the segment of Allan in his study pulling the newspaper from the 1980's which is the vehicle for setting up the Sheriff Peterson narrative. We could get there more efficiently and impactfully. Pete's subsequent interview @ 1:12 does a very succinct and powerful job of reminding people of the history of the Manitowoc police dept when it comes to Steven Avery.

@1:17 Jerome does a terrific job of reminding the viewer of Peterson's personal history with Avery and how now as Sheriff he exerts a great deal of influence over the sentiment of his department.

SPECIFICS:

15:00: The Jerome Buting montage outlining the case to date and the holes in the prosecution's position is really terrific.

17:00 On May 12, Judge Fox rules whether Brendan's statements were made freely and voluntarily, and therefore will be admissible as evidence at trial. PLEASE CONFIRM - during the initial interview, the police say that Brendan's mom was contacted but not available to come. Later Barb says that no one ever attempted to contact her and she knew nothing about the interview. Doesn't Brendan actually ask for his mother at some point? Was this known to the court and wasn't it also the case that the entire interview was not presented to the court

42:00 - interesting introduction of the death penalty debate. Certainly relevant and powerful way of expressing the degree to which Steven is being tried in the media. Alan Lasee is an interesting character however his segment drags and dilutes the impact of this section. Please review to tighten meaningfully.

1:03: ironic that the only person who is really understanding Brendan's predicament and worrying for him, is Dean Strange who has no responsibility for the case. Nice scene that helps viewers feel like someone has eyes and a heart.

From: Lisa Nishimura <[REDACTED]>
Sent: Friday, June 5, 2015 11:57:00 AM
To: Moira Demos <[REDACTED]>; Laura Ricciardi <[REDACTED]>; Lisa Dennis <[REDACTED]>; Mary Manhardt <[REDACTED]>
Cc: Adam Del Deo <[REDACTED]>; Zana Lawrence <[REDACTED]>
Subject: Making A Murderer: Notes Ep5v2
Attachments: MakingAMurdererEp5v2_Notes06.05.15.pdf

Hello!

I hope this finds you all well. We are looking forward to our call this afternoon. Attached please find our notes for your reference.

Best,

Lisa & Adam

TO: MAKING A MURDER CREATIVE
FROM: NETFLIX CREATIVE
RE: MAKING A MURDER NOTES - Ep5 v2
DATE: June 5, 2015

GENERAL:

We understand the desire to break up the density of the trial which was previously encapsulated into a single episode (ep 5) into two separate episodes. Given the breadth and depth of the material, we think this is a good idea to explore, however we'd like to better understand the goal of the narrative for ep 5. It ends in quite an awkward way, with Colborn taking the stand and then cutting off. There are some incredible pieces of evidence which are introduced and shocking testimony, however the episode needs to further develop more emotional peaks and valleys to draw the viewer in more quickly, and to engage the heart of the trial, not just the facts.

PACING: We like the approximate 60 minute runtime, this feels right but the overall tempo still feels a bit slow on the whole. Further, music should help meaningfully to keep engagement during the trial episodes where so much of the episode will live inside the same courthouse. Also, wherever possible, pull in any unnecessary narrative. It's a helpful device to intercut the trial testimony with a post-mort POV from Jerry, Dean and at times Pete to set context and provide a change of scenery however try to make it feel more informational and, if possible, less subjective. As an example, the opening scene w/ Dean Strang and Jerome 6:43 - 7:45 feel too personalized and casual given the overall tone. Perhaps this can be edit better so the audience can hear their POV on the case but we lose the overall judgmental vibe and snarkiness.

COLD OPEN SET UP:

The close of ep4 is so powerful with the discovery of the tampered blood so we want to make sure to capture that same momentum with the cold open of ep5. It's now a little confusing to understand why the Defense does not want to utilize the blood as evidence when the viewer is left believing that it's the smoking gun at the end of episode 4. Is there a way we can help clarify the challenge more quickly and clearly?

TITLE SEQUENCE: Structurally, it feels like it comes up too late in the episode. It's a bit awkward. Let's discuss if it works better coming in around 3-5 min.

PROSECUTION / KRATZ:

There are a number of times when it feels like Kratz is completely obfuscating or intentionally misleading the jury, as an example the entire Bobby Dassey / Michael Odmonson (sp?) / Steven exchange re: burning of Teresa's body. The timing is entirely off when this conversation takes place and Kratz lies and says it is Bobby Dassey who introduces the timeline when it is in fact him. The actual full context of the exchange between Bobby, Mike and Steven is not properly revealed by Kratz. Later in the press release a reporter asks, "How can Kratz do that?". The result of this exchange is not entirely clear to the viewer. Was the jury asked not to consider the exchange? There was no mistrial called. It feels left unanswered. This needs further context and full clarity given the importance of this part of the case.

TERESA'S PHONE: First, why does everyone under the sun seem to have the password to her voicemail? How does Jerry Buting know that messages have been deleted? Was this pursued with the phone company? Can't one look at the phone records of incoming calls to better understand who was repeatedly calling Teresa prior to her disappearance per the testimony of Tom Pearce? Can the phone company see the source of phone number where calls were deleted on an account? Does anything come of the phone records or further review of activity on her phone?

BOBBY DASSEY / MIKE HALBACH / RYAN HILLEGAS:

They all give rather awkward and conspicuously vague and to some degree unbelievable testimonies. (e.g. Ryan not being able to determine the time of day or any of them giving credible answer why they know Teresa's vm pw). Are any of them ever considered suspects or are these odd testimonies ever further pursued?

Additionally, does Theresa's roommate Scott ever testify?
Does Michael O (Bobby Dassey's friend who jokes about burning the body) testify?

PRE-TRIAL PROCEEDINGS:

Some narrative clarity would be helpful in understanding the importance of whether the State will call Brendan. Technically, how much advance notice is required if any? Also, it is unclear why it would be in the State's advantage to drop 2 of the 3 charges against logged against him after his arrest: sexual assault & kidnapping? Please explain.

CLOSE:

Let's work on a stronger close leading out of this episode and into part 2 of the trial. As it stand, it feels like the end is awkward and abrupt.

MUSIC:

There is some good musical choices in the episode, some of which are highlighted below. However, vital to better utilize score throughout to help with pacing, driving focus for viewer, foreshadow. We understand you're still in early stages so we will continue to revisit as this becomes more robust. Also, very curious to hear the primary thematic piece that you'll be anchoring the score with.

SPECIFICS:

6:39 After the opening title sequence, give the fade-to-black a bit more time before coming up. Currently, it feels a little quick from the time of the end of the sequence to the first frame.

6:43-7:45 Jerry & Dean going through the jury candidate questionnaires is great. 1 out of 130 is a potentially unbiased jury candidate. But, again, feels tonally to subjective.

11:22 The font looks good, but the card and way the information on the card (ex. "4 counts") is laid out could be cleaner. The "-" bulleted the counts feels like it could be done better. Let's discuss.

13:04 Great verite shot of Ken Kratz entering the courtroom by walking AROUND rather than through the metal detector and the court police doing nothing about it. . . perfect visual set up for what is it to come.

Great line from Dean Strang in court, "with all due respect, the prosecution is supposed to be swimming upstream, it's called the presumption of innocence". Terrific at re-setting the actual law to the court and to our viewers.

15:00: The Jerome Buting montage outlining the case to date and the holes in the prosecution's position is really terrific.

35:12-35:18 The drone shot of the snowy road pulling away is great. Feels very lyrical and personal when set to the music and Steven's VO. Maybe look to replicate this feel/tone/aesthetic more in series, it works well.

42:00 ish Music is working well here.

42:55 Dean Strang soliloquy on the difficulty of this type of trial. v/o over shot of Steven looking a little smug - might be better to use a different shot?

51:05 The text card is tough to read. Bump up a font size.

54:59- Pam Sterm Testimony - would be good to contextualize the true size and scope of the junkyard and allow the viewers to really lean into the ridiculous notion that Pam & Nicole Sterm could possibly have found the Rav4 on their own. Can we provide the viewers with an instantly relatable reference to the size of the junkyard (e.g. what they managed to do is the equivalent of finding 1 out of 30,000 cars in 10 minutes on a piece of property the equivalent of 50 football fields. . .)

Making a Murderer

Status:

1. The series is amazing. It is a major accomplishment to lay out such a complex case in such a clear and suspenseful way.
1. Some structural & pacing challenges may not support full audience engagement for such a long view that at times gets very granular.

Goals:

1. Identify final overall series structure which supports the most impactful, compelling and revelatory storytelling, including:
 - Ideal number of episodes (9-10?)
 - Ideal length of episodes (recommending 50 minute target, no greater than 60)
 - Best opens and closes (see specific notes in Structural Breakdown).
 - Red Herrings.
 - Expand the emotional range for the viewer throughout the series. We want to feel the swells of hope, the rage of injustice, the horror of the defenseless. Viewers across the globe should be in tears and shouting at their screens throughout.
2. Music and gfx aren't being utilized effectively yet for the next pass we should take it to the next level and bring in reinforcements for the areas that aren't yet getting there.
3. With final overall episode structure in place, tighten each episode to most effective cut (see detailed notes).
4. Eliminate the storylines that aren't serving the greater good.

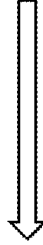
CURRENT:

Episode 1.

SUGGESTIONS:

Cold open: S.A. gets out of prison. Background that he was wrongfully imprisoned for 18 years. Cousin says: "Be careful... They aren't even close to being finished with you."

- S.A. files civil rights suit against Sheriff and DA.
- Jump back to Sandra deposition.
- S.A. background.
- Dispute with Sandra, S.A. charged with felony.
- Penny B is attacked.
- Police mishandle and Penny points to S.A.
- S.A. arrested, Sheriff keeps him from lawyer.
- Background on S.A.'s alibi.
- Information about Gregory Allen.
- S.A. found guilty.
- Hard on family. Parents stick by him. Lori leaves.
- New evidence - fingernails not enough.
- Pubic hair found. Matches Gregory Allen.
- Evidence of police misconduct.
- S.A. back to normal life, meets Jodi.



There should be a more explicit ending that makes it clear that in the next episode the cops are going to seek revenge. We should have a really tight Episode 1 with a strong cliffhanger that immediately engages the audience to come back for Episode 2. Currently, the suggestion that they might charge him with murder is very subtle and the audience might think everything is resolved. This line is impossible to understand without any context. (also could consider ending with the cliffhanger of whether or not the DNA matches S.A., this would be the ultimate pull-back for watching Ep2 but would mean changing the cold-open)

Cliffhanger: S.A. is released: "Don't bring a lawsuit against Sheriff's department in a community where you still live or you could get charged with murder."



Episode 1 - Detail (1hr 9min)

- 1:45 - we end the cold open with Steven's cousin saying, "Manitowoc County is not done with you, they're not even close to being finished with you". The viewer has yet to get their bearings - we should explore adding graphical treatment to these powerful words going into the title treatment.
- 21:00 - Emphasize the relationship between Sheriff Kocourek's wife and Penny B so that we establish a motive for him to interfere in the investigation.
- 31:47 - The fact that the police had been following Gregory Allen is established (somewhat out of the blue) during the investigation. This set-up seems to undermine the revelation later, when his DNA is matched, that the police had been following him and hid this information. It could be more shocking to reveal later in the episode who Gregory Allen was and how evidence of his presence was known by the Sheriff's dept.
- 37:15 & 40:55 - There are two chunks that both talk about the parents sticking by him. This is something we return to several times through the series, so we should just be judicious about which of these is the most effective and sufficient.
- 41:50 - The explanation of the appeals system might be unnecessary - we should probably assume the audience has a basic understanding of this.
- 45:30 - Stephen Glynn talks for a while about how the decision shows how much the system is weighted against the presumption of innocence, but we never see the decision for ourselves - is there a way to pull out a representative quote from that decision that could be shown while he is talking? He also talks about how S.A. pays a heavy price for not caving under pressure, but this is already really clear.

Episode 1 – Detail Cont. (1hr 9min)

- 51:00 - The exoneration of Steven should be a much more emotional turn of events. After 18 years it should be heartbreaking that he is finally out. Music and edits should build-up and pay-off in a much bigger way.
- - Public Integrity Bureau investigation report goes into a lot of detail and might be hurting the momentum of the episode's conclusion (over 4 minutes).

CURRENT:

Episode 2.

SUGGESTIONS:

Cold open: Homevideo of T.H.

- S.A. files \$36m lawsuit against Manitowoc.
- Civil suit trial.
- Police sketch mishandled.
- Legislature about to pay his \$450k.
- Colburn received phone call in 1995, no report.
- More testimony.
- City will be on the hook for damages.
- Teresa Halbach goes missing.
- Search party - they find the Rav4.
- Cop asks if they have S.A. in custody yet
- Calumet County takes over the investigation.
- Police search S.A.'s house.
- Manitowoc only used for support resources.
- Key found.
- S.A. is questioned and arrested.
- Keep S.A. away from lawyer. Lie about location.
- Kratz says the evidence hasn't been tainted.

The cold open of T.H. is very confusing and too far ahead of her disappearance to make the connection. Perhaps open with the image of the article saying that S.A. is suing the law enforcement agencies and Walter Kelly (Ep2 - 3:19) explains everything up until he says that it is for \$36m. And it would save the TH video to use later to greater effect during the trial (eg around Ryan's testimony).

The police sketch and Judy Dvorak scenes are explained in such detail in Episode 1 that it is less of a bombshell here. Would it make more sense to hold the reveals for this Episode?

The testimony about this phone call and report (which we touch on several times throughout the series) is confusing as it relates to who within law enforcement knows what/when - could a graphic help chart the related events and make it less necessary to keep repeating the story?

Cliffhanger: S.A. DNA on the key and in the blood. S.A. in handcuffs entering courtroom.

Potentially add Allan's quote from the top of Ep3 saying "They framed an innocent man just like they did 20 years ago" to the cliffhanger here.

Episode 2 - Detail

- 5:55 - What Walter Kelly is saying about the AG's report is very interesting, but he is very slow and unclear in his diction - probably it ultimately isn't necessary. It could even be as simple as saying "they felt like they were talking law enforcement to law enforcement so were fairly candid."
- 14:00 - The phone call that Colburn receives and the subsequent flow of information to other figures in the Sheriff's department is something we keep going back to throughout the series. It would really help to create a graphic that can be built on throughout the series as new information is added to this topic. It would really help keep clear what the connections are and highlight when new information is revealed. It could also help minimize the amount of time we need to spend explaining it multiple times.
- Also, is there any record that Gregory Allen was in the Brown County prison when they made the phone call to Colburn? Maybe add his mugshot from that prison to the graphic as well, to drive home the fact that they are letting a known rapist go free while Steven rots in prison.
- 17:30 - There is probably more testimony of the police that we need at this point regarding the phone call.
- 22:50 - This Michael Grierbach testimony doesn't really seem necessary.
- 24:00 - Who is the person who is circled in the courtroom clip?
- 25:00 - Not sure what the montage of courtroom exteriors and testimony clips is doing here. (55 seconds for just a short VO) - and this conversation about the impact on the city is somewhat redundant - it could probably be tightened.

Episode 2 – Detail Cont

- 27:20 - Stephen Glynn gives a very wordy and dry reveal that Teresa Halbach is missing. There should be a bit of a tonal shift and dramatic tire-screech when the bombshell is dropped that someone is connecting S.A. to a murder. He says it in an almost incidental way. Are there other options? News clips? Make this a visceral experience that a woman is missing and people are searching for her and the world is closing in on Steven.
- 32:30 - Search party lasts for almost 2 minutes. Maybe it could be cut down by 1 minute and have Mike Halbach's interview as partially VO instead of on screen the whole time.
- 42:40 - Not sure if we need the search party again since the car has already been found. It is clear that they are still looking for the body, but the focus now has shifted to the Avery property and since the search party isn't involved in that we could probably cut this entire minute out and get straight to finding the body and key.
- 45:00 - There should be more of a creepy, suspenseful tone when the bones and teeth are shown.
- End - Use lower-thirds to ID the cops that are questioning S.A.

CURRENT:

Episode 3.

SUGGESTIONS:

Cold open: S.A. denies and gets handcuffed in interrogation room. Allan Avery saying they are taking an innocent man and making him guilty just like 20 yrs ago.

- Start of pre-trial.
- Key wasn't there when they first searched.
- Court finds probable cause.
- Gov signs Avery reform. Discuss changing name.
- Media repaints S.A. a monster. Town reacts.
- Family gets hate letters.
- Judge sets bail high.
- Family visits.
- S.A. settles lawsuit to get money for defense.
- Halbach family files lawsuit to tie up money.
- Buting and Strang join - talk about police framing.
- Brendan is detained.
- Kratz details Brendan's version of crime.
- Jodi out, Chuck reacts, Allan says family torn.
- Brendan coerced and charged.

Since Ep2 ends with him shackled going into courthouse, is it necessary to have him handcuffed here? Other ideas would be to start with teasing the fact that the key wasn't there the first several times they searched the room or start with the media turning on S.A. - making him into a monster.

Cliffhanger: Brendan's mom says that if he testifies against S.A. he gets 20+ years with parole, but if he doesn't he could get life with no parole.

This is a great cliffhanger, but should drive harder on the fact that B.D. might testify against S.A. and is essentially being blackmailed to do this.

Episode 3 - Detail

- Opening - Use lower-thirds to ID the cops that are questioning S.A.
- 08:44 - Coverage of the Governor signing the Avery Reform Bill (and the state senator discussing) is definitely interesting, but it is a bit granular and might not move the story forward at all. This might not be information that the audience need and could save us almost two minutes.
- 13:55 - Chuck playing pool could be trimmed. The local woman and man giving the community perspective is good, but could stand on its own. This five minute chunk (including Steven's phone calls and Chuck in the junkyard) could be delivered in a few quick soundbites contrasted with the media coverage of Steven as a monster to show that there is a division of opinion between the establishment and the poor community. Could be really driven home if capped with Steven's quote (18:40) "Poor people lose".
- 19:19 - Do we need the scene of them visiting him in prison? We already get that the family is standing behind him and don't see why he would do this.
- 25:15 - 28:15 - Bringing in Strang & Buting should be a glimmer of hope and feel somewhat triumphant - here are two great lawyers coming to his rescue, but this three minute segment doesn't capture that. This could really be tightened up and enhanced by a good music cue.
- 41:56 - Jodi gets out of jail...is there any way to quickly establish earlier on that she has been in jail through all of this?
- 47:28 - Allan complaining about the loss of business and Chuck saying that he doesn't think Steven is guilty are both somewhat repetitive from other scenes - maybe a tighter version, but it feels like it might be overkill.

CURRENT:

Episode 4.

SUGGESTIONS:

Cold open: S.A. on phone over B-roll: "Brendan said all of this. I feel sorry for him...It'd probably make somebody look like a monster...Nothing good can come out of this.

It's tough to understand in a cold open what S.A. is talking about - there is too much distance between this call and the previous episode's material that gives it context. Would it be possible to tease something that is coming ahead rather than recap?

- New atty (Len) for B.D. - he is terrible.
- Jodi finds phone calls w/S.A. on day of murder.
- Eval. of blood and key DNA, evidence from car.
- Try to throw out B.D.'s confession.
- Len/O'Kelley push B.D. to confess.
- B.D. meets with police then calls mom.
- Police say easier to kill S.A.
- State tries to change death penalty, trial delayed.
- Jodi ordered not to see S.A.
- Family tries to get B.D. a new lawyer - denied.
- Judge tells Len to withdraw.
- Family check in.
- Recap of Penny B set-up.
- Lenk.

Maybe it would be better to bring some of the innocence project's explanations about why this was so egregious from Ep10. It would help clarify the fact that Michael O'Kelley is supposed to be working FOR B.D. and also deal with it in one place instead of multiple times. And ending on such deep analysis of the issue is somewhat anti-climatic. Splitting it up between this section and the hearing for the new trial would possibly be more efficient.

Cliffhanger: Blood vial is discovered to have been tampered with.

Episode 4 - Detail (1hr20min)

- 21:25 - Can the card identifying O'Kelly make it more clear that this guy is supposed to be helping Brendan? Would it also be out of the question to bring in the Innocence Project from Ep10 here to really explain why this was so egregious?
- 38:34 - The fact that media affects the jury is important could probably more concise - we get it. Might also be too much news coverage of whether framing is possible or not. It sets up the "We could just kill him" quote, but probably could be set up with just one or two quick clips.
- 42:00 - The death penalty conversation takes up a lot of oxygen. Is there any way to streamline it or lose it altogether? We already get so much about the jury being influenced by the media/culture. Almost five minutes is a big chunk when this episode is currently at 1hr20min
- - Dolores driving around the junkyard and the aerial atmospherics could all be tightened a lot. This four minute segment should probably be 30-40 seconds.
- - Pete talking about Manitowoc causing rape and they were most definitely biased to be investigating this case. It feels like this has been covered elsewhere?
- - This major dramatic moment of the tampered with vial being discovered could really have more impact with the right score.

CURRENT:

Episode 5.

SUGGESTIONS:

Cold open: S.A. enters courtroom. Buting discusses EDTA. Cards explain motion to exclude and judge denies and that State asks Judge to allow FBI to test for EBTA. Courtroom debate about EDTA testing. Judge allows testing.

- Drop sexual assault charges against S.A.
- Day 1 of trial.
- Opening statements (a lot about VM messages)
- Det Jacobs call (do we have a body?)
- S.A. questioned about T.H.'s appointment.
- Bobby says he was asked to help get rid of body.
- Debate about VMs.
- Judge blocks from talking about other suspects.
- Dean asks about roommate.
- Ryan H admits to figuring out her password.
- Boss (Sheriff?) says to search Avery property.
- Review of finding Rav4 and what followed (Pam)
- Dolores shows us where the car was found.

Cliffhanger: Colburn testifies about calling in the license plate before the Rav4 is discovered. Dolores drives around junkyard pointing out where they could have brought the car in.

Feels like Buting is stumbling over what he is saying in this cold open. Maybe something less technical in the open? Maybe something that would hint at another possible suspect?

Great cliffhanger, but the effect is dulled by having Dolores pointing out the layout of the junkyard. We would recommend ending the episode before the Dolores scene.

Episode 5 - Detail (1hr10min)

- 15:00 - Lots of b-roll of people entering the courtroom. Opening statements are somewhat unruly. Everything they say is interesting, but most of this is covered really well in other sections. It might be more impactful to hit one or two points on each side that really summarize the spirit of what is happening. It seems like the voicemail
- 19:45 - Buting really rambles in this section - we could probably massage this into a much more succinct summary of what to expect in the trial. (three minutes and then straight into their opening statement which reiterates many of the same points)
- 23:00 - Defense Opening statement has the same issue as the prosecution's. Together the opening statements take up the majority of the first 30 minutes.
- 30:40 - Shows S.A. being interrogated about making the appointment in Barbara's name. This occupies a large part of the opening statement also - is there a more efficient way to get through the fact that the prosecution was trying to make it look like he was hiding his own name while the defense says he has a valid reason. This also seems like a minor part of the evidence base and it is hard to illustrate what exactly they mean, so it may be worth trimming this debate out.
- 36:30 - Bobby Dassey's testimony about Steven asking to hide the body - this could really be clarified by a graphic so that it is clear why it is so important to know whether this happened on the 3rd or on the 10th. And why the prosecution acted so improperly.
- They mention that T.H. had been receiving harassing phone calls, but they never identify you the harrassing caller was. Surely they had the phone records ...can we explain who it was or why they couldn't identify that person if that is the case?

Episode 5 – Detail Cont.

- 41:00 - The debate about TH's voicemail inbox being full and how we know that some were deleted and who had access to the voicemails could all really benefit and be laid out more efficiently with a graphic - probably can replace the actual phone records which don't really convey any information. (this is currently a 7 ½ minute section, plus it circles back again with the ex-boyfriend's testimony)
- 56:30 - In the Weigart call, he references the "boss" called - is there a way to get across who exactly the boss is?
- - We don't really need the interrogation of S.A. about how the truck could have gotten in or the footage of Dolores showing us the area. It really kills the effect of the Colburn license plates bomb.

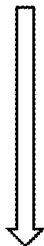
CURRENT:

Episode 6.

SUGGESTIONS:

Cold open: Card says one day after Brendan's arrest there is a press conf. Kratz describes how S.A. instructed Brendan to cut T.H.'s throat. Police search residence and garage for new evidence. Kratz claims physical evidence now makes sense.

- Strang & Buting disc. poisoned jury pool.
- Bullet found in garage - Lenk was present.
- No T.H. DNA found in trailer or garage.
- Bobby only thing placing her inside.
- Skull fragments.
- Evidence montage.
- Sherry: blood on bullet matches despite botching
- Defense tried to have labwork monitored, denied.
- Everyone reiterates there would have been blood
- Bones and barrels conversations.
- Coroner dismissed.
- Family check-in. TV might influence jury.
- Bloody hair in trunk.
- Timeline debate (Bobby D, bus driver, Scott T.)



The timeline conversation is important, but also confusing and might not be the best hook to end the episode on. Would it be worth hinting that there is evidence that Lenk (or the cops in general) planted the evidence so that is tee'd up for Ep7?

Cliffhanger: School bus driver has a different timeline than Bobby. Lawyers explain the timelines don't match up.

Episode 6 - Detail (1hr5min)

- 08:58 - Strang rambles for too long about the fact that there was no reason or need for Manitowoc county to be present. Some of the audio could lap over the b-roll of Allan entering the courthouse which seems to also be too long.
- 17:30 - Kratz' press conf about there being a homicide with gunshot to the head seems unnecessary. Doesn't give any new information.
- 18:10 - Montage of video evidence also seems to be floating without any connection to the testimony from Sherry - maybe it could be tightened by pre-lapping her audio "can you identify this exhibit in front of you... it is a lead bullet fragment." This might give the video evidence context and also tighten all of this courtroom evidence.
- 20:50 - Not sure what the source material you are cutting around is, but it feels like the timing of cutting to Buting's reaction to Sherry's testimony "I believe my DNA was introduced to the sample when I was talking" line could be timed for more of a comedic effect.
- 21:12 - Everything in the prosecution's press conference is just reiterating what was said in court and the reporter jumbles the question - it hurts the momentum. Buting says what happened much more succinctly, but again the reporter's question isn't important. What is important is Strang/Buting saying that this is why we asked to be present (almost three minutes of press conf).
- 24:42 - Excessive b-roll around the courthouse.

Episode 6 – Detail Cont.

- 29:55 - This press conf could be trimmed down - in general we keep going back and forth between courtroom testimony and press conferences - they really need to be surgical in terms of explaining only things that need to be explained or giving new information. Even just having something like the reporter asking "do you really think that plays well with the jury?" give some context to how the outside world is interpreting the events, but anything that is redundant should be trimmed down or at least tightened a lot. Same with Strang/Buting explaining things such as Buting here who doesn't make a very clear point.
- 32:29 - In this stretch Buting, Steven, Allan, Strang and Pete each say essentially the same thing "there would have been blood" - this is repetitive. (this along with Sherry confirming that there was no blood and the subsequent press conf together add up to 6 ½ minutes)
- 39:55 - Could we use graphics to clarify and streamline the bone / burn pit analysis? (over 11 minutes)
- 45:35 - The side story of the coroner is interesting, but it might be something we could take out for the overall betterment of the episode. She is thrown out so quickly and we never get to hear from the county why she wasn't assigned the case and since she didn't investigate the case makes wonder why we would hear her testimony...as the other county's investigators and prosecutors were used, it almost makes sense that the Manitowoc Coroner wouldn't be used.
- 51:23 - We've already heard about the Avery Bill, so do we really need Allan talking about it again (or them going to prison to visit again)?

Episode 6 – Detail Cont.

- 52:49 - Do we really need Buting/Strang talking about the jury being influenced by the press? It seems like this is pretty clear from everything we've already seen. With so much trial to get through, this seems like another road bump.
- 55:50 - Scott, Bobby and the school bus driver testifying about the timeline runs very long and isn't entirely clear. Could a graphic help lay out exactly why this is important and allow us to get through their testimony more quickly. (this is almost 10 minutes)

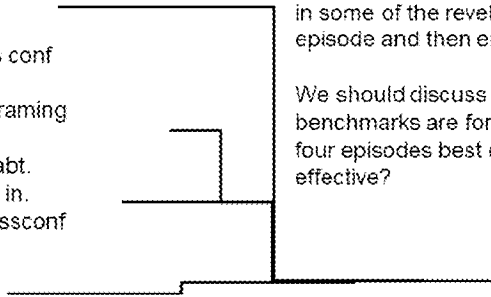
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Episode 7.

SUGGESTIONS:

Cold open: B-roll of police cars - "FBI is going to assist in investigation... Manitowoc provided resources. That is their only role." Allan says "They had Stevie picked. They set him up. They weren't even supposed to be investigating.

- Debate abt Manitowoc PD being at crime scene.
- Buting & Strang point to Lenk as framing.
- Press conferences re police reputations.
- More testimony on Colburn conflict & press conf
- Buting est. that EDTA test is bogus.
- Log shows Lenk didn't sign in - he denies framing
- Call with Dolores (family check-in).
- Judge rules EDTA admissible. Press conf abt.
- S.A. call saying they are trying to keep him in.
- Direct FBI testimony, pressconf, cross, pressconf
- S.A. decides not to testify, pressconf.
- Motion to dismiss false imprisonment.



Lots of really interesting mini-bombshells in this episode. Nothing that has significant impact on shifting our view of whether anyone is guilty or not. Would it make sense to really tighten this and bring in some of the revelations from Episode 8 to this episode and then end Episode 7 pre-verdict?

We should discuss Ep 7-10 and what the best benchmarks are for where each episode ends. Is four episodes best or would three be more effective?

Cliffhanger: Dean explains to S.A.'s parents that good news is that 3 charges have been dropped, bad news is that murder charge is all that matters.

Episode 7 - Detail

- 17:05 - Norm says his blood boils - this reaction is so great we probably don't need Buting adding on to it.
- 18:53 - Pete explaining is totally unnecessary. The facts are laid out so well we don't need him to be the peanut gallery. Everything he says is explicitly laid out and we have to trust that the audience is sophisticated enough regardless.
- 25:04 - Do we need this much of Strang's questioning of Colburn (4 ½ minutes)? (especially since we already had his testimony about calling in the license plate and we've spent a lot of time covering the 1995 phone call already)
- 33:59 - possible to get to the bottom of the Log more efficiently? As the trial goes on there should be less need for establishing shots and exposition that has already been covered, so each bit of evidence that is debated should be at a quicker pace.
- 39:45 - There is one minute of montage/b-roll here that really bogs it down.
- 41:35 - Lenk's testimony is really long. Graphic to demonstrate the scope of the Lenk coincidences?
- 46:20 - Do we need Lynn's testimony to establish that the Sheriff's dept had access to the evidence?
- 49:49 - Possible to tighten Buting talking about the EDTA test expert? Who is Janine and why do we need to hear that part of the conversation?

Episode 7 – Detail Cont.

- 53:13 - Do we need these press conferences? There isn't any new information. Could go straight to S.A. saying "They are doing their damndest to keep me in here"
- 58:57 - Do we need prosecution's press conf about the EDTA testimony?
- - Do we need Strang's press conf about the EDTA testimony?
- - Cut parking lot b-roll?

CURRENT:

Episode 8-9.

SUGGESTIONS:

Cold open: Allan walking around barn looking for Steven's name on the floor. Dean talks about the fact that S.A. never committed these crimes: "What you can hope to get is your liberty back, eventually."

Allan walking around the barn doesn't really grab attention. The quote is strong, but perhaps this could tease to something that will happen in this episode, such as the fact that a juror was excused and S.A. gets to decide whether to call a mistrial or not.

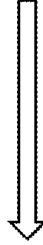
- Closing arguments.
- Buting, Dean say he was framed.
- Kratz says shouldn't matter if key was planted!
- Judge gives instructions to jury.
- News reports. Dolores talks to S.A. (b-roll)
- Jury leaves for night. Juror is replaced.
- B-roll with S.A. talking, Dolores calls him.
- Jury deliberates late. Buting/Dean look at press.
- Family warned about blowback.
- Verdict.
- Dean/Buting sad, believe killer is on the loose.
- Colburn makes statement.
- Scott T: He had it coming.
- Buting says 7 votes for innocent at start.
- Excused Juror feels terrible.

One quote that would make a powerful opener for this would be Strang saying "WHAT WOULD a case look like if someone were being framed? I would suggest a hypothesis that someone burned her body and dumped it in Avery's yard..." (08:00-10:00)

WHERE ARE THE BREAKS? EP 7, 8, 9, 10

Cold open:

- Brendan's trial in 2 weeks. New lawyers discuss.
- Kratz opening statement.
- Mark opening statement.
- Play BD's first statement.
- Lots of discussion of his coercion.
- Only play first half of his confession.
- Debate about interrogation tactics.
- Kayla's retraction. TH brother talks to press.
- Brendan testifies. His father comments.
- Tape of his call to mom, he says he made it up.
- Mike Halbach talks to press.
- Closing arguments. Judge reads jury instructions
- Judge reads verdict. Mom freaks out.
- Buting/Pete/Dean comment.
- Mike Halbach talks to press.



Keep more of this in Ep8?

Move more of this to 10 so that we have more payoff in terms of Brendan rather than just analysis?

Cliffhanger: Judge reads statement for Brendan and how dangerous he is. Dean comments: "Tragic lack of humanity."
Buting: [Could happen to any of us.]

Episode 8-9 - Detail

- 14:00 - the line from Kratz' closing argument "it shouldn't matter whether or not that key was planted" is a bit of a bombshell, but it get buried in this cut.
- 18:14 - Buting's commentary seems unnecessary as does the news reporter.
- 22:37 - News guy says that the option was up to Steven whether to accept the alternate juror. Could we highlight this by explaining in more detail? Could Steven have opted for a mistrial??
- 45:26 - We've seen so much of Brendan's statements and confessions that we maybe don't need all of the audio statement that is played in this hearing and probably don't need the explanation of his demeanor because we know it so well at this point. The important part and new information is that they only play part of his confession which starts about 6 mins later when Weigart set it up (although his setup is really bulky also).
- 56:10 - Mark talking about police being trained to elicit confessions isn't necessary - Richard (the excused juror just said it a couple minutes earlier and it is more interesting to hear his thoughts than the lawyer's.
- 58:40 - The testimony/questioning about the interrogation techniques goes on too long - we've really have no doubt at this point.
- - There is a lot of very powerful testimony from Brendan - how much of it/what parts of it are the most essential? (15 minutes)

Slide 25

- 2 I believe they were saying that Steven could decide proceed to with one less juror, or else ask for an additional juror to be added at this point.
Lisa Nishimura, 10/25/2021

Episode 8-9 – Detail Cont.

- – 45 second of night b-roll maybe too much even for showing the passage of time during the deliberation
- – Do we need a card explaining the verdict since the judge just read them?
- – Strang's comments here don't feel vital
- – Can we make it clear who the judges are and which cases they have handled before? (Allan makes this point later, but it gest a bit lost because he isn't very specific).

Slide 26

- 3** I believe they were saying that Steven could decide proceed to with one less juror, or else ask for an additional juror to be added at this point.
Lisa Nishimura, 10/25/2021

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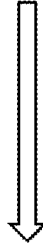
Episode 10.

SUGGESTIONS:

Cold open: Kratz press statement: [Happy S.A. won't be on the streets ever again.]

- Community is happy. Family is destroyed.
- Sandy story.
- B.D. appeal for new trial. Focus on Len/O'Kelley
- More about call to mom being orchestrated.
- Judge denies Steven's motion.
- Kratz scandal.
- Judge Fox denies request for new trial.
- Higher courts refuse to review both cases.
- Sandy talks about his mental state.
- Round table with lawyers comparing to rape case
- S.A. starts preparing his own case.
- Pete recaps the evidence, has other suspects.
- Northwestern students discuss Brendan's case.
- Wisc Supreme Ct turns down Brendan's case.
- Federal suits filed.
- Allan driving around garden. S.A. talks.
- New Lawyer (Tom) - case on eavesdropping.
- Moved to Waupon.

Potentially move in a bigger reveal to Ep10. The denying of new trials doesn't have enough punch in and of itself.



All of this analysis is great, but is mostly re-capping things we already know. Would it make sense to focus the final episode on the characters and the harm this has done to them rather than the wider social implications? Would maybe leave it with more of an emotional impact - especially the fact that Steven was preparing his own case and that Brendan is completely helpless.

Cliffhanger: Sandy visits S.A. who says in V.O. "They think I'll stop...The truth always comes out."

Slide 27

- 1 Do we have a suggestion of a bigger cold open reveal for 10?
Lisa Nishimura, 10/25/2021

Episode 10 - Detail (1hr30min)

The majority of comments on behalf of Ep10 depend on the overall structure, however the following elements feel like they can be removed to support better pacing and the continuous evolution of new information to the viewer:

11:00 - Lots of b-roll of entering and exiting the court.

15:00 - Steve talking about getting the state to record videotaping doesn't seem important.

- Pete recaps all of the evidence (8 minutes), but it is all info we already know.

- The class about Brendan's confession doesn't feel necessary - it would make more sense to include this info when this is being evaluated in the investigation or in the trial.

GFX List

- Improve map for Steven's alibi for the rape of Penny B. (Ep1)
- Law enforcement org chart to help keep clear who everyone is throughout (1-10)
- Org chart of various courts/Judges - especially when we get repeat judges (1-10)
- Number of times the Avery property is searched & over what duration
 - when the key is discovered (search #6?)
- Len/O'Kelley/Investigators (explaining the coercion of Brendan) (4)
- Lenk's mysterious involvement every step of the way. (4)
- Teresa Halbach Voicemail details (5)
- Timelines (Colburn License Plate Phone call - 5, Bobby v Busdriver - 6, Police Log at Crime Scene - 7)
- Bones/Burn barrels (6)
- Do we add a GFX of all leads not pursued by Manitowoc or Calumet? (TH roommate, Ryan H, Bobby Dassey, Scott T)?

GFX List Cont.

- Contradictory State arguments (how can Teresa have been killed in bedroom & garage)?
- Graphic of salvage yard and estimate size and # of cars and probability of finding TH's Rav 4 in less than 20 minutes.
- Brendan flip flopping statements & dates ?
- Chart out the appeals (9-10)
- Perhaps there is one master graphic that could contain both law enforcement, judges and all of the various lawyers

Music Beats

The role of music throughout the series is vital and will play a primary role in helping guide viewers through this rich and complex narrative. Below are a few proposed areas to review and we look forward to discussing further once the overall episode structure is solidified.

- Overall: the lulling guitar hurts the tone. The music should put everyone on the edge of their seat.
- Can we work to establish a subtle but impactful 'theme' track for the baddies, e.g. Lenk, Petersen, Kratz and certainly for Len Kachinsky & Michael O'Kelly to help clearly support that despite their appointed roles to protect Brendan – they are doing him great harm.
- Similarly, there have been moments of hope & promise introduced throughout, e.g.: when Steven secures Buting and Strang on his case, when the Innocence Project / Steve Drizin and team enter Brendan's life – can we work to utilize music to subconsciously and organically support the emotional connection and hope.
- Enhance emotions of Steven's release (Ep1)
- Music is slow when he meets his first girlfriend (and then wife).
- Music could drive the magnitude of the moment that S.A. is first convicted. (Ep1)
- Create the shock of Steven being connected with Teresa's disappearance. (Ep2)

Music Beats Cont.

- Sheriff Petersen suggesting that it's easier to kill SA than frame him on the news is absolute madness, should be emphasized (Ep4)
- Major twist when the tampered blood vial is discovered. (Ep4)
- All of the verdicts should be very suspenseful and use music to enhance.
- Enhance shock of Colburn escorting Brendan out when his verdict is read (Ep8-9)
- Michael O'Kelly's testimony is shocking. Music might underscore this to great effect and highlight the importance of his conflict of interest (Ep10)

Overall Notes

- As we refine, let's be very judicious about ensuring that every scene serves to evolve the key narratives and character development in a novel way. Currently there is a relatively high level of repetition throughout the episodes. Rather than repeat key points for impact, let's make their initial introduction impossible to forget via pacing, music and graphics.
- A large amount of the series is built on S.A.'s narrative based on his phone calls to and from prison. To ground this, perhaps there's a defining visual representation of him talking on the phone (recreated or otherwise) that could be used throughout. (for example: a diverse group of tight to medium shots of him picking up the phone, putting it down, shots from behind, tapping foot, scratching skin etc.)
- Discuss the overall use of drone footage and b-roll. As it stands, while it makes the series feel cinematic and have bigger scope, currently, the use still feels somewhat arbitrary and could be used to have greater strategic effect either to illustrate literally what is happening within scenes or it could be used to create an emotional/atmospheric arc rather than repetitive.
- Consistency in subtitles/lower third in a way that clearly distinguishes the different individuals when we are bouncing between different V.O.

Appendix - Current Overall Structure

Episode:

1. S.A. Background, Arrest and Rape Conviction
2. S.A. Civil Suit, Disappearance of T.H., Charges against S.A.
3. Building the case against S.A., Settles Civil Suit, Brendan is arrested
4. Analysis of Evidence, Brendan is coerced, Evidence was tampered.
5. Trial begins.
6. All trial.
7. All trial.
- 8/9. End of trial. Verdict. Brendan's trial.
10. State of family. Sandy introduction. S.A. and Brendan appeal. Innocence project analysis. Brendan's hearing for new trial. Round table with lawyers. S.A. trains himself to appeal himself and family visits. Pete reviews. Students discuss. Status of new appeal.

Making a Murderer

07.16.2015 Update:

GOAL:

Given the limited amount of time remaining, we want to ensure that we're aligned on the following key areas going forward. Most importantly we should engage additional supports quickly where appropriate, to ensure you are supported and fully resourced to deliver the award-worthy series we know this can be.

GRAPHICS: Per our meeting, we would like to explore the idea of bringing Elastic on to help refine existing graphics (eg: ep 1 Sandy Morris graphic, SA alibi graphic) as well as to assist with additional timeline graphics throughout eps 1 - 10, which we believe will be extremely helpful in progressing the narrative in an impactful and efficient way. See GFX page for specifics. This would be in addition to Steven (as introduced by Ben) or someone of equal caliber who could execute for you.

MUSIC: We have provided detailed feedback on music cues for episode one which we hope can act as a guiding template for the full series.

SOUND DESIGN: please advise when we will see an episode that reflects your vision of full sound design. There is ample opportunity with such an emotionally captivating series to really engage on this front.

EDITING: we really want to see Moira and Laura directing as much as possible and again present the offer to bring on another set of hands to execute and refine while you focus on overall structure and creative vision.

Status:

1. The series is amazing. It is a major accomplishment to lay out such a complex case in such a clear and suspenseful way.
2. Poses some challenges in getting the audience buy-in for such a long view that at times gets very granular. Our goal is to protect the deep dive while being accessible, user friendly and impactful.

Goals:

1. Identify final overall series structure which supports the most impactful, compelling and revelatory storytelling, including:
 - a) number of episodes (9-10?).
 - b) length of episodes (recommending 50 minute target, no greater than 60)
 - c) best opens and closes (see specific notes in Structural Breakdown).
 - d) red herrings.
1. Music and gfx aren't being utilized effectively yet for the next pass we should take it to the next level and bring in reinforcements for the areas that aren't yet getting there.
2. With final overall episode structure in place, tighten each episode to most effective cut (see detailed notes).
3. Eliminate the storylines that aren't serving the greater good.

CURRENT:

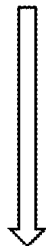
Episode 1.

SUGGESTIONS:

Cold open: S.A. gets out of prison. Background that he was wrongfully imprisoned for 18 years. Cousin says: "Be careful...They aren't even close to being finished with you."

- S.A. files civil rights suit against Sheriff and DA.
- Jump back to Sandra deposition.
- S.A. background.
- Dispute with Sandra, S.A. charged with felony.
- Penny B is attacked.
- Police mishandle and Penny points to S.A.
- S.A. arrested, Sheriff keeps him from lawyer.
- Background on S.A.'s alibi.
- Information about Gregory Allen.
- S.A. found guilty.
- Hard on family. Parents stick by him. Lori leaves.
- New evidence - fingernails not enough.
- Pubic hair found. Matches Gregory Allen.
- Evidence of police misconduct.
- S.A. back to normal life, meets Jodi.

Cliffhanger: S.A. is released: "Don't bring a lawsuit against Sheriff's department in a community where you still live or you could get charged with murder."



There should be a more explicit ending that makes it clear that in the next episode the cops are going to seek revenge. We should have a really tight Episode 1 with a strong cliffhanger that immediately engages the audience to come back for Episode 2. Currently, the suggestion that they might charge him with murder is very subtle and the audience might think everything is resolved. This line is impossible to understand without any context. (also could consider ending with the cliffhanger of whether or not the DNA matches S.A., this would be the ultimate pull-back for watching Ep2 but would mean ~~changing the~~ cold-open)

Episode 1 - Detail (1hr 9min)

- 1:45 - we end the cold open with Steven's cousin saying, "Manitowoc County is not done with you, they're not even close to being finished with you". The viewer has yet to get their bearings - we should explore adding graphical treatment to these powerful words going into the title treatment. The viewer doesn't know what Manitowoc is at this point.
- 21:00 - Emphasize the relationship between Sheriff Kocourek's wife and Penny B so that we establish a motive for him to interfere in the investigation.
- 31:47 - The fact that the police had been following Gregory Allen is established (somewhat out of the blue) during the investigation. This set-up seems to undermine the revelation later, when his DNA is matched, that the police had been following him and hid this information. It could be more shocking to reveal later in the episode who Gregory Allen was and how evidence of his presence was known by the Sheriff's dept.
- 37:15 & 40:55 - There are two chunks that both talk about the parents sticking by him. This is something we return to several times through the series, so we should just be judicious about which of these is the most effective and sufficient.
- 41:50 - The explanation of the appeals system might be unnecessary - we should probably assume the audience has a basic understanding of this.
- 45:30 - Stephen Glynn talks for a while about how the decision shows how much the system is weighted against the presumption of innocence, but we never see the decision for ourselves - is there a way to pull out a representative quote from that decision that could be shown while he is talking? He also talks about how S.A. pays a heavy price for not caving under pressure, but this is already really clear.
- 51:00 - The exoneration of Steven should be a much more emotional turn of events. After 18 years it should be heartbreaking that he is finally out. Music and edits should build-up and pay-off in a much bigger way.
- - Public Integrity Bureau investigation report goes into a lot of detail and might be hurting the momentum of the episode's conclusion (over 4 minutes).

CURRENT:

Episode 2.

SUGGESTIONS:

Cold open: Homevideo of T.H.

- S.A. files \$36m lawsuit against Manitowoc.
- Civil suit trial.
- Police sketch mishandled.
- Legislature about to pay his \$450k.
- Colburn received phone call in 1995, no report.
- More testimony.
- City will be on the hook for damages.
- Teresa Halbach goes missing.
- Search party - they find the Rav4.
- Cop asks if they have S.A. in custody yet.
- Calumet County takes over the investigation.
- Police search S.A.'s house.
- Manitowoc only used for support resources.
- Key found.
- S.A. is questioned and arrested.
- Keep S.A. away from lawyer. Lie about location.
- Kratz says the evidence hasn't been tainted.

Cliffhanger: S.A. DNA on the key and in the blood.
S.A. in handcuffs entering courtroom.

The cold open of T.H. is very confusing and too far ahead of her disappearance to make the connection. Perhaps open with the image of the article saying that S.A. is suing the law enforcement agencies and Walter Kelly (Ep2 - 3:19) explains everything up until he says that it is for \$36m. And it would save the TH video to use later to greater effect during the trial (eg around Ryan's testimony).

The police sketch and Judy Dvorak scenes are explained in such detail in Episode 1 that it is less of a bombshell here. Would it make more sense to hold the reveals for this Episode?

The testimony about this phone call and report (which we touch on several times throughout the series) is confusing as it relates to who within law enforcement knows what/when - could a graphic help chart the related events and make it less necessary to keep repeating the story?

Potentially add Allan's quote from the top of Ep3 saying "They framed an innocent man just like they did 20 years ago" to the cliffhanger here.

Episode 2 - Detail

- 5:55 - What Walter Kelly is saying about the AG's report is very interesting, but he is very slow and unclear in his diction - probably it ultimately isn't necessary. It could even be as simple as saying "they felt like they were talking law enforcement to law enforcement so were fairly candid."
- 14:00 - The phone call that Colburn receives and the subsequent flow of information to other figures in the Sheriff's department is something we keep going back to throughout the series. It would really help to create a graphic that can be built on throughout the series as new information is added to this topic. It would really help keep clear what the connections are and highlight when new information is revealed. It could also help minimize the amount of time we need to spend explaining it multiple times.
- Also, is there any record that Gregory Allen was in the Brown County prison when they made the phone call to Colburn? Maybe add his mugshot from that prison to the graphic as well. to drive home the fact that they are letting a known rapist go free while Steven rots in prison.
- 17:30 - There is probably more testimony of the police that we need at this point regarding the phone call.
- 22:50 - This Michael Grierbach testimony doesn't really seem necessary.
- 24:00 - Who is the person who is circled in the courtroom clip?
- 25:00 - Not sure what the montage of courtroom exteriors and testimony clips is doing here. (55 seconds for just a short VO) - and this conversation about the impact on the city is somewhat redundant - it could probably be tightened.

Episode 2 - Detail (cont.)

- 27:20 - Stephen Glynn gives a very wordy and dry reveal that Teresa Halbach is missing. There should be a bit of a tonal shift and dramatic tire-screech when the bombshell is dropped that someone is connecting S.A. to a murder. He says it in an almost incidental way. Are there other options? News clips? Make this a visceral experience that a woman is missing and people are searching for her and the world is closing in on Steven.
- 32:30 - Search party lasts for almost 2 minutes. Maybe it could be cut down by 1 minute and have Mike Halbach's interview as partially VO instead of on screen the whole time.
- 42:40 - Not sure if we need the search party again since the car has already been found. It is clear that they are still looking for the body, but the focus now has shifted to the Avery property and since the search party isn't involved in that we could probably cut this entire minute out and get straight to finding the body and key.
- 45:00 - There should be more of a creepy, suspenseful tone when the bones and teeth are shown.
- End - Use lower-thirds to ID the cops that are questioning S.A.

CURRENT:

Episode 3.

SUGGESTIONS:

Cold open: S.A. denies and gets handcuffed in interrogation room. Allan Avery saying they are taking an innocent man and making him guilty just like 20 yrs ago.

- Start of pre-trial.
- Key wasn't there when they first searched.
- Court finds probable cause.
- Gov signs Avery reform. Discuss changing name.
- Media repaints S.A. a monster. Town reacts.
- Family gets hate letters.
- Judge sets bail high.
- Family visits.
- S.A. settles lawsuit to get money for defense.
- Halbach family files lawsuit to tie up money.
- Buting and Strang join - talk about police framing.
- Brendan is detained.
- Kratz details Brendan's version of crime.
- Jodi out, Chuck reacts, Allan says family torn.
- Brendan coerced and charged.

Since Ep2 ends with him shackled going into courthouse, is it necessary to have him handcuffed here? Other ideas would be to start with teasing the fact that the key wasn't there the first several times they searched the room or start with the media turning on S.A. - making him into a monster.

Cliffhanger: Brendan's mom says that if he testifies against S.A. he gets 20+ years with parole, but if he doesn't he could get life with no parole.

This is a great cliffhanger, but should drive harder on the fact that B.D. might testify against S.A. and is essentially being blackmailed to do this.

Episode 3 - Detail

- Opening - Use lower-thirds to ID the cops that are questioning S.A.
- 08:44 - Coverage of the Governor signing the Avery Reform Bill (and the state senator discussing) is definitely interesting, but it is a bit granular and might not move the story forward at all. This might not be information that the audience need and could save us almost two minutes.
- 13:55 - Chuck playing pool could be trimmed. The local woman and man giving the community perspective is good, but could stand on its own. This five minute chunk (including Steven's phone calls and Chuck in the junkyard) could be delivered in a few quick soundbites contrasted with the media coverage of Steven as a monster to show that there is a division of opinion between the establishment and the poor community. Could be really driven home if capped with Steven's quote (18:40) "Poor people lose".
- 19:19 - Do we need the scene of them visiting him in prison? We already get that the family is standing behind him and don't see why he would do this.
- 25:15 - 28:15 - Bringing in Strang & Buting should be a glimmer of hope and feel somewhat triumphant - here are two great lawyers coming to his rescue, but this three minute segment doesn't capture that. This could really be tightened up and enhanced by a good music cue.
- 41:56 - Jodi gets out of jail...is there any way to quickly establish earlier on that she has been in jail through all of this?
- 47:28 - Allan complaining about the loss of business and Chuck saying that he doesn't think Steven is guilty are both somewhat repetitive from other scenes - maybe a tighter version, but it feels like it might be overkill.

CURRENT:

Episode 4.

SUGGESTIONS:

Cold open: S.A. on phone over B-roll: "Brendan said all of this. I feel sorry for him...It'd probably make somebody look like a monster....Nothing good can come out of this.

- New atty (Len) for B.D. - he is terrible.
- Jodi finds phone calls w/S.A. on day of murder.
- Eval. of blood and key DNA, evidence from car.
- Try to throw out B.D.'s confession.
- Len/O'Kelley push B.D. to confess.
- B.D. meets with police then calls mom.
- Police say easier to kill S.A.
- State tries to change death penalty, trial delayed.
- Jodi ordered not to see S.A.
- Family tries to get B.D. a new lawyer - denied.
- Judge tells Len to withdraw.
- Family check in.
- Recap of Penny B set-up.
- Lenk.

It's tough to understand in a cold open what S.A. is talking about - there is too much distance between this call and the previous episode's material that gives it context. Would it be possible to tease something that is coming ahead rather than recap?

Maybe it would be better to bring some of the innocence project's explanations about why this was so egregious from Ep10. It would help clarify the fact that Michael O'Kelley is supposed to be working FOR B.D. and also deal with it in one place instead of multiple times. And ending on such deep analysis of the issue is somewhat anti-climatic. Splitting it up between this section and the hearing for the new trial would possibly be more efficient.

Cliffhanger: Blood vial is discovered to have been tampered with.

Episode 4 - Detail (1hr20min)

- 21:25 - Can the card identifying O'Kelly make it more clear that this guy is supposed to be helping Brendan? Would it also be out of the question to bring in the Innocence Project from Ep10 here to really explain why this was so egregious?
- 38:34 - The fact that media affects the jury is important could probably more concise - we get it. Might also be too much news coverage of whether framing is possible or not. It sets up the "We could just kill him" quote, but probably could be set up with just one or two quick clips.
- 42:00 - The death penalty conversation takes up a lot of oxygen. Is there any way to streamline it or lose it altogether? We already get so much about the jury being influenced by the media/culture. Almost five minutes is a big chunk when this episode is currently at 1hr20min
- - Dolores driving around the junkyard and the aerial atmospherics could all be tightened a lot. This four minute segment should probably be 30-40 seconds.
- - Pete talking about Manitowoc causing rape and they were most definitely biased to be investigating this case. It feels like this has been covered elsewhere?
- - This major dramatic moment of the tampered with vial being discovered could really have more impact with the right score.

CURRENT:

Episode 5.

SUGGESTIONS:

Cold open: S.A. enters courtroom. Buting discusses EDTA. Cards explain motion to exclude and judge denies and that State asks Judge to allow FBI to test for EBTA. Courtroom debate about EDTA testing. Judge allows testing.

- Drop sexual assault charges against S.A.
- Day 1 of trial.
- Opening statements (a lot about VM messages)
- Det Jacobs call (do we have a body?)
- S.A. questioned about T.H.'s appointment.
- Bobby says he was asked to help get rid of body.
- Debate about VMs.
- Judge blocks from talking about other suspects.
- Dean asks about roommate.
- Ryan H admits to figuring out her password.
- Boss (Sheriff?) says to search Avery property.
- Review of finding Rav4 and what followed (Pam)
- Dolores shows us where the car was found.

Cliffhanger: Colburn testifies about calling in the license plate before the Rav4 is discovered. Dolores drives around junkyard pointing out where they could have brought the car in.

Feels like Buting is stumbling over what he is saying in this cold open. Maybe something less technical in the open? Maybe something that would hint at another possible suspect?

Great cliffhanger, but the effect is dulled by having Dolores pointing out the layout of the junkyard. We would recommend ending the episode before the Dolores scene.

Episode 5 - Detail (1hr10min)

- 15:00 - Lots of b-roll of people entering the courtroom. Opening statements are somewhat unruly. Everything they say is interesting, but most of this is covered really well in other sections. It might be more impactful to hit one or two points on each side that really summarize the spirit of what is happening. It seems like the voicemail
- 19:45 - Buting really rambles in this section - we could probably massage this into a much more succinct summary of what to expect in the trial. (three minutes and then straight into their opening statement which reiterates many of the same points)
- 23:00 - Defense Opening statement has the same issue as the prosecution's. Together the opening statements take up the majority of the first 30 minutes.
- 30:40 - Shows S.A. being interrogated about making the appointment in Barbara's name. This occupies a large part of the opening statement also - is there a more efficient way to get through the fact that the prosecution was trying to make it look like he was hiding his own name while the defense says he has a valid reason. This also seems like a minor part of the evidence base and it is hard to illustrate what exactly they mean, so it may be worth trimming this debate out.
- 36:30 - Bobby Dassey's testimony about Steven asking to hide the body - this could really be clarified by a graphic so that it is clear why it is so important to know whether this happened on the 3rd or on the 10th. And why the prosecution acted so improperly.
- They mention that T.H. had been receiving harassing phone calls, but they never identify you the harrassing caller was. Surely they had the phone records...can we explain who it was or why they couldn't identify that person if that is the case?

Episode 5 - Detail (cont.)

- 41:00 - The debate about TH's voicemail inbox being full and how we know that some were deleted and who had access to the voicemails could all really benefit and be laid out more efficiently with a graphic - probably can replace the actual phone records which don't really convey any information. (this is currently a 7 ½ minute section, plus it circles back again with the ex-boyfriend's testimony)
- 56:30 - In the Weigart call, he references the "boss" called - is there a way to get across who exactly the boss is?
- - We don't really need the interrogation of S.A. about how the truck could have gotten in or the footage of Dolores showing us the area. It really kills the effect of the Colburn license plates bomb.

CURRENT:

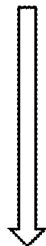
Episode 6.

SUGGESTIONS:

Cold open: Card says one day after Brendan's arrest there is a press conf. Kratz describes how S.A. instructed Brendan to cut T.H.'s throat. Police search residence and garage for new evidence. Kratz claims physical evidence now makes sense.

- Strang & Buting disc. poisoned jury pool.
- Bullet found in garage - Lenk was present.
- No T.H. DNA found in trailer or garage.
- Bobby only thing placing her inside.
- Skull fragments.
- Evidence montage.
- Sherry: blood on bullet matches despite botching
- Defense tried to have labwork monitored, denied.
- Everyone reiterates there would have been blood
- Bones and barrels conversations.
- Coroner dismissed.
- Family check-in. TV might influence jury.
- Bloody hair in trunk.
- Timeline debate (Bobby D, bus driver, Scott T.)

Cliffhanger: School bus driver has a different timeline than Bobby. Lawyers explain the timelines don't match up.



The timeline conversation is important, but also confusing and might not be the best hook to end the episode on. Would it be worth hinting that there is evidence that Lenk (or the cops in general) planted the evidence so that is tee'd up for Ep7?

Episode 6 - Detail (1hr5min)

- 08:58 - Strang rambles for too long about the fact that there was no reason or need for Manitowoc county to be present. Some of the audio could lap over the b-roll of Allan entering the courthouse which seems to also be too long.
- 17:30 - Kratz' press conf about there being a homicide with gunshot to the head seems unnecessary. Doesn't give any new information.
- 18:10 - Montage of video evidence also seems to be floating without any connection to the testimony from Sherry - maybe it could be tightened by pre-lapping her audio "can you identify this exhibit in front of you...it is a lead bullet fragment." This might give the video evidence context and also tighten all of this courtroom evidence.
- 20:50 - Not sure what the source material you are cutting around is, but it feels like the timing of cutting to Buting's reaction to Sherry's testimony "I believe my DNA was introduced to the sample when I was talking" line could be timed for more of a comedic effect.
- 21:12 - Everything in the prosecution's press conference is just reiterating what was said in court and the reporter jumbles the question - it hurts the momentum. Buting says what happened much more succinctly, but again the reporter's question isn't important. What is important is Strang/Buting saying that this is why we asked to be present (almost three minutes of press conf).
- 24:42 - Excessive b-roll around the courthouse.

Episode 6 - Detail (cont.)

- 29:55 - This press conf could be trimmed down - in general we keep going back and forth between courtroom testimony and press conferences - they really need to be surgical in terms of explaining only things that need to be explained or giving new information. Even just having something like the reporter asking "do you really think that plays well with the jury?" give some context to how the outside world is interpreting the events, but anything that is redundant should be trimmed down or at least tightened a lot. Same with Strang/Buting explaining things such as Buting here who doesn't make a very clear point.
- 32:29 - In this stretch Buting, Steven, Allan, Strang and Pete each say essentially the same thing "there would have been blood" - this is repetitive. (this along with Sherry confirming that there was no blood and the subsequent press conf together add up to 6 ½ minutes)
- 39:55 - Could we use graphics to clarify and streamline the bone / burn pit analysis? (over 11 minutes)
- 45:35 - The side story of the coroner is interesting, but it might be something we could take out for the overall betterment of the episode. She is thrown out so quickly and we never get to hear from the county why she wasn't assigned the case and since she didn't investigate the case makes wonder why we would hear her testimony...as the other county's investigators and prosecutors were used, it almost makes sense that the Manitowoc Coroner wouldn't be used.
- 51:23 - We've already heard about the Avery Bill, so do we really need Allan talking about it again (or them going to prison to visit again)?

Episode 6 - Detail (cont. 2)

- 52:49 - Do we really need Buting/Strang talking about the jury being influenced by the press? It seems like this is pretty clear from everything we've already seen. With so much trial to get through, this seems like another road bump.
- 55:50 - Scott, Bobby and the school bus driver testifying about the timeline runs very long and isn't entirely clear. Could a graphic help lay out exactly why this is important and allow us to get through their testimony more quickly. (this is almost 10 minutes)

CURRENT:

Episode 7.

SUGGESTIONS:

Cold open: B-roll of police cars - "FBI is going to assist in investigation...Manitowoc provided resources. That is their only role." Allan says "They had Stevie picked. They set him up. They weren't even supposed to be investigating.

- Debate abt Manitowoc PD being at crime scene.
- Buting & Strang point to Lenk as framing.
- Press conferences re police reputations.
- More testimony on Colburn conflict & press conf
- Buting est. that EDTA test is bogus.
- Log shows Lenk didn't sign in - he denies framing
- Call with Dolores (family check-in).
- Judge rules EDTA admissible. Press conf abt.
- S.A. call saying they are trying to keep him in.
- Direct FBI testimony, pressconf, cross, pressconf
- S.A. decides not to testify, pressconf.
- Motion to dismiss false imprisonment.

Lots of really interesting mini-bombshells in this episode. Nothing that has significant impact on shifting our view of whether anyone is guilty or not. Would it make sense to really tighten this and bring in some of the revelations from Episode 8 to this episode and then end Episode 7 pre-verdict?

We should discuss Ep 7-10 and what the best benchmarks are for where each episode ends. Is four episodes best or would three be more effective?

Cliffhanger: Dean explains to S.A.'s parents that good news is that 3 charges have been dropped, bad news is that murder charge is all that matters.

Episode 7 - Detail

- 17:05 - Norm says his blood boils - this reaction is so great we probably don't need Buting adding on to it.
- 18:53 - Pete explaining is totally unnecessary. The facts are laid out so well we don't need him to be the peanut gallery. Everything he says is explicitly laid out and we have to trust that the audience is sophisticated enough regardless.
- 25:04 - Do we need this much of Strang's questioning of Colburn (4 ½ minutes)? (especially since we already had his testimony about calling in the license plate and we've spent a lot of time covering the 1995 phone call already)
- 33:59 - possible to get to the bottom of the Log more efficiently? As the trial goes on there should be less need for establishing shots and exposition that has already been covered, so each bit of evidence that is debated should be at a quicker pace.
- 39:45 - There is one minute of montage/b-roll here that really bogs it down.
- 41:35 - Lenk's testimony is really long. Graphic to demonstrate the scope of the Lenk coincidences?
- 46:20 - Do we need Lynn's testimony to establish that the Sheriff's dept had access to the evidence?
- 49:49 - Possible to tighten Buting talking about the EDTA test expert? Who is Janine and why do we need to hear that part of the conversation?
- 53:13 - Do we need these press conferences? There isn't any new information. Could go straight to S.A. saying "They are doing their damndest to keep me in here"
- 58:57 - Do we need prosecution's press conf about the EDTA testimony?
- - Do we need Strang's press conf about the EDTA testimony?
- - Cut parking lot b-roll?

CURRENT:

Episode 8 - 46min45sec

SUGGESTIONS:

Cold open: Allan walking around barn looking for Steven's name on the floor. Dean talks about the fact that S.A. never committed these crimes: "What you can hope to get is your liberty back, eventually."

- Closing arguments.
- Buting, Dean say he was framed.
- Kratz says shouldn't matter if key was planted!
- Judge gives instructions to jury.
- News reports. Dolores talks to S.A. (b-roll)
- Jury leaves for night. Juror is replaced.
- B-roll with S.A. talking, Dolores calls him.
- Jury deliberates late. Buting/Dean look at press.
- Family warned about blowback.
- Verdict.
- Dean/Buting sad, believe killer is on the loose.
- Colburn makes statement.
- Scott T: He had it coming.
- Buting says 7 votes for innocent at start.
- Excused Juror feels terrible.
- Brendan's trial in 2 weeks. New lawyers discuss.

New ending: Brendan is led into court and we hear his call with Barb.

Allan walking around the barn doesn't really grab attention. The quote is strong, but perhaps this could tease to something that will happen in this episode, such as the fact that a juror was excused and S.A. gets to decide whether to call a mistrial or not.

One quote that would make a powerful opener for this would be Strang saying "WHAT WOULD a case look like if someone were being framed? I would suggest a hypothesis that someone burned her body and dumped it in Avery's yard..." (08:00-10:00)

Episode 8 - Detail

- 04:30 - Buting and Strang's closing arguments are somewhat redundant and dividing them over the two days makes it drag. Could we intercut these?
- 08:30 - Judge makes statement about rebuttal - warns not to deliberate yet...is this necessary?
- 14:00 - the line from Kratz' closing argument "it shouldn't matter whether or not that key was planted" is a bit of a bombshell, but it get buried in this cut.
- 18:14 - Buting's commentary seems unnecessary as does the news reporter.
- 22:37 - News guy says that the option was up to Steven whether to accept the alternate juror. Could we highlight this by explaining in more detail? Could Steven have opted for a mistrial??
- 33:00 - There is a natural segway to Brendan's case when he is mentioned by Strang at the end of this press conference, but instead we detour to the family. For the sake of keeping the momentum of the trials going, it might be better to go straight into Brendan's case.

Also assuming that music spotting has yet to take place which will help dramatically to guide viewer response. eg: 25:00 - preceding the verdict when Dean meets with the family and essentially says to be careful for their safety in the event of a guilty verdict really hammers home the incendiary nature of the community sentiment. A big musical cue here would really drive home the stakes.

27:00 - the reading of Stevens verdict - no bigger moment in the episode. Really punctuate here. Good use of the diminishing audio of the Judge's ramblings beginning at ~28:00, where you almost feel like you're inside Steven's ringing head where he's unable to hear anything beyond the guilty verdict.

Episode 8 - Detail (cont.)

32:45 - do you think there's a killer out there that the police have not caught - BIG musical opportunity, cut to cops or prosecution response as they wait on the side and punctuate with eerie music.

40:28 - Glynn: 'not a pretty tale for the criminal justice system' - punctuate!

42:00 - learning that Tom Fassbender is calling Scot Tadych to convince Barbara make Brendan take a plea - perfect moment for 'bad guy theme'.

46:00 - closing music underlying Brendan's entry to the courtroom and his phone conversation with Barb is over more prod rock type guitar music which doesn't quite fit the ominous and foreshadowing mood audiences should be awash with going into this trial.

as an example:

15:51 - music beat w/atmospheric keyboards preferred to the wide body guitar overall. The overall music feels a bit more prod rock; please explore a more atmospheric, creepy and suspenseful tone throughout.

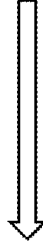
We haven't done a complete episodic spot for music here, but hopefully the frame that we're providing for episode 1 will translate well throughout the series.

Episode 9 (1hr3min)

SUGGESTIONS:

Cold open: Buting quote: the question is whether Brendan is going to confess to a murder he didn't commit.

- Kratz opening statement.
- Mark opening statement.
- Play BD's first statement.
- Lots of discussion of his coercion.
- Only play first half of his confession.
- Debate about interrogation tactics.
- Kayla's retraction. TH brother talks to press.
- Brendan testifies. His father comments.
- Tape of his call to mom, he says he made it up.
- Mike Halbach talks to press.
- Closing arguments. Judge reads jury instructions
- Judge reads verdict. Mom freaks out.
- Buting/Strang comment.
- Family comments on what they would say.
- Mike Halbach reads statement in SA sentencing.
- S.A. reads his own statement.



Tighten all of the testimony.

Move Brendan's verdict to 10 so that we have a strong reveal for episode 10?

Cliffhanger: Judge reads statement for Steven and how dangerous he is. Dean comments: "Tragic lack of humanity." Buting: [Could happen to any of us.]

Episode 9 - Detail

4:00 - Do we need commentary here to hammer home the fact that Kratz just claimed she was murdered in the house when a few weeks ago he claimed that she was murdered in the garage? We go back to it later, but this is a really big moment when he is obviously lying and it would really help the audience to see that more explicitly.

6:45 - We've seen so much of Brendan's statements and confessions that we maybe don't need all of the audio statement that is played in this hearing and probably don't need the explanation of his demeanor because we know it so well at this point. The important part and new information is that they only play part of his confession which starts about 6 mins later when Weigart set it up (although his setup is really bulky also).

19:30 - Mark talking about police being trained to elicit confessions isn't necessary - Richard (the excused juror just said it a couple minutes earlier and it is more interesting to hear his thoughts than the lawyer's.

30:15 There is a lot of very powerful testimony from Brendan - how much of it/what parts of it are the most essential? (15 minutes)

33:00 - Timelines of Brendan getting home, getting phone call, etc laid out in GFX

50:50 - 45 seconds of night b-roll maybe too much even for showing the passage of time during the deliberation.

52:30 - Would it help to point out that Colburn is escorting him out with a lower-third?

56:20 - Do we really need a card explaining the verdict since the judge read them?

57:25 - Strang's comments here don't feel necessary.

- Need card or chyron that this is Steven's sentencing hearing so we know this isn't Brendan's trial anymore

- Can we make it clear who the judges are and which cases they have handled before? (Allan says this later, but it gets a bit lost because he isn't very specific)

CURRENT:

Episode 10 (1hr8min)

SUGGESTIONS:

Cold open: Broll of empty house. Kratz press statement: [Happy S.A. won't be on the streets ever again.]

- Community is happy. Family is destroyed.
- Sandy story.
- B.D. appeal for new trial. Focus on Len/O'Kelley
- More about call to mom being orchestrated.
- Judge denies Steven's motion.
- Kratz scandal.
- Judge Fox denies request for new trial.
- Higher courts refuse to review both cases.
- Sandy talks about his mental state.
- Round table with lawyers comparing to rape case
- S.A. starts preparing his own case.
- Pete recaps the evidence, has other suspects.
- Northwestern students discuss Brendan's case.
- Wisc Supreme Ct turns down Brendan's case.
- Federal suits filed.
- Allan driving around garden. S.A. talks.
- New Lawyer (Tom) - case on eavesdropping.
- Moved to Waupun
- Climax: Sandy visits S.A. who says in V.O. "They think I'll stop...The truth always comes out."

Potentially move in a bigger reveal to Ep10. The denying of new trials doesn't have enough punch in and of itself.

As we discussed, focus Episode 10 on the characters - specifically Dean Strang's revelation that he has lost faith in the system if Steven isn't guilty and Steven's own attempt to save himself by studying the law. Take out the analysis where it veers too far from that story.

Episode 10 - Detail

Based on the desire to keep a 10 episode structure, the following elements feel like they can be removed to support better pacing and the continuous evolution of new information for the viewer.

13:45 - Steve D talking about getting the state to record videotaping doesn't seem important.

16:30 - Len's testimony tighten more?

22:00 - It takes 13min30sec to connect the Michael O'Kelly testimony to the phone call between Brendan and his mom.

40:45 - Pete recaps all of the evidence (5 minutes), but it is all info we already know. Pete says he thinks he knows who they were, but he doesn't say so it doesn't pay off for the viewer.

45:15 - Robert Dvorak recaps what we already know.

50:30 - Meeting with 3 lawyers is more recap, no new info. Analysis is great, but within the context of the film - adding at the end feels tacked on. The part of Strang talking about questioning his faith in the legal system is great, so let's focus on key revelations.

58:45 - The cards, graphics and news footage feels bumpy when going from Brendan's Appeals Court and Supreme Court decisions.

- Sandy and parents' visit to Waupun is really long.

Also, to re-iterate, we would like to recommend moving Brendan's verdict to episode 10 out of 9 to ensure one major reveal in this final episode.

GFX List

- Improve map for Steven's alibi for the rape of Penny B. (Ep1)
 - Add perm graphic for the Sandra Morris encounter (currently listed as temp)
 - Law enforcement org chart to help keep clear who everyone is throughout (1-10)
 - Org chart of various courts/Judges- especially when we get repeat judges (1-10)
 - Number of times the Avery property is searched & over what duration
 - when the key is discovered (search #6?)
 - Len/O'Kelley/Investigators (explaining the coercion of Brendan) (4)
 - Lenk's mysterious involvement every step of the way. (4)
 - Teresa Halbach Voicemail details (5)
 - Timelines (Colburn License Plate Phone call - 5, Bobby v Busdriver - 6, Police Log at Crime Scene - 7)
 - Bones/Burn barrels (6)
 - Do we add a GFX of all leads not pursued by Manitowoc or Calumet? (TH roommate, Ryan H, Bobby Dassey, Scott T)?
 - Contradictory State arguments (how can Teresa have been killed in bedroom & garage)?
 - Graphic of salvage yard and estimate size and # of cars and probability of finding TH's Rav 4 in less than 20 minutes.
 - Brendan flip flopping statements & dates ?
 - Chart out the appeals (9-10)
 - Timelines of key events: (1-10)
- Perhaps there is one master graphic that could contain both law enforcement, judges and all of the various lawyers

Music Beats

The role of music throughout the series is vital and will play a primary role in helping guide viewers through this rich and complex narrative. Below are a few proposed areas to review and we look forward to discussing further once the overall episode structure is solidified.

- Overall: the lulling guitar hurts the tone. The music should put everyone on the edge of their seat.
- Can we work to establish a subtle but impactful 'theme' track for the baddies, e.g. Lenk, Petersen, Kratz and certainly for Len Kachinsky & Michael O'Kelly to help clearly support that despite their appointed roles to protect Brendan – they are doing him great harm.
- Similarly, there have been moments of hope & promise introduced throughout, e.g.: when Steven secures Buting and Strang on his case, when the Innocence Project / Steve Drizin and team enter Brendan's life – can we work to utilize music to subconsciously and organically support the emotional connection and hope.
- Enhance emotions of Steven's release (Ep1)
- Music is slow when he meets his first girlfriend (and then wife).
- Music could drive the magnitude of the moment that S.A. is first convicted. (Ep1)
- Create the shock of Steven being connected with Teresa's disappearance. (Ep2)
- Sheriff Petersen suggesting that it's easier to kill SA than frame him on the news is absolute madness, should be emphasized (Ep4)
- Major twist when the tampered blood vial is discovered. (Ep4)
- All of the verdicts should be very suspenseful and use music to enhance.
- Enhance shock of Colburn escorting Brendan out when his verdict is read (Ep8-9)
- Michael O'Kelly's testimony is shocking. Music might underscore this to great effect and highlight the importance of his conflict of interest (Ep10)

Overall Notes

- As we refine, let's be very judicious about ensuring that every scene serves to evolve the key narratives and character development in a novel way. Currently there is a relatively high level of repetition throughout the episodes. Rather than repeat key points for impact, let's make their initial introduction impossible to forget via pacing, music and graphics.
- A large amount of the series is built on S.A.'s narrative based on his phone calls to and from prison. To ground this, perhaps there's a defining visual representation of him talking on the phone (recreated or otherwise) that could be used throughout. (for example: a diverse group of tight to medium shots of him picking up the phone, putting it down, shots from behind, tapping foot, scratching skin etc.)
- Discuss the overall use of drone footage and b-roll. As it stands, while it makes the series feel cinematic and have bigger scope, currently, the use still feels somewhat arbitrary and could be used to have greater strategic effect either to illustrate literally what is happening within scenes or it could be used to create an emotional/atmospheric arc rather than repetitive.
- Consistency in subtitles/lower third in a way that clearly distinguishes the different individuals when we are bouncing between different V.O.

Appendix - Current Overall Structure

Episode:

1. S.A. Background, Arrest and Rape Conviction
2. S.A. Civil Suit, Disappearance of T.H., Charges against S.A.
3. Building the case against S.A., Settles Civil Suit, Brendan is arrested
4. Analysis of Evidence, Brendan is coerced, Evidence was tampered.
5. Trial begins.
6. All trial.
7. All trial.
- 8-9. End of trial. Verdict. Brendan's trial.
10. State of family. Sandy introduction. S.A. and Brendan appeal. Innocence project analysis. Brendan's hearing for new trial. Round table with lawyers. S.A. trains himself to appeal himself and family visits. Pete reviews. Students discuss. Status of new appeal.

From: Lisa Nishimura [REDACTED]
Sent: Friday, July 24, 2015 3:55:52 AM
To: Moira Demos [REDACTED]; Laura Ricciardi [REDACTED]; Mary Manhardt [REDACTED]; Lisa Dennis [REDACTED]
Cc: Adam Del Deo <[REDACTED]>; Benjamin Cotner <[REDACTED]>
Subject: Making A Murderer: Ep 3 Notes
Attachments: Making a Murderer_Ep3_07.23.2015.pdf

Dear Moira, Laura, Mary & Lisa,

Thank you so much for Episode 3. We are so enthusiastic about the progress that you've been making. This episode really digs into some crucial detail while still moving the story along at an increasingly good pace. There is still some work to be done, but you are definitely heading in the right direction.

We've tried to be specific in the attached notes, so let's go through any questions you might have on our call tomorrow. The music continues to be strong in parts, but tonally off in some parts that need to increase the intensity or others where we need to pick up the mood in order to move the story along. There are also many opportunities to highlight important information by underscoring it more effectively. We've tried to note all of those specific spots that stood out to us, but overall the tone of the music continues to drag and we would encourage you to continue to take a closer look at the overall mood that it is setting.

We would also love to dig into the graphics tomorrow. We had some questions about the new clips and would really love to figure out how we can help take these to a higher level. It would help if could share the music and graphics cue sheets so we can discuss more efficiently. Looking forward to connecting!

Best,

Lisa, Adam & Ben

Making a Murderer

Episode 3 (1hr) SUGGESTIONS:

CURRENT:

Cold open:

- Start of pre-trial.
- Overview of the evidence (Rav4, bones)
- Key wasn't there when they first searched.
- Court finds probable cause.
- Media repaints S.A. a monster. Town reacts.
- Family gets hate letters.
- Judge sets bail high.
- S.A. settles lawsuit to get money for defense.
- Buting and Strang join - talk about police framing.
- Brendan is detained.
- Kratz details Brendan's version of crime.
- Brendan bail hearing.
- Jodi out, Chuck reacts, Allan says family torn.
- Brendan coerced and charged.

Changed... The new cold open is great, really turns the tables on Steven with the \$450k payment being cancelled and law enforcement closing in on him. And the music really drives it home!

Preliminary hearing is getting tight. Great

Cliffhanger: Brendan's mom says that if he testifies against S.A. he gets 20+ years with parole, but if he doesn't he could get life with no parole.

Good closing - very clear that Brendan is being forced to testify against Steven.

Episode 3 Detail:

- 1:26 - add ident for Walter Kelly
- 3:30 - Music is great - really ups the stakes.
- 4:30 - more rapid succession of pretrial testimonies is great - better pacing creates really strong engagement.
- 10:30 - Music under news clips is effective, really keeps tension up, especially after the poignant moment of SA saying "poor people lose" - which is great with powerful silence that lets those words ring, but this silence could be punctuated more by surrounding music.
- 12-13:00 - Family all repeating they didn't think he could have done it - too many. Maybe remove Yvonne?
- 13:30-13:50 - People seem to get confused between the \$450k awarded by the legislature (before being cancelled) and the \$425k settlement from the \$36m lawsuit. Maybe a simple graphic could track Steven's various avenues for recourse and each of their outcomes.
- 14-14:30 - Like the townspeople commenting in the pool hall, but probably one too many. The guy in the middle seems the least expository (first woman mentions the key being planted, the last specifically says that the town couldn't afford the lawsuit so they had to get rid of the problem).
- 17:15 - The underscore here is incredibly sleepy.
- 19:25 - Dean Strang speaking about how he can understand the human emotions of how Manitowoc police could end up planting evidence. . . adjust music to darker & more ominous.
- 20:00-22:00 Strang/Butin inspecting the junkyard is pretty bulky scene, could be tightened.
- 25:40 - Good unsettling underscore.

Episode 3 Detail (cont.)

- 34:35: great ominous music in this section under the card re: Barb visiting Brendan on March 4th at the Sheboygan Detention Center.
- 35:28 - Jodi gets out of jail...is there any way to quickly establish earlier on that she has been in jail through all of this? (this is same note from last cut - thoughts?). A lot of her walking from jail to car and from car to trailer - could tighten.
- 42:00-43:00 - Dolores v Barb scene isn't really clear. Do we need it?
- 46:00 - Yvonn isn't necessary, Reesa says it more effectively.
- 47:53 - add simple and unsettling music bed as Brendan is walked into the interview room with Weigert and Fassbender. He has no idea how his life is going to change from this interview on. Could also really accentuate the "They got into my head" line with the play of music/silence.
- 49:15 - The calendar graphic feels very strange - not clear at this point what it is trying to get across.
- 54:57 - audio glitch when Jerome Buting says, "xxx" finally gets frustrated and says - "her head - what happened to her head". The name (whether it's Wiegert of Fassbender is cut off)
- 56:43 - After he says "By being honest you can at least sleep at night" it would be nice to bring in an emotional music cue - this is really sad that they are doing this to him - and it could carry us through until we drop out the music at 57:47 when Barb says "Did you?" so that the silence is deafening when he says "Not really...they got into my head"
- 59:30 - Could really ratchet up the music - the score from the open for example was more intense and might work here. The world just closed in on Brendan...

From: Lisa Nishimura <[REDACTED]>
Sent: Friday, August 7, 2015 1:27:32 PM
To: Moira Demos [REDACTED]; Laura Ricciardi [REDACTED];
Mary Manhardt [REDACTED]; Lisa
Dennis [REDACTED]
Cc: Adam Del Deo [REDACTED]; Benjamin Cotner [REDACTED]
Subject: Making a Murderer: Ep 5 & Ep 6 Notes
Attachments: 08.07.2015_MAM_Ep5_Ep6_Notes.pdf

Hello Team,
I hope this finds you all well. Attached please find our notes on behalf
of Episodes 5 & 6. Looking forward to connecting this afternoon.
Best,
Lisa

Making a Murderer

Episode 5. SUGGESTIONS:

CURRENT:

Cold open:

- Drop sexual assault charges against S.A.
- Day 1 of trial.
- Opening statements (a lot about VM messages)
- Det Jacobs call (do we have a body?)
- S.A. questioned about T.H.'s appointment.
- Bobby says he was asked to help get rid of body.
- Debate about VMs.
- Judge blocks from talking about other suspects.
- Dean asks about roommate.
- Ryan H admits to figuring out her password.
- Boss (Sheriff?) says to search Avery property.
- Review of finding Rav4 and what followed (Pam)
- Dolores shows us where the car was found.

Cliffhanger: Colburn testifies about calling in the license plate before the Rav4 is discovered.



Episode 5 - Detail (1hr10min)

This episode has come a long way. The new edits around the blood vial are much improved, however the top of the episode still feels very slow to start because of the opening statements, but once the ball gets rolling it uncovers a lot of the evidence. It is doing a much better job of painting the picture that there were several other potential suspects who were not investigated.

What is the context of him saying "If the defense wants to put forth their defense then they do so at their own peril."? This statement feels clunky, out of place and perhaps unnecessary.

07:05 – Buting and Strang discussing the jury questionnaires – they're frustration is coming through in an almost pissy/sarcastic way and feels pretty long.

8:30 – Something bumps in the cut of Dolores watching the news coverage, something missing in the stitching to make it a convincing cheat.

Episode 5 - Detail (cont.)

09:00 – 09:50 – Check the chyron - it reads Feb 12, 2005 first day of court. I believe this is meant to be 2006 or 2007. Do we need the b-roll of the empty courtroom and the press room? Music scales up over this rather than over people entering courtroom. As a result, it lulls back down before Kratz' opening statement.

09:50 - 12:45 – Kratz' opening statement goes on a long time and seems to meander a bit. Review to tighten

12:45 – 13:00 – Do we need the judge giving instructions not to discuss the case?

15:30 – “Both were questioned about their own activity and conduct with respect to Mr. Avery’s imprisonment.” Is there a sound byte here that references that this is in relation to the older rape charges? The year is easy to miss and this could be confusing for people not really familiar with the timeline.

15:30 – 19:55 – All of Strang’s opening statement is really important, but look at tightening – even tiny trims will help. This much talking in a courtroom begins to make for a really dry episode. Perhaps music could help? This episode is naturally so courtroom heavy that we need to try really hard to help people through it.

Episode 5 - Detail (cont.)

- 23:15 – Great cut between Bobby Dassey testimony and the news coverage – and the music nails it!
- 26-27:00 – Well cut/music works to show the press' doubt on the Bobby Dassey testimony in contrast with the Judge's ultimate decision not to call a mistrial or instruct the jury to disregard. Would look to have the music hit slightly harder w/the card stating that the judge does not call a mistrial or direct the jury to disregard.
- 28:20 - How important is it to have this interview w/Dolores and Allen re: Bobby Dassey? She says, "half of that stuff isn't even true, implying that half of it is - feels too vague to make a point."
- 36 – 36:45 – They are arguing about whether or not the judge will allow the cell phone testimony in front of the jury, but we don't see his decision.
- 37:30 – 38:15 – Strang's comments seem a bit preachy and obvious – do they really further the story or raise a question that the material doesn't naturally raise?
- 49:00 – Did Pam and Nicole search the junkyard after the Sheriffs got the Avey's permission? Did Steven give them permission?
- 53:00 – The Tammy Webber information is interesting, but without knowing who she is or how much weight this holds it could be confusing. Do we have more information on who she is or should we consider taking this out?
- The Colburn ending is terrific! - can we add music to help emphasize further? He goes from being so sure and then is caught in a clear lie about the origin of the car make and model.

Episode 5 - Detail (cont.)

Question - where are we utilizing the Teresa Halbach home video of her talking about life, and how she would feel if she died now? Is there a strategic place to put within this episode or do you have plans to utilize strategically elsewhere? It's extremely powerful, particularly once the viewer has established a connection.

It should be knowable when Teresa made that video. Do we have that information? Could we accurately lay it within an episode to coincide with the actual events of that time.

Was it ever administered as evidence in the trial? If so, when?

CURRENT: Episode 6. **SUGGESTIONS:**

Cold open: Card says one day after Brendan's arrest there is a press conf. Kratz describes how S.A. instructed Brendan to cut T.H.'s throat. Police search residence and garage for new evidence. Kratz claims physical evidence now makes sense.



- Bullet found in garage - Lenk was present.
- No T.H. DNA found in trailer or garage.
- Bobby only thing placing her inside.
- Skull fragments.
- Sherry: blood on bullet matches despite botching
- Defense tried to have labwork monitored, denied.
- Everyone reiterates there would have been blood
- Bones and barrels conversations.
- Bloody hair in trunk.
- Timeline debate (Bobby D, bus driver, Scott T.)

Cliffhanger: School bus driver has a different timeline than Bobby. Lawyers explain that the prosecution still hasn't put forth a theory about when and where she was killed.

Episode 6 - Detail (59min)

- Opening chyron - propose to change to read that Kratz and Pagel HOLD a press conference (versus held) to keep it present tense.
- 1:20 - Music at end of Kratz' press conf is fantastic.
- 08:02 - Good sound design punctuation on the end of Remiker's testimony, can we further add a musical cue when it's confirmed that Remiker saw Lenk on the property?
- 16:20 - Do we need this press conf from Kratz? Seems it would be powerful to go straight to photo of Teresa.
- 22:24 - Possible to trim down people entering courtroom/walking around press room and get straight back to Sherry?
- The entire burn barrel testimony is still very long.
- 46:00 - **Dorothy and Allan visiting Steven; is this scene necessary?**
- 48:37 - 49:39 - Buting isn't very concise here. Is it possible to do some dialogue trims and get him to the point faster?
- 58:45 - Are there too many quotes at the end? Could we end with Buting's line "I'm still waiting."? That might achieve the same result as "Spring it on us at the last minute.", but without the redundancy.
- You've just come off terrific cliffhanger closes with the blood vial in ep 4, and Andy Colburn caught in a lie in ep 5. Comparatively, this close doesn't feel as impactful or urgent. One suggestion would be to pull up the open of 7, eg Manitowoc police being on site when they weren't supposed to be part of the investigation.

Episode 6 - Detail (59min)

key moments of testimony where **music cues can be added:**

- Ryan - 1) has Teresa's vm pw 2) can't remember what time of day he saw Teresa last
- Sherry Culhane - 1) confirming that Fassbender specifically asked her to try to find DNA of Teresa in Steven's trailer. 2) Her deviation from protocol. 3) She never found Teresa's DNA in Steven's trailer AND also did not find Brendan Dassey's DNA there either
- Scott Tadych - after he is so confident about the time he left (2:45), then Dean has him read his statement to police 16 months earlier, time is 3:15 and the flames are 3 ft. versus 10 ft.
- Bobby Dassey - testimony about being so confident that he and Scott ident one another precisely at 2:45, but under oath say that the two of them did not coordinate or talk about this statement.

From: Lisa Nishimura [REDACTED]
Sent: Thursday, August 13, 2015 12:16:24 AM
To: Moira Demos [REDACTED]; Laura Ricciardi [REDACTED]; Mary Manhardt [REDACTED]; Lisa Dennis [REDACTED]
Cc: Adam Del Deo [REDACTED]; Benjamin Cotner [REDACTED]
Subject: Making A Murderer: Notes Episodes 3 & 4
Attachments: 08.12.15_MAM_Ep3_Ep4_Notes.pdf

Team!

Congrats - these latest cuts of 3 & 4 are fantastic. You have accomplished an amazing task in getting so much information into a tight & dramatic form. We are thrilled with the work you've done.

The music is being used to far greater effect. We would encourage you to keep working at it to ensure you engage the full scope and impact of music as you finalize. Similarly, as you work with Elastic we want to make sure that not only are the graphics created at the highest quality, but that they are utilized to maximum effect. A couple of our notes reflect this point. We have some other very minor suggestions and points attached. We look forward to discussing them with you, but most importantly great job and congrats!!

Best,
Lisa, Adam & Ben

Making a Murderer

Episode 3 (1hr) SUGGESTIONS:

CURRENT:

Cold open:

- Start of pre-trial.
- Overview of the evidence (Rav4, bones)
- Key wasn't there when they first searched.
- Court finds probable cause.
- Media repaints S.A. a monster. Town reacts.
- Family gets hate letters.
- Judge sets bail high.
- S.A. settles lawsuit to get money for defense.
- Buting and Strang join - talk about police framing.
- Brendan is detained.
- Kratz details Brendan's version of crime.
- Brendan bail hearing.
- Jodi out, Chuck reacts, Allan says family torn.
- Brendan coerced and charged.

Cliffhanger: Brendan's mom says that if he testifies against S.A. he gets 20+ years with parole, but if he doesn't he could get life with no parole.

Episode 3 Detail:

- Overall note: it would be helpful to label all of the footage (in all episodes as we finish them) that is part of police evidence as a result of searching the Avery property as “Police Video” to distinguish it from documentary footage.
- “Poor people lose.” Really want to emphasize this key line of the phone call. It’s so core to the classism and bias that drives so much of this entire story. Explore adding an impactful music to that one line, or allowing a beat more of time to really take it in.
- 20:30-21:00 - This Jerry Buting sequence is really powerful, let’s just ensure his assertions aren’t defamatory. His statement needs to align with the filings they made in court.
- 22:00 - Do we need Robert Hermann here? Could we jump straight to the press conf?
- 35:07 - Remove “November 6” from the text on the card.
- 49:00 - Let’s discuss the goals of this graphic and how you are directing Elastic to execute. It isn’t just that the graphic needs to improve, it actually feels like the timing of how it is cut into the scene should be examined. It feels tacked on to the end of the scene and essentially repeating information rather than being integrated within the scene and enhancing the narrative.

CURRENT: Episode 4. **SUGGESTIONS:**

Cold open: Brendan's call with his mom and then S.A. saying he feels sorry for him... nothing good coming out of this.

- New atty (Len) for B.D. - he is terrible.
- Jodi finds phone calls w/S.A. on day of murder.
- Eval. of blood and key DNA, evidence from car.
- Try to throw out B.D.'s confession.
- Len/O'Kelley push B.D. to confess.
- B.D. meets with police then calls mom.
- Dateline
- Police say easier to kill S.A.
- Jodi ordered not to see S.A.
- Family tries to get B.D. a new lawyer - denied.
- Judge tells Len to withdraw.
- Lenk.

Cliffhanger: Blood vial is discovered to have been tampered with.

Episode 4 - Detail (1hr 4min)

- Mark the date at the top of the episode.
- 5:25 - To add support to what Len is saying, could we add a card saying what the actual law is in Wisc regarding having a parent present when a minor is questioned.
- 14:35 - It might help to clarify if you say on this card "Brendan's lawyer, Len, has made arrangements..." or "Len, the public defender, has made arrangements..." (Again, the Len and O'Kelly's behavior is so counter intuitive for the first time viewer).
- 40:45 - Music really good here with Jodi in her car, following that scene you've done a great job tightening Jodi at home.
- 41:50 - 42:20 - Is it possible to tighten Allan here into just a quick reference to "Here he is. Kenny Peterson. I didn't like the statement he made either. That was a hell of a thing for a sheriff to say. He said that right on TV." to set up Peterson's testimony (trim these shots 41:33-41:36, 41:45-41:48, 41:52-42:08)
- 42:29 - 44:46 - Peterson's testimony feels like it could be tightened still. Could we cut "Two members of your department... In your life have you ever spent a day in jail for a crime you didn't commit." (42:44 - 44:22). This section seems to just confuse the fact that Strang is trying to get across that Peterson personally had reason to be biased. We get plenty of Lenk/Colburn in much more clear sections.
- 52:30-52:38 - Cut extraneous lines "you're going to call your PO?...they told me I had to go see her."
- 52:45 - Great job building the narrative arc of Jodi and Steven's relationship, her unwavering dedication to him despite his incarceration and ultimately the demise of their relationship due to the relentless harassment that she was under.
- 1:00:12 - The Sheriff org chart is temp, right?

From: Lisa Nishimura <[REDACTED]>
Sent: Monday, August 17, 2015 5:43:45 PM
To: Moira Demos <[REDACTED]>; Laura Ricciardi
<[REDACTED]>; Mary Manhardt <[REDACTED]>
Cc: Lisa Dennis <[REDACTED]>; Adam Del Deo <[REDACTED]>; Benjamin
Cotner <[REDACTED]>; Zana Lawrence <[REDACTED]>
Subject: Making A Murderer: Episode 7 Fine Cut Notes
Attachments: 08.17.2015_MAM_Ep7_FineCutNotes.pdf

Moira, Laura, Mary & Lisa,
Attached please find our notes on behalf of Episode 7 Fine Cut. Kindly
review and we can set up a call to answer any questions or to jump into
detail.

Congrats on all of the hard work - the progress is amazing!

Best,
Lisa

Making a Murderer

08.17.2015 Update:

Episode 7 Fine Cut

TRT: 1:03

MACRO:

Episode 7 is really coming together! This is a pivotal and challenging episode given the density of material and the sheer volume of courtroom testimony, and in particular the enormous amount of exposition of evidence. The structure is solid and serves the complexity of the story well, but the sheer density & volume of the material can at times, become overwhelming to the viewer. While we fully recognize that you've significantly pruned through the various testimonies, it is our feeling that there is further room to tighten.

While the run time of 1:03 is definitely far more in line with where we feel most of the episodes should land, because the specific material in the episode is so heavily concentrated in testimony and evidence, we would suggest targeting a shorter run time in the 50 - 55 minute zone.

Looking forward to discussing!

Episode 7. SUGGESTIONS:

CURRENT:

Cold open: B-roll of police cars - "FBI is going to assist in investigation...Manitowoc provided resources. That is their only role." Allan says "They had Stevie picked. They set him up. They weren't even supposed to be investigating this. Right?"

- Colburn testifies about questioning SA and finding the key. Colburn questioned about report.
- Debate abt Manitowoc PD being at crime scene.
- Buting & Strang point to Lenk as framing.
- Press conferences re police reputations.
- More testimony on Colburn conflict & press conf
- Log shows Lenk didn't sign in - he denies framing
- Judge rules EDTA admissible. Press conf abt.
- S.A. call saying they are trying to keep him in.
- Direct FBI testimony, pressconf, cross, pressconf
- S.A. decides not to testify, pressconf.

Cliffhanger: Dean explains to S.A.'s parents that good news is that 3 charges have been dropped, bad news is that murder charge is all that matters.

Episode 7 - Detail. TRT: 1:03

- 04:00 - Fade-out on music is very abrupt/awkwardly placed here.
- 05:25 - 07:05 - Colburn testifying about the key could use a lot of tightening.
- 10:42 - Jump cuts on Strang for "Nov 5, Nov 6, Nov 7" are awkward.
- 19:00-23:30 - Consider cutting Kucharski down significantly or entirely. Establishing his lack of oversight of Lenk/Colburn was covered by the previous officer and Buting's argument about the keys falling from the bookcase is confusing/doesn't have a huge impact - it actually detracts from the point that they could have planted it. Especially when it eats up 4 ½ minutes.
- 23:30 - 25:20 - Similarly Lenk's testimony about the search could be really cut down or out.
- 25:20 - 26:00 - Buting's claim that he put the DNA on the key is really weak.
- 19-26 This whole section detracts from connecting Lenk's testimony to the officer earlier testifying that they should not have been there to begin with.
- 29:03 - Could we cut Orth after 30:45 once we've established that Lenk/Colburn weren't there at the beginning and that he started the Log (until 31:16)? Lenk's presence on the site is better established with Fassbender reading the log (and finding a record of Lenk leaving but not signing in) and Lenk himself with conflicting testimony across 2 dates (2:05 arrival vs. 6:30pm arrival)
- 34:00 - Good music ratcheting it up.
- 39:20 - Good music.
- 40:51 - Good music.

Episode 7 - Detail

- 50:45 - consider adjusting the musical Bed for Jerry's driving interview re: the FBI retooling the EDTA test from the droning guitar and drum loop to more of an atmospheric and haunting musical bed.
- 51:35 - Buting's joke here about "do so at your peril" will only work if you keep that in Episode 5. It was confusing in 5, so depending on what you do there you might want to consider cutting it here also.
- 51:55 - Triple check Buting's statement here for legal. He is directly claiming they framed Steven. Make sure this is 100% covered in their legal filings.

From: Lisa Nishimura <[REDACTED]>
Sent: Sunday, August 23, 2015 4:33:59 PM
To: Moira Demos <[REDACTED]>; Laura Ricciardi <[REDACTED]>; Mary Manhardt <[REDACTED]>; Lisa Dennis <[REDACTED]>
Cc: Adam Del Deo <[REDACTED]>; Benjamin Cotner <[REDACTED]>
Subject: Making A Murderer Notes: Episodes 8 & 9
Attachments: 08.23.2015_Making a Murderer_Episodes 8 & 9 Notes.pdf

Moira, Laura, Mary & Lisa,

I hope this finds you all well. Attached please find our notes on behalf of Episodes 8 & 9. Terrific progress! You'll find that these notes are focused on refining, tightening and leaning into specific moments to ensure the greatest emotional engagement.

We look forward to speaking with you and answering any questions that you might have!

Best,

Lisa, Adam & Ben

Making a Murderer

CURRENT: Episode 8 - 45min 23sec **SUGGESTIONS:**

Cold open: Allan walking around barn looking for Steven's name on the floor. Dean talks about the fact that S.A. never committed these crimes: "What you can hope to get is your liberty back, eventually."

- Closing arguments.
- Buting, Dean say he was framed.
- Kratz says shouldn't matter if key was planted!
- News reports. Dolores talks to S.A. (b-roll)
- Jury leaves for night. Juror is replaced.
- S.A. talking on tape about how he feels.
- Family warned about blowback.
- Verdict.
- Dean/Buting sad, believe killer is on the loose.
- Allan talks about Manitowoc winning.
- Colburn makes statement.
- Scott T: He had it coming.
- Buting says 7 votes for innocent at start.
- Excused Juror feels terrible.
- Commentary from Pete, Kim and Stephen Glynn.
- Brendan's trial in 2 weeks. New lawyers discuss.

New ending: Brendan is led into court and we hear his call with Barb.

Episode 8 - Detail 08.23.2015

- 4:30 - 9:27 - The closing arguments are running too long to sustain engagement. Is there any way to trim them down? The content is great, but 5 minutes of straight speech is too much. Perhaps cut Strang's lines about Lenk lying since we covered that in trial? Do we need as much detail about Buting's theory on the burn barrels?
- 6:59 - Dean Strang - At "Would Lieutenant Lenk lie?" - perhaps a quick cut away to a Lenk (photo or footage) would be impactful since it would put a face to him in this defining moment. Take a look at it both ways and see what works better.
- 9:05 - Probably best to ID both Lenk and Colborn in the two shot photo.
- 13:05 - 13:48 Consider cutting Jerry Buting's post trial epilogue section. From a pacing perspective, it's a bit slow and he doesn't add any significant new information which was not covered in the closing statements.
- 17:32 - Explanation of replacing the verdict is much more clear! Great job.
- 18:14 - Buting's commentary still seems unnecessary here
- 18:29 - When Steven says "If they finding me guilty, it's gonna be hard.....why I have my family go through all of this, and everything else...." is powerful but doesn't resonate as strong as it could as currently juxtaposed against the B-roll shots of his parents only. Maybe add a few shots/photos of his kids and ex-wife and girlfriend to remind the audience what Steven has lost already for going away for a crime he didn't commit, all of which is on the line yet again. The additional shots may add some further emotion to the sequence.
- 26:37 - 28:55 - THE VERDICT - The reading of the guilty verdict of Steven still doesn't feel climactic enough given the entire series has been building to this moment. Perhaps enhancing the music and/or cutting to other members of the Avery family in the courtroom showing strong disappointment on their faces (conversely, maybe adding any shots of Kratz, Colburn, Fassbender, etc. and their team showing satisfaction would work too), and an overall intensifying of the cutting style would help drive this into a more climactic

Episode 8 - Detail

(cont.)

moment. Currently the beat emits anger and we feel injustice was done, but given the overall investment made in watching 8 hours thus far, the audience should be feeling more intense anger, sadness, bewilderment, and perhaps even fury at this jury decision. Take a look and see if it can be ratcheted up.

- 27:59 - Great use of music to subtly accentuate when Steven chokes up here!
- 33:30 - 34:30 - Music is lulling. Would a version of the cue at 18:42 work here as well?
- 37:28 - Off of Mr. Beatz interview, do we have a photo or any footage of Ken Kratz getting an award for winning this case? If so, it would be satisfying and impactful to use it.
- 37:53 - 39:44 - Pete and Kim and Stephen Glynn together is too much commentary, please trim.
- 41:21 - new atmospheric and haunting music under Brendan's walk into the court is much better

Episode 9 (1hr3min)

SUGGESTIONS:

Cold open: Buting quote: the question is whether Brendan is going to confess to a murder he didn't commit.

- Kratz opening statement.
- Mark opening statement.
- Play BD's first statement.
- Weigert
- Lots of discussion of his coercion.
- Only play first half of his confession.
- Kayla's retraction. TH brother talks to press.
- Brendan testifies.
- Tape of his call to mom, he says he made it up.
- Mike Halbach talks to press.
- Closing arguments. Judge reads jury instructions
- Judge reads verdict. Mom freaks out.
- Strang comment.
- Dolores cries.
- Theresa Halbach video.
- Mike Halbach reads statement in SA sentencing.
- S.A. reads his own statement.

Cliffhanger: Judge reads statement for Steven and how dangerous he is. Dean comments: "Tragic lack of humanity." Buting: [Could happen to any of us.]

Episode 9 - Detail (1hr3min)

- 4:00 - Still think that someone should explain that Kratz claims Teresa was murdered in a completely different location in Brendan's case. This is shocking and not completely obvious unless it is pointed out.
- new music under the end of Kratz's opening statement is powerful.
- 7:39 - 8:50 - It might be better to take out the audio playback of Brendan's first interview. It is hard to understand and slows things down.
- 15:00 - during the smoke break with Barbara, Richard Mahler, Carla Chase and Peter Dassey, the comments from Carla and Peter don't really add to the conversation meaningfully. Richard's point about the lack of DNA evidence and Barbara saying that Weigert is lying about giving her the opportunity to be present during Brendan's interrogation are the key bits. Consider trimming, especially because there is a solid segment with Peter Dassey later in the episode.
- 17:43 - Is there any footage or documents (maybe a corporate training video) from John E. Reid & Associates showing their interrogation techniques? It may sell the line attorney Fremgen better.
- 39:57 - 40:06 - awkward pause here as he is putting the slide up.
- 41:00 - 41:17 - Would it be possible to cut this setup of Brendan denying talking to Kayla and just start with him saying "How is it that you and Kayla came up with seeing body parts in the fire?"
- 44:44 - 44:58 - Consider taking out shots of them walking into the courtroom.
- 51:20 - Good "danger" music when Colburn is walking him out.
- 53:55 ID both Colburn and Petersen - amazing, given the conflict of interest, that they are now walking Brendan out of court.
- 54:15 - Could we subtitle what Barb is yelling in this section? Who does she say set it up?
- 1:01:05 - ID that Colburn is walking Steven Avery out of the court. Again, huge conflict of interest given he was always a suspect in tampering with evidence.
- Playing Teresa's home video in the courtroom during the sentencing is affecting. Separate from this, when will we see the video of Teresa talking about her own death?

Making a Murderer - Ep 8 v1 Notes

GENERAL

COLD OPEN: Let's label whose home this is as we start showing the opening images. Is it Steven's home? Let's discuss other ways can we set up the episode before going into the credits.

SANDY GREENMAN: This is the first time we see Sandy Greenman. Although context is given to her relationship with Steven, we don't have closure with Jodi who was in the first few episodes. What happened to that relationship? Is there a statement we have of Jodi explaining the break up - even further, whether she believes he's still innocent? (we believe you're addressing in episode 4, but let's discuss). Also, the fact that Sandy hasn't had physical contact with Steven (until he is moved to Waupun Correctional Institution) is a shocking fact given that they're engaged. Let's discuss her introduction to the series and her significance in his life (along with her relationship with his family), and also calibrate how much screen time we want to allocate to her narrative specifically. Currently, she is a substantial part of the episode and we believe we may be able to pull back her overall narrative a bit while still having her role be incredibly impactful.

PACING: As discussed before with previous episodes, pacing is an issue. There's new information being squeezed into this final episode (Sandy, Brendan's case with the Innocence Project, etc). Let's figure out a way to create proper chapters so the storylines are interwoven as well as explore shortening certain court scenes and b-roll so information doesn't drag. In other words, many of the sequences feel long with run-on narratives. As a result the cadence of episode 8 feels inconsistent with episodes 1-7.

Episode 8 presents a meaningful challenge to deftly navigate a large expanse of time, as well as working to weave back and forth between Steven and Brendan's storylines. Given the sheer volume of information, as well as the climax of the verdicts and sentencing of both Brendan and Steven across episodes 7 & 8, let's explore how best to present those key pieces of information across these final 2 episodes. As an example, do we reveal the verdict for either Steven or Brendan in episode 7 and then the other in episode 8 along with sentencing for both?

NORTHWESTERN CLASS/STUDENTS: Please strongly consider removing the this entirely. While interesting, the students pov doesn't add authenticity to Brendan's innocence and tonally it feels like it belongs in a different film. Treating it as a classroom case study feels too basic and inconclusive. Brendan's defense attorneys are amazing and incredibly articulate - particularly Laura, Steven, Robert are powerful and remarkably effective at communicating the level of injustice that has taken place throughout the course of Brendan's case. Let them shine through this section - they bring great clarity and are very satisfying to watch. In parts the students pov dilutes the clarity presented by their instructors.

JUDGE ELLIS: Let's discuss how we can elevate his character at the beginning of the episode. We left off episode 7 seeing how biased he was against Steve - and it comes up again (at 45:00). He essentially is a key figure in preventing Steven's innocence to be explored.

ENDING: Currently, given the investment the audience has made in the 8 episodes, the ending feels anti-climactic. Perhaps there's new promising up-to-date information we can add that presents more of a light at the end of the tunnel, some hope, for Brendan and Steven, or work to amplify the positive turns (new defense team for both Brendan and Steven, Steven successfully moving to Waupun and educating himself and driving his own case effectively enough to earn a court appointed attorney). Further, stylistically how can we generate more anger and urgency. Using Steve's V.O. works very effectively throughout, can we build a bigger narrative around his own words for the ending? Also, it would be helpful to explain Tom Acquino's status on the case given how new he is to Steven's defense.

Also, we think doing a round up (eg., where are they now) of Kratz and all the investigators involved would be interesting. Our audience needs to be left not only feeling extremely upset and saddened for Steven and Brenden, but also incredibly angry.

To close, remember, we're looking for people to feel terrified and enraged; to feel as though it's their responsibility & need to discuss this case, to raise it in the social consciousness and to drive awareness and potentially a new legal look in the same way society did for The West Memphis Three. Leave the audience feeling angry!

SPECIFIC

6:09: This is the first time we see Sandy, as Steven's fiance no less. What happened to his other girlfriend? Why did she start visiting him? What was the initial connection?

8:45 - Is there a better transition we can use here between Sandy's interview and Richard Mahler's interview (rather than the dock?) Is there a picture at all of Sandy and Steve we can insert? (not sure that exists)

13:29 - Do we need this interview with Barbara here? It may be better suited for the end. What month is this in 2010?

17:13 - We don't need this much of a set up for Brendan's trial. It drags - let's cut to the trial instead of spending so much time on b-roll seeing people file in and get their bearings.

47:00 - Can we find a better way to transition into Kratz's misconduct?

49:08 - Again, we need a better way to transition out of Kratz being taken off the case because of his misconduct. These two scenes (Len Kachinsky being removed) feel too dropped in rather than strategically connected.

51:40 - Let's label Sandy's home here.

53:44 - This scene is really long and it feels that the information is familiar and not propelling the story forward. Perhaps there is a way to make this feel more kinetic in nature. Also, once it's been cut more efficiently, can we ID of the description/location/who's in this scene? Lastly, will we need to remind folks what "EDTA" is at this point in the story? Will they remember from previous episodes?

55:22 - Perhaps we can show a graphic here to visually see how both cases are parallel.

1:00:34 - He says "this much" and the subtitle reads "this one"

1:01:11 - Please label. Why is he revisiting Steve's house - under what context, when, etc? We need a stronger set up.

1:09:09 - 1:13:14 - This scene with Steven's mother and Sandy drags on and doesn't move the story along. Let's consider cutting.

1:15:01 - 1:20:55 - Per above, please consider removing this classroom scene from Northwestern analyzing Brendan's demeanor and status within the case. It feels irrelevant to the story overall.

1:15:50 - Another example, this professor explaining "what we look at when analyzing a confession" comes off rather overplayed and exaggerated.

1:22:55 - This scene of Steven's father walking around his garden, while sweet feels out of place and slows the pace. What's the underlying purpose?

Instead, cut to 1:24:20 with Steven talking about his dream of where to live and what he wants - it's showing shots of the garden that we were just walked through but let's see more images of him and his family and Sandy - let's create the hopeful tone for the life he doesn't have that he's yearning for.

1;24:13 - When in 2014 is this?

1:27:48 - Is there a better way we can say "Steven is in a maximum security prison" without saying "not super max" - to provide context of the difference of where he was before?

1:28:29 - When Sandy says here that she has never actually had physical contact with Steven, this is an important fact for the audience to know given that she's been labeled as his fiance the entire episode. Why is that fact stated here at the end of the episode rather than when we're first introduced to her character?

1:31: The last statement he says "I want my life but they keep on taking it" - this is the note we end the series on and it is powerful. Let's explore different imagery to use here and ways to lead up to this closing statement.

MAKING A MURDERER

Ep 6 v1 / 3.9.15

GENERAL:

Length: This episode is an hour and 30 min. While the court scenes are captivating we need to ensure that we're providing the essential evidence, of which there is a bounty! Let's trim where we can to ensure continued engagement and keep the pace and transition in a way that we don't lose folks in unnecessary detail unless it will play into key evidence in later episodes.

We're in a lot of detail until at around minute 39, we speak to the fact that they're at day 18 of testimony & provide a summary of facts to date via the defense attorneys. This is a welcome organizing moment to help the viewer ground all of the testimony, but let's make sure that viewers get there and are not lost before.

As an example, Dr. Leslie Eisenberg: Forensic Anthropologist, her testimony in particular is important and thoughtful, but comparatively very boring and lulling. Can we cut directly to her admitting that she can't reasonably support that there might be more than 1 burn site? When combined by the later testimony of Dr. Scott Fairgrieve: Author of "Forensic Cremation Recovery & Analysis" saying that he actually finds the evidence to be more supportive of the theory that the body was burned elsewhere and brought over is powerful. We need to really build and hold this moment.

Pete: An overall note as he appears across multiple episodes. Can we do something to help further substantiate who he is and why his POV is valid? He does such a good job of providing context and articulating just how out of normal protocol and extraordinary the investigation has been to date. Let's make sure he is substantiated and believable based upon his past history.

Opening Credit Sequence: Let's discuss today next steps for the graphics treatment.

Beginning: Instead of just the date, can we provide another line of context of who and what we're about to see? It's important that these cards reset the scene for the viewer, especially to remain consistent from where the viewer left off in the previous episode. Also to relabel the characters at the beginning.

Avery's Parents: It's heartbreaking and effective to have this up close look at parents watching their innocent son in this situation. However, it feels that we're leaning in on Avery's parents too much overall. For example, we don't need the scene of Steven's dad talking about how much blood a deer holds. Please revisit overall.

AMOUNT OF QUARTS OF BLOOD: During the testimonies, there seems to be a different number. Please review just to be sure.

SPECIFIC:

7:33 - Re-label Steven's lawyers here. Again, to have them relabeled at their first appearance at the beginning of each episode will be helpful for the audience, even if some of these characters are consistent in each.

17:40 - 17:55 - Can we label these exhibits? Where/what? Even if there's someone describing at certain parts, it'll be helpful to both see and hear.

45:00 aprx - in this area, the testimony of Linda Eisenberg starts to really drag. The defense attorney, Strang, drags in his line of questioning as well, specifically, in his summary of events at approximately 47 minutes. We know this is an important narrative, however is there perhaps a way to make this just as impactful, but also more concise.

52:19- 55:00 - Feels like this section is lagging a bit overall. Can see if maybe speeding up Dr. Scott Fairgrieve testimony will help? It's important information but, again like Eisenberg, could if possible, use some tightening.

1:06 - Brendan Dassey's testimony section feels long - if possible, perhaps an area to tighten. Please revisit.

1:09:00 - Love the character of the woman bus driver, Buchner. She gives impactful testimony and comes across very credible.

1:12:03- The transition into FBI witness, Lebeau, feels very low energy. Can we explore ways to transition stronger into this FBI witness, maybe in a kinetic way? Since this is another significant witness, if we can transition into him in a stronger, more interesting way it should set him up better (especially for his statement at 1:15:35).

1:17:00- BIG QUESTION: Why would the FBI have a specific interest in covering up for and possibly aiding and abetting with Manitowoc County? Seems like we would maybe need to know that Manitowoc had some deep history with Lebeau/other FBI officials for them to testify in the case in such a subject manner. We are not saying we shouldn't do this arc, it just feels unlikely. This was something we bumped on. Let's discuss.

Episode 1:

- Do we reveal Steven has been let out of prison so early in the episode
- MUSIC is slow when he meets his girlfriend and then first wife. Pace needs to be picked up
- Check this - Don't think we make the Sandy Morris connection when we see her younger picture. Also, we cut back to the younger picture twice which we should try to avoid.
- Use different colors or italics for subtitles (Steven and others)
- Better editing on rape re-enactment scene - currently feels too subtle
- Seeing all the ID of the different sheriffs and deputies is confusing.
- Music is so subtle when Steven is convicted. Music needs to be more present overall.
- Feels slow pacing when Steven parents and Aunt are talking about supporting Steven. To be clear, this is the part before the appeals lawyers get involved.
- When Steven gets out of jail needs to be WAY more climactic and suspenseful.
- The episode tracks better, but less emotional. Editing can be sharper turning the story in a more clever and precise ways. Music also is, again, key.
- Should we foreshow Vogel and a key villain earlier.

Episode 2

- Two shots of attorney feels stage. Probably not worth exploring.
 - Should be lose the sketch of Avery in Episode 1 since it's effective used in this episode from Eugene on the stand.
 - Lose Judy Dvorak Stand Testimony in episode 1. Much better here.
 - What's in the document/memo the Eugene is referencing on the stand and is trying to evade.
 - **MUCH HARDER TURN when we go to Teresa Halbach.** Should be use a news clip.
 - Need context on who filmed Teresa Halbach mother and brother. Feels.
 - Search for Tereasa should feel more build up and more cinematic. Feels like this should be THE FUGITIVE. Use more set up with Imagery BEFORE the search party starts walking.
 - We need to make a distinction between Calumet and Manitowoc. Use a graph to show the distance. What county is Kratz from? Also, what's the historical relationship between Calumet and Manitowoc.
 - More of Halback mom at the prayer vigil. This could be more powerful is let to play out more.
 - Imagery of teeth and bones when it's first mentioned - make this more of a thriller and creepy.

- ID the cop who's interrogating Avery on the overhead - FASSBENDER (off camera) and WIEGERT (on-camera).

Overall

Great timeline - Using more.

Episode 3

- What's the overall strategy to use the cold opens. Perhaps cold open with Steven walking into the courthouse? Let's discuss.
- Trim Chuck (Steven brother), especially in the pool hall.
- If you are going to use public sentiment scene (in the bar), they you need variation and more POV.
- Good to see Tom Kocourek, but we need to understand if he is the mastermind, the driver, of the original arrest of Steven, the entire cover up, and the second cover up of Steven. Let's discuss?
- Do we need to have Jodi, the girlfriend, in the series? Does she help advance any storytelling. If we keep her, do we need to set up that she goes to prison for a DUI. Need to tighten her.
- Why wasn't Barb in the interview room with Brendan?
- Where does Dr. Larry White teach? Does he work at a reputable school?
- Dr. White says detectives are "Unaware" they are coercing Brandon. Not convinced that they aren't intentionally coercing Brandon. I think they are obviously shaping and pushing the storyline they want.

Episode 4

- Odd cold open, it doesn't work.
- Regarding the Jodi and Steven call from prison - do we need a visual - tape to tape - deck device.
- Needs to be clear that Michael O'Kelly is Brendan's investigator, not Kratz. Since O'Kelly is so biased. You think he works for her.
- Cut Senator Lasse (death penalty senator) way down. Much too long
- What did Brendan make up his story? Should we analysis this.
- Pace at the end of this episode is
- Pete Baetz re-cap isn't necessary
- **Jerry Buting analysis of Petersen, Lenk, Kratz is strong...Should we use analytical approach throughout.**
- Breaking into to vial so be way more climatic!
- Should the innocence project be more involved.

Episode 5

- Why does the State drop 3 charges of Brendan on the place card at the beginning - which is mentioned

- Beginning of trial - people walking in - is way too fat. Needs to be cleaned up and tightened.
- Kratz opening statement needs to be way cut down.
- Pete Baetz - does he work overall? He given a statement is that the state job is get a prosecution.
- Phone messages - need a timeline here. Also, probably best to see an overall timeline.
- Who are the other suspects?
- Hillages is super interesting - we can really lean into this.
- Does Steven Avery ever give the permission to search the junk yard before the Rav is found?
- Strum - need to better understand why she had Paggie phone #.
- Do we need Butting to contextualize that
- Ending is odd. Should we cut Dean (and perhaps Jerry) out of the frame.
- Colburn - let him be really

Episode 6

- Jerry and Dean tone is off here.
- REALLY NEED TIMELINE GRAPH.
-

Episode 7

- Conspiracy theory is being introduced well by Dean, but short on specifics.
- Too many courtroom scenes
- Too much Jerome play-by-play - tonally it slows the story
- Jerome says police think it Steven at the end of the car ride (when we have already said from Jerome and Jerry it's a conspiracy). Cut Jerome at end of car ride before FBI testimony on EDTA.
- Too long overall. Stay in the courtroom and be efficient.
- Not claer

Episode 8

- Cut Steven's dad
- Dean says to camera that Steven has been screwed over. Please cut this, again.
- When we're waiting for the decision, it should be much for suspenseful.
- Cut Dean's conversation in parking lot or, at least, trim down. This is right before the verdict is read. Is drags.
-

Episode 9

Do we need to see Brendan's case. Can we just use a card. Let's consider.

Episode 10

This feels a bit like an epilogue. Fundamentally, does it work? I am not sure it does.

Pace, Pace, Pace.

Michael O'Kelly - what's his history, background - who does he know, Peterson, Kuche, Lenk, Colburn?

Should Nirider and innoce project be integrated throughout the episode?

OVERALL - Other Macro Notes:

How often did Steven use Auto Trader?

Music is lulling...not working and needs rethinking.

Who could have access to Steven's blood?

Did we need cinematic device (or re-enactment of someone in the booth) for all the prison calls?

Need graphical treatment of timelines of who was doing what on the grounds of the Avery compound.

Use Drone Footage as a character, more strategically

We need to be more efficient in the story telling. Less press conferences. More concise in the court room.

Gregory Allen - hold back on showing any information

Need Jim Haygood or other editor

Lose innocence project episode

Making a Murderer

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NFXCOL0002137

07.16.2015 Update:

GOAL:

Given the limited amount of time remaining, we want to ensure that we're aligned on the following key areas going forward. Most importantly we should engage additional supports quickly where appropriate, to ensure you are supported and fully resourced to deliver the award-worthy series we know this can be.

GRAPHICS: Per our meeting, we would like to explore the idea of bringing Elastic on to help refine existing graphics (eg: ep1 Sandy Morris graphic, SA alibi graphic) as well as to assist with additional timeline graphics throughout eps 1 - 10, which we believe will be extremely helpful in progressing the narrative in an impactful and efficient way. See GFX page for specifics. This would be in addition to Steven (as introduced by Ben) or someone of equal caliber who could execute for you.

MUSIC: We have provided detailed feedback on music cues for episode one which we hope can act as a guiding template for the full series.

SOUND DESIGN: please advise when we will see an episode that reflects your vision of full sound design. There is ample opportunity with such an emotionally captivating series to really engage on this front.

EDITING: we really want to see Moira and Laura directing as much as possible and again present the offer to bring on another set of hands to execute and refine while you focus on overall structure and creative vision.

Status:

1. The series is amazing. It is a major accomplishment to lay out such a complex case in such a clear and suspenseful way.
2. Poses some challenges in getting the audience buy-in for such a long view that at times gets very granular. Our goal is to protect the deep dive while being accessible, user friendly and impactful.

Goals:

1. Identify final overall series structure which supports the most impactful, compelling and revelatory storytelling, including:
 - a) number of episodes (9-10?).
 - b) length of episodes (recommending 50 minute target, no greater than 60)
 - c) best opens and closes (see specific notes in Structural Breakdown).
 - d) red herrings.
2. Music and gfx aren't being utilized effectively yet for the next pass we should take it to the next level and bring in reinforcements for the areas that aren't yet getting there.
3. With final overall episode structure in place, tighten each episode to most effective cut (see detailed notes).
4. Eliminate the storylines that aren't serving the greater good.

CURRENT:

Cold open: S.A. gets out of prison. Background that he was wrongfully imprisoned for 18 years. Cousin says: "Be careful... They aren't even close to being finished with you."

- S.A. files civil rights suit against Sheriff and DA.
 - Jump back to Sandra deposition.
 - S.A. background.
 - Dispute with Sandra, S.A. charged with felony.
 - Penny B is attacked.
 - Police mishandle and Penny points to S.A.
 - S.A. arrested, Sheriff keeps him from lawyer.
 - Background on S.A.'s alibi.
 - Information about Gregory Allen.
 - S.A. found guilty.
 - Hard on family. Parents stick by him. Lori leaves.
 - New evidence - fingerprints not enough.
 - Pubic hair found. Matches Gregory Allen.
 - Evidence of police misconduct.
 - S.A. back to normal life, meets Jodi.
- Cliffhanger: S.A. is released: "Don't bring a lawsuit against Sheriff's department in a community where you still live or you could get charged with murder."

Episode 1.

SUGGESTIONS:



There should be a more explicit ending that makes it clear that in the next episode the cops are going to seek revenge. We should have a really tight Episode 1 with a strong cliffhanger that immediately engages the audience to come back for Episode 2. Currently, the suggestion that they might charge him with murder is very subtle and the audience might think everything is resolved. This line is impossible to understand without any context. (also could consider ending with the cliffhanger of whether or not the DNA matches S.A., this would be the ultimate pull-back for watching Ep2 but would mean changing the cold-open)

Episode 1 - Detail (1hr 4min)

- 12:50 - Just to confirm - this animation is just a first pass, right? Will the final animation be motion?
- 16:20 - Good music
- 23:47 - Flag for legal review - "They made the case that night themselves."
- 29:40 - Graphic great connecting police w/ sheriff - is Elastic polishing this?
- 31:04 - Confirm Elastic is working on this graphic. The clock especially doesn't work as effectively as the graphic treatment we saw. And the photos popping out make the screen cluttered.
- 31:04 - 32:23 -Music cue feels soft and tonally off. Add more tension here.
- 43:43 - Maybe look at extending the photo of Steven's kids here - feels like it ends too soon.
- 45:50 - Music should pick up when the Innocence Project takes the case, this is good news!
- 47:32 - Is there a photo of the pubic hair? Could really drive home the fact that his entire life was hanging on the outcome of one hair. Might as well go there...
- 47:30 - Music feels small/muted when Steven gets released.
- 48:30 - Consider inserting a card reminding us how long Steven was in prison "After 6000 days..." - this would help more than the date (Sept 11, 2003) which we don't have enough perspective to really grasp what that means.
- 49:57 - This photo of Vogel is soft (used a couple of times) - is it just low res still or do we have a better photo to use?
- 52:15 - Maybe add a photo of Vogel in addition to seeing his signature here to drive it home.
- 1:00:00 - It might be good to look at reordering his quotes here and start with him saying "I'm amazed that sitting in Milwaukee we couldn't hear the sigh of relief coming out of Manitowoc as soon as that AG report came out." which would punctuate the previous scene. Then go into "I don't think Steven had any alternative but to bring the lawsuit..." It might just track better.
-

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CURRENT:

Episode 2

SUGGESTIONS:

Cold open: Voicemail from Teresa

- S.A. files \$36m lawsuit against Manitowoc.
- Civil suit trial.
- Background w/ Jodi
- Judy Dvorak
- Police sketch mishandled.
- Legislature about to pay his \$450k.
- Colburn received phone call in 1995, no report.
- More testimony.
- City will be on the hook for damages.
- Teresa Halbach goes missing.
- Search party - they find the Rav4.
- Cop asks if they have S.A. in custody yet.
- Calumet County takes over the investigation.
- Police search S.A.'s house.
- Manitowoc only used for support resources.
- Key found.
- S.A. is questioned and arrested.
- Keep S.A. away from lawyer. Lie about location.
- Kratz says the evidence hasn't been tainted.
- Cliffhanger: S.A. DNA on the key and in the blood.
- S.A. in handcuffs entering courtroom.

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Episode 2 - Detail (55min)

08.29.2015

- The new cold opening with Teresa is good, updated musical bed is really engaging! Updated footage of Steven post exoneration also working and helpful in establishing the timeline of how long he was free between arrests.
- 9:45 - Good introduction of Jodi and her DUI/arrest history
- 27:00 - 27:44 - Is Rohrer saying that he told the AG's office significant? Might be able to trim that.
- 27:45 - Could we give this montage of depositions to Elastic to do a simple treatment and make it look a little smoother?
- 30:30 - Timeline graphic is really helpful.
- 33: - do we want to add a musical punctuation under Mike Halbach saying that the grieving process could take days, weeks. . . . when interviewed about his sister's disappearance.
- 35:55 - Is that Mark Wiegert's voice? If so, perhaps we should ID him to establish?
- 41:30 - 41:50 - Do we know who the voice reading Steven's letter? Would be great to label "voice of Detective so-and-so"
- 48:23 - There is an errant frame at the end of the Sheriff Pagel's press conf (on the cut to news clip about Walt Kelly)

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Episode 3 (1hr) SUGGESTIONS:

CURRENT:

Cold open:

- Start of pre-trial.
- Overview of the evidence (Rav4, bones)
- Key wasn't there when they first searched.
- Court finds probable cause.
- Media repaints S.A. a monster. Town reacts.
- Family gets hate letters.
- Judge sets bail high.
- S.A. settles lawsuit to get money for defense.
- Buting and Strang join - talk about police framing.
- Brendan is detained.
- Kratz details Brendan's version of crime.
- Brendan bail hearing.
- Jodi out, Chuck reacts, Allan says family torn.
- Brendan coerced and charged.

Cliffhanger: Brendan's mom says that if he testifies against S.A. he gets 20+ years with parole, but if he doesn't he could get life with no parole.

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Episode 3 Detail:

- Overall note: it would be helpful to label all of the footage (in all episodes as we finish them) that is part of police evidence as a result of searching the Avery property as "Police Video" to distinguish it from documentary footage.
- "Poor people lose." Really want to emphasize this key line of the phone call. It's so core to the classism and bias that drives so much of this entire story. Explore adding an impactful music to that one line, or allowing a beat more of time to really take it in.
- 20:30-21:00 - This Jerry Buting sequence is really powerful, let's just ensure his assertions aren't defamatory. His statement needs to align with the filings they made in court.
- 22:00 - Do we need Robert Herrmann here? Could we jump straight to the press conf?
- 35:07 - Remove "November 6" from the text on the card.
- 49:00 - Let's discuss the goals of this graphic and how you are directing Elastic to execute. It isn't just that the graphic needs to improve, it actually feels like the timing of how it is cut into the scene should be examined. It feels tacked on to the end of the scene and essentially repeating information rather than being integrated within the scene and enhancing the narrative.

CURRENT:

Episode 4.

SUGGESTIONS:

Cold open: Brendan's call with his mom and then S.A. saying he feels sorry for him...nothing good coming out of this.

- New atty (Len) for B.D. - he is terrible.
- Jodi finds phone calls w/S.A. on day of murder.
- Eval. of blood and key DNA, evidence from car.
- Try to throw out B.D.'s confession.
- Len/O'Kelley push B.D. to confess.
- B.D. meets with police then calls mom.
- Dateline
- Police say easier to kill S.A.
- Jodi ordered not to see S.A.
- Family tries to get B.D. a new lawyer - denied.
- Judge tells Len to withdraw.
- Lenk.

Cliffhanger: Blood vial is discovered to have been tampered with.

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Episode 4 - Detail (1hr 4min)

- Mark the date at the top of the episode.
- 5:25 - To add support to what Len is saying, could we add a card saying what the actual law is in Wisc regarding having a parent present when a minor is questioned.
- 14:35 - It might help to clarify if you say on this card "Brendan's lawyer, Len, has made arrangements..." or "Len, the public defender, has made arrangements..." (Again, the Len and O'Kelly's behavior is so counter intuitive for the first time viewer).
- 40:45 - Music really good here with Jodi in her car, following that scene you've done a great job tightening Jodi at home.
- 41:50 - 42:20 - Is it possible to tighten Allan here into just a quick reference to "Here he is. Kenny Peterson. I didn't like the statement he made either. That was a hell of a thing for a sheriff to say. He said that right on TV." to set up Peterson's testimony (trim these shots 41:33-41:36, 41:45-41:48, 41:52-42:08)
- 42:29 - 44:46 - Peterson's testimony feels like it could be tightened still. Could we cut "Two members of your department...In your life have you ever spent a day in jail for a crime you didn't commit." (42:44 - 44:22). This section seems to just confuse the fact that Strang is trying to get across that Peterson personally had reason to be biased. We get plenty of Len/Colburn in much more clear sections.
- 52:30-52:38 - Cut extraneous lines "you're going to call your PO?...they told me I had to go see her."
- 52:45 - Great job building the narrative arc of Jodi and Steven's relationship, her unwavering dedication to him despite his incarceration and ultimately the demise of their relationship due to the relentless harassment that she was under.
- 1:00:12 - The Sheriff org chart is temp, right?

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Episode 4 - Detail Cont. (1hr 4min)

PREVIOUS NOTES FROM RC2

- 34:49: Sheriff Ken Petersen interview re: easier to kill Steven than to frame him. . . do we want to punctuate with some music?
- 38:00 - 40:30 - Possibly trim down Jodi getting caught drinking and going back to jail / prohibited from seeing Steven.
- 40:30 - Music is great here, really ratchets up the tension and pace...this would be a good one to use more of.
- 42:27 - Possibly add org chart graphic here to explain the connection between Peterson and Manitowoc.
- 45:29 - Music is great here.
- 52:00 - Do we add some kind of card. After x amount of time together - Jodi leaves?? Charles being the bearer of the break up on the phone feels very abrupt after so much footage spent showing Jodi saying that they were never going to break them up, or that she would wait for him. . .
- 58:00: Do we emphasize Len Kachinsky saying - The State will likely not use Brendan's statement on May 13th - when indeed that's what is ultimately the nail in the coffin. MUSIC??
- 59:00 – do we emphasize with a touch of music when Jerry Buting first says Len's name, one person's name keeps popping up over and over again – James Lenk .
- 59:45 - The bouncing of the floating labels of Petersen and Lenk in the hallway feels rough - is this temp? Add org chart graphic here to show Lenk's connection?

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Episode 5.

SUGGESTIONS:

CURRENT:

Cold open:

- Drop sexual assault charges against S.A.
 - Day 1 of trial.
 - Opening statements (a lot about VM messages)
 - Det Jacobs call (do we have a body?)
 - S.A. questioned about T.H.'s appointment.
 - Bobby says he was asked to help get rid of body.
 - Debate about VMs.
 - Judge blocks from talking about other suspects.
 - Dean asks about roommate.
 - Ryan H admits to figuring out her password.
 - Boss (Sheriff?) says to search Avery property.
 - Review of finding Rav4 and what followed (Pam)
 - Dolores shows us where the car was found.
- Cliffhanger: Colburn testifies about calling in the license plate before the Rav4 is discovered.



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Episode 5 - Detail (57:50 min)

08.28.2015

- 00:58 - Should the card say "develop a NEW chemical test"?
- 20:52 - The addition of music under Bobby Dasse's testimony when he says, "I saw Teresa walk toward Steven's trailer" is really effective! Can we explore the use of this subtle, almost subconscious use of music in other key testimony, (e.g. Ryan Hillegas testimony or Fassbender testimony when he admits that he did not question Scott the roommate). Given the density of the testimony footage, it would be a good technique to further employ.
- 27:00 - The much abridged interview with Dolores and Allan after the Bobby Dasse testimony section is far more effective.
- 28:00 - In a pretrial hearing about a third party liability, Judge Willis rules that the Defense cannot offer any alternative suspects to be jury by name except Brendan" - Is there a way to simplify this card? The audience may, perhaps, need just a little more clarity on "third party liability." Please consider.
- 47:52 - Like the cards saying that Earl gives permission - this helps!
- 54:20 - Setting Colburn up as the potential cop to plant the car works really well now. Sensational and strong end to this episode.

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NFXCOL0002150

Episode 5 - Detail (57min)

PREVIOUS NOTES:

This episode has come a long way. The new edits around the blood vial are much improved, however the top of the episode still feels very slow to start because of the opening statements, but once the ball gets rolling it uncovers a lot of the evidence. It is doing a much better job of painting the picture that there were several other potential suspects who were not investigated.

What is the context of him saying "If the defense wants to put forth their defense then they do so at their own peril."? This statement feels clunky, out of place and perhaps unnecessary.

07:05 – Buting and Strang discussing the jury questionnaires – they're frustration is coming through in an almost pissy/sarcastic way and feels pretty long.

8:30 – Something bumps in the cut of Dolores watching the news coverage, something missing in the stitching to make it a convincing cheat.

Episode 5 - Detail (cont.)

09:00 – 09:50 – Check the chyron - it reads Feb 12, 2005 first day of court. I believe this is meant to be 2007. Do we need the b-roll of the empty courtroom and the press room? Music scales up over this rather than over people entering courtroom. As a result, it lulls back down before Kratz' opening statement.

09:50 - 12:45 – Kratz' opening statement goes on a long time and seems to meander a bit. Review to tighten - specifically?

11:45 - Please recall at this early stage - they don't know if a body is involved in this case, was to find Teresa Halbach - remove. Go straight to the photo & remembering the humanity

12:45 – 13:00 – Do we need the judge giving instructions not to discuss the case?

15:30 – “Both were questioned about their own activity and conduct with respect to Mr. Avey's imprisonment.” Is there a sound byte here that references that this is in relation to the older rape charges? The year is easy to miss and this could be confusing for people not really familiar with the timeline.

15:30 – 19:55 – All of Strang's opening statement is really important, but look at tightening – even tiny trims will help. This much talking in a courtroom begins to make for a really dry episode. Perhaps music could help? This episode is naturally so courtroom heavy that we need to try really hard to help people through it.

Episode 5 - Detail (cont.)

23:15 – Great cut between Bobby Dassesey testimony and the news coverage – and the music nails it!

26-27:00 – Well cut/music works to show the press' doubt on the Bobby Dassesey testimony in contrast with the Judge's ultimate decision not to call a mistrial or instruct the jury to disregard. Would look to have the music hit slightly harder w/the card stating that the judge does not call a mistrial or direct the jury to disregard.

28:20 - How important is it to have this interview w/Dolores and Allen re: Bobby Dassesey? She says, "half of that stuff isn't even true, implying that half of it is - feels too vague to make a point."

36 – 36:45 – They are arguing about whether or not the judge will allow the cell phone testimony in front of the jury, but we don't see his decision.

37:30 – 38:15 – Strang's comments seem a bit preachy and obvious – do they really further the story or raise a question that the material doesn't naturally raise?

49:00 – Did Pam and Nicole search the junkyard after the Sheriffs got the Averys' permission? Did Steven give them permission?

53:00 – The Tammy Webber information is interesting, but without knowing who she is or how much weight this holds it could be confusing. Do we have more information on who she is or should we consider taking this out?

The Colburn ending is terrific! - can we add music to help emphasize further? He goes from being so sure and then is caught in a clear lie about the origin of the car make and model.

Episode 5 - Detail (cont.)

Question - where are we utilizing the Teresa Halbach home video of her talking about life, and how she would feel if she died now? Is there a strategic place to put within this episode or do you have plans to utilize strategically elsewhere? It's extremely powerful, particularly once the viewer has established a connection.

It should be knowable when Teresa made that video. Do we have that information? Could we accurately lay it within an episode to coincide with the actual events of that time.

Was it ever administered as evidence in the trial? If so, when?

CURRENT:

Cold open: Card says one day after Brendan's arrest there is a press conf. Kratz describes how S.A. instructed Brendan to cut T.H.'s throat. Police search residence and garage for new evidence. Kratz claims physical evidence now makes sense.

Episode 6.

SUGGESTIONS:

- Bullet found in garage - Lenk was present.
- No T.H. DNA found in trailer or garage.
- Bobby only thing placing her inside.
- Skull fragments.
- Sherry: blood on bullet matches despite botching
- Defense tried to have labwork monitored, denied.
- Everyone reiterates there would have been blood
- Bones and barrels conversations.
- Bloody hair in trunk.
- Timeline debate (Bobby D, bus driver, Scott T.)



Cliffhanger: School bus driver has a different timeline than Bobby. Lawyers explain that the prosecution still hasn't put forth a theory about when and where she was killed.

Episode 6 - Detail (60 min)

08.28.2015

Approx. 9:40 - Let's discuss a graphical timeline in this area to clarify key points of evidence & milestones being laid out from the Fassbender questioning and testimony? Lots of facts coming so this could provide a stabilizing effect.

13:20-14:22 - Please consider trimming down Allan entering the courtroom here.

17:46-18:15 - Possibly cut down this montage of b-roll.

29:57-30:35 - Buting's commentary is weak here - he doesn't make his point articulately and we spent so much time in court with him arguing this already that this seems redundant. Can we cut Jerry's post follow up (Specifically, the "...they think we're a bunch of country bumpkins" section. But, again, ideally all of it.)

Close:

We would love to discuss the close. Coming off of the extraordinary cliff hangers in episodes 4 & 5 with the blood vial and Colburn on the stand, the relative weight of Lenk just taking the stand feels a little light. Can we discuss if there is a little more weight we can provide around the Lenk narrative, the close feels a bit abrupt.

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Episode 6 - Detail (59min)

PREVIOUS NOTES

- Opening chyron - propose to change to read that Kratz and Pagel HOLD a press conference (versus held) to keep it present tense.
- 1:20 - Music at end of Kratz' press conf is fantastic.
- 08:02 - Good sound design punctuation on the end of Remiker's testimony, can we further add a musical cue when it's confirmed that Remiker saw Lenk on the property?
- 16:20 - Do we need this press conf from Kratz? Seems it would be powerful to go straight to photo of Teresa.
- 22:24 - Possible to trim down people entering courtroom/walking around press room and get straight back to Sherry?
- The entire burn barrel testimony is still very long.
- 46:00 - **Dorothy and Allan visiting Steven; is this scene necessary?**
- 48:37 - 49:39 - Buting isn't very concise here. Is it possible to do some dialogue trims and get him to the point faster?
- 58:45 - Are there too many quotes at the end? Could we end with Buting's line "I'm still waiting."? That might achieve the same result as "Spring it on us at the last minute.", but without the redundancy.
- You've just come off terrific cliffhanger closes with the blood vial in ep 4, and Andy Colburn caught in a lie in ep 5. Comparatively, this close doesn't feel as impactful or urgent. One suggestion would be to pull up the open of 7, eg Manitowoc police being on site when they weren't supposed to be part of the investigation.

Episode 6 - Detail (59min)

key moments of testimony where **music cues can be added:**

- Ryan - 1) has Teresa's vm pw 2) can't remember what time of day he saw Teresa last
- Sherry Culhane - 1) confirming that Fassbender specifically asked her to try to find DNA of Teresa in Steven's trailer. 2) Her deviation from protocol. 3) She never found Teresa's DNA in Steven's trailer AND also did not find Brendan Dasse's DNA there either
- Scott Tadych - after he is so confident about the time he left (2:45), then Dean has him read his statement to police 16 months earlier, time is 3:15 and the flames are 3 ft. versus 10 ft.
- Bobby Dasse - testimony about being so confident that he and Scott ident one another precisely at 2:45, but under oath say that the two of them did not coordinate or talk about this statement.

08.17.2015 Update:

Episode 7 Fine Cut

TRT: 1:03

MACRO:

Episode 7 is really coming together! This is a pivotal and challenging episode given the density of material and the sheer volume of courtroom testimony, and in particular the enormous amount of exposition of evidence. The structure is solid and serves the complexity of the story well, but the sheer density & volume of the material can at times, become overwhelming to the viewer. While we fully recognize that you've significantly pruned through the various testimonies, it is our feeling that there is further room to tighten.

While the run time of 1:03 is definitely far more in line with where we feel most of the episodes should land, because the specific material in the episode is so heavily concentrated in testimony and evidence, we would suggest targeting a shorter run time in the 50 - 55 minute zone.

Looking forward to discussing!

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Episode 7.

SUGGESTIONS:

CURRENT:

Cold open: B-roll of police cars - "FBI is going to assist in investigation... Manitowoc provided resources. That is their only role." Allan says "They had Stevie picked. They set him up. They weren't even supposed to be investigating this. Right?"

- Colburn testifies about questioning SA and finding the key. Colburn questioned about report.
- Debate abt Manitowoc PD being at crime scene.
- Buting & Strang point to Lenk as framing.
- Press conferences re police reputations.
- More testimony on Colburn conflict & press conf
- Log shows Lenk didn't sign in - he denies framing
- Judge rules EDTA admissible. Press conf abt.
- S.A. call saying they are trying to keep him in.
- Direct FBI testimony, pressconf, cross, pressconf
- S.A. decides not to testify, pressconf.

Cliffhanger: Dean explains to S.A.'s parents that good news is that 3 charges have been dropped, bad news is that murder charge is all that matters.

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NFXCOL0002160

Episode 7 - (Final Cut) Detail. TRT: 1:01

- 20:30 - Music here has a distinctly western sound that stands out a little bit from the palate of the rest of the series.
- 30:00 - We think it is really important to include a simple graphic timeline listing the times related to the police logs that Orth, Fassbender, Lenk, testify about. Showing the audience a) the time the log was created b) the time the officers arrived and departed and c) the times the officers SAY they arrived and departed would help them visually understand the disconnect. The testimony is so piecemeal that it is really close to impossible to understand why this is significant.
- 37:00 - Music might be a little bit over the top here.
- 59:00 - Would a card mixed in with Strang's talk here showing the exact charges that were dropped help keep it clear here? It might also drive home how significant it is that all of these charges by the police are not materializing and also emotionally give us hope that Steven seems to be on the right track.

Internal note: Make the point that we need to drive home these differences between Steven and Brendan's trial (different charges, different murder locations, etc).

CURRENT:

Episode 8 - 45min 23sec

SUGGESTIONS:

Cold open: Allan walking around barn looking for Steven's name on the floor. Dean talks about the fact that S.A. never committed these crimes: "What you can hope to get is your liberty back, eventually."

- Closing arguments.
- Buting, Dean say he was framed.
- Kratz says shouldn't matter if key was planted!
- News reports. Dolores talks to S.A. (b-roll)
- Jury leaves for night. Juror is replaced.
- S.A. talking on tape about how he feels.
- Family warned about blowback.
- Verdict.
- Dean/Buting sad, believe killer is on the loose.
- Allan talks about Manitowoc winning.
- Colburn makes statement.
- Scott T. He had it coming.
- Buting says 7 votes for innocent at start.
- Excused Juror feels terrible.
- Commentary from Pete, Kim and Stephen Glynn.
- Brendan's trial in 2 weeks. New lawyers discuss.

New ending: Brendan is led into court and we hear his call with Barb.

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Episode 8 - Detail

- 4:30 - 9:27 - The closing arguments are running too long to sustain engagement. Is there any way to trim them down? The content is great, but 5 minutes of straight speech is too much. Perhaps cut Strang's lines about Lenk lying since we covered that in trial? Do we need as much detail about Buting's theory on the burn barrels?
- 6:59 - Dean Strang - At "Would Lieutenant Lenk lie?" - perhaps a quick cut away to a Lenk (photo or footage) would be impactful since it would put a face to him in this defining moment. Take a look at it both ways and see what works better.
- 9:05 - Probably best to ID both Lenk and Colborn in the two shot photo.
- 13:05 - 13:48 Consider cutting Jerry Buting's post trial epilogue section. From a pacing perspective, it's a bit slow and he doesn't add any significant new information which was not covered in the closing statements.
- 17:32 - Explanation of replacing the verdict is much more clear! Great job.
- 18:14 - Buting's commentary still seems unnecessary here
- 18:29 - When Steven says "If they finding me guilty, it's gonna be hard.....why I have my family go through all of this, and everything else..." is powerful but doesn't resonate as strong as it could as currently juxtaposed against the B-roll shots of his parents only. Maybe add a few shots/photos of his kids and ex-wife and girlfriend to remind the audience what Steven has lost already for going away for a crime he didn't commit, all of which is on the line yet again. The additional shots may add some further emotion to the sequence.
- 26:37 - 28:55 - THE VERDICT - The reading of the guilty verdict of Steven still doesn't feel climactic enough given the entire series has been building to this moment. Perhaps enhancing the music and/or cutting to other members of the Avery family in the courtroom showing strong disappointment on their faces (conversely, maybe adding any shots of Kratz, Colburn, Fassbender, etc. and their team showing satisfaction would work too), and an overall intensifying of the cutting style would help drive this into a more climactic

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NFXCOL0002163

Episode 8 - Detail

(cont.)

moment. Currently the beat emits anger and we feel injustice was done, but given the overall investment made in watching 8 hours thus far, the audience should be feeling more intense anger, sadness, bewilderment, and perhaps even fury at this jury decision. Take a look and see if it can be ratcheted up.

- 27:59 - Great use of music to subtly accentuate when Steven chokes up here!
- 33:30 - 34:30 - Music is lulling. Would a version of the cue at 18:42 work here as well?
- 37:28 - Off of Mr. Beatz interview, do we have a photo or any footage of Ken Kratz getting an award for winning this case? If so, it would be satisfying and impactful to use it.
- 37:53 - 39:44 - Pete and Kim and Stephen Glynn together is too much commentary, please trim.
- 41:21 - new atmospheric and haunting music under Brendan's walk into the court is much better

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NFXCOL0002164

Episode 8 - Detail (cont.)

PREVIOUS NOTES:

32:45 - do you think there's a killer out there that the police have not caught - BIG musical opportunity, cut to cops or prosecution response as they wait on the side and punctuate with eerie music.

40:28 - Glyn: "not a pretty tale for the criminal justice system" - punctuate!

42:00 - learning that Tom Fassbender is calling Scot Tadych to convince Barbara make Brendan take a plea - perfect moment for 'bad guy theme'.

46:00 - closing music underlying Brendan's entry to the courtroom and his phone conversation with Barb is over more prod rock type guitar music which doesn't quite fit the ominous and foreshadowing mood audiences should be awash with going into this trial.

as an example:

15:51 - music beat w/atmospheric keyboards preferred to the wide body guitar overall. The overall music feels a bit more prod rock; please explore a more atmospheric, creepy and suspenseful tone throughout.

We haven't done a complete episodic spot for music here, but hopefully the frame that we're providing for episode 1 will translate well throughout the series.

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NFXCOL0002165

Episode 9 (1hr3min)

SUGGESTIONS:

Cold open: Buting quote: the question is whether
Brendan is going to confess to a murder he didn't
commit.

- Kratz opening statement.
- Mark opening statement.
- Play BD's first statement.
- Weigert
- Lots of discussion of his coercion.
- Only play first half of his confession.
- Kayla's retraction. TH brother talks to press.
- Brendan testifies.
- Tape of his call to mom, he says he made it up.
- Mike Halbach talks to press.
- Closing arguments. Judge reads jury instructions
- Judge reads verdict. Mom freaks out.
- Strang comment.
- Dolores cries.
- Theresa Halbach video.
- Mike Halbach reads statement in SA sentencing.
- S.A. reads his own statement.

Cliffhanger: Judge reads statement for Steven and
how dangerous he is. Dean comments: "Tragic lack
of humanity." Buting: [Could happen to any of us.]

Episode 9 - Detail (1hr3min)

- 4:00 - Still think that someone should explain that Kratz claims Teresa was murdered in a completely different location in Brendan's case. This is shocking and not completely obvious unless it is pointed out.
- new music under the end of Kratz's opening statement is powerful.
- 7:39 - 8:50 - It might be better to take out the audio playback of Brendan's first interview. It is hard to understand and slows things down.
- 15:00 - during the smoke break with Barbara, Richard Mahler, Carla Chase and Peter Dasse, the comments from Carla and Peter don't really add to the conversation meaningfully. Richard's point about the lack of DNA evidence and Barbara saying that Weigert is lying about giving her the opportunity to be present during Brendan's interrogation are the key bits. Consider trimming, especially because there is a solid segment with Peter Dasse later in the episode.
- 17:43 - Is there any footage or documents (maybe a corporate training video) from John E. Reid & Associates showing their interrogation techniques? It may sell the line attorney Fremgen better.
- 39:57 - 40:06 - awkward pause here as he is putting the slide up.
- 41:00 - 41:17 - Would it be possible to cut this setup of Brendan denying talking to Kayla and just start with him saying "How is it that you and Kayla came up with seeing body parts in the fire?"
- 44:44 - 44:58 - Consider taking out shots of them walking into the courtroom.
- 51:20 - Good "danger" music when Colburn is walking him out.
- 53:55 ID both Colburn and Petersen - amazing, given the conflict of interest, that they are now walking Brendan out of court.
- 54:15 - Could we subtitle what Barb is yelling in this section? Who does she say set it up?
- 1:01:05 - ID that Colburn is walking Steven Avery out of the court. Again, huge conflict of interest given he was always a suspect in tampering with evidence.
- Playing Teresa's home video in the courtroom during the sentencing is affecting. Separate from this, when will we see the video of Teresa talking about her own death?

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NFXCOL0002167

CURRENT:

Episode 10 (1hr)

SUGGESTIONS:

Cold open: Broll of empty house. Kratz press statement: [Ensuring Steven will spend the rest of his life in prison.

- Community is happy. Family is destroyed.
- Steven has hearing for a new trial.
- Sandy intro..
- B.D. appeal for new trial. Focus on Len/O'Kelley
- More about call to mom being orchestrated.
- Judge denies Steven's motion.
 - Kratz scandal.
- Judge Fox denies request for new trial.
- Higher courts refuse to review both cases.
- Sandy talks about his mental state.
- Round table with lawyers comparing to rape case
- S.A. starts preparing his own case.
- Wisc Supreme Ct turns down Brendan's case.
- Federal suits filed.
- Allan driving around garden. S.A. talks.
- Moved to Waupon.



Cliffhanger: Sandy visits S.A. who says in V.O.
"They think I'll stop... The truth always comes out."

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NFXCOL0002168

Episode 10 - Detail 09.11.2015

The updated 1 hour closing episode is much improved. The pacing feels much sharper and the new structure allows for the audience to feel that rather than a summary episode, we are still deeply entwined in the story and fate of both Steven and Brendan.

- The addition of new interviews, photos, b-roll & reference materials further adds context and richness of the story:
 - great move to add the NYTimes article that first got the two of you engaged in this story.
 - new Steve Drizin 'at-work' montage is great
 - updated Len Kachinsky testimony is fantastic. addition of Drizin's comments, plus Kachinsky reaction shot once his actual newsreel is played in court is very impactful
 - added interview of Drizin describing Brendan's traumatization from his O'Kelly interview
- 32:25: Revealing that Steven's motion has been denied is glossed over, is there a more impactful way of showing this? Maybe with footage? It would also help distinguish it from Brendan's case since the last thing we heard about is Brendan.
- Ken Kratz: very powerful to have the Ken Kratz scandal back in the narrative. You've handled it very well, citing the passage of time, and leading in with the AP interview. It feels incredibly relevant and impactful without feeling salacious.
- Great job tightening the attorney roundtable. Contextualizing that their gathering is at the request of the filmmakers sets the stage well.
- 44:00 - music underlying excused juror stating, "whoever did this to Teresa is still out there" - is really ominous and powerful.
- 45:00 - review music. Steven taking on his own case feels like it should be less of this lulling type of guitar and a little more like an underdog Rocky feel. This is also a long segment, nearly 2 minutes long - so the music needs to help to keep the viewer engaged. Currently, it slows the pace and tonally doesn't feel like the right fit for the narrative.

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NFXCOL0002169

Episode 10 - Detail 09.11.2015

- Addition of Brendan reading the letter is fantastic!
- 55:00 onwards:
 - The lead up to the Steven visit at Waupun, still feels too long for the payoff given that the camera is not allowed in. Look to trim more from the top, perhaps Dolores and Allan getting out of the car - looking for a drivers license etc. Currently, this scene stunts the momentum and emotion of the episode.
 - From the point of Allan in the garden onwards, it feels stylistically segmented and lacks the emotional payoff one would expect at this point. It would be great to take a stab at a more artful edit that connects all of these little segments both in edit and in music (currently the cues are changing throughout) so that the final few scenes flow cohesively and then land on the last minute, which is really strong!
 - Let's work to on nailing the connective tissue to make a cohesive final sequence that truly sings and is worthy of this incredible 10 hour journey!

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NFXCOL0002170

Episode 10 - Detail

PREVIOUS NOTES:

- 08:17 - 08:28 - Perhaps cut some of Sandy walking out of her house.
- 09:39 - 10:08 - Consider taking out Sandy's back-story about her husband. It is fascinating and speaks to Steven's kindness, but it really feels like a detour.
- 10:34 - Out of curiosity, is the photo in the background of Sandy photoshopped to be with Steven?
- 11:08 - 12:12 Music here is very sleepy and feels like a continuation of the first 10 minutes even though we've shifted to Brendan's story.
- 14:53 - 14:15 - Possibly trim the court room b-roll (obviously keep the shock of seeing Brendan looking so drastically different, but maybe just focus on him instead of all of the other characters)
- 15:35 - Barb Tadych (label with Janda also?)
- 25:00 - When Dvorak says "Tell me how you start that email to Mr. K on May 9." you lose this sentence in the mix - needs to emphasize that O'Kelly is reading HIS OWN words. Probably good to subtitle him in parts... particularly hard to hear him when he says "I just keep thinking about that blue ribbon, i'm sorry"....&.... "we need to end the gene pool here". It might also help to punctuate this truly horrifying line by dropping the music out right before it.
- 20:47 - Could we somehow zoom in on the fact that Michael O'Kelly's email is "[REDACTED]"? That is particularly hilarious and messed up.
- 35:24 & 36:00 - How can we make the judges decisions not to give Steven & Brendan new trials more impactful than just quick cards? Music punctuation? Are there sound bytes to drive it home?
- Did the Kratz sexting scandal move to another episode???
- 35:58 - 36:50 - This music is incredibly sleepy. Not only does it hurt the pace, it makes the audience tune out from everything discussed in the section as if it wasn't important.

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NFXCOL0002171

Episode 10 - Detail

- 36:47 - 38:57 Consider really trimming down Sandy & Dolores' phone call with Steven or possibly removing.
- 39:50 - 40:41 - Sandy feels long again here too. Please consider cutting.
- 40:55 - Lawyer round-table feels very forced. If you are doing this - did you invite the other side's lawyers/detectives/etc? The whole conversation of hypotheticals (EDTA) just isn't interesting. Unknown fingerprints.... other new evidence - all of this is just a giant detour. Strang's quote is the only strong part - is there a way to just use him and integrate it more organically into the narrative?
- 46:30 - 47:30 - Please consider trimming way down the set up of Avery's house (golf cart, etc)
- 48:16 - Great here with Steven taking his case into his own hands.
- 50:30 - 51:55 - Garden walk with Allan feels like it goes on for too long.
- 56:22 - 56:44 - Would it be more efficient to replace Sandy talking about Steven's transfer with just the card?
- 56:24 - 57:39 Is there a way to demonstrate towards the end of this episode that not only has it been 7 years since the conviction - as the card says at 56:24 - but it has been also been 30 years since all of this started.
- 57:39 - Could we trim down the driving to the prison section and the Averys parking?
- 1:00:30 - 1:01:32 Music in this entire stretch is really flat.
- 1:00:51 - Could you cut her after "and his parents are still there." ? The next line is redundant.
- 1:01:20 - Similarly, you could cut the second half of his line - (so lose) "people who are arguing to the contrary just haven't had it happen to them yet".
- 01:01:33 - 01:01:58 - This line doesn't feel additive.
- 01:03:15 - Great the way the music kicks in and builds with Steven's voice.

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NFXCOL0002172

GFX List

- Improve map for Steven's alibi for the rape of Penny B. (Ep1)
- Add perm graphic for the Sandra Morris encounter (currently listed as temp)
- Law enforcement org chart to help keep clear who everyone is throughout (1-10)
- Org chart of various courts/Judges - especially when we get repeat judges (1-10)
- Number of times the Avery property is searched & over what duration
 - when the key is discovered (search #6?)
- Len/O'Kelley/Investigators (explaining the coercion of Brendan) (4)
- Len's mysterious involvement every step of the way. (4)
- Teresa Halbach Voicemail details (5)
- Timelines (Colburn License Plate Phone call - 5, Bobby v Busdriver - 6, Police Log at Crime Scene - 7)
- Bones/Burn barrels (6)
- Do we add a GFX of all leads not pursued by Manitowoc or Calumet? (TH roommate, Ryan H, Bobby Dassey, Scott T)?
- Contradictory State arguments (how can Teresa have been killed in bedroom & garage)?
- Graphic of salvage yard and estimate size and # of cars and probability of finding TH's Rav 4 in less than 20 minutes.
- Brendan flip flopping statements & dates ?
- Chart out the appeals (9-10)
- Timelines of key events: (1-10)

Perhaps there is one master graphic that could contain both law enforcement, judges and all of the various lawyers

Music Beats

The role of music throughout the series is vital and will play a primary role in helping guide viewers through this rich and complex narrative. Below are a few proposed areas to review and we look forward to discussing further once the overall episode structure is solidified.

- Overall: the lulling guitar hurts the tone. The music should put everyone on the edge of their seat.
- Can we work to establish a subtle but impactful 'theme' track for the baddies, e.g. Lenk, Petersen, Kratz and certainly for Len Kachinsky & Michael O'Kelly to help clearly support that despite their appointed roles to protect Brendan – they are doing him great harm.
- Similarly, there have been moments of hope & promise introduced throughout, e.g.: when Steven secures Buting and Strang on his case, when the Innocence Project / Steve Drizin and team enter Brendan's life – can we work to utilize music to subconsciously and organically support the emotional connection and hope.
- Enhance emotions of Steven's release (Ep1)
- Music is slow when he meets his first girlfriend (and then wife).
- Music could drive the magnitude of the moment that S.A. is first convicted. (Ep1)
- Create the shock of Steven being connected with Teresa's disappearance. (Ep2)
- Sheriff Petersen suggesting that it's easier to kill SA than frame him on the news is absolute madness, should be emphasized (Ep4)
- Major twist when the tampered blood vial is discovered. (Ep4)
- All of the verdicts should be very suspenseful and use music to enhance.
- Enhance shock of Colburn escorting Brendan out when his verdict is read (Ep8-9)
- Michael O'Kelly's testimony is shocking. Music might underscore this to great effect and highlight the importance of his conflict of interest (Ep10)

Overall Notes

- As we refine, let's be very judicious about ensuring that every scene serves to evolve the key narratives and character development in a novel way. Currently there is a relatively high level of repetition throughout the episodes. Rather than repeat key points for impact, let's make their initial introduction impossible to forget via pacing, music and graphics.
- A large amount of the series is built on S.A.'s narrative based on his phone calls to and from prison. To ground this, perhaps there's a defining visual representation of him talking on the phone (recreated or otherwise) that could be used throughout. (for example: a diverse group of tight to medium shots of him picking up the phone, putting it down, shots from behind, tapping foot, scratching skin etc.)
- Discuss the overall use of drone footage and b-roll. As it stands, while it makes the series feel cinematic and have bigger scope, currently, the use still feels somewhat arbitrary and could be used to have greater strategic effect either to illustrate literally what is happening within scenes or it could be used to create an emotional/atmospheric arc rather than repetitive.
- Consistency in subtitles/lower third in a way that clearly distinguishes the different individuals when we are bouncing between different V.O.

Appendix - Current Overall Structure

Episode:

1. S.A. Background, Arrest and Rape Conviction
2. S.A. Civil Suit, Disappearance of T.H., Charges against S.A.
3. Building the case against S.A., Settles Civil Suit, Brendan is arrested
4. Analysis of Evidence, Brendan is coerced, Evidence was tampered.
5. Trial begins.
6. All trial.
7. All trial.
- 8-9. End of trial. Verdict. Brendan's trial.
10. State of family. Sandy introduction. S.A. and Brendan appeal. Innocence project analysis. Brendan's hearing for new trial. Round table with lawyers.
S.A. trains himself to appeal himself and family visits. Pete reviews. Students discuss. Status of new appeal.

From: Lisa Nishimura [REDACTED]
Sent: Friday, November 21, 2014 4:11:01 PM
To: Laura Ricciardi [REDACTED]
Cc: Adam Del Deo [REDACTED]; Marjon Javadi [REDACTED]; Moira Demos [REDACTED]; Lisa Dennis [REDACTED]; Zana Lawrence [REDACTED]
Subject: Re: Making a Murderer Notes - Eps 1-4

Thanks for the spelling correction and we'll review your editors and come back to you quickly. Thanks!

L

On Fri, Nov 21, 2014 at 12:54 PM, Laura Ricciardi <

[REDACTED]> wrote:

> Hello all,

>

>

> I just noticed we misspelled David Zieff's name which could lead you astray

> in google/imdb. It's "i" before "e".

>

>

> I figured I'd take the opportunity to tell you a little about the editors

> we are talking to in case they are not familiar to you.

>

>

> Mary Manhardt has been cutting award winning documentaries for over 20

> years. She won a Primetime Emmie for her editing of The Farm: Angola which

> was also nominated for an academy award. Her other documentary credits of

> note include "Streetfight" (also nominated for an academy award), "The

> execution of Wanda Jean", and "American Teen" as well several television

> series in the crime genre.

>

>

> Jinx Godfrey has edited all of James Marsh's films including his academy

> award winning "Man on Wire" for which she won and Eddie, "Project Nim", his

> first narrative film "Shadow Dancer" and his most recent "The theory of

> Everything" as well the the BBC TV movie "Page Eight".

>

>

> David Zieff's documentary editing credits include "Crazy Love" (dirs. Dan

> Klores & Fisher Stevens) and "Metallica: Some kind of Monster" (Dirs. Joe

> Berlinger & Bruce Sinofsky) He was the creative consultant on "The Cove",

> and has worked on several TV documentary series including "The Awful Truth"

> "30 for 30" and "America undercover".

>

>

> Talk soon.

>

>

> Laura

>

> On Fri, 21 Nov 2014 11:39:04 -0800, [REDACTED] wrote:

>

> Dear Lisa, Adam and Marjon,

>

>

> Thanks for making the time to put together notes on the assemblies you've

> seen. It is a huge help to have these.

>

>

> Perhaps after the holiday, once we have had an opportunity to go through

> them thoroughly, we can address/discuss them in more detail.

>

>

> At first blush it seems like most if not all of your major notes are in

> keeping with our own list of what needs to be addressed on the 2nd pass of

> the episodes, namely crafting a more modulated and dynamic pacing,

> revisioning the opening, expanding the pilot, fine tuning the planting and

> payoff, sharpening the twists and reveals, and paying special attention to

> character introductions and character tracking.
>
>
> We also could not agree more about the potential for the series to rivet
> audiences and the associated stakes involved in making sure it is the best
> that it can be.
>
>
> To that end we are eager to identify the ideal creative collaborators to
> help maximize the series' potential.
>
>
> Thank you for sending your thoughts on potential editors to join our team.
> Some of them are definitely names we have considered in the past and could
> revisit, and we will look further into your other ideas. On our end we had
> a very promising conversation with the award winning editor Mary Manhardt
> this week. And have feelers out to Jinx Godfrey and David Zeiff - two
> other incredibly talented editors with impressive and relevant resumés
>
>
> We have been building a list for potential graphics & title sequence and
> should have that to you shortly. And we are excited to get your ideas
> about creatives/firms that might be able to take this on at this
> price-point.
>
>
> As far as music we could not be more convinced that Kevin and Gustavo are
> the perfect duo to create a tense atmospheric score for this
> ground-breaking crime series. If you combine Gustavo's work on "The Last
> of us" and "21 grams" with Kevin's decades of experience in the crime genre
> the two of them have all the ingredients to compose a memorable score that
> gets under your skin. We are excited that you will all get a chance to
> "meet" them on Tuesday.
>
>
> Until then have a wonderful weekend.
>
>
> Best,
>
>
> Moira, Laura and Lisa
>
>
>
> On Thu, 20 Nov 2014 17:59:01 -0800, Marjon Javadi [REDACTED]
> wrote:
>
> Hi Team,
>
> As promised, attached please find attached our feedback on the first
> four episodes. We look forward to discussing and getting the second editor
> on board as soon as possible.
>
> Please let us know if you have any questions.
>
> Thank you,
> Lisa, Adam, & Marjon
>
>
>
> --
> Moira Demos
> Producer/Director
> Synthesis Films LLC
> [REDACTED]
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>
> Synthesis Films LLC
> www.synthesisfilms.com

> [REDACTED]
> [REDACTED]
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>

--
Lisa Nishimura
VP, Original Documentary & Comedy Programming
[REDACTED]
[REDACTED]

From: Peter Stone <[REDACTED]>
Sent: Monday, November 16, 2015 11:04:28 AM
To: Adam Del Deo <[REDACTED]>
Cc: Lisa Nishimura <[REDACTED]>; Benjamin Cotner <[REDACTED]>; Stephen Bruno <[REDACTED]>; Jennie Wilkes <[REDACTED]>; Ashley Jimenez <[REDACTED]>
Subject: Re: Making a Murderer - trailer

Of course--thanks Adam.

Sent from my iPhone

On Nov 16, 2015, at 2:03 PM, Adam Del Deo <[REDACTED]> wrote:

Hey Peter. I am in London w/ Lisa and been out all day but back at hotel on a few hours - can I send feedback any feedback I may have in 3/4 hours?

Thanks,
Adam

Sent from my iPhone

On Nov 16, 2015, at 7:00 PM, Peter Stone <[REDACTED]> wrote:

Hi Lisa--

Many thanks for the helpful feedback and detailed suggestions! These lines to provide a little more balance are really great.

Pending any other ideas from Adam/Ben (let us know you guys?)--we'll take another pass (may also try to tighten the opening) and share with you guys later this week.

So happy to hear that you're liking this direction.

Safe travels, Peter

On Nov 16, 2015, at 1:53 PM, Lisa Nishimura <[REDACTED]> wrote:

Hi Peter,

The trailer is off to a great start - we understand how incredibly challenging it is to incorporate 10 episodes of material, and they've certainly made a very engaging trailer. Our one major note is that after watching it a number of a times, it feels as though the overall tone of the trailer is very pro-Steven. While we clearly know the facts around his original DNA exoneration, the tone of innocence and wrongful conviction seems to carry through very strongly into the Teresa Halbach case. We'd love to see a pass with a little more balance, or conflict dealing with this second case.

There are some powerful lines to consider that may help to balance the narrative of the trailer so you're constantly flipping on sympathy, fear, certainty or guilt and gnawing doubt:

from the judge calling him the most dangerous man to ever step foot in his courtroom

His brother saying - i don't know - maybe he did do it

or his original defense lawyer saying, "well if he did it it's because he was changed during the 18 years of serving a sentence he didn't deserve". . .

Congressman Gundum saying - maybe it was better he was locked up all that time - imagine what he would have done

of course - Kratz, Fassbender and Weigert and the judges all supply ample material condemning Steven.

Ben and Adam will chime in with more thoughts and ideas I'm sure - but i think we're on our way to creating an incredibly riveting piece! I've just landed into London (just an FYI on the time difference for any time sensitive concerns). Adam is with me, Ben is in the office. Thanks all!

Best,
Lisa

On Sun, Nov 15, 2015 at 9:26 PM, Peter Stone [REDACTED] wrote:

Hi Lisa, Ben, Adam -

Wonderful to see you Friday night - and congratulations on a successful Doc NYC presence for Making a Murderer. We were bowled over anew as we watched those first two episodes - and it was really wonderful to see Laura/Moira start to tell their story as well!

We're excited to share with you our ~~WIP trailer for the series~~. There are a few more tweaks which we think can make it even more successful, but very eager to hear your thoughts at this stage, at your earliest convenience. (Definitely want to allow enough time for Laura/Moira to check it out and become comfortable with it - before we need to lock at the end of the month).

To put the trailer in context:

- Already occurred: key art debut/initial coverage + Doc NYC screening this past weekend.
- From there, PR will continue to pitch stories about the filmmakers.
- Then, we plan to release the trailer about 7-10 days out from launch - a final call to action to our core audience
- Finally, on launch weekend, we'll be debuting the entire first episode on YouTube/Facebook (exact plans/timing in the works)
- We'll be watching viewer reaction (reviews/social responses) carefully after the launch and plan to make a quote-based spot post-launch that celebrates the reviews and fan reaction.

NOTE: As I'm sure you are accustomed to - graphics, sound, etc (incl when subtitles appear that are not connected to VO that is happening) - all of this is temp and will look/sound perfect once we lock and move into finishing.

Look forward to hearing from you -

Best, Peter

~*

Peter Stone

Originals Marketing - NETFLIX

[REDACTED]

**EXHIBIT 3 - COMPARISON VIDEO SHOWING RAW
FOOTAGE PRODUCED BY DEFENDANTS LABELED
CHRM 867 14:35 – 15:08 VS. EPISODE 5 55:31 –55:54
PROVIDED ON FLASH DRIVE TO CLERK’S OFFICE
AND COUNSEL**

**EXHIBIT 4 - COMPARISON VIDEO SHOWING RAW
FOOTAGE PRODUCED BY DEFENDANTS LABELED
CHRM 868 7:10 – 7:20 VS. EPISODE 7 AT 24:20 – 24:30
PROVIDED ON FLASH DRIVE TO CLERK’S OFFICE
AND COUNSEL**

**EXHIBIT 5 - SEVERAL VIDEOS OF RAW
FOOTAGE AS IDENTIFIED BELOW**

CHROME # 864 14:45 – 14:55 (10 SECONDS)

CHROME # 866 5:54 – 6:00 (6 SECONDS)

CHROME # 866 7:10 – 7:25 (15 SECONDS)

CHROME # 866 10:58 – 11:08 (10 SECONDS)

CHROME # 867 29:40 -30:21 (41 SECONDS)

CHROME # 867 31:00 – 31:17 (17 SECONDS)

**PROVIDED ON FLASH DRIVE TO CLERK'S OFFICE
AND COUNSEL**

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STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 1

STATE OF WISCONSIN,

PLAINTIFF,

JURY TRIAL
TRIAL DAY 8

vs.

Case No. 05 CF 381

STEVEN A. AVERY,

DEFENDANT.

DATE: FEBRUARY 21, 2007

BEFORE: HON. PATRICK L. WILLIS
Circuit Court Judge

APPEARANCES:

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

THOMAS J. FALLON
Assistant Attorney General
On behalf of the State of Wisconsin.

NORM GAHN
Special Prosecutor
On behalf of the State of Wisconsin.

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

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

STEVEN A. AVERY
Defendant
Appeared in person.



1 connections or other, um, items that may be
2 located in Manitowoc County. Let me specifically
3 ask you, uh, whether you have ever seen, uh, any
4 vial of Mr. Steven Avery's blood in possession
5 anywhere in, Cal -- in, uh, Manitowoc County?

6 A No, sir, I have not.

7 Q Did you ever, before the 5th of November, have
8 knowledge of a vial of Mr. Avery's blood in the
9 Manitowoc County Clerk of Court's Office?

10 A No, sir, I did not.

11 Q Did you ever see a vial of blood in the clerk's
12 office?

13 A No, sir.

14 Q Between the 3rd and 5th of November, were you
15 ever in the Manitowoc County Clerk of Court's
16 Office?

17 A No, sir, I was not.

18 Q Lieutenant Lenk, did you ever, um, obtain any
19 blood from the clerk's office or did you obtain
20 any blood from any location and plant it anywhere
21 on the Avery salvage property?

22 A No, sir, absolutely not.

23 Q Did you ever plant it anywhere in Teresa
24 Halbach's vehicle or anywhere where it could be
25 found as part of this investigation?

1 A No, sir, definitely not.

2 Q Did you ever assist any other officer so that
3 another officer could either plant evidence, uh,
4 or try to in some way frame Mr. Avery for this
5 homicide?

6 A No, sir.

7 Q And, lastly, uh, had you ever heard from any
8 member of the, uh, Manitowoc County law
9 enforcement community, uh, that they had
10 participated in some frame-up or planting of
11 evidence?

12 A No, sir, there was not.

13 Q And just to make sure, since we've gone through
14 the, uh -- the key evidence, um, did you have any
15 occasion to plant the -- Teresa Halbach's key or
16 place her key in Mr. Avery's residence?

17 A Absolutely not.

18 ATTORNEY KRATZ: That's all the
19 questions I have of Lieutenant Lenk, Judge.
20 Thank you.

21 THE COURT: Mr. Strang?

22 ATTORNEY STRANG: Thank you, Your Honor.

23 **CROSS-EXAMINATION**

24 BY ATTORNEY STRANG:

25 Q Next year it will be quarter century that you've

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

3 STATE OF WISCONSIN,

4 PLAINTIFF, JURY TRIAL
5 vs. TRIAL - DAY 21
Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** MARCH 12, 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 done so knowingly and voluntarily. Mr. Strang, have
2 you raised this issue with your client?

3 ATTORNEY STRANG: I have raised it with
4 Mr. Avery; that is, Mr. Buting and I both have,
5 jointly, several times, probably beginning before
6 trial and then during the trial.

7 THE COURT: Thank you. You can move the
8 microphone over to Mr. Avery then.

9 Mr. Avery, do you understand that you
10 have a constitutional right to testify in this
11 case, if you wish?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: And do you further understand
14 that you have a constitutional right not to testify,
15 if you wish?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: Do you understand that the
18 decision whether to testify or not is yours to make?

19 THE DEFENDANT: Yes.

20 THE COURT: That means, you can listen to
21 your attorneys and listen to their advice, but,
22 ultimately, it's your call; do you understand that?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: Has anyone made any threats or
25 promises to you to influence your decision?

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THE DEFENDANT: No, they didn't.

THE COURT: Have you thoroughly discussed your decision with your attorneys?

THE DEFENDANT: Yes, I did.

THE COURT: And have you made a decision as to whether or not you wish to testify in this case?

THE DEFENDANT: Yes.

THE COURT: What is your decision?

THE DEFENDANT: My decision is, I'm an innocent man and there's no reason for me to testify. Everybody knows I'm innocent.

THE COURT: Okay. So you wish not to testify; is that correct?

THE DEFENDANT: Yes.

THE COURT: Thank you. You may be seated.

THE DEFENDANT: Thank you.

THE COURT: Mr. Strang and Mr. Buting, have each of you had sufficient opportunity to thoroughly discuss this case and the decision whether or not to testify with your client?

ATTORNEY BUTING: Yes, we both have.

THE COURT: And are each of you satisfied that he's making his decision not to testify knowingly, intelligently and voluntarily?

ATTORNEY BUTING: Yes.

1 THE COURT: Very well, the Court finds that
2 Mr. Avery's decision not to testify in this case is
3 knowingly and voluntarily made. I'm satisfied he's
4 aware of his constitutional right to testify, if he
5 wishes. And he is knowingly and voluntarily
6 declining the right to exercise the right to
7 testify. Is there anything else that either party
8 wishes to address before we bring the jurors in?

9 ATTORNEY STRANG: There is, from the
10 defense, your Honor. I cannot remember when, but
11 sometime earlier in this trial, we discussed the
12 issue of one of our juror's participation on an
13 earlier civil jury in which the witness here was a
14 party. I will not name the juror, but the juror is
15 known to the Court and to opposing counsel.

16 We argued at the time, that although
17 this was uncharted territory, as a matter of case
18 law, that the juror having once passed on the
19 credibility of a witness here, and that witness'
20 role as a party in a prior civil lawsuit, we
21 thought would leave a strong enough impression on
22 a juror and enough commitment to conclusions
23 about credibility that there would be at least
24 objective bias, if not also subjective bias, and
25 reason to relieve the juror from further

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

3 STATE OF WISCONSIN,

4 PLAINTIFF, JURY TRIAL - DAY 24
5 vs. CLOSING ARGUMENTS, CONTD.
Case No. 05 CF 381

6 STEVEN A. AVERY,
7 DEFENDANT.

8 **DATE:** MARCH 15, 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 ask you, just kind of for the sake of talking, as
2 Mr. Strang wanted to talk with you rather than at
3 you, I certainly have a style that I would prefer
4 that as well. Let's assume they never found the
5 key. Let's assume this key isn't part of this
6 case at all.

7 Let's assume Mr. Strang's theory is
8 correct, that these cops aren't trying to plant
9 an innocent person, but trying to make sure that
10 a guilty person is found guilty. Well, can't you
11 then, with that argument, set the key aside? Do
12 you have the ability, as a jury, to set that key
13 aside, if in fact it doesn't matter whether or
14 not Mr. Avery is guilty or not guilty in this
15 analysis? Can you set that aside and decide is
16 there enough other evidence, or is the key the
17 only thing that points to Mr. Avery?

18 Well, if this was a CSI case, one of
19 those cases on TV where sometimes that key, or
20 sometimes one little piece of evidence like that
21 may decide the guilt or innocence, it would make
22 a difference. But that key, in the big picture,
23 in the big scheme of things here, means very
24 little. All right.

25 Now, I'm telling you that not because I

1 don't want you to consider it, not because I
2 think that it's not important, or not because the
3 credibility of these officers is in question to
4 the State at all. What I am suggesting, though,
5 is that if you buy Mr. Strang's argument, if you
6 buy Mr. Strang's argument that they were trying
7 to make sure that a guilty person was found
8 guilty, then assigning accountability to the
9 murder for Teresa Halbach, shouldn't matter
10 whether or not that key was planted.

11 In other words, it shouldn't matter to
12 the Halbach family. You shouldn't be punishing
13 the police officers, in other words, the other
14 officers that were involved in this
15 investigation, if you come to that conclusion.
16 You are not going to. You are not going to come
17 to that conclusion because you have heard nothing
18 about these police officers that they would do
19 such a thing. But my suggestion is simply not to
20 focus all your attention.

21 In the law, that's called searching for
22 doubt. The Judge has told you, and may even tell
23 you again in your closing instruction, that you
24 are to search for the truth, you are not to
25 search for doubt. In other words, you don't go

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ANDREW L. COLBORN,

Plaintiff,

-vs-

Case No. 19-CV-0484

NETFLIX, INC., et al.,

Defendants.

* * * * CONFIDENTIAL * * * *

Video-Recorded Examination of
KENNETH PETERSEN, taken at the instance of the
Defendants, under and pursuant to the Federal Rules
of Civil Procedure, before Sarah M. Gilkay, a
Certified Realtime Reporter, Registered Merit
Reporter, and Notary Public in and for the State of
Wisconsin, at GODFREY & KAHN, S.C., 833 East Michigan
Street, Suite 1800, Milwaukee, Wisconsin, on
May 19th, 2022, commencing at 10:14 a.m. and
concluding at 2:45 p.m.

Job No. CS5223455



1 sheriff's department to being its own --

2 A It's own --

3 Q -- standalone department that encompassed
4 different -- different groups, including the
5 sheriff's department, but also things like the
6 fire department?

7 A Yes.

8 Q Okay. Do you have any -- do you have any
9 experience with the way those dispatch records
10 were kept in the early 2000s?

11 A You mean in a call logger or dispatch sheet when
12 they dispatch vehicles to scenes or whatever?

13 Q Let's -- let's start with the call logger.

14 A The call logger would record any call that comes
15 in and goes out.

16 Q And how about the dispatch sheet that you
17 mentioned?

18 A I don't think they do it on paper anymore. They
19 do it on computer. But it would -- it would log
20 the activity. So if somebody was dispatched to
21 a scene, it would show up they were dispatched
22 to a scene. It would show what they requested
23 once at the scene, whether it's ambulance,
24 coroner, whatever, and then it would show when
25 they clear the scene or if they requested, you

1 record. The time is 2:25 p.m.

2 (Recess taken.)

3 THE VIDEOGRAPHER: And we are back on
4 the record. The time is 2:32 p.m.

5 BY MR. VICK:

6 Q Sheriff Petersen, you testified previously that
7 you believed that the Teresa Halbach
8 investigation fell -- originally fell into
9 Calumet County maybe based upon where she was
10 based out of; is that right?

11 A Correct.

12 Q Once the body was found in Manitowoc County,
13 would that have normally shifted it over to the
14 Manitowoc County Sheriff's Department as being
15 lead investigators?

16 A It would have under normal conditions, but
17 because of me being recused, it was handed back
18 over to them so that we wouldn't view -- or they
19 wouldn't view it as any improprieties.

20 Q So they found that you had a conflict of
21 interest potentially, and that's why it got sent
22 back to Calumet County?

23 A Both -- both myself and the DA's office.

24 Q I see. What about the Sheriff's Department
25 beyond you, was there an understanding that

1 there was some conflict of interest that the
2 Sheriff's Department -- Manitowoc County
3 Sheriff's Department had?

4 MS. BARKER: Objection. Foundation.

5 THE WITNESS: Not that I'm aware of.

6 BY MR. VICK:

7 Q Now, Calumet County, is it also true that the
8 Wisconsin DCI was, you know, co-lead
9 investigative --

10 A Yes.

11 Q -- body with them?

12 And DCI has a lot of personnel; right?

13 MS. BARKER: Objection. Foundation.

14 THE WITNESS: I have no idea how many
15 they have.

16 BY MR. VICK:

17 Q I believe you testified that Calumet County is
18 relatively small; right?

19 A Well, as far as their Sheriff's Department
20 budget. The county itself, you know, area-wise
21 would be about the same as Manitowoc, I think.

22 Q I see. But in terms of the size of their
23 Sheriff's Department, they're smaller than
24 Manitowoc, for example; right?

25 A Yes.

1 MS. BARKER: Sure. And I'll see if --

2 MS. FENZEL: April, is this -- was
3 this also tagged as Exhibit 57, you said?

4 MS. BARKER: Yes. It's Exhibit 57.
5 The only difference is the top page has -- 66
6 has a certification from the Manitowoc County
7 Sheriff's Department.

8 MR. FRIEDMAN: So that has not been
9 used in a deposition before?

10 MS. BARKER: I believe 57 was, which
11 is everything except for this top page.

12 MR. FRIEDMAN: Okay. But you marked
13 it 66 for today?

14 MS. BARKER: Someone from the Conway
15 Olejniczak office did, yes.

16 MR. FRIEDMAN: Okay.

17 MR. VICK: I'm going to object to this
18 on the basis that it was not produced in
19 discovery, and I don't believe it's been used or
20 authenticated in any previous depositions
21 either. I do recall it being on the exhibit
22 list I believe for Ms. Demos's deposition, but I
23 don't believe it was ever used.

24 THE WITNESS: That's it there.

25 MS. BARKER: I think it was actually

1 used. Yeah. Exhibit 57. It's the same thing,
2 except it has a certification. We could use
3 that page right there, that 57. It's fine with
4 me.

5 MR. VICK: I'm still going to object
6 on the basis it's never been produced in
7 discovery.

8 MS. BARKER: Actually, I'm pretty sure
9 it was, but I -- I don't have the Bates number,
10 but I'm pretty use sure a copy of that was
11 Bates-stamped and produced.

12 MR. VICK: I don't know the answer.
13 I've made my objection.

14 MS. BARKER: Sure. Okay.

15 BY MS. BARKER:

16 Q And so my question, Sheriff Petersen, after all
17 that buildup is really very simple.

18 Is this document a copy of -- or
19 strike that.

20 Do you recognize this document as the
21 type of narrative dispatch log from Manitowoc
22 County that was used at the time you were
23 sheriff of Manitowoc County?

24 A Yes.

25 MS. BARKER: Okay. That's all I have.

In the Matter of:
Andrew Colborn vs.
Netflix, Inc., et al.
Case No. 19-CV-0484-BHL

Andrew L. Colborn
July 21, 2022

365Reporting LLC
freelance court reporters

1081 Lamers-Clancy Road Greenleaf, WI 54126
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In the Matter of:
Andrew Colborn vs.
Netflix, Inc., et al.
Case No. 19-CV-0484-BHL

Andrew L. Colborn
July 22, 2022

365Reporting^{LLC}
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1081 Lamers-Clancy Road Greenleaf, WI 54126
920.585.2341 | www.365reporting.net | paula@365reporting.net

1 MR. BURNETT: I'll withdraw the
2 objection. You can answer.

3 A I disagree with that statement.

4 Q On what basis? Let me -- let me ask you.
5 You've not watched the whole thing?

6 A Correct.

7 Q In fact, you haven't even watched the last
8 three episodes at all according to your stipulated
9 facts, correct?

10 A That is correct, yes.

11 Q So you have no idea in those last three
12 episodes whether it tells both sides of the stories,
13 raises questions, or encourages viewers to reach
14 their own conclusion? You just don't know, correct?

15 A I don't know any of the content of the last
16 three episodes, that's correct.

17 Q Can you point me to where in Making a
18 Murderer it contends that you planted evidence to
19 frame Avery for Teresa Halbach's murder?

20 A I believe there's quite a few examples in
21 the Complaint that were -- so I'm not an attorney.

22 Q I know.

23 A I hired attorneys to do the research to find
24 that evidence.

25 Q I'm just asking you -- yeah. And your

1 attorneys will make arrangements for you after this
2 deposition, but I'm asking -- all of my questions
3 today Mr. Colborn, just so we can do a level set,
4 they're all directed to you and your personal
5 knowledge as you sit here today, and I'm just asking
6 you can you tell me where MAM, Making a Murderer,
7 contends, states something in a strong and definite
8 way, that you planted evidence to frame Avery for
9 Teresa Halbach's murder?

10 A I can't tell you the exact episode, no.

11 Q Okay. Try a couple more. Where does MAM
12 contend or state in a strong and definite way that
13 you made a call to dispatch after you located Teresa
14 Halbach's SUV; do you know?

15 A No, I don't know the exact episode. I
16 haven't committed all that to memory.

17 Q Would you rely on everything in your
18 Complaint I take it?

19 A Yes, I would rely --

20 Q Okay.

21 A -- on things in my Complaint and other
22 evidence that my attorneys have uncovered since
23 discovery.

24 Q We'll talk about that and we'll look at
25 those, and I'll ask you how you think they contend

1 **name anyone who you believe has treated you**
2 **differently since the release of Making a Murderer?**

3 A I have some examples, yes, but I don't know
4 their name per se.

5 **Q Okay. How many examples do you have?**

6 A Oh, for sure one.

7 **Q Okay. What's that example?**

8 A Well, that example is I've been going to the
9 exact same place to get my car serviced, the
10 dealership where I bought my car, for years. All of
11 a sudden the service manager is now taking pictures
12 of me in the waiting room, my car up on the lift and
13 sending that out on Facebook saying, "Look who I got
14 here, the person who set up Steven Avery. Here's the
15 car he drives, along with my license plate number."
16 That had never happened prior to this.

17 **Q Have you produced those social media**
18 **postings to us in this case?**

19 A No. I tried to get them from the sheriff's
20 department, and I wasn't able to. She was instructed
21 by her employer prior to being terminated to take it
22 down off Facebook.

23 **Q So it's no longer online?**

24 A Not that I am aware of, no. I don't have
25 any social media accounts, so I can't research that.

1 Q And you think the sheriff's department had
2 copies?

3 A I don't know.

4 Q But you -- for some reason you thought they
5 might because you asked the sheriff's department for
6 them?

7 A Correct. I reported that to the sheriff's
8 department, actually.

9 Q Okay. Would there be a written report of
10 that?

11 A I don't know.

12 Q Did you ask for the written report?

13 A I did not. I try not to bother law
14 enforcement with this. They put up with it enough
15 while I worked there.

16 Q Do you have any way of knowing whether the
17 person at the dealership who was posting this had
18 ever watched Making a Murderer?

19 A I didn't talk to the person who did this. I
20 was advised not to.

21 Q So the answer is you don't know?

22 A Correct.

23 Q And other than the names on this list and
24 the person at the car dealership, is there anyone
25 else who you believe has treated you differently

1 **since the release of Making a Murderer?**

2 A I've had -- I don't know. I supplied it to
3 my attorneys. I can't remember the guy's name, but
4 he ran for mayor for the City of Green Bay, and I
5 took a part-time job after I retired from law
6 enforcement so I had health insurance. He came to
7 the hospital because he had a sick child, so I showed
8 him where the NICU is. Do you know what the NICU is?

9 **Q (Nodding head up and down.)**

10 A Okay. So he immediately leaves the hospital
11 and posts on Facebook that he felt -- you know, he
12 was more concerned or -- and aghast that I was the
13 one working at the hospital than his sick child who's
14 in the NICU. His whole Facebook post was about me.
15 And I've purposely tried to change my appearance, but
16 this was pre-COVID, so I wasn't wearing a mask. But
17 I've allowed my hair to grow longer. I sometimes
18 grow facial hair, although I'm not a fan of it. So
19 he still managed to recognize me, plus I'm required
20 to wear a name tag that has my name on it. So that
21 was another instance. And, of course, his comments
22 on Facebook weren't exactly favorable.

23 **Q Did you preserve the comments on Facebook?**

24 A I printed them out or emailed them to my
25 counsel.

1 **Q Okay. And you may have produced them to us.**
2 **We'll look for them.**

3 MS. WALKER: If we didn't, we'd request
4 a copy.

5 MR. BURNETT: Sure.

6 **Q What's the mayoral candidate's name; do you**
7 **recall?**

8 A I sent -- no, I don't recall the gentleman's
9 name.

10 **Q Okay. Anyone else you can identify who you**
11 **believe treated you differently?**

12 A There probably are other examples,
13 Ms. Walker, but I can't remember them specifically
14 outside of those two.

15 **Q Do you --**

16 A I've had people come up to -- I work in a
17 booth at the hospital, and I've had people come up to
18 the booth, and all of a sudden I'll see a flash and
19 they'll tell me, Oh, I got your picture. I'm going
20 to put it on Facebook that -- where you're working
21 or Now I've got a good souvenir. And I'm very
22 careful, I try to be. I don't allow any family
23 members to take my photograph. I don't -- I don't
24 want my picture all over social media, for obvious
25 reasons.

1 Q Okay. Finally, she told us, quote, I wanted
2 to move on. I didn't want to let Avery or Making a
3 Murderer ruin our lives. Andy couldn't let it go
4 though. The lawsuit only did more damage to us, end
5 quote.

6 Do you dispute that?

7 A No.

8 Q Okay. So now we're going to go back to
9 Exhibit 1 and look at your stipulation number 45.
10 And you can set the list of names to the side.

11 A Okay.

12 Q So 45 says, "Some members of my law
13 enforcement community supported me after the release
14 of Making a Murderer but some did not," and you
15 requested before signing it that we add "some did
16 not." You recall that?

17 A Correct.

18 Q And so I'd like to know the names of people
19 within the law enforcement community who did not
20 support you.

21 A Well, I can't give you those names because I
22 don't know the -- the author of the article, but I
23 can give you the department.

24 Q Sure.

25 A Scotland Yard.

1 **Q What is --**

2 A So Scotland Yard is an investigative agency
3 within the City of London Police Department in Great
4 Britain. I received an article -- I think I got it
5 via email; I don't have a hard copy of it -- where
6 they had interviewed members of Scotland Yard, showed
7 them snippets of -- and clips of Making a Murderer,
8 and after that, Scotland Yard was united in saying,
9 Yes, certainly that officer did a put-up, which is
10 British talk, I understand, for set-up, of Steven
11 Avery.

12 So we're talking an entire agency overseas
13 is now saying that about a police officer. And I was
14 still an active duty police officer at the time, and
15 I've worked international cases. So it's difficult
16 having a law enforcement agency that you may have to
17 work with thinking that you set up a guy here in the
18 United States. So that's one example.

19 **Q You said that was an article or a television**
20 **special or what was --**

21 A I don't know if it made it on television or
22 no. It was an article. I don't re -- you know, I
23 don't know if I printed that one and gave it to the
24 attorney who was helping me at the time or not.

25 **Q Okay.**

1 MR. BURNETT: Objection, foundation.

2 Q You don't know?

3 A Correct.

4 Q You do know that some of them were convicted
5 felons, correct? I'll show you an example to jog
6 your -- a document to jog your memory.

7 A Thank you.

8 Q Could you go to Exhibit 8?

9 A Do I have that?

10 Q Yeah.

11 A Got it.

12 Q And flip about 20 pages in to tracking
13 number 355, if you could. Sorry, 356.

14 A Okay.

15 Q And just to refresh your memory, this is a
16 transcript of the interview you gave for Convicting a
17 Murderer, correct?

18 A Well, it's my answers. Again, like I said
19 yesterday, the question doesn't appear.

20 Q Okay.

21 A And I can't determine which interview it is,
22 but it's either interview one or two of Convicting a
23 Murderer interviews.

24 Q Okay. So I'm going to start reading at the
25 top of that third row. "Unwisely, I invited him to

1 A Correct.

2 Q That you transferred the call to a
3 detective, right?

4 A Correct.

5 Q That you didn't know the call was about
6 Mr. Avery, right?

7 A That is correct.

8 Q That the call did not motivate you to frame
9 Mr. Avery for the murder of Ms. Halbach, right?

10 A That is correct.

11 Q And that you didn't plant evidence against
12 Mr. Avery, right?

13 A That is correct, yes.

14 Q So would you agree that this episode got
15 across the most crucial points of this portion of
16 your direct testimony by Mr. Kratz?

17 MR. BURNETT: Objection, form.

18 Go ahead.

19 A No, I don't believe it did.

20 Q Why not?

21 A There were too many things that -- too many
22 forceful points that were eliminated to clearly get
23 it across. I come across as -- you know, looking at
24 this -- if I was looking at this and I didn't know it
25 was me, I would think, Boy, this officer's pretty

1 wishy-washy about that, pretty unsure of himself.
2 For instance, "Have you ever planted any evidence
3 against Mr. Avery?" my response at trial was, "That
4 is ridiculous, no, I have not." And then the second
5 question Mr. Kratz asked me, "Have you ever planted
6 any evidence against anybody in the course of your
7 law enforcement career?" that whole question is
8 eliminated. Instead, it looks like I answered, "Have
9 you ever planted evidence against Mr. Avery" by
10 saying, "I have to say this is the first time my
11 integrity has been questioned." That doesn't come
12 across very forceful or convincing. It's hardly
13 answering the question. So I don't believe that's an
14 accurate portrayal.

15 **Q Did you feel that accusations that you**
16 **planted evidence against Mr. Avery were calling into**
17 **question your integrity?**

18 **A** The question was have you ever planted any
19 evidence against anybody in the course of your law
20 enforcement career. That's my answer to that
21 question.

22 **Q Mr. Colborn, I'm going to move to strike.**
23 **That wasn't my question.**

24 **My question is leaving this for a second,**
25 **did you feel that accusations against you that you**

1 planted evidence against Mr. Avery, that that called
2 into question your integrity as a law enforcement
3 officer?

4 A Yes.

5 Q And do you feel like this scene shows you
6 denying that you planted any evidence against
7 Mr. Avery?

8 A I'm sorry. The scene on Making a
9 Murderer --

10 Q Sure.

11 A -- that you just showed me?

12 Q The clip we just -- we just --

13 A Is that what you are asking about?

14 Q The clip we just looked at, you deny having
15 planted any evidence against Mr. Avery, right?

16 A Yes.

17 Q Okay. Last one. If you could move on to
18 page 52 of Exhibit B.

19 A Okay.

20 Q And what I'm interested in here is where it
21 starts, oh, maybe a quarter of the page down, it says
22 Redirect Examination.

23 A Okay. I see it.

24 Q So just looking at that section.

25 A Okay.

1 Q Have you had a chance to review this already
2 or would you like more time?

3 A Page 52? No, I reviewed it.

4 Q Would you agree that Mr. Kratz was trying to
5 elicit testimony from you to clarify or rebut some of
6 the points raised during Mr. Strang's
7 cross-examination of you regarding this phone call?

8 A From what you're asking me to look at here,
9 it looks like Mr. Kratz is trying to get me to
10 explain about not writing a report about the '94 or
11 '95 call.

12 Q And was that in response to some questions
13 that Mr. Strang had asked you during the
14 cross-examination that preceded this?

15 A I don't have the entire cross-examination
16 committed to memory, and it says here, "15 lines of
17 testimony omitted." So I don't have a -- I don't
18 have a reference of what Mr. Strang was asking me.

19 Q Do you have any personal recollection of
20 Mr. Strang asking you about that?

21 A Yes, but I can't tell you verbatim our --
22 the -- his questions.

23 Q And I'm not going to quiz you on that,
24 Mr. Colborn. I really just wanted to ask if you had
25 a recollection --

1 A Yes.

2 Q -- that Dean Strang asked about this subject
3 matter during his cross-exam.

4 A Yes.

5 Q And then Mr. Kratz on redirect wanted to
6 respond to some of the points that Mr. Strang had
7 raised, right?

8 A Yes.

9 Q Mr. Kratz wanted to make clear that you
10 hadn't written a report about the call in 1994 or
11 '95?

12 A Yes.

13 Q And that if you had written a report you
14 wouldn't have known what it was about; is that right?

15 A Correct.

16 Q That you didn't know the call was even about
17 Mr. Avery, right?

18 A Correct.

19 Q Is there anything I'm missing here that's
20 key to understanding your testimony?

21 MR. BURNETT: Objection, form.

22 A I explained in the presence of -- all these
23 questions were in the presence of the jury. I
24 explained in the presence of the jury my reason that
25 I didn't write a report has been eliminated from my

1 should not concern himself."

2 Did I read that correctly?

3 A Yes.

4 **Q Did you tell that to Tom Kocourek back in**
5 **the mid '90s?**

6 A No.

7 **Q Any idea why Gene Kusche would say that you**
8 **did?**

9 A I don't know. He's clearly confused. He
10 doesn't even have the right dates. So I would
11 suspect that the story started here, and by the time
12 it got here, it's definitely kittywampus, not correct
13 if that would be easier to put on.

14 **Q Thank you. Do you have any reason to think**
15 **that Mr. Kusche would lie about anything here as**
16 **opposed to having just made a mistake?**

17 A I think he might have thought that that's
18 what he heard or that -- but he has it all confused.
19 And I've never had a conversation with then Sheriff
20 Kocourek or retired Sheriff Kocourek about that.

21 **Q So did you ever have a conversation with**
22 **Mr. Kocourek about this phone call at any time?**

23 A No.

24 **Q And so he never told you, "Hey, don't worry**
25 **about it. We've got the right guy"?**

1 A That is correct, he never told me that.

2 Q Did anybody else in the sheriff's department
3 tell you something to that effect?

4 A Not that I recall.

5 Q And besides what you've already told me, do
6 you have any idea how Eugene Kusche would have gotten
7 that impression?

8 A I don't know. No, I don't, but I will tell
9 you that Gene Kusche's health wasn't very good, and
10 he passed away shortly after this, I believe in '6.

11 Q Looking down at the bottom, the last two
12 sentences, I'll go ahead and read them out, "On late
13 Thursday afternoon I found Mark Rohrer and apprised
14 him of the conversation with Gene. By the time I
15 found Mark he indicated that he had already been made
16 aware of the conversation between Colborn and
17 Kocourek." Did I read that correctly?

18 A Yes.

19 Q Do you have any idea how Mark Rohrer would
20 have gotten the idea that you and Mr. Kocourek had a
21 conversation back in the mid '90s about the phone
22 call and Mr. Kocourek had, you know, told you, "Don't
23 worry about it"?

24 A I have no idea.

25 Q Are you aware that Michael Griesbach was

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ANDREW L. COLBORN,)
)
Plaintiff,)
)
vs.)
)
NETFLIX, INC., et al.,)
)
Defendants.)
_____)

Case No.: 19-CV-0484

C O N F I D E N T I A L

VIDEO-RECORDED DEPOSITION OF LISA NISHIMURA
Los Angeles, California
Friday, April 29, 2022

REPORTED REMOTELY BY:

NATALIE ALCOTT-BERNAL, CSR No. 13105



1 72, and 73.

2 If you can just please take a moment to review
3 those.

4 A I'll read them.

5 Q Thank you.

6 A I've read it.

7 Q Thank you.

8 On the bottom half of the first page of that set
9 of pages, which is Bates-stamped CHRM 71, there is,
10 apparently, an e-mail message dated November 11th, 2013,
11 from Moira Demos to Adam Del Deo.

12 Do you see that?

13 A I -- I do.

14 Q The first or the second sentence in that message
15 states, "We are planning for and looking forward to your
16 and Lisa's visit this week."

17 Do you see that?

18 A I do.

19 Q At some point do you recall going to the
20 Synthesis offices and meeting with Ms. Demos and
21 Ms. Ricciardi?

22 A I do have a memory of going to their offices. I
23 don't remember if it was, specifically, this date or this
24 occasion, but yes.

25 Q What was the purpose of going to their offices,

1 to your recollection?

2 A We were going to meet with them, as you know we
3 do with our filmmakers. It's a very collaborative
4 process.

5 I'm gleaning from the contents of this e-mail
6 that they wanted to give us a creative update on where
7 they were with the project. And it sounds like here they
8 had put some assemblies or scenes together from their
9 episodes that they wanted to show to us.

10 Q Do you recall whether the -- strike that.

11 Do you recall whether you would have gone to the
12 Synthesis offices with just Mr. Del Deo, or would anyone
13 else have accompanied you?

14 A I don't. I don't recall with certainty. I do
15 remember going with him, but I don't recall if anybody
16 else was there.

17 Q And directing your attention up to the first
18 message at the top of the page from Paola Correa to
19 Moira Demos on 11/12/2013.

20 Do you see that message?

21 A I do.

22 Q That states in the second paragraph that you had
23 a -- you and Adam had a two-hour block open on Friday,
24 November 15th.

25 Do you see that?

1 Q And the second line of that e-mail message
2 indicates that there were notes that were available for
3 the first three episodes at that time.

4 Do you see that?

5 A I do see -- yes, I see the line.

6 Q We will be going through a lot of notes later in
7 the deposition. But I just want to first get a general
8 sense of that process, to the best of your recollection.

9 Would the first step in the process of
10 generating notes for each cut would be that you would be
11 provided a version of the cut -- or strike that -- you
12 would be provided a cut by Laura Ricciardi and
13 Moira Demos, and you -- your team would review it;
14 correct?

15 A That's correct.

16 Q And then in terms of compiling notes, did each
17 member of the Netflix creative team first assemble their
18 own notes?

19 A It was different every time. So there were
20 occasions when we would watch a cut together and then
21 discuss it and determine which of us would lead in
22 drafting the first set of notes, after which anyone on
23 the creative team that was party to a review would add
24 their thoughts and ideas and questions. Again, as I
25 mentioned, it's a very, very collaborative process.

1 There were other times when each of us would
2 watch separately and agree on a deadline to produce
3 notes, again, determining who would take lead on a draft,
4 or we would often use a collaborative platform like
5 Google Docs so that we could be concurrently drafting
6 notes. So, I would say that there was never a uniform
7 way in which notes were produced, but that -- that it was
8 always collaborative across the creative team that was
9 working on the project.

10 Q Thank you.

11 And, so, once the team itself decided on what
12 the final draft of the notes would consist of, then it
13 would be relayed back to the Synthesis team?

14 A Correct.

15 Q Following up on the question about the prior
16 message. I believe there was a reference in CHRM 72 to
17 an edit room at the Synthesis office. Do you recall
18 being in an edit room?

19 A Sorry.

20 A Sorry. Do you have more to your question?

21 Q Yeah. I'm sorry. Yes. I'll strike the prior
22 version.

23 Do you recall being in an edit room at the
24 Synthesis office?

25 A I recall that Synthesis had a combined office,

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ANDREW L. COLBORN,)
Plaintiff,) Case No.
vs.) 19-cv-0484
NETFLIX, INC., et al.,)
Defendants.)

CONFIDENTIAL
VIDEOTAPED DEPOSITION OF ADAM DEL DEO
April 26, 2022

REPORTED REMOTELY BY:
AMBER S. WILLIAMS, C.S.R. No. 1080
Notary public



1 through NFX 1941, you can take a moment and look
2 through those, please.

3 A. Okay.

4 Q. So the documents at NFXCOL 1933 through
5 1941 are the "Making a Murderer" notes for Episodes
6 1, 2, 3, and 4, as referenced in the preceding e-mail
7 message, correct?

8 A. That looks correct.

9 Q. And to your understanding, in the "To"
10 line on page NFXCOL 1933, when it refers to "Making a
11 Murderer Creative," who all is included in that?

12 A. I don't know. It depends on -- it
13 looks, based on the e-mail, that the cover letter --
14 that it would have been Lisa Nishimura, myself, and
15 Marjon at that time.

16 Q. With respect to the notes that are
17 represented by NFXCOL 1933 through 1941, was -- do
18 you know specifically who drafted each note other
19 than looking at other documents or is this a group
20 effort?

21 A. I don't recall.

22 Q. Did you at the time review the notes
23 that are represented at NFXCOL 1933 through 1941?

24 A. I don't recall.

25 Q. Normally in your work on the series, you

1 wouldn't have ignored the notes for those four
2 episodes, would you?

3 A. I normally would not have ignored notes.

4 Q. All right. So in your normal practice,
5 you would have reviewed those notes, correct?

6 A. That's correct.

7 Q. Okay. Directing your attention forward
8 in the document to -- marked as Exhibit 5, to the
9 page Bates-stamped NFXCOL 1942 in the lower
10 right-hand corner.

11 A. Okay.

12 Q. In that document is a copy of an e-mail
13 message from Lisa Nishimura to Moira Demos and Laura
14 Ricciardi and Lisa Dennis on which you are copied; is
15 that correct?

16 A. That looks to be the case.

17 Q. And that e-mail message forwarded notes
18 for discussions on Version 2 of the pilot for MAM; is
19 that correct?

20 A. That looks to be the case.

21 Q. And then directing your attention to
22 NFXCOL 1943 through NFXCOL 1947, you can take a
23 moment and just scan through those, please.

24 A. Okay.

25 Q. The documents at NFXCOL 1943 through

1 correct?

2 A. It would have -- yeah, based on what I'm
3 looking at here, I don't recall this e-mail and I
4 don't recall reviewing these notes. In the course of
5 my position, which we talked about earlier, I
6 generally would have looked at notes before they went
7 out.

8 Q. Moving forward in Exhibit 6 to the
9 documents that -- two forward from where we were, or
10 left off, the document Bates-stamped NFXCOL 1948, can
11 you see that document?

12 A. 19- --

13 Q. -- -48.

14 A. Yeah. So we went through this. Okay.
15 Yeah.

16 Q. And again, that -- that document is a
17 message -- or, copy of an e-mail message from Marjon
18 Javadi to Laura Ricciardi, Mary Manhardt, and Lisa
19 Dennis that is copied to you and Lisa Nishimura?

20 A. That is correct.

21 Q. And that e-mail message references
22 attached notes for Episode 6, correct?

23 A. That looks correct.

24 Q. And the attachment line at the top of
25 the document where -- just underneath the subject,

1 "subjects"; is that right?

2 A. The pool -- I think the pool hall
3 patrons, yeah, I think we are using that as a
4 synonym.

5 Q. Okay. Do you -- did you know the
6 identities of any of those people at any time?

7 A. I don't recall that.

8 Q. Do you know how those people were
9 solicited for participation?

10 A. I do not.

11 Q. Do you know whether any of those people
12 had any connections to the Averys?

13 A. I do not.

14 Q. Do you know whether any of them have had
15 any law enforcement encounters with Manitowoc County?

16 A. I do not.

17 MS. BARKER: Okay. Do we want to try to do
18 the rough edition?

19 MS. BURSİK: Sure.

20 MS. BARKER: Okay. So despite our AV issues,
21 we're going to try to play some raw footage. We
22 probably -- I'm assuming Leita wants to put a
23 statement -- or, I'm sorry -- Attorney Walker
24 probably wants to put a statement on the record. I
25 was going to play just a few excerpts of raw footage

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

3 STATE OF WISCONSIN,
4 PLAINTIFF, JURY TRIAL
5 vs. TRIAL - DAY 23
6 STEVEN A. AVERY, Case No. 05 CF 381
7 DEFENDANT.

8 DATE: MARCH 14, 2007

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

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

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

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

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

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

21 STEVEN A. AVERY
22 Defendant
Appeared in person.

23 TRANSCRIPT OF PROCEEDINGS

24 Reported by Diane Teshneck, RPR

25 Official Court Reporter



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I N D E X

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INDIVIDUAL VOIR DIRE

LAURA BARBER

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LAURA BARBER

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1 (Individual voir dire of Juror Laura Barber.)

2 THE COURT: In a trial like this, whenever
3 the Court gets any information, the Court is
4 obligated to follow it up and that's what we're
5 doing this morning.

6 MS BARBER: Okay.

7 THE COURT: There was a report that was
8 received yesterday, that was passed on to me
9 yesterday, involving a citizen providing information
10 about a juror. And that's what I'm going to be
11 talking to you about.

12 MS BARBER: Okay.

13 THE COURT: The incident happened at the --
14 or reported was at the Manitowoc Eagle's Club on
15 Friday, March 2nd, which would be the Friday before
16 this past Friday.

17 MS BARBER: All right.

18 THE COURT: For a fish fry, I think, in the
19 evening. First, were you there?

20 MS BARBER: Yes, I was.

21 THE COURT: Okay. Can you tell me who you
22 were there with?

23 MS BARBER: My mother and my husband.

24 THE COURT: Okay. And do you know about
25 what time you were there, like from when until when,

1 say approximately?

2 MS BARBER: I'm going to guess 5:30 to
3 9.

4 THE COURT: Okay. During the time that you
5 were there, would you have said anything to anyone
6 that would have given them the impression that you
7 are a juror in this case?

8 MS BARBER: No, I didn't. A lot of
9 them, that I belong to the auxiliary with, knew I
10 was on, but they -- they don't question me about
11 things.

12 THE COURT: Okay.

13 MS BARBER: They do know I am a juror
14 and they make comments like, I wouldn't want to
15 be in your shoes.

16 THE COURT: Okay.

17 MS BARBER: And I just shrug my
18 shoulders and say, I can't say anything.

19 THE COURT: Okay. Was anything said to you
20 or was there any mention that you heard from anyone
21 at the Eagle's Club that evening involving the guilt
22 or innocence of the defendant in this case?

23 MS BARBER: I have to think about that.
24 I don't recall anybody saying something to me
25 because I -- I have my own opinions. I don't

1 want to listen to anybody else. And no matter
2 what they say, I don't listen to them.

3 THE COURT: Okay. Did you discuss the case
4 at the Eagle's Club with anyone that evening?

5 MS BARBER: No, I didn't.

6 THE COURT: Did you give any opinions or
7 say anything about your feelings about the case so
8 far?

9 MS BARBER: No. And that's -- I just
10 refuse to, because I don't -- I don't want
11 somebody telling me what to think.

12 THE COURT: Okay. Can you think of
13 anything that was said or that happened that night
14 that -- that would have led a citizen to report
15 something?

16 MS BARBER: Honestly, I don't. We go
17 for fish. I have a couple old fashions. We sit
18 upstairs in the bar afterward for a couple hours.
19 And I don't -- I don't make it a known thing that
20 this is what I'm doing.

21 THE COURT: Okay. You are saying, though,
22 that there are other -- there were other people
23 there who may have known you were a juror.

24 MS BARBER: Right.

25 THE COURT: And may have said something?

1 MS BARBER: Exactly. I don't know who
2 they were.

3 THE COURT: Okay.

4 MS BARBER: They talk amongst
5 themselves. I really don't listen. I have made
6 it a point that I don't want to have any
7 influence.

8 THE COURT: Okay.

9 MS BARBER: However, you want to take
10 that, that's fine, but I don't -- I don't want
11 somebody telling me how to think. And I have
12 always been that way.

13 THE COURT: Okay. Thank you. I'm going to
14 have you step outside with the sheriff.

15 MS BARBER: Sure.

16 THE COURT: Counsel, anything else that you
17 would like asked?

18 ATTORNEY STRANG: I think I caught this,
19 but we were clear that it was the Manitowoc Eagle's
20 Club?

21 ATTORNEY BUTING: Yes.

22 ATTORNEY STRANG: I thought so, but.

23 THE COURT: Otherwise we'll retreat to
24 chambers.

25 ATTORNEY FALLON: Did you want to ask her

1 point blank the question, it's been pointed out this
2 comment was attributed to someone meeting your
3 description. That's the only question left, if you
4 think you circumstantially have to.

5 ATTORNEY KRATZ: Does she know this woman?
6 But then you out the reporter.

7 THE COURT: I don't think the woman claimed
8 that she knew the juror.

9 ATTORNEY KRATZ: I think we can do this in
10 chambers.

11 THE COURT: All right. Let's go off the
12 record at this time.

13 (Individual voir dire concluded.)

14 (Jury not present.)

15 THE COURT: At this time the Court calls
16 State of Wisconsin vs. Steven Avery, Case No. 05 CF
17 381. We're here today for a continuation of the
18 trial, specifically, final instructions and closing
19 arguments. Will the parties state their appearances
20 for the record, please.

21 ATTORNEY KRATZ: Good morning, Judge. The
22 State of Wisconsin appears by Calumet County
23 District Attorney Ken Kratz. Also Tom Fallon and
24 Norm Gahn, all appearing as Special Prosecutors.

25 ATTORNEY STRANG: Steven Avery appears in

1 person, Jerome Buting and Dean Strang on his behalf.

2 THE COURT: Before we bring in the jury,
3 after the formal instruction conference yesterday
4 afternoon I prepared a proposed final set of jury
5 instructions. I also provided a copy of the final
6 draft to each of the attorney's before we left
7 yesterday. Mr. Kratz, are the instructions as
8 proposed acceptable to the State?

9 ATTORNEY KRATZ: They are, Judge.

10 THE COURT: And, Mr. Strang, subject to the
11 requested instructions of the defense the Court did
12 not give, do they, the instructions as submitted,
13 reflect your understanding?

14 ATTORNEY STRANG: The instructions, as
15 tendered to us this morning, do reflect our
16 understanding of the resolution, the jury
17 instruction conference, and what we understood the
18 Court would say to the jurors.

19 THE COURT: Very well. Does either party
20 have anything else before we bring the jury out?

21 ATTORNEY KRATZ: Not the State, your Honor.

22 ATTORNEY STRANG: (Shakes head negatively.)

23 THE COURT: All right. We'll bring in the
24 jurors at this time.

25 (Jury present.)

1 THE COURT: You may be seated. Members of
2 the jury, at this time the Court is going to read
3 the final instructions to you. We'll then proceed
4 to closing arguments of the parties.

5 Mr. Ward, I'm going to ask you if you
6 can take these instructions and provide one set
7 to each member of the jury.

8 ATTORNEY STRANG: Your Honor, maybe we can
9 have just a very brief side bar.

10 THE COURT: Okay.

11 (Side bar taken.)

12 THE COURT: All right. Members of the jury
13 you may follow along with the Court if you wish.
14 Members of the jury, the Court will now instruct you
15 upon the principles of law which you are to follow
16 in considering the evidence and in reaching your
17 verdict.

18 It is your duty to follow all of these
19 instructions. Regardless of any opinion you may
20 have about what the law is or ought to be, you
21 must base your verdict on the law I give you in
22 these instructions, apply that law to the facts
23 in the case which have been properly proven by
24 the evidence. Consider only the evidence
25 received during this trial and the law as given

1 to you by these instructions, and from these
2 alone, guided by your soundest reason and best
3 judgment, reach your verdict.

4 If any member of the jury has an
5 impression of my opinion as to whether the
6 defendant is guilty or not guilty, disregard that
7 impression entirely and decide the issues of fact
8 solely as you view the evidence. You the jury
9 are the sole judges of the facts and the Court is
10 the judge of the law only.

11 Evidence is, first, the sworn testimony
12 of witnesses, both on direct and
13 cross-examination, regardless of who called the
14 witness.

15 Second, the exhibits the Court has
16 received, whether or not an exhibit goes to the
17 jury room.

18 Third, any facts or testimony to which
19 the lawyers have agreed or stipulated or which
20 the Court has directed you to find.

21 Anything you may have seen or heard
22 outside the courtroom is not evidence. You are
23 to decide the case solely on the evidence offered
24 and received at trial.

25 The defendant in this case is charged

1 with three counts. A fourth count of false
2 imprisonment has been dismissed. The
3 instructions for the three remaining counts have
4 been modified somewhat from the opening
5 instructions given to you at the beginning of the
6 trial to conform to the evidence introduced at
7 trial.

8 The first count of the Information in
9 this case charges that: Steven Avery, on Monday,
10 October, 31, 2005, at 12932 Avery Road, Town of
11 Gibson, Manitowoc, Wisconsin, did cause the death
12 of Teresa M. Halbach, with intent to kill that
13 person, contrary to Section 940.01 (1)(a) of the
14 Wisconsin Statutes.

15 To this charge, the defendant has
16 entered a plea of not guilty, which means the
17 State must prove every element of the offense
18 charged beyond a reasonable doubt.

19 First degree intentional homicide, as
20 defined in Section 940.01 of the Criminal Code of
21 Wisconsin, is committed by one who causes the
22 death of another human being with intent to kill
23 that person or another.

24 Before you may find the defendant guilty
25 of first degree intentional homicide, the State

1 must prove, by evidence which satisfies you,
2 beyond a reasonable doubt, that the following two
3 elements were present:

4 One, the defendant caused the death of
5 Teresa Halbach. Cause means that the defendant's
6 act was a substantial factor in producing the
7 death.

8 Two, the defendant acted with the intent
9 to kill Teresa Halbach.

10 Intent to kill means that the defendant
11 had the mental purpose to take the life of
12 another human being or was aware that his conduct
13 was practically certain to cause the death of
14 another human being.

15 While the law requires that the
16 defendant acted with intent to kill, it does not
17 require that the intent exist for any particular
18 length of time before the act is committed. The
19 act need not be brooded over, considered, or
20 reflected upon for a week, a day, an hour, or
21 even for a minute. There need not be any
22 appreciable time between the formation of the
23 intent and the act. The intent to kill may be
24 formed at any time before the act, including the
25 instant before the act, and must continue to

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exist at the time of the act.

You cannot look into a person's mind to find intent. Intent to kill must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent.

Intent should not be confused with motive. While proof of intent is necessary to a conviction, proof of motive is not. Motive refers to a person's reason for doing something. While motive or lack of motive is relevant and may be shown as a circumstance to aid in establishing the guilt or innocence of a defendant, the State is not required to prove motive on the part of a defendant in order to convict. Evidence of motive does not by itself establish guilt. You should give it the weight you believe it deserves under all the circumstances.

If you are satisfied, beyond a reasonable doubt, that the defendant caused the death of Teresa Halbach, with the intent to kill, you should find the defendant guilty of first degree intentional homicide.

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If you are not so satisfied, you must find the defendant not guilty.

The second count of the Information charges that: Steven Avery, between Monday, October 31, 2005, and Friday, November 4, 2005, at a 12932 Avery Road, Manitowoc County, Wisconsin, did mutilate, disfigure, or dismember a corpse with the intent to conceal a crime, contrary to Section 940.11 (1), 939.50 (3) ((f) of the Wisconsin Statutes.

To this charge, the defendant has also entered a plea of not guilty, which means the State must prove every element of the offense charged beyond a reasonable doubt.

Mutilating a corpse, as defined in Section 940.11 (1) of the Criminal Code of Wisconsin, is violated by one who mutilates a corpse with intent to conceal a crime or avoid apprehension, prosecution, or conviction for a crime.

Before you may find the defendant guilty of this offense, the State must prove, by evidence which satisfies you, beyond a reasonable doubt, that the following two elements were present:

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One, Steven Avery mutilated the corpse of Teresa Halbach.

Two, in mutilating the corpse of Teresa Halbach, Steven Avery acted with the intent to conceal a crime.

This requires that the defendant acted with the purpose to conceal a crime.

You cannot look into a person's mind to find out intent. Intent must be found, if found at all, from the defendant's acts, words and statements, if any, and from all the facts and circumstances in this case bearing upon intent.

If you are satisfied, beyond a reasonable doubt, that both elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

The defendant's theory of defense on the charges of first degree intentional homicide and mutilation of a corpse is that another person or persons tried to frame him for the murder of Teresa Halbach and the burning of her body. If the facts introduced in support of the defendant's theory raise a reasonable doubt in

1 your mind, or if you otherwise find that a
2 reasonable doubt arises from the evidence, then
3 you must find the defendant not guilty of the
4 charges.

5 The third count of the Information
6 charges that: Steven Avery, on Saturday,
7 November 5, 2005, at 12932 Avery Road, Manitowoc
8 County, Wisconsin, did possess a firearm
9 subsequent to the conviction for the felony or
10 other crime, as specified in sub. (1) (a) or (b),
11 contrary to Section 941.29 (2) (a), and 939.50
12 (3) (g) of the Wisconsin Statutes.

13 To this charge, the defendant has also
14 entered a plea of not guilty, which means the
15 State must prove every element of the offense
16 charged, beyond a reasonable doubt.

17 Section 941.29 of the Criminal Code of
18 Wisconsin is violated by a person who possesses a
19 firearm, if that person has been convicted of a
20 felony.

21 Before you may find the defendant guilty
22 of this offense, the State must prove, by
23 evidence which satisfies you, beyond a reasonable
24 doubt, that the following two elements were
25 present:

1 One, the defendant possessed a firearm.
2 Firearm means a weapon which acts by the force of
3 gun powder. It is not necessary that the firearm
4 was loaded or capable of being fired.

5 Possess means that the defendant
6 knowingly had actual physical control of a
7 firearm.

8 An item is also in a person's possession
9 if it is in an area over which the person has
10 control and the person intends to exercise
11 control over the item. It is not required that a
12 person own an item in order to possess it. What
13 is required is that the person exercise control
14 over the item.

15 Two, the defendant had been convicted of
16 a felony before November 5, 2005.

17 The parties have agreed that Steven
18 Avery was convicted of a felony before
19 November 5, 2005, and you must accept this as
20 conclusively proved.

21 If you are satisfied, beyond a
22 reasonable doubt, that both elements of this
23 offense have been proved, you should find the
24 defendant guilty.

25 If you are not so satisfied, you must

1 find the defendant not guilty.

2 In reaching your verdict, examine the
3 evidence with care and caution. Act with
4 judgment, reason, and prudence.

5 Defendants are not required to prove
6 their innocence. The law presumes every person
7 charged with the commission of an offense to be
8 innocent. This presumption requires a finding of
9 not guilty, unless in your deliberations you find
10 it is overcome by evidence which satisfies you,
11 beyond a reasonable doubt, that the defendant is
12 guilty.

13 The burden of establishing every fact
14 necessary to constitute guilt is upon the State.
15 Before you can return a verdict of guilty, the
16 evidence must satisfy you, beyond a reasonable
17 doubt, that the defendant is guilty.

18 If you can reconcile the evidence upon
19 any reasonable hypothesis, consistent with the
20 defendant's innocence, you should do so and
21 return a verdict of not guilty.

22 The term reasonable doubt means a doubt
23 based upon reason and common sense. It is a
24 doubt for which a reason can be given, arising
25 from a fair and rational consideration of the

1 evidence or lack of evidence. It means such a
2 doubt as would cause a person of ordinary
3 prudence to pause or hesitate when called upon to
4 act in the most important affairs of life.

5 A reasonable doubt is not a doubt which
6 is based on mere guesswork or speculation. A
7 doubt which arises merely from sympathy or from
8 fear to return a verdict of guilt is not a
9 reasonable doubt. A reasonable doubt is not a
10 doubt such as may be used to escape the
11 responsibility of a decision.

12 While it is your duty to give the
13 defendant the benefit of every reasonable doubt,
14 you are not to search for doubt. You are to
15 search for the truth.

16 An Information is nothing more than a
17 written formal accusation against the defendant
18 charging the commission of one or more criminal
19 acts. You are not to consider it as evidence
20 against the defendant in any way. It does not
21 raise any inference of guilt.

22 Disregard entirely any question that the
23 Court did not allow to be answered. Do not guess
24 at what the witness' answer might have been. If
25 the question itself suggested that certain

1 information might be true, ignore the suggestion
2 and do not consider it as evidence.

3 Attorneys for each side have the right
4 and the duty to object to what they consider are
5 improper questions asked of witnesses and to the
6 admission of other evidence which they believe is
7 not properly admissible. You may not draw any
8 conclusions from the fact an objection was made.

9 By allowing testimony or other evidence
10 to be received over the objection of counsel, the
11 Court is not indicating any opinion about the
12 evidence. The jurors are the judges of the
13 credibility of the witnesses and the weight of
14 the evidence.

15 During the trial the Court has ordered
16 certain testimony to be stricken. Disregard all
17 stricken testimony.

18 An exhibit becomes evidence only when
19 received by the Court. An exhibit marked for
20 identification and not received is not evidence.
21 An exhibit received is evidence whether or not it
22 goes to the jury room.

23 You will not have a copy of the written
24 transcript of the trial testimony available for
25 use during your deliberations. You may ask to

1 have specific portions of the testimony read to
2 you. You must continue to rely primarily on your
3 memory of the evidence and the testimony
4 introduced during the trial.

5 Remarks of the attorneys are not
6 evidence. If the remarks suggested certain facts
7 not in evidence, disregard the suggestion.

8 Consider carefully the closing arguments
9 of the attorneys, but their arguments and
10 conclusions and opinions are not evidence. Draw
11 your own conclusions from the evidence and decide
12 upon your verdict according to the evidence,
13 under the instructions given to you by the Court.

14 It is not necessary that every fact be
15 proved directly by a witness or an exhibit. A
16 fact may be proved indirectly by circumstantial
17 evidence. Circumstantial evidence is evidence
18 from which a jury may logically find other facts,
19 according to common knowledge and experience.
20 Circumstantial evidence is not necessarily better
21 or worse than direct evidence. Either type of
22 evidence can prove a fact.

23 Whether evidence is direct or
24 circumstantial, it must satisfy you, beyond a
25 reasonable doubt, that the defendant committed

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the offense before you may find the defendant guilty.

The State has introduced evidence of statements which it claims were made by the defendant. It is for you to determine how much weight, if any, to give to each statement.

In evaluating each statement, you must determine three things:

Whether the statement was actually made by the defendant. Only so much of a statement as was actually made by a person may be considered as evidence.

Whether the statement was accurately restated here at trial.

Whether the statement, or any part of it, ought to be believed.

You may also consider the consistency or inconsistency with any other statements made by the defendant.

You should consider the facts and circumstances surrounding the making of each statement, along with all the evidence, in determining how much weight, if any, a statement deserves.

The weight of evidence does not depend

1 on the number of witnesses on each side. You may
2 find that the testimony of one witness is
3 entitled to greater weight than that of another
4 witness or even of several other witnesses.

5 In weighing the evidence, you may take
6 into account matters of your common knowledge and
7 your observations and experience in the affairs
8 of life.

9 Ordinarily, a witness may testify only
10 about facts. However, a witness with expertise
11 in a particular field may give an opinion in that
12 field.

13 You should consider the qualifications
14 and credibility of the expert, the facts upon
15 which the opinion is based, and the reasons given
16 for the opinion.

17 Opinion evidence was received to help
18 you reach a conclusion. However, you are not
19 bound by any expert's opinion. You may give as
20 much or as little weight to the opinion of any
21 expert as you conclude it is entitled to receive.

22 In resolving conflicts in expert
23 testimony, weigh the different expert opinions
24 against each other. Also consider the
25 qualifications and credibility of the experts and

1 the facts supporting their opinions.

2 During the trial, an expert witness was
3 told to assume certain facts and then was asked
4 for an opinion, based on that assumption. This
5 is called a hypothetical question.

6 The opinion does not establish the truth
7 of the facts upon which it is based. Consider
8 the opinion only if you believe the assumed facts
9 upon which it is based have been proved. If you
10 find the facts stated in the hypothetical
11 question have not been proved, then the opinion
12 based on those facts should not be given any
13 weight.

14 It is the duty of the jury to scrutinize
15 and to weigh the testimony of the witnesses and
16 to determine the effect of the evidence as a
17 whole. You are the sole judges of the
18 credibility, that is, the believability of the
19 witnesses and of the weight to be given to their
20 testimony.

21 In determining the credibility of each
22 witness, and the weight you give to the testimony
23 of each witness, consider these factors:

24 Whether the witness has an interest or
25 lack of interest in the result of this trial.

1 The witness' conduct, appearance, and
2 demeanor on the witness stand.

3 The clearness, or lack of clearness of
4 the witness' recollections.

5 The opportunity the witness had for
6 observing and for knowing the matters the witness
7 testified about.

8 The reasonableness of the witness'
9 testimony.

10 The apparent intelligence of the
11 witness.

12 Bias or prejudice, if any has been
13 shown.

14 Consistency or inconsistency with any
15 prior statements of the witness.

16 Possible motives for falsifying
17 testimony.

18 And all other facts and circumstances
19 during the trial which tend either to support or
20 to discredit the testimony.

21 Then give to the testimony of each
22 witness the weight you believe it should receive.

23 There is no magic way for you to
24 evaluate the testimony; instead, you should use
25 your common sense and experience. In everyday

1 life, you determine for yourselves the
2 reliability of things people say to you. You
3 should do the same thing here.

4 A defendant in a criminal case has the
5 absolute constitutional right not to testify.

6 The defendant's decision not to testify
7 must not be considered by you in any manner and
8 must not influence your verdict in any manner.

9 Now, at this time the closing
10 instructions will not be given until after the
11 closing arguments have been completed.

12 We're going to take a very short break,
13 not our normal morning break, at this time, to
14 allow the parties to get ready to present their
15 closing arguments.

16 I will continue to remind you not to
17 discuss this case until you have heard all the
18 closing arguments and the Court orders that you
19 begin deliberating.

20 (Jury not present.)

21 THE COURT: You may be seated.

22 ATTORNEY BUTING: Judge, one thing that
23 might be helpful just to explain to the jury so they
24 have some idea how the day will proceed, that the
25 State goes first, then the defense, and then the

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State, actually, has a follow-up rebuttal.
Otherwise they may be unclear on how that works.

THE COURT: Any objection from the State?

ATTORNEY KRATZ: No.

THE COURT: I should indicate during the
side bar, requested by the defense -- Well,
Mr. Strang, I will let you reiterate what you told
the court.

ATTORNEY STRANG: I asked for a side bar
shortly before instructions began, but after written
instructions had been distributed to the jurors. I
raised my concern simply that I did not think the
jurors should have written instructions in their
hands or with them at their chairs during closing
arguments; although, I certainly agree they should
have a copy of the written instructions during
deliberations.

As I understand, without objection from
Mr. Kratz on behalf of the State, the Court
agreed to collect the written instructions again
at this point, from the jurors, and redistribute
them again after the jury is sworn to begin
deliberations.

THE COURT: Mr. Kratz?

ATTORNEY KRATZ: That's fine.

1 THE COURT: I'm just -- If I understand, I
2 was told what the parties were requesting; I don't
3 remember the part about ordering them being
4 collected. My concern is this, I generally
5 instruct, before closing arguments and hand out the
6 instructions because sometimes the attorneys in
7 their closing argument wish to refer to specific
8 instructions.

9 I don't know if either of you intend to
10 do that, but if you do, I generally allow --
11 first of all, I allow the attorneys to invite the
12 jurors to flip to a page so that the jurors can
13 follow along with what the attorney is reading
14 and not have to take the attorney's word for it
15 that that is the instruction.

16 Let me suggest this, I could tell the
17 jurors, when they come back for closing
18 arguments, to set the instructions down under
19 their chair and only refer to them if one side or
20 another, in its closing argument, invites them
21 to. Does that address your concern?

22 ATTORNEY STRANG: I think it would. It had
23 been our plan simply to put an instruction up on the
24 ELMO if we intended to use much of it, but I think
25 what the Court is proposing would do the same thing.

1 The concern here is for the same reason we don't
2 allow jurors to take notes during the closing
3 arguments, we don't want divided attention.

4 THE COURT: Mr. Kratz.

5 ATTORNEY KRATZ: That's fine.

6 THE COURT: All right. Well, I also, as a
7 practical matter, don't want them to misplace
8 theirs. I don't think they have written their names
9 on them. I will do this, I will instruct them to
10 place the instructions on the floor and not pick
11 them up to look at them during closings, unless the
12 attorney making the closing invites them to.

13 ATTORNEY STRANG: I'm going to duck out for
14 two minutes, if we have two minutes.

15 THE COURT: All right. We'll do that.
16 We'll take a couple quick minutes before we start.

17 (Brief recess taken.)

18 (Jury present.)

19 THE COURT: Members of the jury, before we
20 get started, I have a couple of announcements for
21 you. First, with respect to the format, in closing
22 arguments the State, because the State has the
23 burden of proof, goes first. We will, I believe,
24 take a break sometime this morning, in the middle of
25 the State's closing argument. The defense, then,

1 gets a chance to make its closing argument. And the
2 State has a final chance to make argument in
3 rebuttal, after they have heard what the defense
4 argument is.

5 The other thing is, I'm going to ask you
6 at this time to take your copy of the closing
7 instructions -- the jury instructions, if you
8 brought them out, set them on the floor upside
9 down. We do this to make sure that everybody is
10 paying attention to the closing arguments.

11 The attorneys are permitted, if they
12 wish, to make reference to the jury instructions
13 in their closings. If they ask you to take a
14 look at any instruction, you may pick them up at
15 that point, otherwise set them down. I believe
16 nobody has pens or notebooks, correct, because
17 you are not permitted to take notes during
18 closing arguments. With that, Mr. Kratz, you may
19 proceed.

20 ATTORNEY KRATZ: Thank you, Judge. I don't
21 know how the volume is on this mike.

22 THE COURT: Do you know if you are number
23 seven or eight?

24 ATTORNEY STRANG: Eight.

25 ATTORNEY KRATZ: I guess I'm eight, Judge.

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THE COURT: Okay.

ATTORNEY KRATZ: Can everybody hear me okay? Is that all right? Thank you. Then, I will begin. May it please the Court. Let me start ladies and gentlemen by thanking you for the time and attention that you have given to this very important case for the last five weeks.

This is an important duty. It's an important duty not just for the 12 of you that are going to decide the case, but for really all of Manitowoc County. You are representatives of the citizens of Manitowoc County.

And I'm going to be highlighting some of the facts in this case that the State believes was important. The last thing I'm going to do is reiterate -- or try to reiterate all of the facts, all the evidence that has been presented. I don't think you want to hear lawyers any more talking for you incessantly or hours upon hours. But there are some important parts of this case.

We start with why are we here. It would be a natural thought process for a jury to think, you know, we have been sitting here for five weeks, there must be a reason. There's got to be a reason why, for five weeks, we have had to

1 listen to over 500 exhibits, something
2 approaching 60 witnesses, and there must be a
3 conflict. There must be a controversy that has
4 to be tried in this case.

5 We're here because Steven Avery pled not
6 guilty. We're here because Mr. Avery has a
7 constitutionally protective right to be tried
8 when he pleads not guilty, like anybody else who
9 pleads not guilty. There hasn't been any
10 question and I don't want you to sit in that jury
11 box and think that there is any question about
12 who is responsible for the death and the
13 mutilation of Teresa Halbach.

14 The fact that we have been here five
15 weeks is because it's my duty, it's my job, to
16 prove all the elements of the offenses for which
17 Mr. Avery is charged. Not because there are
18 questions. And I start by saying that for, I
19 think, obvious reasons. Because as jurors, you
20 must be thinking, or you would naturally be
21 thinking, that there's got to be two sides to
22 this. And as the State and as we, I think, have
23 presented in this case, all of the evidence
24 points to one person. That's the one person
25 being responsible.

1 I'm going to argue at the conclusion of
2 this case who that one person is. I bet you can
3 guess who I'm going to suggest was -- was
4 responsible. But, again, please keep, before any
5 of the evidence I talk about, please keep that in
6 mind, that we're here because that man pled not
7 guilty and because that man is entitled to a
8 trial.

9 Cases are decided on facts, at least
10 from the State's perspective. We don't present
11 speculation. We don't ask you to perform
12 guesswork when deciding what happens. You know
13 the funny thing about facts is facts are
14 stubborn. Facts don't change. You can twist
15 them and you can beat them up, you can try to
16 massage, if you will, the facts, but facts don't
17 change.

18 The facts in this case, as presented,
19 and as I will present to you, are very much so
20 uncontested, uncontroverted, at least most of the
21 facts in this case are uncontroverted. But my
22 job is going to be to take you through what I
23 think are the important facts of this case, why
24 we think we have proved the case, beyond a
25 reasonable doubt, against Steven Avery. And I

1 intend do that.

2 The first fact that I would like to talk
3 about is a starting point in the case. Now,
4 every case has a starting point. When you think
5 about a case this big, and by now you realize and
6 you have heard just how big of a case this is.
7 You have heard that the Crime Lab received the
8 most submissions ever in the history of the
9 Wisconsin State Crime Lab, that more law
10 enforcement officers were used in this case, from
11 an investigative standpoint, than any other case.

12 But what does that mean. Try and put
13 that in perspective in -- in kind of an
14 historical perspective. That means that this is
15 a pretty darn big case. And when a case is that
16 big, the natural tendency is to try to look at
17 the big picture, and to try to absorb it all, if
18 you can. But I'm not going to do that.

19 I want you to pick one particular point
20 in time. I want to start the presentation that I
21 have with one moment in time. Now, we could have
22 started any number of moments. There's been what
23 we call watershed moments, real important moments
24 in the case when Teresa Halbach was shot, when
25 she was murdered. That's a particularly

1 important moment.

2 We could start with the moment or with
3 the visual or with the image of that man, Steven
4 Avery, standing outside of a big bonfire, with
5 flames over the roof, or at least over the garage
6 roof, and the silhouette of Steven Avery, with
7 the bonfire in the background and the
8 observations made by some witnesses.

9 Can you all picture that? Can you
10 picture that as a moment, as a moment in time?
11 And that moment, by the way, although dramatic
12 and although important, should tell the whole
13 story. That moment of Steven Avery, after the
14 murder was committed, of Steven Avery tending the
15 fire, of Steven Avery disposing of and mutilating
16 the body of 25 year old Teresa Halbach. That
17 would be a good place to start.

18 But I'm not going to start there. I'm
19 going to start somewhere else. I'm going to
20 start with the Toyota RAV4. The Toyota RAV4,
21 which was owned by Teresa Halbach, which was
22 discovered on the 5th of November, at the Avery
23 Salvage Property, is less dramatic, it's a less
24 dramatic place to start, than those other moments
25 in time that I talked about. But it's equally

1 important.

2 Because the discovery of that RAV4, the
3 discovery of Teresa Halbach's vehicle, changed
4 the course of not only this case, but the clues
5 and the secrets found in that vehicle changed the
6 lives of everybody in this room. Look around,
7 everybody.

8 The clues found in that vehicle, on the
9 5th of November, changed everybody's lives, yours
10 included. Your lives will never be the same,
11 ours won't, families won't. That moment is
12 particularly important. And that is where we're
13 going to begin.

14 This woman, Pam Sturm, of the 60
15 witnesses -- by the way, I'm going to be helping
16 you remember some of these faces as we go along.
17 I don't expect you to remember 60 people and what
18 they look like. And when I talk about witnesses,
19 I'm going to try to help the jury with some
20 photos to jog your memories.

21 But on the 5th of November, Pam Sturm
22 and Ryan Hillegas had a conversation. They had a
23 conversation about where should Pam search for
24 Teresa's vehicle. And, importantly, in that
25 conversation, they decided to search the Avery

1 salvage property, the last place where Teresa
2 Halbach was seen alive.

3 Now, as I mentioned, this case
4 dramatically changes at that moment. This
5 changes from a missing persons investigation to
6 where something horribly bad has happened to
7 Teresa Halbach.

8 It's also the first opportunity that we
9 hear where we talk about law enforcement bias.
10 And we have heard that a lot from the defense,
11 throughout this case. But the perception or the
12 finding of the vehicle on the Avery property, in
13 fact, the very decision to look for this vehicle
14 on the Avery property, should tell you something.
15 What should it tell you?

16 Well, if Pam Sturm and Ryan Hillegas can
17 figure it out. If Pam Sturm and Ryan Hillegas,
18 when they talk to each other, say to themselves,
19 you know what, common sense would tell us that
20 the first place that we should look for Teresa
21 was the last place that she was seen alive, that
22 should put a lot of the defense suggestion of law
23 enforcement bias by Mr. Fassbender and
24 Mr. Wiegert, into perspective.

25 Because you don't have to be Sherlock

1 Holmes to figure out that that's where the
2 investigation should start. Pam and Ryan figured
3 that out, when Pam Sturm decided, let's go look
4 at the Avery property for this particular
5 vehicle.

6 Now, we also remember that Pam's
7 daughter, Nikole, went with her. Nikole,
8 importantly, did some things at the scene. She
9 took the photograph. She realized that the doors
10 were locked. She realized that it was too dark
11 to see inside, or to see any blood inside. She
12 realized that there were no plates on the
13 vehicle. But, importantly, both ladies never
14 took their eyes off of that vehicle until the law
15 enforcements arrived.

16 Now, photographs that were taken from
17 Pam are important; they are important in this
18 case. It was a camera lent to them by Scott
19 Bloedorn, as we understand. But what we do find
20 is that there were obvious attempts to obscure
21 the view of this car. There's no question that
22 this car was found by the car crusher.

23 Doesn't take a great leap of
24 interpretation to suggest that Steven Avery
25 intended to crush this car. But you don't have

1 to make that finding in this case. I'm just
2 saying that parenthetically for you. In other
3 words, that where it was located was not an
4 accident. There was no accident where Teresa
5 Halbach's vehicle was located.

6 Think also, if you will, about how
7 important this particular event was, finding this
8 car. Pam Sturm described it as divine
9 intervention, or words to that effect, that it
10 was the hand of God, I think was the term that
11 she said, as to where we should look at the 4,000
12 cars that were on this property. Pam Sturm
13 looked in that one place. She never would have
14 gotten through all those cars.

15 But on that Saturday morning, or going
16 into that Saturday afternoon, think of what would
17 have happened if this car wouldn't have been
18 found. Think about what would have happened if
19 this car was crushed, like the other 54 crushed
20 cars that were there. Think of what would happen
21 if the law enforcement officials wouldn't have
22 known that this car was there and this car would
23 have secretly been taken off the property and the
24 blood wouldn't have been found, both Teresa's
25 blood and Steven's blood.

1 Think how close he got to getting away
2 with that. Pam Sturm doesn't find this car, this
3 case doesn't change at that moment, we may not be
4 standing here today. All right. And that's why
5 that's the important place to start in this case.
6 That's why the investigation changes so
7 dramatically upon the recovery -- excuse me --
8 and observation of this particular car. All
9 right. That's the first fact.

10 Usually, when I would talk to a jury, I
11 wouldn't be concerned with things like security
12 issues, but part of the prosecution's job, not
13 only is to present my case, but to dispel any
14 defense suggestions that they have made in this
15 case. I'm not going to identify what the defense
16 has told you is evidence in the case, because
17 evidence has a meaning. Evidence suggests that
18 there were witnesses that said things about it or
19 that there were witnesses that agreed with the
20 questions that the defense gave.

21 Remember evidence in the case -- excuse
22 me -- evidence is the answers that witnesses
23 give. Evidence aren't the questions that
24 Mr. Buting or Mr. Strang asked. I know this is a
25 little bit of a diversion, but I'm the

1 prosecutor, I get to do this. The questions of
2 witnesses, did you plant evidence in this case,
3 and when witnesses consistently indicate that,
4 no, sir, I did not, that's the evidence.

5 The evidence is the answer. The
6 evidence isn't the question. Okay. So keep that
7 in mind as not only I go through my closing
8 argument, but as the defense may stand before you
9 and may suggest to you theories, or speculation,
10 or supposition, or maybe what questions they
11 might have asked. But you are also collectively
12 going to have to remember what the answers were,
13 because it's the answers that are the evidence,
14 not the question.

15 Scene security. Scene security was
16 talked to you by several witnesses. I'm not
17 going to spend a great deal of time, but we know
18 that law enforcement early on, number one, knew
19 the significance of this SUV; number two, knew
20 the -- at least perception of Manitowoc County
21 being involved in the case. But as importantly,
22 number three, knew the importance of something
23 called scene security, of making sure that nobody
24 was allowed to have access to that car. Nobody
25 was going to tamper with the SUV after it had

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been located.

We first heard from Deputy Pete O'Connor. Deputy O'Connor was the perimeter security guy. Deputy O'Connor, as you recall, and as we come right off of Highway 147, was stationed right at the entrance to the Avery salvage property. Importantly, I guess, not only did he note the people that were leaving and that he stopped, but that Sergeant Orth was the first one to arrive.

And as you might expect, we then called those officers in order of arrival on the scene. When Sergeant Orth said that he got there about 10:59 a.m., that he talked to both of the Sturms, that they were very upset, that they were visibly upset, and they should be, the Sturms knew at that time the significance of what they had found. They knew about their cousin. They knew about where this case was going and where it was going to lead.

And Sergeant Orth testified that his job, when he was on the Avery salvage property, was to protect that particular vehicle. All right. It's called scene security. That's a fancy word for guarding a piece of property, or

1 maintaining the integrity of a piece of evidence
2 in a case. And we heard that he was, really,
3 just a few feet, what would be to the east of the
4 SUV that was located.

5 Remember also, though, that other
6 witnesses, including the Sturms, including some
7 other supervisors, including Calumet County, when
8 they arrive, they never take their eyes off of
9 that particular vehicle. And Sergeant Orth was
10 one of those. Remember his testimony, he said, I
11 didn't take my eyes off that vehicle. Nobody
12 entered that vehicle. Nobody tampered with that
13 vehicle.

14 We even called witnesses like Lieutenant
15 Todd Hermann who, at the time, provided short
16 breaks for Sergeant Orth. We do that for
17 something called chain of custody, to make sure
18 that even for those couple of minute gaps and
19 Sergeant Orth said, even when I was taking a
20 little break in the staging area, I could
21 still -- I could still see the car. But, again,
22 under the category of lead prosecutor, crossing
23 all of my T's, I wanted you to know, and wanted
24 to make sure that you knew that all the witnesses
25 were called.

1 We heard from Detective Dave Remiker,
2 several times in the case. But Detective
3 Remiker, who was involved early on, Detective
4 Remiker was, I guess, the lead investigative
5 individual from Manitowoc County, both in the
6 missing persons part of the case, and also in
7 these early stages Detective Remiker, we heard,
8 confirmed the VIN. Remember, confirmed that this
9 was, in fact, Teresa Halbach's car. And you will
10 remember everything that Detective Remiker said
11 to you about that case.

12 But I want you to think back and I want
13 you to remember Detective Remiker looking. I
14 want you to remember how Detective Remiker told
15 you about scene security. This is a detective, a
16 young detective, but a good detective, a guy who
17 knows his job. A guy who, on the scene, knew the
18 importance of scene security.

19 Detective Remiker looked at you, without
20 apology, didn't bat an eye, and he told you,
21 nobody entered that vehicle. Remember that?
22 Remember when Detective Remiker told all of you,
23 all of the jurors, that nobody entered that
24 vehicle, because it was so important. Because
25 the integrity, the perception about this case,

1 making sure that nobody was going to tamper with,
2 at that time, his evidence, was an important
3 factor to Detective Remiker.

4 And when you look at his credibility --
5 This is the first opportunity I will have to talk
6 about credibility of witnesses. It's not
7 something -- and the judge has instructed you --
8 not something that you do just as a juror. We do
9 it everyday.

10 When we listen to lawyers, or when we
11 listen to people who are trying to sell us
12 something, car salesmen, as an example. We weigh
13 their credibility. All right. The car salesman
14 comes up and tells you that this little baby was
15 only driven on Sunday, by a little old lady to
16 church. You might weigh some of those factors
17 into that particular salesman. What's he trying
18 to sell me and why is he trying to sell me that?
19 Does he have any interest in the outcome of what
20 he's saying? Does he have some kind of a bias or
21 does he have some kind of a prejudice?

22 And, of course he does. And you weigh
23 those kind of factors, not just how they say it,
24 but whether or not they have those -- those
25 influences. You do the same thing as -- it's a

1 little more formalized, but you do the same thing
2 as a juror. It's not just what they say, it's
3 how they say it and were they in a position to
4 know the things that they are talking to you
5 about.

6 And my suggestion to you, my argument to
7 you, as the lead prosecutor, when the guy who's
8 in charge of the case points to you and looks at
9 you, without apology and emphatically says,
10 nobody, nobody entered that vehicle, and nobody
11 tampered with that vehicle, that's something that
12 you should give great credibility and great
13 weight to.

14 We finish what's called the chain of
15 custody, or the transfer of -- from Manitowoc to
16 Calumet County, with Sergeant Tyson. You have
17 heard from Sergeant Bill Tyson who completes, if
18 you will, the chain; that is, who watched the
19 vehicle and who took over. And about 3:00, and
20 at least from 3:00 on, we learned, then, that
21 Calumet County takes over.

22 Calumet County takes over, then, with
23 not just perimeter security, but takes over
24 security of the SUV, of that particular part of
25 the scene. It's the transfer of management

1 control about this case, that's why Calumet
2 County and DCI got involved. Let me just spend a
3 couple minutes about that.

4 Manitowoc County sheriff's deputies were
5 never, never, precluded from being involved in
6 this case. The resources of Manitowoc County law
7 enforcement officers was critical, was crucial.
8 Mr. Fassbender never apologized for that.

9 And think about why. Because we're in
10 Manitowoc County. It's the Manitowoc County
11 sheriff's deputies that are going to know if we
12 need a wrecker, where are we going to go. If we
13 need some tarps, where are we going to go. If we
14 need some ropes, where are we going to go. If we
15 need some bodies, to do some searching, if we
16 need trained evidence techs, it's a logical place
17 to find them. And that's why Manitowoc County
18 remained involved in this case.

19 You heard the testimony from
20 Mr. Fassbender, that it was the management
21 decisions, that it was the control decisions,
22 over this particular investigation, that was
23 removed from Manitowoc County. Never, ever,
24 ever, the resources. Never that we couldn't, or
25 shouldn't, use Manitowoc County law enforcement

1 officers. All right.

2 I hope you all understand that. I hope
3 you understand the difference, then, between
4 decision making, how a case should be directed,
5 and whether or not a Manitowoc County law
6 enforcement officer should have been used in this
7 case.

8 All right. Fact number three, the
9 vehicle is locked. We learned at this time the
10 weather is worsening, it's getting dark. The
11 Crime Lab is called in. And so our third
12 uncontested fact, my third fact that I want you
13 to consider when deciding this entire case, is
14 something called a recovery process. The SUV
15 recovery.

16 And for the first time, I guess, we
17 learn, and it's the first example of the
18 diversity of agencies that are involved in this
19 investigative effort, this largest criminal
20 investigation, that we have talked about, of the
21 resources that need to be allocated.

22 We have civilian searchers, like canine
23 handlers. We have law enforcement officers, like
24 from DCI and Calumet County. We have scientists
25 that are brought in, like people from the Crime

1 Lab. We have, as you heard, other civilians
2 brought in to help, like the wrecker operator,
3 and the tow truck driver, and the driver of the
4 trailer in this recovery effort.

5 But this is a good place to really kind
6 of get your mind around the expanse of this
7 investigation. And remember, we're an hour into
8 it. We're only an hour into the investigation
9 and already the resources are being called in,
10 because the enormity of this investigative effort
11 is so, so apparent to everybody.

12 I told you on my opening statement about
13 what I called a four legged hero. That may have
14 overstated Brutus a little bit, but Brutus is
15 certainly a qualified asset that you should be
16 considering in this case. Brutus hit on the SUV.
17 All right. And if the officers didn't have
18 enough suspicion before that particular moment,
19 all right, that should have been, and was, in
20 fact, a very important part of this case.

21 Because Brutus hitting on the SUV, told
22 the handler, told Julie Cramer, who you have
23 heard from, one very important thing, that either
24 a dead body was still in that particular SUV, or
25 a dead body had been in that SUV. This is

1 another changing moment. It's another time in
2 this investigation where very important, the
3 investigation changes and becomes much more of a
4 criminal investigation, that of a missing person
5 investigation.

6 We heard about Brutus' search that he
7 did, real methodical kind of search. As I was
8 thinking about it, even though Brutus is a dog,
9 Brutus approached that search much like our law
10 enforcement officers, very methodically, very
11 professionally, and came up with the same kinds
12 of results that our other officers have in this
13 case, as well.

14 One of the two lead investigators, Tom
15 Fassbender, from the Division of Criminal
16 Investigation, talked to you about the agencies
17 that were involved. I will talk to you about
18 that a little bit later. But mentioned something
19 called resource allocation, putting the teams
20 together for searching all the different
21 properties.

22 That first night, Mr. Fassbender clearly
23 was in charge of deciding who's going to go into
24 what house and why those people were going to do
25 that. And talked about the search plan. Talked

1 about why Steven Avery was a person of interest.
2 Gave you that obvious answer that everybody is
3 giving you, is because Steven Avery was the last
4 person to see Teresa alive.

5 And Mr. Fassbender knew, that first
6 afternoon, what an overwhelming task this was.
7 He knew what an overwhelming job the coordination
8 of this largest investigative effort was going to
9 include. And, again, without apology, without
10 apology, Mr. Fassbender told you at that early
11 stage, all the early clues pointed to one man.

12 They pointed to one person, even early
13 on. Who's the last person to see her alive?
14 Where was the vehicle that was found? Was there
15 an attempt by Mr. Avery to lure, or to invite, if
16 you want to use a more polite term, this woman
17 onto the property? It all pointed to one person.

18 And although Investigator Fassbender
19 said that, he had other irons in the fire, he was
20 looking at other individuals, he was looking at
21 other family members, he was looking at possibly
22 old boyfriends, or people that might have had
23 contact with Teresa, or who else she might have
24 seen that day, Mr. Zipperer, or Mrs. Zipperer, or
25 Mr. Schmitz, or where she might have been going.

1 And all those things are important. And
2 a law enforcement officer does all those things.
3 But law enforcement officers aren't stupid
4 either. Law enforcement officers understand that
5 when you have limited resources, when there is
6 just so many officers to go around, you better
7 direct your resources to where this thing is
8 likely going.

9 And that night the likely place that
10 this was going was towards Steven Avery. And so
11 a team was put together to search Steven Avery's
12 trailer, that very first night, on the 5th,
13 subject to a search warrant. Getting ahead of
14 myself just a little bit.

15 I apologize, because we're still talking
16 about the recovery of the SUV. The scientist,
17 Mr. Ertl, who himself is a DNA analyst, that's
18 what he does during the day. But on weekends,
19 like many other Crime Lab employees, Mr. Ertl
20 volunteers to go on field responses. He
21 volunteers to go to crime scenes and look at
22 evidence and things just like this.

23 So Mr. Ertl, gave his opinion, gave his
24 expertise to, and opinions to, Mr. Fassbender.
25 Made the decision that because the weather was

1 becoming progressively worse, I think Mr. Ertl
2 used the term dramatic weather had occurred on
3 the evening of the 5th, after he had got there.
4 Mr. Ertl verified, if you remember, and
5 importantly, verified that the vehicle was
6 locked, that all the doors were locked in the
7 vehicle. And decided that although they were
8 going to process the outside of the vehicle, that
9 the real processing of this car was going to take
10 place in Madison.

11 But the SUV was going to be transported,
12 as it was, to a more pristine type of location,
13 to a place where the climate could be controlled
14 and where they could control the processing of
15 the vehicle. Mr. Ertl also told you that this
16 vehicle was obviously obscured, or attempted to
17 be obscured, you couldn't see it from, as an
18 example, an airplane. Mr. Drumm told you that
19 they couldn't see a car like that from an
20 airplane when they did their air search a day or
21 two before.

22 Mr. Ertl also told you, and if you
23 remember, we'll go to a picture of Mr. Ertl
24 who is standing right here with Mr. Fassbender
25 and some other -- one other Crime Lab person.

1 Mr. Ertl told you that, right on the other side,
2 see this, right on the other side of the SUV,
3 running all the way along this ridge, was this
4 berm. Mr. Ertl talked about this being 15 to
5 20 feet high.

6 Remember he talked about walking over
7 that particular berm where he -- after he got to
8 the top of it, kind of slid down, or gravity kind
9 of assisted this going down the other side of
10 that berm. That is important, or it may be for
11 you, important, when deciding whether or not
12 somebody knew to put this car here.

13 It certainly couldn't be driven in from
14 the south. That's the point. All right. The
15 point is that it couldn't be driven into that
16 property unless somebody knew that property,
17 unless who ever put that car there, knew how to
18 get the car into this location. Again, it's near
19 the car crusher. It's near a place where other
20 cars are to be crushed. It's near cars that have
21 been crushed. The 54 cars that we talked about.

22 But Mr. Ertl's job, primary job, at this
23 location, is to process the outside of the
24 vehicle. But then to get a wrecker, to get a tow
25 assembly set up, and to put this on an enclosed

1 trailer and take to it Madison for processing.
2 And so we move to our next uncontested fact, fact
3 number four. We move our investigation to
4 Madison.

5 ATTORNEY STRANG: Your Honor, excuse me.
6 Excuse me, Mr. Kratz. I think it's unwise and
7 improper to be describing facts necessarily as
8 uncontested.

9 THE COURT: Mr. Kratz.

10 ATTORNEY KRATZ: Well, however unwise it
11 may be, this is argument, Judge. And if the jury
12 decides that they are, in fact, contested, they can
13 make that conclusion as well.

14 THE COURT: All right. Members of the
15 jury, I think I will simply remind you about one of
16 the instructions that you read and that is that the
17 closing arguments are just that, arguments. They
18 are not facts. You should take anything that is
19 said by either party as argument.

20 The fact, for example, that one side
21 said something is uncontested, may not
22 necessarily make it so. It depends on your
23 interpretation of the evidence. And the other
24 side will also have a chance to respond in its
25 argument. Mr. Kratz, you may proceed.

1 ATTORNEY KRATZ: Thank you, Judge. And the
2 Judge is absolutely right and Mr. Strang is
3 absolutely right. And if you remember one of them,
4 one of the defense attorneys putting on some
5 evidence that this car wasn't taken to Madison for
6 processing, then you should adopt that. You should
7 adopt your memory. I'm calling it uncontested as an
8 argument. I'm saying because we haven't heard any
9 evidence to the contrary, we haven't heard any
10 answers from a witness to the contrary, that's why
11 I'm characterizing this as uncontested. But as I
12 mentioned --

13 ATTORNEY STRANG: I would like to be heard
14 about that, at an appropriate time, as if now.

15 THE COURT: I'm sorry, I didn't hear the
16 last part of your comment.

17 ATTORNEY STRANG: I would like to be heard
18 about that at an appropriate time, as if now.

19 THE COURT: Very well. You may proceed,
20 Mr. Kratz.

21 ATTORNEY KRATZ: The evidence in this case
22 was that this particular SUV was taken to Madison,
23 that it was taken to a garage in Madison. It was
24 taken to the Crime Lab, where this vehicle could be
25 processed. And we heard from Mr. Groffy and Ms

1 Culhane, and Mr. Riddle. And, in fact, we heard and
2 we'll talk about a fourth individual, Mr. Stahlke,
3 about the processing or the looking at this vehicle
4 in a more controlled environment.

5 Mr. Groffy testified that after the
6 vehicle was initially looked at, that when the
7 vehicle was open, that Mr. Groffy started
8 photographing. But, importantly, photographing
9 from the outside of the vehicle, not from the
10 inside. And that's why his testimony included
11 that he photographed both on the 6th, that's
12 Sunday, and also on the 7th.

13 Because on the 6th, Mr. Groffy testified
14 that he photographed from the outside of the
15 vehicle, that he could photograph things where he
16 didn't have to crawl into the vehicle, because he
17 couldn't get the inside shots yet. Didn't want
18 to contaminate the inside of the vehicle and
19 waited for the vehicle to be what's called
20 processed, by the lead individual who was in
21 charge of processing the car. And that was
22 Sherry Culhane.

23 Now, Ms Culhane has lots and lots of
24 involvement in this particular case. Ms Culhane,
25 you heard, was the unit leader or the unit head.

1 of the DNA Section of the Madison Crime Lab. And
2 she was chosen or she assigned herself the
3 responsibility of this case. And it was the unit
4 head, the head of the DNA section who, herself,
5 processed this particular vehicle.

6 Ms Culhane, as you heard testimony, took
7 some swabs, took some samples of the interior of
8 the vehicle. It's more than just the four
9 pictures that I'm putting up before you, but the
10 swabs of around the ignition area, the swabs of
11 the seats -- excuse me -- the cuttings, as she
12 cut out portions of the seat, I believe the
13 testimony was. Swabs of the CD case, swabs of
14 the back door, and also on the interior of the --
15 what's called the cargo area of the SUV.

16 The defense will have an opportunity to
17 present a argument in this case. We heard some
18 questions of some law enforcement officers, about
19 planting evidence. We didn't hear anything about
20 how an officer might plant a stain like this,
21 what's called by Mr. Stahlke, a contact stain,
22 which common sense would tell you requires active
23 bleeding. How stains which require gravity, that
24 is, which require dripping kinds of actions might
25 be planted, how smear or movement kinds of stains

1 might be planted as well.

2 Now, I say that, again, not for my
3 argument, not at this particular time telling you
4 what the evidence has shown, or is going to show,
5 but I am interested to hear theories of how these
6 things might have actually happened. Mr. Avery's
7 blood is in six different places in this vehicle.
8 Other DNA, that is, without blood being visible,
9 is in yet another, that would be the hood latch
10 on this particular vehicle.

11 And so the sheer volume, the sheer
12 numbers of places, made this quite a job. Made
13 this processing or the recovery of this evidence
14 quite important, indeed.

15 We heard from Mr. Riddle, who is
16 primarily a fingerprint guy. And although he
17 didn't obtain any identifiable prints, at least
18 those that were suitable for comparison,
19 Mr. Riddle also had the responsibility of
20 inventorying the car. Mr. Riddle told you about
21 what that means, to inventory a vehicle. And
22 it's the little things that he found, the little
23 things within the inventory that become so
24 important.

25 Things like the blue lanyard, that was

1 given from Katie Halbach to her sister Teresa.
2 You saw Katie, with the assistance of, I think it
3 was Mr. Wiegert, actually fitting the key
4 assembly, or what's called the fob, right onto
5 this particular lanyard that was given to Teresa.

6 And I had a sense, and I'm allowed to,
7 and I will argue to you, that that showed where
8 this case fits together. Fits together just like
9 the fob and just like the lanyard that was given.

10 Now, Nick Stahlke, I told you I was
11 going the talk about, and I'm going to add a
12 little bit of Mr. Stahlke's testimony in at this
13 point, because although an analysis was given, it
14 does fit also into the processing of the vehicle
15 when Mr. Stahlke talked about the blood that was
16 found in the back of the RAV4.

17 This area right here, where Mr. Stahlke
18 said that that was a very identifiable impression
19 to him. Sadly, this is a impression, or an
20 impression, of a individual whose head, whose
21 hair, is soaked with blood. And it leaves an
22 impression. It leaves a stamp, if you will. And
23 you can see that and you may get a chance even to
24 see some photos, close up photos, when you
25 deliberate in this case.

1 But the point of Mr. Stahlke's testimony
2 was that, how Ms Halbach was laying in the back,
3 that her hair was blood soaked, becomes real
4 important, obviously. Because what we're going
5 to hear about gunshots to the head, what we're
6 going to hear about where Ms Halbach was placed
7 thereafter, when it ties in with Brutus hitting
8 on this particular vehicle, as an individual was
9 either bleeding, or was deceased in this
10 particular SUV, again, becomes very, very
11 important.

12 Mr. Stahlke also told you the difference
13 between contact and transfer kinds of stains,
14 which Mr. Avery -- the blood attributed to
15 Mr. Avery suggests impact, or what's called
16 projected blood, as if an individual was thrown
17 into the back of the SUV. That was on the back
18 gate, that Mr Stahlke talked about. We'll show
19 you some pictures about that, as if the blood is
20 splattering, or is actually in movement as it
21 hits the side of, or the back gate of, the SUV.

22 We talked about passive bleeding.
23 Again, those attributed to Mr. Avery; that is,
24 the back passenger seat and also on the front
25 seats where there's droplets, where there's

1 active bleeding that's going on.

2 Mr. Stahlke also testified, if you
3 recall, that upon his expert opinion, his opinion
4 as a blood spatter expert, and he does this for a
5 living, that this particular stain by the
6 ignition is absolutely consistent with somebody
7 with a cut to the outside of the right hand and
8 turning an ignition, this transfer -- contact
9 transfer stain was absolutely consistent.

10 Now, the Judge promised you a break and
11 you are going to get one right after fact number
12 five. So I want you to know that I'm not just
13 going to drone on and on. I'm going to provide
14 you a break after this next section. Because you
15 probably, since you have been sitting for about
16 45 minutes now, probably not more than an hour
17 should go by before you get a break.

18 Fact number five, we go back to the
19 salvage yard. Fact number five becomes a
20 critical or critically important piece of
21 evidence, the State is referring to as
22 Mr. Avery's burn barrel. And we have heard about
23 the discovery, and the recovery, and the
24 processing of this burn barrel. But all of the
25 aspects of this particular burn barrel, again,

1 become very, very important.

2 It is important because of the obvious
3 evidentiary value that we have had. But it's
4 also obvious -- or excuse me -- it's also
5 important for what we haven't heard. What we
6 haven't heard about explanations, if you will,
7 about how some of this evidence gets in there.
8 But, again, I'm jumping ahead, I will talk about
9 that in just a moment.

10 Deputy Siders was the individual that
11 you heard found or discovered the burn barrel on
12 a sweep of an adjoining property of Mr. Avery's
13 on Monday, the 7th of November. Deputy Siders
14 finds the burn barrel with a tire, with the tire
15 rim being inside of the vehicle (sic). And he,
16 as you recall, takes the tire rim out.

17 Tires, again, you have heard by later
18 witnesses, are accelerants. They can be used to
19 keep a fire going, to keep it certainly going hot
20 enough to destroy, or what should be, destroy
21 most of the things that it comes in contact with.

22 Deputy Siders, we hear, turns over
23 responsibility for the photography and the taking
24 control of this piece of evidence to Special
25 Agent Kevin Heimerl. Mr. Heimerl takes some

1 pictures of the inside. But even Deputy Siders
2 told you, upon looking in the burn barrel, it was
3 obvious that a Motorola cellphone was inside
4 there, because you could see the M, the very
5 distinctive M from inside of the burn barrel.

6 Mr. Ertl, again, another one of his
7 responsibilities, later, I think it was at the
8 Calumet County Sheriff's Department, processed
9 the contents of this burn barrel, which was
10 anywhere between a third and a half full. But
11 Mr. Ertl didn't identify those components. He
12 doesn't identify the obvious electronics that are
13 found within. He leaves that to the FBI.

14 Now, Mr. Thomas, although a very young
15 looking individual, is in fact an expert, here to
16 provide you with expert testimony. These
17 components were sent to Virginia. And these
18 components, we heard, were all laid out and were
19 all identified by Mr. Thomas.

20 When you look at these pictures and you
21 look at the kinds of things that didn't burn, and
22 when I asked Mr. Thomas, what are we looking at
23 here, what's left over, what didn't burn,
24 Mr. Thomas mentioned that the metal didn't burn.
25 He mentioned that the glass didn't burn. And I

1 said, well, what does that leave. I asked him
2 the question, what components aren't here, what
3 aren't we looking at.

4 Mr. Thomas told you plastic. He said it
5 was the plastic components of the camera, and of
6 the cellphone, and of the PDA, the personal data
7 assistant, that we're missing from this
8 constellation of things.

9 Mr. Thomas was able to positively
10 identify three specific things, obviously, the
11 cellphone. He talked to you about the large
12 circuit board for the PDA, the Palm Pilot type
13 thing, and also the components for the digital
14 camera, the Canon A310. Didn't just say it was
15 any camera, said it was a Canon A310 digital
16 camera.

17 I showed you a blow up of this
18 particular exterior of that camera. And it says,
19 you know, PowerShot A310 on it, so you probably
20 don't have to be an expert to determine what kind
21 of camera that was. Not surprisingly, the State
22 tied this up as well, as you might expect. We
23 meticulously, I think, matched the recovered
24 items and showed you that Teresa Halbach owned
25 all of those items. So at least the three items

1 that Mr. Thomas was able to positively identify.
2 Teresa owned a Motorola V3 RAZR
3 cellphone. She owned a PowerShot A310 digital
4 camera and she owned a Palm Zire 31 PDA. We saw
5 the boxes that Teresa had kept her or had
6 purchased her Palm Pilot. The box that Auto
7 Trader had given her her digital camera in, the
8 Canon PowerShot A310. And you also heard
9 testimony about Teresa owning the Motorola RAZR
10 cellphone, which is a very common kind of cell
11 phone.

12 But Steven Avery's burn barrel becomes
13 important, not just for what is found in it, but
14 what witnesses, what other citizens, what other
15 people on the property saw on the 31st. One of
16 those people is Blaine Dassey, is the nephew of
17 Steven Avery.

18 And when considering credibility, you
19 can consider a young man like this sitting in
20 front of his uncle and having to testify against
21 his uncle, and doing the best job that he can,
22 and telling you that he is generally scared of
23 his Uncle Steve, but does the best he can in
24 telling you that he and Brendan Dassey, his
25 brother, get off the bus, sometime between 3:40

1 and 3:45, everyday.

2 That on this day, on Halloween, he
3 remembers particularly, while walking home, while
4 coming down their dirt road towards their house,
5 that he saw his Uncle Steve walking from his
6 trailer and putting a bag, a white bag is what he
7 described, a white plastic bag, into an already
8 burning burn barrel. Okay.

9 So by 3:45 or 3:50 in the afternoon, the
10 State is arguing, Mr. Avery is already getting
11 rid of Teresa Halbach's stuff. The electronics,
12 the phone, the PDA, the digital camera are
13 already being disposed of, they are already being
14 destroyed at that time.

15 Mr. Dassey, importantly, also testified,
16 and please remember this, before our break,
17 Mr. Dassey testified that the Suzuki and the
18 snowmobile that you see pictures of inside of the
19 garage, on the 31st of October, weren't in the
20 garage, remember that. They weren't inside of
21 the garage as the picture shows. But the 31st,
22 the Suzuki and the snowmobile are on the side of
23 the garage, leaving this garage opened, at least
24 opened to the point where something else can fit
25 into that particular garage.

1 Brings us to our next witness, who's
2 Mr. Fabian. Mr. Fabian is Earl Avery's friend,
3 that they were rabbit hunting. Mr. Fabian told
4 you that he parked the golf cart, that the burn
5 barrel was already burning, that he smelled the
6 distinct odor of plastic burning at the time,
7 that the smoke was so bad that, although parked
8 in a golf cart to the south or next to the burn
9 barrel, eventually he had to move this golf cart
10 because the smell of burning plastic and the
11 smoke was getting so bad.

12 Mr. Fabian also tells you, at that time,
13 just before dark, he places that just before
14 dark, when the rabbit hunt was just about
15 completed, that Mr. Avery's garage was closed.
16 He couldn't see what was inside of the garage.
17 There isn't any SUV any more. There is nothing
18 to be seen. The garage is closed, but the Suzuki
19 and the snowmobile are on the side of the garage.
20 All right.

21 So I have given you five so far, five
22 pieces of evidence, five pieces of crucial
23 evidence of the evidence that the State believes
24 is necessary to prove this case, beyond a
25 reasonable doubt.

1 When you return, after whatever break
2 the Judge may give you, I will conclude, then,
3 with the other pieces of evidence and instruct
4 you, or at least argue to you, what I believe
5 that you should do, after considering all these
6 pieces of evidence.

7 It's a good time for a break, Judge.
8 Thank you.

9 THE COURT: All right. Members of the
10 jury, what we're going to do is this, we're going to
11 take a break of 10 minutes or so, at this time, then
12 come back and have the State complete its closing
13 argument. I have informed the lunch people to bring
14 in lunch at quarter to one. So, because we will be
15 eating lunch later than normal, if you want to have
16 a snack during the break, go ahead and do so.

17 And, again, I will remind you not to
18 begin discussing anything about this case until
19 all the closing arguments have been given and
20 until I tell you to begin deliberating. You are
21 excused at this time.

22 (Jury not present.)

23 THE COURT: You may be seated. Mr. Strang,
24 you have something you wish to place on the record
25 at this time?

1 ATTORNEY STRANG: I do. Thank you. I
2 initially interrupted Mr. Kratz's argument,
3 reluctantly, and trying to be polite and somewhat
4 circumspect about my comment that it was unwise and
5 improper to describe facts as uncontested. I waited
6 until we got to the PowerPoint slide that said fact
7 number four, and by my recollection, that was the
8 fourth time that the -- counsel for the State
9 returned to the theme of an uncontested fact.

10 As I say, I was trying to be
11 circumspect, but the concern, of course, was that
12 this comes too close to commenting on the
13 decision of the defendant not to take the stand.
14 Or, for that matter, not to offer witnesses that
15 he did not.

16 Mr. Kratz, in responding to my
17 interruption and objection, I think made the
18 problem substantially worse. I don't have
19 committed to memory, we could go back to the
20 court reporter's notes if we need to, but the
21 rejoinder from counsel for the State was that,
22 you know, if you remember a witness being called,
23 or if you remember someone saying this didn't
24 happen, something to that effect, well, then
25 that's fine, but, of course, the suggestion was

1 that the witness was not called and no one did
2 speak up to contest the fact.

3 Doesn't warrant a mistrial, but comes
4 way too close to commenting on the Fifth
5 Amendment privilege not to testify and I think
6 warrants some curative step, either by counsel
7 himself, or by the Court, or both.

8 THE COURT: Mr. Kratz.

9 ATTORNEY KRATZ: That's absurd, Judge. I
10 get to, on closing argument, suggest that Mr. Strang
11 is going to place a theory of defense into play in
12 this case. There's absolutely no evidence that
13 would suggest that. If there are facts that I
14 believe have not been contested, either by
15 cross-examination, or are not contested through the
16 defense calling its own witnesses, that's fair game
17 for me to comment upon.

18 I have not, and I will not, comment on
19 Mr. Avery's decision not to take the stand. I
20 understand and the jury has been instructed that
21 the defense, or the defendant, I guess, is how
22 the instruction reads, has no burden in this
23 case, but certainly if something is not
24 contested, if there is a fact that I believe has
25 been proven and is an important part of the

1 State's theory of the prosecution and there
2 hasn't been a challenge, at least through
3 evidence in the case, I feel very much so
4 entitled to comment upon that.

5 THE COURT: Anything else, Mr. Strang?

6 ATTORNEY STRANG: Well, it's certainly fair
7 game to argue what the State, or for that matter the
8 defense, thinks the evidence shows. It's fair game
9 to argue -- a little bit more dangerous for the
10 State, I suppose -- but fair game to argue what the
11 evidence does not show, draw conclusions from the
12 evidence.

13 But describing something as uncontested
14 or, you know, we could go to other cases, this
15 word hasn't been chosen here, but we could go to
16 other cases where un-rebutted or unchallenged
17 comes, I think, way too close to commenting, not
18 on the strength of the evidence, or the
19 conclusions, affirmatively, the State wants
20 drawn, but on the decision of the defendant not
21 to testify to something himself, or not to call a
22 witness on a point. And I don't think the
23 suggestion was absurd at all. But that's at
24 least for this Court, in the first instance, to
25 decide.

1 THE COURT: All right. The note I took
2 down at the time the objection was made that the
3 specific alleged fact involved I believe had
4 something to do with the vehicle being transported
5 to Madison for inspection. Frankly, that wasn't
6 something that struck a chord in my mind that
7 somehow there was any relationship with the
8 defendant's decision not testify.

9 I appreciate the fact defense counsel
10 has alerted the Court to that possibility. I
11 agree that the -- there is the potential, when
12 you start using the approach that's been used as
13 far as undisputed facts, I can see where it could
14 lead to that. I do not know what the rest of the
15 State's argument is going to be.

16 At least based on what I have heard so
17 far, I do not believe it relates in any way to
18 any suggestion to the jury that somehow they
19 should take the defendant's failure to testify
20 into account in evaluating the State's evidence,
21 based on the facts that have been discussed.

22 ATTORNEY STRANG: And I -- I want to add, I
23 will -- I will go one step further, I agree with the
24 Court that the particular fact described, where
25 actually Mr. Kratz quite acceptably is using fact

1 number one, and fact number two, fact number three,
2 really, to describe a constellation of facts around
3 some single event, I agree that -- and I haven't
4 moved for a mistrial -- that this was not a topic on
5 which a juror would say, boy, the one who probably
6 has the best knowledge about that is Mr. Avery. And
7 that's something exclusively within Mr. Avery's
8 knowledge.

9 I agree and I will go the one step
10 further and say that facts one, two, and three,
11 similarly, were not matters that immediately
12 would suggest whether the defendant is in the
13 best position to know. I used the term,
14 initially, unwise and incorrect, because I wanted
15 to alert counsel and the Court, that if, you
16 know, we could get to a point where this would
17 become a real serious concern.

18 Unfortunately, the response made the
19 concern more immediate. Still not rising to the
20 level of requiring a mistrial, in my view, and
21 perhaps the Court's admonition now will be
22 enough, but I -- if -- if we go much further down
23 there, I will be heard again.

24 THE COURT: I'm assuming that both parties
25 are aware there are permissible and impermissible

1 ways of suggesting the same thing. If the State
2 says there's no evidence in the record to show this
3 or that, then that's generally okay. But if the
4 argument relates to something that might implicate
5 the defendant's decision not to testify, and the
6 language, whatever it may be, is construed as
7 something that somehow the defense should have
8 produced, then that danger arises.

9 I'm assuming that all counsel for the
10 State understand that. I haven't heard that yet.
11 And I'm trusting, Mr. Kratz, we're not going to
12 have to go there.

13 ATTORNEY KRATZ: Except on the planting
14 issue, Judge, where the defense has affirmatively
15 put that into play. The State didn't. And as to,
16 have we heard anything about planting, I do intend
17 to go into that. And that may be on rebuttal. I
18 may wait to see what the defense does. And with the
19 Court's comments, I may, in fact, do that.

20 But I at least want the Court to
21 understand that since the defense has asked for
22 the theory of defense, and since the defense has
23 intended, throughout this trial, to discuss
24 planting of evidence as its theory, I think my
25 comment on the lack of evidence, at least on that

1 issue, without mentioning Mr. Avery, without
2 mentioning his decision to testify or not, is
3 certainly fair game in my argument, or whether I
4 choose to do it now, or whether I choose to do it
5 in my rebuttal.

6 ATTORNEY STRANG: Well, and you'll know
7 when we get there. I simply would point out now
8 that planting and being framed is not an affirmative
9 defense. It's not something on which a defendant
10 has a burden of production or going forward, let
11 alone a burden of persuasion. So this would be
12 different if the defense here were self-defense, or
13 involuntary intoxication, something like that, it's
14 an affirmative defense.

15 I, too, trust counsel is aware of the
16 boundaries and now I have elaborated my concerns.
17 But I do want to be clear, the defense that's
18 been presented here is not an affirmative
19 defense. So we'll ...

20 THE COURT: All right. I'm sure, now that
21 the matter has been brought to the parties'
22 attention and the parties will be careful about it.
23 We'll take a break at this time. I guess we will be
24 resuming in 10 minutes. The jury gets a little
25 longer.

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(Recess taken.)

THE COURT: Mr. Kratz, I understand you are now on mike seven.

ATTORNEY KRATZ: I am. I switched mikes, Judge, they couldn't hear in the back, so. I don't think the jury was having a problem hearing.

THE COURT: All right. You may resume.

ATTORNEY KRATZ: I appreciate it. Thank you, Judge.

Fact number six, we talked about the instrumentality of the murder and here we talk about the .22 caliber rifle. Remember both the felon in possession of a firearm charge, the instruction that was given to you, it's not ownership of the weapon, it is possession of. You heard the Judge give you the instruction that it is the exercise of control, especially in an area where an individual would have control of that weapon becomes important.

Mr. Johnson, although a entertaining fellow, also provided important information for the jurors that he certainly knew of the .22 caliber rifle, owned the black powder rifle as well, and knew that they were hanging just a few feet above Mr. Avery's bed. Also knew of the

1 ammunition. We have seen photographs and we have
2 actually seen these rifles.

3 Let me just tell you, and this goes to
4 Count 3, and this, interestingly, might be the
5 last time I talk about possession of a firearm by
6 a felon. You are to, and you must, consider the
7 fact that the defendant was previously convicted
8 of a felony that element has been proved and
9 we're now just responsible to prove to you
10 whether or not he possessed those firearms.

11 Either of these weapons are rifles,
12 either of these weapons qualify as weapons for
13 possession of a firearm. We were -- of course,
14 claim in this case that the .22 caliber Marlin
15 not just was, what's called constructively
16 possessed, that is, over an area of which
17 Mr. Avery had control, but we will actually be
18 arguing to you that Mr. Avery handled, held that
19 weapon in his hands, when Ms Halbach was killed.

20 Some quick testimony, or at least a
21 review of some testimony on these issues.
22 Mr. Tyson, although he didn't seize the guns,
23 observed the guns that first night, on the 5th.
24 Mr. Kucharski is the gentleman who actually
25 seized the weapons on the 6th.

1 So there was some further evidence about
2 the dogs demeanor being vicious, and that is
3 further testament as to why the burn pit, or the
4 burn area, wasn't searched before it was.

5 Mr. Austin was kind enough to provide
6 us -- the trooper reconstruction expert was kind
7 enough to provide us with some diagrams and
8 things that have helped us throughout this case.
9 And I think they have been very helpful to the
10 jury.

11 Deputy Kucharski also, however, found 11
12 shell casings in the garage on the 6th of
13 November; obviously, in plain view, obviously
14 something that you should consider.

15 When we move to March, though, when we
16 move to March 1st and 2nd, when there's been
17 additional search warrants being executed on --
18 in Mr. Avery's garage, an important discovery
19 occurs, that you heard about. And that is, two
20 separate bullets, a bullet up in front here where
21 we have tent number nine, and a bullet underneath
22 this compressor, actually having to move these
23 items by tent number 23, which is the bullet
24 which later we'll find has Teresa's DNA on it.

25 Remember the different kind of search

1 that this is in March, compared to November when
2 the agents and the officers talked about taking
3 all of this junk and moving it one by one, one
4 piece by one piece, and doing that kind of
5 search. In March, the officers, pursuant to
6 their search warrant, did, in fact, just that.

7 Mr. Newhouse, we heard from the firearms
8 expert. I think the kind of expert that you
9 might hope and expect to find, from the Crime
10 Lab, talking about shell casing matches and also
11 bullet matches, at least the bullet that had
12 Teresa's DNA on it.

13 All of these photos and all this
14 evidence is in evidence in this case. The
15 bullets that were taken from Mr. Avery's bedroom,
16 you will be able to see, no pun intended, bear
17 the same letter as those that were identified by
18 Mr. Newhouse. That is, as having been shot from
19 that specific gun, that is, the Marlin Glenfield
20 .22 hanging over Mr. Avery's bed. That's
21 important, that's important stuff, that the shell
22 casings that are found in this case are from that
23 very same weapon.

24 We heard about the bullet analysis as
25 well, the bullet with the DNA is from that very

1 same weapon. And interestingly and importantly,
2 Mr. Newhouse tells you, to the exclusion of all
3 other weapons. All right. That's the kind of
4 identification that these experts can do, at
5 least the ballistics and firearms experts. And
6 so the .22 caliber bullet is an important fact.

7 Fact number seven, some background
8 information. We will hear, or I'm sure -- I'm
9 sorry, you have heard about the prior *Auto Trader*
10 contacts, that is, prior contacts, the history
11 between Steve and Teresa. You heard from Mr.
12 Pearce, that she and Mr. Pearce had talked about
13 Ms Halbach already having gone to the Avery
14 property, something of the nature of, you are not
15 going to believe whose photos we were taking.
16 And you heard the testimony of Mr. Pearce about
17 his reminder not to -- generally, reminder not to
18 go into people's homes, or not to have that kind
19 of contact with them.

20 Ms Pliszka talked about the history,
21 knowing about the history. Ms Pliszka is from
22 *Auto Trader*; she's the receptionist. And the
23 important part, at least for this part of our
24 argument, is that that photographer, Ms Halbach,
25 had been there on a number of occasions before.

1 And when Mr. Avery called at 8:12 on the
2 31st of October, he asked for that same
3 photographer. Although, he didn't use the name
4 Teresa, asked for that same female photographer
5 that had been out there before. Again, although
6 using a different name, although using the name
7 B. Yanda, he specifically was asking for Teresa
8 to come out.

9 You heard from the supervisor of *Auto*
10 *Trader*, Ms Schuster, that Ms Halbach had taken
11 six prior photos at the Avery salvage property.
12 And we put these six photos, early on, into the
13 case, into evidence. You can note on most of the
14 photos, just how close they are in proximity to
15 Mr. Avery's trailer.

16 These photos, as you heard, were taken,
17 the first on June 20th, and the last on October
18 10th, of 2005. I think the inference that you
19 also may want to draw on as you think weeks ahead
20 from the presentation of this evidence is, after
21 these photos are taken, after a car goes into
22 *Auto Trader Magazine*, what's done with it.

23 You can actually answer that question by
24 some of the other photos that I showed you.
25 What's done with these cars doesn't do Mr. Avery

1 any good, or whoever is selling a car, any good,
2 to leave these items back by Mr. Avery's garage,
3 or back by his trailer.

4 But after the *Auto Trader* picture is
5 taken, these items are put up on the corner, what
6 is called the corner by the business property.
7 We know that because of Ms Buchner, Lisa Buchner,
8 when she testified in this case, that she
9 testified that she saw a woman taking pictures of
10 cars that were for sale. And, in fact, we
11 pointed out these two vehicles, the Grand Prix
12 and the Blazer, that Ms Halbach had earlier, or
13 just within the last month or six weeks had taken
14 photographs of.

15 And, so, when a photo is taken, when it
16 goes into the *Auto Trader*, and when it has to be
17 sold, it makes sense to put those vehicles up in
18 a place where people will see them. People that
19 are coming into the auto salvage business, people
20 that will drive by, as you remember the overall
21 view of this property, that will drive by those
22 vehicles and might naturally get out and take a
23 picture and they might want to buy that kind of
24 vehicle.

25 Now, we have also heard, and I will

1 argue, importantly, that the van that Ms Halbach
2 took a picture of, remained in exactly the same
3 location, remained there from the 31st, when Ms
4 Halbach took the picture, at least through the
5 5th, when the officers took control of the scene.

6 Now, I'm going to argue and you should
7 ask yourself why, you should ask yourself why,
8 what inference can I draw by that. I will argue
9 that the inference is that Mr. Avery knows that
10 the van is not going in the *Auto Trader Magazine*.
11 Mr. Avery knows that that picture is never going
12 to make it to *Auto Trader*, because he's taken the
13 camera and he's burned it. He's put it into the
14 burn barrel.

15 There is no reason to move the van from
16 its original location near Mr. Avery's property,
17 up towards where the other cars that are for sale
18 on this property. Again, has inferences that you
19 can draw, or that you don't have to draw, but,
20 again, I'm arguing that it's something that you
21 may want to consider, again, to reconcile Ms
22 Buchner's testimony, what she had given.

23 Fact number eight, we're able to piece
24 together some of the history of Teresa for the
25 31st. It's what's called a timeline for Teresa

1 Halbach. And we were able to do that through all
2 of these particular witnesses.

3 Ms Pliszka, of course, the 8:12 call for
4 Mr. Avery triggers Ms Pliszka's 9:46 voice
5 message call to Teresa. Remember Ms Pliszka's
6 testimony, again, this is hard, because it's five
7 weeks ago. Her testimony was, she left the voice
8 mail that there's a person who wants you to come
9 out and do a shoot. There is a phone number
10 that's been left.

11 You will hear later on in my
12 presentation, that at 11:43, Ms Halbach calls
13 that number. It's the voice message that we hear
14 to B. Yanda, to Barb Yanda's house saying, I'm
15 able to come out today and to take that -- to
16 take that call. But it's this 9:46 call, when
17 we're setting the timeline for Teresa, where was
18 she, excuse me, at all these times that become
19 important.

20 The most, probably, important thing that
21 Ms Pliszka talks about is the call at 2:27, the
22 call to Teresa, which is verified through the
23 phone records that she did receive a telephone
24 call at 2:27, from *Auto Trader Magazine*. That
25 telephone call from Ms Pliszka, to Ms Halbach, is

1 not so important for talking about
2 trick-or-treating and the things that Dawn
3 Pliszka said that they were talking about, but
4 what came from Teresa's side of that
5 conversation.

6 Remember the testimony from Dawn Pliszka
7 that Teresa said, I'm on my way to the Avery's.
8 All right. I'm on my way to the Avery's. So at
9 2:27, this is the best, at least from a timeline
10 standpoint, the best opportunity for you to put
11 these things into place and to determine what
12 time was it that Teresa arrived.

13 Mr. Remiker, an investigator in this
14 case, testified that, upon searching the
15 residence of Barb Yanda, he came across this
16 particular voice mail: Hello. This is Teresa
17 with *Auto Trader Magazine*, the photographer. And
18 I'm just giving you a call to let you know that I
19 can come out there today, in the afternoon. And
20 it will probably be around 2:00 or, you know, a
21 little later. If you could, please, give me a
22 call back and let me know if that will work for
23 you, because I don't have your address or
24 anything. So I can't stop by without getting a
25 call back from you. And my cellphone is

1 737-4731. Again, that's Teresa, 920-737-4731.

2 Thank you.

3 Other than the obvious impact that that
4 call has, it has substantial evidentiary value.
5 That call from Teresa talks about when she's
6 coming out to the property. The call from Teresa
7 says it will be some time after 2:00, or even
8 around 2:30, which turns out to be almost exactly
9 correct.

10 But she also indicates that, because of
11 the name that was given, because of the number
12 that was called, she doesn't know how to get
13 there because she hasn't been there. Well,
14 that's not true. That's not true, because if
15 Steven Avery would have given his name, Teresa
16 Halbach wouldn't have had to say, I don't know
17 how to get there, or I haven't been out to the
18 property before.

19 And so the purpose what I argued, or at
20 least what I -- the opening statement that I
21 gave, was that Mr. Avery lured Ms Halbach out to
22 the property, I think is a valid inference for
23 you to draw. But more importantly, it's the
24 timing, more importantly it's when Teresa says
25 through this voice mail message, when it is that

1 she's planning to come to that location.

2 Mr. Schmitz, at 1:30, testified, we put
3 the rest of the timeline together for you. So at
4 1:30 we know Teresa is out at the Schmitz
5 property. We know that she's wearing a light
6 colored or a white shirt, a waist length jacket.
7 We know she's wearing jeans. We know she's there
8 for 10 minutes. She leaves an Auto Trader book
9 and she leaves a receipt.

10 Right after she is done with Mr.
11 Schmitz, she goes to the Zipperer residence,
12 sometime between 2:00 and 2:30. In fact, you
13 will note from the calls and the testimony later
14 from the cellphone people, that at 2:12 a call is
15 made to the Zipperer residence. You heard some
16 reference to that.

17 It may have been lost in some of the
18 other testimony, about Teresa being lost and on
19 her way. But Teresa finds her way there. And we
20 know that about 2:15 or so, she does her photo
21 shoot at the Zipperer's. We also -- excuse me --
22 We also know, just like the Schmitz photo shoot,
23 just like every other photo shoot that you have
24 heard testimony about, that it lasts 10 minutes.
25 She leaves an Auto Trader book. She leaves a

1 receipt, which is actually called a bill of sale.
2 These things are particularly important.

3 You will see testimony later, or you
4 will see exhibits later, that were seized from
5 Mr. Avery on the 5th, that exactly the same *Auto*
6 *Trader Magazine* is found on his computer.
7 Exactly the same kind of bill of sale is found.
8 So the significance, or the habit, if you will,
9 of these contacts, become critically important.

10 Ms Schadrie, again, although providing
11 some confusing testimony that had to be cleared
12 up by a Mr. Zimmerman, later, at least provided
13 the records, at least provided what has been
14 received as Exhibit No. 361, the cellphone
15 records for Teresa Halbach.

16 Ms Schadrie provides some important
17 parts of this particular record. Specifically,
18 at 11:43, that was the call to Barb Janda's that
19 you heard about. The answering machine call that
20 was made.

21 You have heard about the call from -- at
22 2:27, from Ms Pliszka, I'm on my way to the
23 Avery's. And we have heard about -- or the
24 records reflect this last call at 2:41.

25 Now, the testimony, you have to next

1 turn to the testimony of Mr. Zimmerman, Exhibit
2 No. 372. And although that call starts at 2:41,
3 it's a voice mail. And on page two of document
4 372, page two of this exhibit, we learned,
5 importantly, this incoming call to Teresa is
6 never retrieved. It's never retrieved by Teresa.
7 All right.

8 Look at Teresa, how many times she
9 checks her voice mail. Mike Halbach talked about
10 Teresa Halbach being very conscientious about
11 checking her voice mail. And after, sometime
12 after her visit, assuming she wasn't harmed or
13 killed by Mr. Avery, you would have expected her
14 to check her voice mail.

15 Mr. Zimmerman also cleared it up and
16 said that after 2:41, on the 31st, this
17 particular cellphone, the cellphone of our
18 victim, Ms Halbach, was out of service. Wasn't
19 used after that particular point.

20 Remember the testimony that by 3:30 a
21 bag of something is being placed in the burn
22 barrel where this particular phone is later
23 found. It all starts to make sense now. It all
24 starts to be put together. Again, the
25 combination of observations of Blaine Dassey,

1 combination of phone records, combination of
2 explanation of voice mails, combination of
3 testimony from Mike Halbach.

4 You put all of that together and it
5 paints the picture for you. It provides the
6 timeline for you, for Teresa Halbach, not just
7 what happens to her phone, but by inference, what
8 happens to her, and when, when it's happening to
9 her. All right.

10 We talked more about the timeline and we
11 heard from Bobby Dassey, again, in the same kind
12 of a position to be -- his credibility to be
13 weighed by you, but is an eyewitness. Again, an
14 eyewitness without any bias. It is a individual
15 that deserves to be given a lot of credit.
16 Because sometime between 2:30 and 2:45 he sees
17 Teresa Halbach. He sees her taking photographs.
18 He sees her finishing the photo shoot. And he
19 sees her walking up towards Uncle Steve's
20 trailer.

21 Now, we heard about taking a shower.
22 And we heard about him leaving for hunting. That
23 all becomes important and becomes more important
24 when, after leaving for hunting, he sees Teresa's
25 SUV still parked next to the van, next to his

1 mom's van that's for sale, but Teresa is nowhere
2 to be found. All right.

3 If this event, if a photo shoot is only
4 supposed to take between five and 10 minutes, and
5 you see the habit, and you see that that's how
6 long that it does take, this is a longer period
7 of time. Teresa, although we don't know, that
8 is, we don't have an eyewitness seeing her going
9 into Mr. Avery's trailer, that's the inference
10 that the State is asking you to draw. She's
11 walking towards the trailer. She's walking
12 towards Mr. Avery's property, after doing the
13 photo shoot.

14 Mr. Dassey is looking out this window, a
15 clear view, sees the pictures being taken of the
16 SUV, a clear pathway, and that as she walks
17 towards Mr. Avery's, that's the last Ms Halbach
18 is seen. That's the last she's seen alive. All
19 right. So that's the timeline. That's the
20 pathway, if you will, towards what happens to Ms
21 Halbach.

22 Now, the State has done the same thing
23 with Mr. Avery's timeline; that is, through
24 conversations and through observations, the same
25 thing with Mr. Avery, from the other side of the

1 coin, if you will, what's Mr. Avery doing on the
2 31st of October.

3 We hear, at least, at 8:12, Mr. Avery is
4 making a call asking for that same female
5 photographer to come out and visit him at his
6 property; although, he uses a different -- a
7 different name. And from a timing standpoint,
8 although we don't have Mr. Avery on the phone, we
9 do have Teresa on the phone.

10 But Ms Dohrwardt helps, from that
11 perspective. Ms Dohrwardt, who is a witness for
12 Cellcom, Mr. Avery's cell provider, provided you
13 with those records and provided you with
14 testimony of those records. She's a tech support
15 person. She's a technical individual who can
16 tell you more about those calls. Told you about
17 the 8:12 call, but also these two important calls
18 to Teresa Halbach's cellphone, using what's
19 called the *67, or blocked feature, where the
20 recipient of that call can't tell who it is
21 that's calling.

22 The State is calling the 4:35 call a
23 alibi call, if you will. After her phone is
24 already burned. After Mr. Avery knows that the
25 phone is out of service, which is reflected in

1 what you saw, not only by Mr. Zimmerman's
2 testimony, but by also -- by the records there's
3 no reason to call her phone. He knows where her
4 phone is.

5 Mr. Avery knows where Teresa's phone is,
6 but Mr. Avery is also -- has the ability to think
7 ahead, has the ability to know that these phone
8 records may, in fact, be gleaned, or may, in
9 fact, be reviewed at some point in the future.
10 And so, although he doesn't block, because there
11 is no reason to block the 4:35 call, he still
12 calls Teresa Halbach. And you can see, or you
13 can ask for those records if you need to.

14 The rest of the application, or putting
15 together of Mr. Avery's timeline comes from
16 eyewitnesses, comes from people like Blaine
17 Dassey, at 3:45, seeing him in the burn barrel
18 (sic). You have to skip ahead, I guess, to about
19 11:00, when he sees that image that I talked
20 about, where he sees this large fire behind Uncle
21 Steve's garage. Again, the date of the fire, the
22 time of the fire, becomes ever so important.

23 There shouldn't be any question, at
24 least, any more, at this time, regarding the
25 place of the investigation, or the direction of

1 the investigation. Blaine certainly adds to
2 that.

3 Mr. Fabian provides nothing other than
4 around at dusk, plastic is being burned and he
5 sees that.

6 But Mr. Tadych, who at the time was the
7 boyfriend, is now the husband, of Barb Janda,
8 provides testimony that between 7:00 and
9 7:30, the fire is already going. Mr. Avery
10 already has a large fire. Again, the testimony
11 was flames above the garage roof, already has a
12 big fire going at that particular time.

13 The State will argue and we'll ask you
14 to adopt the inference, that between 7:30 and
15 7:45, Teresa Halbach is already killed. We know
16 that because Mr. Avery is planning to, or in the
17 process, after dark, which is between 7:30 and
18 7:45, of destroying, mutilating and burning her
19 body.

20 Fact number 10, although the fire is
21 included in the aspect of the timeline for
22 Mr. Avery, I have made Item No. 10 or fact number
23 10, it's own fact. These two witnesses, again, I
24 just wanted to reiterate, from Mr. Tadych, in a
25 position of where he is parked, remember his

1 testimony, that he was parked in the circle drive
2 and could clearly see the fire at the time. And
3 the same thing from Blaine Dassey at 11:00, after
4 he gets back from trick-or-treating, there isn't
5 any obstruction to the view of that particular
6 fire.

7 Remember the later evidence, as to the
8 amount of time that's necessary to destroy, or to
9 cremate a body. This is going to come later,
10 from some experts in the testimony, or at least
11 when we talk about that later. But at or about
12 1600 degrees, which actually was the defense
13 expert, Mr. Fairgrieve, when talking about BTUs
14 and 300,000 BTUs per average tire.

15 That's the amount of heat that's thrown
16 off by a tire. Plenty of fuel, plenty of solid
17 fuel to burn, or incinerate, or cremate a human
18 body, that that would take between an hour and a
19 half and two and a half hours, at that 1600
20 degree level. If it starts at, the very latest,
21 7:30 or 7:45, and it's still going at 11:00,
22 that's plenty of time. That's an amount of time,
23 through the timeline, and through the fire, and
24 through a combination of witnesses, for you, the
25 jury, to conclude that, in fact, that body was

1 incinerated, was mutilated, was cremated. As a
2 way, and for the reason, to hide a crime that had
3 already been committed. The crime is obvious,
4 it's a crime of homicide.

5 After the burning event, we ask
6 ourselves what's left, what's in the burn area.
7 And we talk now about some highly specialized
8 experts. We talked about, and we hear from,
9 Mr. Sturdivant, who's an arson investigator who
10 found the zipper, which I guess is important.

11 But more importantly, he found the
12 bones, the small bone fragments intertwined, or
13 mixed in with the steel belt from tires. All
14 right. The bones being intertwined and mixed in
15 is the State's, or one of the State's, strongest
16 argument for this being the primary burn site.

17 Mr. Sturdivant also talked about the dog
18 being vicious. This particular picture, I think
19 it's Exhibit No. 50, is probably all you need to
20 see. It's all you need to know as to why
21 officers were reluctant to kind of check out and
22 investigate this particular area.

23 This dog, whose name is Bear, we heard,
24 who's a German Shepherd, we heard being described
25 as vicious, who Deputy Kucharski said the only

1 way they could get by that dog was to destroy or
2 to kill the dog. Certainly was guarding or had
3 access to this entire area. Not only does the
4 testimony prove that, but this particular photo,
5 before any excavation, before any processing,
6 which is obvious has been done, has occurred.

7 Mr. Ertl, we heard, was the first Crime
8 Lab person with Mr. Sturdivant to get, on the
9 8th, to that burn area. And, importantly, we
10 heard about the careful processing, that he did
11 his best. Although a shovel was used, it wasn't
12 a, I think the word, the term "scoop and swoop",
13 wasn't that at all. It was very carefully done
14 to recover what the agents could at the time in
15 order to get those items to the Crime Lab, to
16 determine, first of all, are they human;
17 secondly, are they female; and, thirdly, do they
18 belong to our victim.

19 We need to know those things, obviously,
20 at the time. And photographs that were shown to
21 Mr. Ertl, and as you have seen these photographs,
22 the car seat that was used as additional fuel in
23 this case. The tires you will see, a hose, and
24 you will see rakes, and you will see shovels, and
25 other instrumentalities, what I call, at least,

1 are instrumentalities of mutilation, that is,
2 tending the fire, or without being particularly
3 insensitive, chopping up the remains of the body
4 as it's being burned, to make sure that a total
5 consumption occurs in these cases. You will be
6 able to see some of those exhibits to show that
7 that was in fact done.

8 Mr. Pevytoe, we hear later, DCR -- DCI
9 agent who, on the 10th, takes over the processing
10 of the burn area, does a more detailed
11 examination; here's where we hear the word
12 excavation, does a couple of things. First of
13 all, we hear that on the 9th and 10th he talks to
14 the anthropologist. He talks to Leslie
15 Eisenberg. He gets some information from Ms
16 Eisenberg as to the processing of the scene.

17 Mr. Pevytoe, as you heard, however, also
18 recalled that the bone fragments were intertwined
19 with the steel belts and, I believe, rendered
20 similar opinions as to the primary burn site.
21 Mr. Pevytoe also eliminates other burn locations.
22 Mr. Pevytoe's opinion about the smelter and about
23 the wood burner, whatever that may have had to do
24 with, on another part of the property, looked in
25 both, crawled up in, put his hands in, moved

1 things around. Didn't find any human remains.
2 Didn't find anything at all that would suggest
3 that that was a primary burn area.

4 And so who's involved, of the
5 individuals that law enforcement is supposed to
6 focus on, who's involved in the mutilation
7 process, who's involved in covering up the
8 homicide. Again, common sense should come into
9 play here, you don't leave that on the steps when
10 you walk into the courtroom. When the burn area
11 is directly behind Mr. Avery's garage, when it's
12 only a few feet from Mr. Avery's trailer, that's
13 the kind of common sense that you should and can
14 use in this case. Again, the evidence keeps
15 pointing only to one individual.

16 Additional processing after the fact,
17 that is, after the items are recovered, occur by
18 DCI agents and Ms Eisenberg, the anthropologist,
19 the doctor. Here is Mr. Heimerl, they find five
20 of the six Daisy Fuentes rivets.
21 Demonstratively, we had these jeans purchased for
22 you so that you can look at where the Daisy
23 Fuentes rivets are located.

24 These are rivets that hold blue jeans,
25 dress type blue jeans that Katie Halbach

1 indicated not only was the kind of blue jeans
2 that Ms Halbach owned, but after Ms Halbach's
3 death, remember, weren't there. They looked for
4 them, those are the pair of jeans, that is, the
5 Daisy Fuentes jeans, are the ones that are gone.

6 So what does that mean, five rivets are
7 found that say Daisy Fuentes on it. They are
8 mixed in with the human fragments. The
9 inference, of course, is that those jeans, the
10 clothing of Ms Halbach, are burned at exactly the
11 same time. There is a picture of Katie.

12 And, again, the credibility that her
13 testimony should be given, I think, is very, very
14 high. They are sisters. Katie knows the kind of
15 clothes. She knew, in fact, made fun of these
16 being old person jeans that her sister had
17 purchased, showed them when she purchased the
18 Daisy Fuentes jeans, would know, and, in fact,
19 was asked to and did look for those jeans, they
20 were missing.

21 We also need to identify the remains.
22 We need to identify who is the person that was
23 burned, who is this individual. We have heard
24 testimony that it was just one person, that it's
25 only talking about one person. But we still have

1 to, although, we can guess I suppose, or
2 speculate, that it's Teresa Halbach. We have to
3 show you, through evidence, that it's Teresa
4 Halbach.

5 We first do that through Dr. Donald
6 Simley. Mr. Simley, although unwilling because
7 of his scientist nature, make 100 percent match,
8 used these words, it's as close to a positive
9 match as you can get, using one tooth.

10 Dr. Simley talked about tooth No. 31, from Ms
11 Halbach's dentist, Dr. Krupka, having been
12 received.

13 Here's a blow up of that particular
14 tooth. And here is an x-ray of this particular
15 structure that was recovered from the burn area,
16 the fragmented and delicate, what Dr. Eisenberg
17 talked about were, dental structures. You can
18 look for yourself as to the similarities,
19 Dr. Simley's used in disaster relief efforts and
20 disaster kind of identifications and I think can
21 help you with that particular process.

22 The charred remains, one piece of bone
23 and tissue was recovered. One piece. One piece
24 was not completely burned up, was not completely
25 charred, to the point where a nuclear

1 identification by Ms Culhane could be made.

2 And although she made a partial profile,
3 that is, in 7 -- they are called loci -- 7 of the
4 13 areas that all labs look for to make a
5 positive match, 7 out of 7 match was made. She
6 gave you the frequency number, if you recall,
7 that being one in a billion, that's with a B,
8 that an individual would randomly have this --
9 this DNA.

10 So the State believes, and the State
11 argues, that there isn't any question that it is,
12 in fact, Teresa Halbach, and her bones, and her
13 remains, and her teeth, that are recovered just a
14 few feet behind Mr. Avery's garage and trailer.

15 Leslie Eisenberg, the State argues, is
16 an amazing expert, an amazing person, one of only
17 a handful of Board Certified Forensic
18 Anthropologists in the entire country. She
19 happens to live here in Wisconsin.

20 Leslie Eisenberg, you heard, was brought
21 on early in the case. And she says a lot about
22 this case and says a lot about what is important.
23 Her expertise, again, she talks about being one
24 of these people that goes to disaster scenes and
25 helps make these identifications.

1 But she didn't just look at some
2 pictures or some reports, she was actually
3 involved in the sifting and the sorting of these
4 bones. She was handling these bones. You could
5 tell how fragile they were, how very delicate
6 some of the dental structures was.

7 She was able to identify these bones as
8 having come from an adult female, no older than
9 age 35, believing -- or excuse me, finds these
10 entrance wounds, that we'll talk about in just a
11 minute, that happened before the burning episode.

12 Dr. Eisenberg testified there was a
13 clear attempt to obscure the identity of an
14 individual. By the way, that's evidence, that's
15 an opinion, that's important to the mutilation
16 count. All right.

17 Obstructing or obscuring the identity
18 for the purpose of covering up a crime, is the
19 essence of mutilation of a corpse. And that was
20 the testimony of Dr. Eisenberg.

21 Importantly, though, Dr. Eisenberg,
22 because she saw all of these bones, because she
23 was involved for such a long period of time, was
24 able to render the opinion that the primary burn
25 area, the primary burn site was behind

1 Mr. Avery's garage. And, again, talked about, or
2 commented on the great take -- care taken by
3 arson agents in the recovery of these bones.

4 Dr. Eisenberg goes through the labor
5 intensive method of the recovery of these
6 particles and pieces of bone, puts them together
7 again, as to the face, as to some of the other
8 areas of Ms Halbach and then able, again, with
9 the assistance of Mr. Austin, is able to show you
10 just from where those pieces come, on diagrams,
11 or on skeletons, or on diagrams -- excuse me --
12 of human skeletons.

13 What she also tells you, is that every
14 bone, at least a part of every major bone group
15 has been recovered from the burn area, from that
16 which is behind Steven Avery's garage. And
17 that's this exhibit up on -- up on the right.
18 All of those bones, or at least portions of
19 everyone of those bones identified, comes from
20 Mr. Avery's burn area. We hear about the -- what
21 she calls defects or damage to an area, just
22 above Ms Halbach's left ear, to that just behind
23 and to the left of Ms Halbach's skull as well.

24 Judge, I will have to alert you that I
25 do probably have perhaps a half an hour or so of

1 my closing left to give. I know that we got a
2 late start. I know that lunch was being brought
3 at this time. I'm happy to give it afterwards, I
4 don't have any problem with that, but I wanted to
5 give the Court at least an opportunity --

6 THE COURT: All right. I don't want it to
7 go too long, after all, it is supposed to be lunch
8 and I think we're going to keep it that way.

9 So, members of the jury, we're going to
10 take a break at this time. We'll resume at 1:30.
11 We're going to take a little shorter than normal
12 lunch break. We'll come back, have the State
13 finish its closing argument and then hear from
14 the defense.

15 Again, I will remind you, the case is
16 not over, do not begin discussing the case at
17 this time. You are excused.

18 (Jury not present.)

19 THE COURT: You may be seated. Counsel,
20 let's prepare to resume promptly, then, at 1:30
21 because I don't want to keep the jury too late with
22 closing argument.

23 ATTORNEY BUTING: Judge, just so you know,
24 after Mr. Kratz finishes, I'm going to need a little
25 bit of time to set up some exhibits.

1 THE COURT: I'm sure you will, and you will
2 get it.

3 ATTORNEY BUTING: All right.

4 (Noon recess taken.)

5 (Jury present.)

6 THE COURT: And, Mr. Kratz, at this time
7 you may resume.

8 ATTORNEY KRATZ: Thank you, Judge. Is the
9 volume okay with the Court; I assume it's okay.

10 We're going to break one rule today
11 never give an important speech after lunch it's a
12 difficult thing to do. I will try to get through
13 the rest of my closing in a manner that makes the
14 most sense. And I beg your indulgence as to how
15 important this is, to allow me to talk about our
16 remaining several facts.

17 Dr. Eisenberg, just to review our
18 transition, talked about two gunshot wounds to
19 the head of Teresa Halbach. Remember her
20 testimony, that it was before burning, that this
21 was a pre-burning event, gunshot events. She
22 knows exactly where. That speaks to
23 Dr. Eisenberg's quality, as far as an
24 anthropologist, forensic anthropologist, at that,
25 and to something I think that you should give,

1 obviously, great weight to. Our next important
2 fact, what I believe, although Dr. Eisenberg was
3 a extremely important witness, may well be the
4 State's most important scientific evidence.

5 And that's the DNA part of the case.
6 Sherry Culhane from the Crime Lab was the State's
7 DNA expert. And you learned what DNA was. You
8 learned that it was a genetic fingerprint and,
9 importantly, you learned that it is in every
10 fluid in our bodies, in every tissue in our
11 bodies.

12 And it's the same, that is, it never
13 changes. Never changes, not only throughout our
14 body, but never changes throughout our lives and
15 so DNA is stubborn as well. I talked about the
16 fact that it's stubborn; DNA is stubborn in that
17 sense in that it doesn't change.

18 Sherry Culhane, the Crime Lab analyst, a
19 great deal was said about her. And, again, you
20 are going to have to weigh the credibility of Ms
21 Culhane. Either Ms Culhane doesn't know what
22 she's talking about, or Ms Culhane is a very
23 talented scientist, very talented DNA expert.

24 Ms Culhane, I will remind you her
25 testimony, was in 2003, the analyst that tested

1 the single sample, the single hair that
2 exonerated Mr. Avery. That Ms Culhane's talent
3 in examining one hair was able, quite properly
4 to, through DNA evidence, because it's so
5 stubborn, because it's so reliable, was able to,
6 this woman was able to have Mr. Avery released,
7 with the other parts of that case as well. But
8 the analyst was, in fact, Ms Culhane.

9 She testified in this case, however,
10 that she received samples, that it was the most
11 samples ever sent to the Crime Lab for analysis.
12 It was the most DNA requests, 180, ever made to a
13 single analyst, on a single case.

14 And despite their backlog, you heard how
15 Ms analyst -- excuse me, how Ms Culhane set aside
16 her other work and got results, quality results,
17 to the State, to the investigators, in a time
18 when it mattered; in a time when the officers
19 needed to know whose DNA matched; whether we're
20 talking about female blood or male blood; and in
21 a time when Mr. Fassbender and Mr. Wiegert could
22 refocus or direct their investigation. That's
23 important.

24 It's important in a case like this and,
25 actually, it's reassuring to know that our Crime

1 Lab, our Wisconsin Crime Lab, we can take pride
2 in. We can take pride in the fact that such an
3 important case and an important investigative
4 responsibility and need was met, by Ms Culhane.

5 Again, she processed the vehicle,
6 starting on the 7th, developed DNA profiles, as
7 you heard on, not all 180 samples, I don't mean
8 to mislead at all. But she received 180 and
9 developed many, many, many profiles, all the
10 exemplars, all of the evidence samples in this
11 case, and then compared the profiles of the
12 evidence samples to what are called known
13 samples, or exemplars. We're going to go through
14 her findings because they are so critically
15 important in this case and, again, the State will
16 argue that this is a very talented lab analyst.

17 Again, she's the head of the unit.
18 She's the head of the DNA Unit for the Wisconsin
19 Crime Lab in Madison. Her experience should
20 speak for itself and, certainly, the quality work
21 that she had done within human boundaries should
22 speak as well.

23 We first start with Teresa, start with
24 Teresa Halbach's DNA. And what we start with is
25 a known sample, her Pap smear. You heard about,

1 at Bellin Health, that Ms Halbach, a couple years
2 ago, had a Pap smear done and that was used as
3 the standard they need because we don't have a
4 live person to take a cheek, or a buccal swab
5 from, or even a blood sample from. We need
6 something that we know is Teresa Halbach. And
7 the best sample, you heard, was this Pap smear
8 and this analysis and profile is developed.

9 All of these different markers, as you
10 heard, are different places on a strand of DNA
11 that analysts are trained to look. And they, in
12 fact, do look for and assign values, or actually
13 the machine that's used assigns values at each of
14 those places. And what's important, and what you
15 heard Mr. Gahn ask Ms Culhane to explain for you,
16 as best that we can understand, is that all of
17 these different locations, there are a whole
18 bunch of different profiles that are possible.
19 You heard, at least some examples of, at the
20 D3S13 location, you know, how many variations.
21 This is a 16/18 profile, but how many
22 possibilities are there.

23 And I'm not going to reiterate all of
24 that testimony because you took good notes about
25 that, I'm sure. But what's important is that

1 each of these is different. They are unique to
2 an individual, or at least this entire profile is
3 unique to an individual. In other words, there's
4 one, absent identical twins, which didn't come up
5 in this case and isn't part of this case, I add
6 that just out of intellectual integrity, but
7 other than identical twins, no two people share
8 the same DNA profile.

9 No two people, not brothers, not son and
10 daughter, nobody shares the same nuclear DNA
11 profile. And that's why it's so important.
12 That's why it is so discriminating, as far as who
13 does this belong to. You can take known samples,
14 then, and you can test them about -- or with
15 evidence samples. All right.

16 So the evidence samples of, in this
17 case, Exhibit A, those are all of the different
18 evidence samples, including the swabs that were
19 taken from the back of the RAV4, the back
20 tailgate, and the actual door itself that
21 Mr. Stahlke talked about the flying blood, the
22 blood spatter analysis, the saliva or the swab
23 taken from the Pepsi can. That's all evidence
24 that Ms Culhane developed and, again, compared to
25 this known -- excuse me, this known sample.

1 And so all of those blood samples, and
2 A-14 is the Pepsi can, they all developed exactly
3 the same. It's called a full profile, this isn't
4 the seven out of seven partial profile. At all
5 15 different locations a pattern, a analysis, is
6 developed for these unknown -- these unknown
7 samples.

8 And as Ms Culhane talked about, for all
9 the different bloodstains and Pepsi can, she was
10 able to compare, as you can, the results from the
11 RAV4 samples, to the known Pap smear, to Teresa
12 Halbach. And it is a perfect match, 15 out of 15
13 exactly, exactly a perfect match.

14 The blood or bullet fragment, which is
15 recovered on the 2nd, same thing is done with
16 that, you heard about the extraction process of
17 having to wash the DNA off of the bullet, but it
18 was able to provide a profile by which a match
19 can be made, or an attempted match can be made.

20 Remember that bullet that was found by
21 Mr. Heimerl, later processed and later developed.
22 And Ms Culhane, then, is able to make that
23 comparison. And although the item has, in two
24 separate locations, one of the values or the
25 spikes, it is not at all inconsistent with the

1 results. And so Ms Culhane says that is
2 insignificant as far as -- as the match.

3 Now, as you have heard, there is, not in
4 the bullet, not in the bullet extract itself, not
5 in the evidence, but in a control sample, in a --
6 what I understand to be a tube of some solution,
7 water, some saline, something, that's supposed to
8 have nothing on it, Ms Culhane's own DNA shows up
9 on that particular run, on that particular
10 sample. And she called that, quite
11 appropriately, contamination.

12 And that's a hard word for jurors, I
13 believe, at least I argue, to understand. But as
14 Mr. Gahn and Ms Culhane talked about
15 contamination, that that's expected, especially
16 in cases with this kind of volume. It's happened
17 89 separate times, unfortunately. This is one of
18 the cases that it happened.

19 But because it wasn't on the bullet,
20 because it wasn't on the piece of evidence
21 itself, Ms Culhane testified, and you can believe
22 her or not, but this expert witness testified
23 that it does nothing for the comparison purposes.
24 It does nothing to diminish whether or not Teresa
25 Halbach's DNA is on that bullet.

1 And stated another way, the fact that
2 Sherry's DNA is on some water or some control
3 somewhere should not, and in fact in this case,
4 did not, keep from you, the jurors, the fact
5 finders in the case, whether or not Teresa
6 Halbach's DNA is on the bullet. All right.

7 That's important evidence. You would
8 want to know that. You would want to know
9 whether or not Teresa Halbach's DNA is on this
10 bullet, this bullet that's found in the garage,
11 in Steven Avery's garage, is Teresa's DNA.

12 And as Ms Culhane said, there isn't
13 anything that can change one person's DNA into
14 another. There is no process, there is no
15 trickery, there's nothing that can go on that can
16 convert, if you will, somebody else's, in this
17 case Sherry's, DNA, into Teresa's. Teresa's DNA
18 is on the bullet.

19 It is your decision and your duty to
20 decide how much, how little, weight, to give to
21 the contamination on the control sample, again, a
22 sample that has nothing to do with this
23 particular bullet. Again, another match.

24 And the frequency, and what we're
25 talking about with all of these matches, and not

1 just these, but also the seven out of seven that
2 we talked about before, although one in a
3 billion, the frequency of all of these blood and
4 saliva matches for our victim, for Teresa, is you
5 would expect to find that DNA profile that we
6 just saw, at random, one time in every 416
7 quadrillion times in the Caucasian population.

8 Well, that's a number that's so big that
9 many of us, most of us, don't really have a good
10 concept about. It's a lot, it's a lot of zeros.
11 Okay. And it is a number that you can call that
12 an exact match. All right. An exact match.

13 When we talked about 6 billion people or
14 so in the world, 6 billion only, and this is a
15 quadrillion, lots and lots more. We're going to
16 talk about quintillions next. But we're talking
17 about such big numbers that it is absolutely --
18 has no impact on the results.

19 But more than that, what does this mean?
20 What does -- what does finding Teresa Halbach's
21 DNA mean, in this case? And where was it found?
22 Because DNA can't change, because DNA is so
23 stubborn, because DNA is what DNA is, I told you
24 at the opening statement, that I'm going to
25 reiterate now, that Teresa Halbach cries out to

1 you, the jurors, at this case. And it tells you
2 to listen and to look.

3 Teresa Halbach, by her DNA and where
4 it's found, is telling you a story. She's
5 telling you, this is where I was. She's telling
6 you, this is what happened to me. She's telling
7 you, this is how I was killed. She's telling
8 you, this is how this person tried to hide me and
9 where they tried to hide me.

10 And it's the kind of evidence, it's the
11 kind of powerful evidence that you can't ignore.
12 I told you at the opening statement and I'm
13 telling you now, that Teresa Halbach left this
14 evidence for you to see, and left this evidence
15 for you to hear, to hear about this evidence.
16 And I simply hope that this evidence has that
17 impact, that you can see where she was; you can
18 see where her body was placed; you can see how
19 she was killed, in this case; not through
20 speculation, not through guesswork, but by
21 scientific evidence.

22 Mr. Avery's DNA is also collected. And
23 the stubbornness about DNA applies to Mr. Avery's
24 DNA, just like it does to a victim of a crime.
25 Blood that's left behind, in this case, is

1 evidence; it's evidence against Mr. Avery. It's
2 important evidence, very, very important evidence
3 because DNA doesn't forget.

4 DNA kinds of evidence can't be confused,
5 it can't be tricked on cross-examination. DNA
6 evidence is what it is. And only through human
7 failure, failure to collect it properly, or
8 failure to analyze it properly, or failure on my
9 part to explain it properly to the jury, is the
10 limitation of DNA evidence.

11 Because the DNA evidence in this case is
12 incredibly powerful. You heard testimony that
13 Mr. Avery had a cut to his hand. Had a cut to
14 the outside of his right hand, what we're calling
15 the source of Mr. Avery's blood. This is how
16 Mr. Avery leaves those six different blood
17 samples within the SUV.

18 And from a prosecutor's standpoint, it's
19 fortunate to have that kind of evidence. It's
20 fortunate to be able to stand up here and tell a
21 story, to be able to tell you that story from
22 Steven Avery. Because just like the victim, just
23 like Ms Halbach's DNA telling you, here is where
24 I was, and here's what happened to me, and here's
25 how I was killed, Mr. Avery's blood tells a story

1 as well.

2 Now, we don't have the same kind of
3 standards used for Mr. Avery. We have what's
4 called a buccal swab, a cheek -- kind of a Q-tip
5 that's placed in his cheek. By the way, this is
6 the same kind of test Ms Culhane said was used in
7 Mr. Avery's exoneration, a buccal swab. You saw
8 that they were still sealed in the Manitowoc
9 County Sheriff's Department, after they were
10 used, analyzed and sent back.

11 But the Crime Lab never had Mr. Avery's
12 blood sample, it was all used through, as you
13 hear it is now days, through buccal swabs,
14 through standards. And the standard for
15 Mr. Avery, just like for Ms Halbach, is developed
16 at all 15 of these different locations that are
17 called loci, for Mr. Avery.

18 So what Ms Halbach (sic) does, then, is
19 she does test samples of different swabs, or
20 different swatches, or different things that
21 there are to analyze. She develops DNA profiles
22 for the hood latch. And you are able to see,
23 then, that the -- although not blood, no visible
24 blood available, you heard about from handling a
25 hood latch or a piece of metal, that depending

1 how much your hands sweat, skin cells and other
2 matters of DNA can be transferred onto a hood
3 latch.

4 Well, it was, in this case. On this
5 hood latch, Mr. Avery's DNA, on the Teresa
6 Halbach SUV. Reaching underneath the hood, is
7 Mr. Avery's DNA; an exact, perfect profile of
8 Mr. Avery's DNA, that does not include, at least
9 visibly, his blood.

10 Well, the same kind of analysis is done
11 on this Toyota key. And you will see the
12 analysis, the Toyota key, the evidence is
13 analyzed. And you will see that right down the
14 line, all 15 places, it's a perfect match for
15 that of Steven Avery. And, again, you heard that
16 by handling a key and, importantly, the last
17 person to handle the key is the most likely
18 source of the DNA that's going to be found on
19 that particular piece of evidence.

20 That was the testimony, that was the
21 testimony in this case. Mr. Avery was the last
22 person to handle this key. This key is the key
23 for Teresa Halbach's vehicle. This key, found in
24 Mr. Avery's bedroom, has a full, a complete, a 15
25 out of 15 match for Mr. Avery's DNA. That is

1 significant evidence.

2 We then talk about the blood and the
3 other stains that are found within the SUV. The
4 other five places in the front part: The
5 driver's seat; front console; the ignition area;
6 which is perhaps the most damning of all of the
7 DNA that's found; passenger seat; and the CD
8 case.

9 Now, each of these locations, Ms Culhane
10 is able to develop a profile on, a full 15 out of
11 15 profile, on these bloodstains. So these
12 aren't small bloodstains. These aren't one
13 microliter as you heard later in the trial about.
14 These are large bloodstains, a drop, as you
15 heard, one droplet of blood is 50 microliters.
16 And so these stains, although we do have a one
17 droplet stain of Teresa's, all of these stains
18 are much, much larger than that.

19 So, in the front, that is, from the
20 front seats forward, five different bloodstains
21 left by Mr. Avery in Teresa Halbach's vehicle.
22 Again, we're pointing to one person being
23 responsible for Ms Halbach's death.

24 In the rear, that is, on the rear
25 passenger door, that bloodstain is left. And we

1 hear that it is, in fact, Steven Avery's; again,
2 a perfect match for Steven Avery.

3 Now, each stain, Ms Culhane testified,
4 she's able to develop a frequency. Again, how
5 likely is it in the Caucasian population that you
6 would find, randomly, that exact DNA profile.
7 And she said one in four quintillion. Okay.

8 This is a number that is absolutely
9 huge. People can't even really picture how much
10 a billion is, finding a billion, one thing in a
11 billion. Finding one thing in a billion is -- is
12 hard enough, but I'm going to take 45 seconds and
13 I'm going to tell you what a billion is. All
14 right.

15 To get to a billion, you first have to
16 know what one out of a hundred is. Pick up 1
17 white marble and think of 99 black marbles. Can
18 you picture that? You put them together, and if
19 you randomly drew the one white marble out, it
20 would be one out of a hundred. Well, if you take
21 five times that, you're 1 out of 500, 1 white
22 marble in 5 -- 499, 500, if you will, black
23 marbles.

24 Would be like a shovelful or a coal
25 shovelful of marbles and you kind of throw them

1 out onto the floor. One of them is going to be
2 white and the other 500 are going to be black.
3 And that's 1 out of 500 black marbles. Okay.
4 You can kind of picture 1 out of 500.

5 A billion is such a big number, that if
6 every day, let's say you had a reservoir of black
7 marbles and you had one white marble in there.
8 All right. And every hour, every hour, of every
9 day, you took your coal shovel and you got out
10 500 marbles and you threw them onto the floor and
11 you said, is there a white marble there. To
12 randomly look for that match. And you don't see
13 it.

14 And then the next hour comes and you do
15 the same thing. Every hour of every day. Let's
16 say that you had the time to do that and you had
17 a big enough reservoir, here's how big a billion
18 is. To find one white marble out of a billion,
19 you would have to do this 500 marble exercise
20 every hour, of every day. And you would expect,
21 at random, you would expect, at random, to find
22 that white marble -- are you ready for this --
23 right about the time that Thomas Jefferson was
24 signing the Declaration of Independence. If you
25 did it every hour, of every day, 500 marbles

1 each, that's how often you would have to go to
2 get to a billion, to get to one out of a billion,
3 one white marble out of a billion black marbles.

4 That's a partial profile that we're
5 talking about. That's the numbers that we're
6 talking about, you need to visualize something.
7 Well, four quintillion, four quintillion, a
8 quintillion -- I hope you get this -- a
9 quintillion is a million billion, it's a million
10 times more than what I just talked about. A
11 million times you would have to do that with the
12 black marbles going back to the time of the late
13 1700s. So one in four quintillion, I need you to
14 appreciate the size that we're talking about, the
15 frequency that we're talking about here. All
16 right.

17 So when Sherry Culhane talks about when
18 we randomly see that same profile, one out of
19 four quintillion times, I hope that at least is a
20 way, something that you can visualize, as to how
21 big of a number that we're talking about.

22 That leads me to beyond a reasonable
23 doubt. Beyond a reasonable doubt is what do we,
24 the State of Wisconsin, have the obligation to
25 prove in this case. The judge has already

1 instructed you that a reasonable doubt is a doubt
2 for which a reason can be given, from a fair and
3 rational consideration of the evidence.

4 That means, a fair and rational
5 consideration of all of the evidence. Not just
6 some of it, but considering all of the evidence,
7 do we have a reasonable doubt in this case.
8 Doesn't mean beyond all doubt, in other words,
9 from a percentage standpoint, doesn't mean a
10 hundred percent, because the human system that we
11 have, it's a human justice system. My burden,
12 which I fully accept, in proving the defendant
13 guilty, beyond a reasonable doubt, is something
14 that I think, clearly, all of the evidence points
15 to in the case.

16 I told you at the beginning of the case
17 that there were agencies that were involved.
18 Mr. Fassbender talked about DCI and Calumet
19 County Sheriff's Department and Manitowoc County
20 Sheriff's Department and Manitowoc Police
21 Department, Marinette County, and Two Rivers
22 Police Department, New Holstein Police
23 Department, Brillion Police Department, Kiel
24 Police Department, Manitowoc Sheriff, and FBI,
25 and State Patrol, and all the volunteer

1 firefighters and everybody else pitched in in
2 this case, who did their professional job to find
3 out what happened to Teresa Halbach.

4 Law enforcement looked at the
5 possibilities, looked at all of the possibilities
6 that were presented to them, submitted results.
7 They didn't know what the results were going to
8 be. They didn't know the evidence was going to
9 come back to Steven Avery, but it did.

10 They didn't know that the bones were
11 going to come back as matching Teresa Halbach's
12 DNA, but it did. And so when they submit
13 evidence, again, they are not looking for a
14 particular answer, they are just seeing where the
15 answers come. And in this case, as I mentioned,
16 it's all been directed towards one person.

17 This 25 year old person that I called an
18 amazing young lady, this 25 year old lady was
19 murdered. That's real. All right. That's real
20 for family, and it's real for friends, and it's
21 real for Teresa Halbach. And I'm able to argue
22 to you what that means.

23 I'm able to argue to you that that means
24 that Teresa Halbach's dreams, and that her
25 potential and her future aspirations were snuffed

1 out by one act, and by one act from one person;
2 her chance to be loved and her chance to love,
3 and -- on the 31st of October.

4 Tom Pearce described this young woman as
5 somebody that he saw great potential in. I think
6 he said the words that she was really going to be
7 someone. I think there's a lot of people in this
8 room who might argue that she already was
9 someone. She already was someone that was very
10 accomplished and somebody that obviously is very
11 missed.

12 And that brings me to my last fact,
13 brings me to fact number 13, how was Teresa
14 Halbach killed. The manner and cause of death
15 was provided to you by three witnesses.
16 Dr. Eisenberg, Mr. Olson, and Dr. Jentzen. And
17 they all are in concert, they all agree, with how
18 this 25 year old woman was killed.

19 Dr. Eisenberg testified about those
20 cranial fragments showing entrance defects,
21 again, suggesting gunshot wounds to the parietal
22 and the occipital region -- regions. The
23 beveling was prior to the burning. The manner of
24 death she described as homicidal violence. I
25 think Dr. Eisenberg, in her own anthropological

1 way, explained to all of you, well, she didn't
2 just jump into the fire, it was homicidal
3 violence that caused her death.

4 Dr. Eisenberg was able to show you and
5 tell you, through photographs, that the -- this
6 particular bone piece, we wouldn't know it was
7 right above the left ear, but this is a piece of
8 the parietal bone that's right above the left
9 ear, that shows the characteristic sign of an
10 entrance bullet wound. And this particular
11 defect that is shown, again, that we wouldn't
12 know, is the occipital region of the skull, that
13 Teresa was also shot in the back of the head with
14 a .22 caliber gun.

15 Mr. Olson, our trace metals expert,
16 talks about instrumentality. That is, what are
17 these defects caused by. And Mr. Olson,
18 importantly, talked about lead deposits, talked
19 about bullets, and bullets having 99 percent
20 lead, but was able to show you x-rays of these
21 defects that we talked about, the x-rays of the
22 parietal region, where these things that light up
23 are actually particles of lead, which are
24 characteristic of a bullet, a bullet entering the
25 skull of an individual. And there's many more of

1 them, actually, back in the occipital area, many
2 more of these lead particles that he -- the
3 elemental analysis, and found, in fact, that
4 these were lead.

5 And, finally, Dr. Jeffrey Jentzen, an
6 expert, perhaps the expert, in the State of
7 Wisconsin, the medical examiner for Milwaukee
8 County Wisconsin, hundreds of gunshot wounds he
9 reviews. He was asked by Mr. Gahn to review this
10 case and see if he could render an opinion as to
11 both the manner and the cause of death.

12 Dr. Jentzen didn't have any question at
13 all about either one, that there was a gunshot
14 wound to the parietal region, agreeing with
15 Dr. Eisenberg it was a gunshot wound to the back
16 of the head. Manner of death is homicide. Cause
17 of death is gunshot.

18 There's three charges that you are going
19 to need to consider in this case: Homicide,
20 first-degree intentional homicide; mutilation of
21 a corpse; and the felon in possession. And it's
22 the State's obligation to prove to you several
23 things with those. They are called elements, but
24 what we really have to prove is what, and when,
25 and how, and, finally, who.

1 What is clear, that a homicide and
2 mutilation occurred. When, the 31st of October,
3 sometime after 2:45 p.m., when Ms Halbach makes
4 contact at the Avery salvage property. How, the
5 doctors and the trace metals and other experts
6 tell you, by gunshot.

7 And, so, when it comes down to the role
8 of the jury, when it comes down to you as the
9 trier of fact, searching for the truth, not
10 speculating, not searching for doubt, but
11 searching for the truth, it's that last answer.
12 It's the who, that you have to decide.

13 And you have got to decide whether or
14 not the State has satisfied you, beyond a
15 reasonable doubt, who killed Teresa Halbach.
16 Again, based upon the facts, based upon the
17 evidence, not based upon speculation.

18 I told you when I first stood up before
19 you this morning, there was no question, no
20 question at least from the State's perspective,
21 who was responsible. And despite having been
22 here for five weeks, I'm hopeful at this time
23 that you are able to agree with the State of
24 Wisconsin that all of the evidence, all of the
25 evidence, points to only one person. All the

1 circumstantial evidence, all the scientific
2 evidence, all the direct evidence, points to one
3 individual.

4 The law enforcement officers have done
5 their duty. All of the citizen searchers and
6 citizens that helped have done theirs. The
7 prosecution team, I believe, has set forth a very
8 methodical, very compelling case. And so we're
9 finally asking you, the citizens -- the jurors in
10 this case, the citizens of Manitowoc County, to
11 return verdicts of guilty, as it is your duty to
12 do so.

13 That's all I have, Judge, thank you.

14 THE COURT: Members of the jury, we're
15 going to take a 10 minute break at this time to give
16 the defense a chance to get ready for its closing
17 argument. Again, do not begin your deliberations at
18 this time. We'll call you back in as soon as we're
19 ready. I anticipate it being about 10 minutes.

20 (Jury not present.)

21 THE COURT: You may be seated.

22 ATTORNEY BUTING: Maybe a little bit longer
23 than 10 minutes, I have to get these exhibits
24 together.

25 THE COURT: All right. I will come back at

George Clooney

1 2:25 and see how you are doing.

2 (Recess taken.)

3 (Jury present.)

4 THE COURT: Mr. Buting, at this time you
5 may begin the defense closing.

6 ATTORNEY BUTING: Thank you, Judge. Good
7 afternoon, ladies and gentlemen. This is the first
8 time I have actually had a chance to talk to you. I
9 have sort of been talking at you as we walk by the
10 witnesses for 6, 5 weeks, whatever. And I'm
11 really -- I feel honored and privileged to do so,
12 just as I am honored and privileged to defend
13 Mr. Steven Avery here, in this very, very serious
14 case.

15 Let me make one thing very clear, right
16 here at the outset. We do not and have never
17 claimed that the police killed Teresa Halbach.
18 But in that respect they have that in common with
19 Steven Avery. However, the person or persons who
20 did kill Teresa, knew exactly who the police
21 would really want to blame for this crime.

22 And they were aided in that respect, by
23 widespread media publicity as early as Friday
24 morning, November 4th, the very morning after the
25 day she was first reported. Widespread publicity

1 that identified Mr. Steven Avery as one of the
2 last people known to have seen her. And because
3 of who he is, that drew even more media attention
4 than perhaps it might other wise have. And the
5 focus was on Mr. Avery, rather than one of the
6 other customers that she saw that day.

7 And this was the very same Steven Avery
8 who was suing the Manitowoc County and the
9 Sheriff's Department, with a lawsuit asking for a
10 whole lot of money, for the wrongful conviction
11 and all the years in prison that he spent, from a
12 1985 wrongful conviction.

13 I believe that when the Manitowoc
14 officers saw this, they very badly wanted to
15 believe that he was guilty and that this was
16 their way out. And that from that point forward,
17 that they had this investigative bias, focused on
18 Steven Avery, that was, then, skillfully
19 exploited by the real perpetrator of this crime.

20 Now, from the very beginning, Steven
21 Avery has proclaimed his innocence in this case.
22 He told that -- everybody that had a camera,
23 anybody who talked to him, that he was not
24 guilty, and that he was being framed. That the
25 police planted his blood.

1 And I want you to think for just a
2 moment how difficult a situation you would be in
3 if that had occurred to you. How, after all of
4 this evidence comes out, and police, who better
5 than anyone else would know how to plant
6 evidence, how you would get back the presumption
7 of innocence. How do you go about trying to get
8 the community, and ultimately a jury such as you,
9 to believe in our system of justice, to believe
10 that in America you are presumed innocent, unless
11 the State, which has the entire burden of proof,
12 can prove you guilty, beyond a reasonable doubt.

13 What would you do? Remember, this
14 morning and five weeks ago, you promised that you
15 would do that, despite all of the pre-trial
16 publicity you may have been exposed to and may or
17 may not have retained. You promised each of us
18 and the Court, and the Judge instructed you
19 today, that you must presume Mr. Avery innocent,
20 and that you must hold the State to the burden of
21 proof, beyond a reasonable doubt. We will talk a
22 little bit more about that later, but I want you
23 to keep that in mind. Because as you go through
24 this evidence, you have to apply that, because
25 that is your sworn duty.

1 Now, we have offered a theory of
2 defense. And that's what it is, it's a theory.
3 Because if someone frames you, you are obviously
4 not there to see how, exactly, it happened;
5 where, how, when, the kinds of things that
6 Mr. Kratz is going to argue we haven't presented.
7 There is no videotape showing how this was done.
8 There's no cop who, in a *Perry Mason* moment,
9 breaks down on the witness stand and says, yes, I
10 did it, I did it, you got me. This is real life,
11 that doesn't happen.

12 You are entitled to reasonable
13 inferences, however, and we're entitled to the
14 inferences that can be drawn from circumstantial
15 evidence, just as much as they are. And so you
16 ask yourself, what would it look like, what would
17 it look like, what would a case look like if
18 somebody was being framed.

19 And we're going to do that for a little
20 bit now. And I think when you do, you are going
21 to see that it would look a lot like this case.
22 You would look first and you would see, well,
23 what about the lack of evidence, in areas that
24 you would expect there to be evidence. And,
25 then, you would look at the areas where there

1 appears to be evidence linking the person to the
2 crime and ask yourself why does all of that
3 evidence appear suspicious or unreliable.

4 And we're going to go back and forth on
5 that a little bit, but those are the two main
6 areas I want to talk about first. Evidence
7 that's not there, that should be. And evidence
8 that is there that appears suspicious or
9 unexplained. And let me turn to that first.

10 In fact, let me turn to what probably
11 is, at least on its face, the most damning piece
12 of evidence in this case, and that is, Teresa
13 Halbach's remains, found in the burn pit, outside
14 Mr. Avery's garage, trailer, whatever.

15 We'll look at the -- what the evidence
16 shows first. We know that not all of her remains
17 have ever been found. I believe Dr. Eisenberg
18 said only 40 percent of her skeletal remains.
19 We're not talking the rest, obviously, that you
20 would expect might be gone, but skeletal remains,
21 only 40 percent. Not because the other 60
22 percent gets burned up. No expert has ever come
23 into this court and said fire would consume bone
24 completely.

25 What fire does, according to these

1 experts, is it goes through these phases of
2 charred to ultimately calcined -- calcinated, I
3 believe the word was. Sixty percent of it is
4 missing. All right. That's -- That's peculiar
5 to begin with. But, then --

6 Well, before I move off that, there's
7 something else that's missing and that is,
8 Mr. Kratz points out, well, the jeans, we found
9 these rivets in this pair of jeans here. But
10 they only found five of six, assuming that these
11 are the same jeans, and these are just a
12 representative example. But what did they not
13 find, the biggest item of all, the button that
14 closes the waist.

15 They have got magnets they are using
16 through all this dirt. They are the sifting
17 through every thing and they don't find this
18 button anywhere. They don't find her house keys
19 anywhere, her work keys anywhere. They find one
20 single key, which we'll certainly talk about.

21 But most importantly, all the experts
22 agree, these bones were moved. And I have got to
23 tell you, we have been here, now, for five weeks
24 and we have still not heard any explanation from
25 this side about how that happens.

1 In fact, we haven't heard any
2 explanation about a lot of things. We have heard
3 manner and cause of death, but that's not really
4 how Teresa Halbach was killed, or even where
5 Teresa Halbach was killed.

6 Unfortunately, from my standpoint on
7 this point anyway, the State gets to go last.
8 This is called sandbagging. This is where we
9 don't get to respond to the theory or the
10 argument that they have been harboring all this
11 time and haven't told you folks either. So they
12 are going to get up here after Mr. Strang and I
13 are done and they are going to say, hey, this is
14 the explanation, take our word for it. And we
15 don't -- of course, don't have a chance to
16 respond.

17 Well, I'm going to trust that between
18 the 12 of you, ultimately 12, you will be able to
19 answer those questions that they raise. You will
20 be able to pick apart, as well as I can, whatever
21 theory they come up with, because we have not
22 heard any yet.

23 The bones were moved. The question is,
24 were they moved to Mr. Avery's burn pit, or were
25 they moved from Mr. Avery's burn pit. The State

1 would have you believe that the original site of
2 burning was the burn pit, behind his garage. But
3 they have offered no explanation for why bones,
4 human bones, would be found in the Janda burn
5 barrel, some 150 feet, or whatever it is, away,
6 in the other yard.

7 And Dr. Eisenberg told you -- By the
8 way -- I can't believe I forgot this -- there's a
9 third site. There's actually three different
10 sites where human, or possible suspected human
11 bones were found. Clearly identified human bones
12 were found in the burn pit. And clearly
13 undisputed human bones were found in the burn
14 barrel.

15 But there's also this mysterious quarry
16 site, a quarter mile or so away that -- You will
17 have to forgive me, but I'm not as
18 technologically savvy as Mr. Kratz, and so we're
19 going to be using the ELMO instead of a laptop.
20 But this is -- this is the map that was shown to
21 you. This is the diagram that was created by
22 Mr. Austin, with the assistance of Dr. Eisenberg.

23 This flag down here, is the third site,
24 where pelvic bones were found, according to
25 Dr. Eisenberg. They were sent to the FBI to do

1 mito-typing (phonetic). We did a stipulation
2 that nothing could be determined from them. But
3 what she said was, all three locations where
4 bones were found, or possible human bones in the
5 case of the quarry, were all burned to the same
6 degree, same amount of calcination.

7 So there is a similarity here that
8 continues forward through all of them. And, very
9 important, no evidence of more than one body. I
10 don't even know if there are other bodies missing
11 in Manitowoc County, or people missing, but in
12 this instance, Dr. Eisenberg concluded, and
13 Dr. Fairgrieve agreed, no evidence of more than
14 one body. So we have got these bones in three
15 different locations.

16 Now, curiously, you have never seen a
17 photograph of what this site looks like, or what
18 the bones looked like, and neither have I. And
19 neither has, I assume, any of the prosecution
20 team because, for some curious reason, no
21 photographs were taken of that site.

22 The method of recovery in this case was
23 not skillfully done, as Mr. Kratz tried to argue,
24 by these experienced arson experts. This
25 investigation needed a forensic anthropologist to

1 be called to that scene, before anything was
2 touched. And Dr. Fairgrieve explained why.

3 Dr. Eisenberg admitted that by the time
4 she got the bones, she was unable to determine
5 some important information about its location,
6 how it was sited. And not only was nobody called
7 to the scene, but no photographs.

8 Have you seen one photograph of any of
9 those bones in the burn pit, in this location,
10 before it's picked up? One photograph? No, you
11 see boxes of bones, tables where they are thrown
12 out. You don't see them in their site. And
13 Dr. Fairgrieve explained to you why that's
14 important, especially important, if you're going
15 to try and answer the question of, was that the
16 burn site.

17 Dr. Fairgrieve is probably the expert in
18 the world, or at least in this North America, on
19 the forensic identification and interpretation of
20 cremains, much more experienced than
21 Dr. Eisenberg in this area. I don't have a
22 problem with Dr. Eisenberg; she's a fine person,
23 and a fine anthropologist.

24 But Dr. Fairgrieve has much more
25 experience in the field, dealing with cremains.

1 He's written a book that's coming out soon. He's
2 worked for the Crown all of his life. This is
3 the first case he's ever testified for the
4 defense. So this is not some paid defense expert
5 that we have just brought in here to try and --
6 try and do a smoke screen or something.

7 This is a world renown expert. And what
8 he says is, he's had a lot of cases, or he's been
9 called in and that very question has been
10 presented, the bones were moved, where is the
11 original site. Was it over here, or was it where
12 the bones were found.

13 Dr. Eisenberg says, you have to listen
14 carefully to her opinion, she concluded -- First
15 of all, she could not rule out other possible
16 burn sites, but her opinion was that it was most
17 likely the original site was behind the garage.
18 And that was based on the fact that most of the
19 bones that were recovered were found in that
20 location, that she would have expected more
21 breakage, and that she found a lot of small
22 delicate type of bones in that area, and so,
23 therefore, she concludes this must be where the
24 burn took place.

25 But Dr. Fairgrieve told you, that from

1 his own case experience, real world case
2 experiences, he has found the tiniest bones in
3 the human body, the little bones in your middle
4 ear. He has found those moved into the secondary
5 site, not at the original burn site.

6 And he told you something else that,
7 frankly, just makes common sense. In his
8 experience, where the majority of the bones are
9 found, that's the location where the bones were
10 moved to. Why? Why does that make common sense?
11 Because if you're -- if for whatever reason you
12 are trying to disguise the original site where
13 the burn took place, and you are going to plant
14 them, or put them some place else, of course you
15 are going to move as many of them as you can to
16 the second location. That makes common sense.
17 It would make perfect sense. And it fits with
18 Dr. Fairgrieve's own real case experience.

19 The other thing Dr. Fairgrieve said is
20 that, had an expert been called to the scene, a
21 real forensic anthropologist, you can determine
22 things about that. I believe he talked about a
23 case where he was able to tell that this was the
24 first, the original spot of burning, because
25 there was some anatomically connected bones.

1 Even though burned, they are close together,
2 anatomically, so you can tell that's where they
3 were burned. If you moved them, they would fall
4 apart and they would be rearranged.

5 Unfortunately, Dr. Fairgrieve, again, he
6 didn't go out on a limb. He said, I cannot tell
7 you for certain, where the original burn site is,
8 nobody can, because of the collection effort.

9 And I'm not faulting these officers,
10 there's nothing deliberate going on here. They
11 probably never encountered a case like this
12 before. And what they should have probably done
13 is just put a tarp over it. Instead, Agent
14 Sturdivant recalls -- I think it took five hours
15 before Mr. Ertl to come to the scene. And it's
16 already starting to get towards dark, 3:00, 3:30
17 or something. So they're hurriedly trying to get
18 as much as they can, working up to dark, until it
19 gets too dark, without light.

20 It's not that they deliberately
21 destroyed the evidence at the scene, but by
22 moving it without the kind of knowledge -- Well,
23 you have seen archaeologists on TV and in movies,
24 you know how they do it, how they move very
25 carefully with brushes. They want to make sure

1 that they can determine exactly where the
2 location of these bones are. Because, if they
3 are not in any kind of anatomical connection,
4 that tells you something.

5 So, Dr. Fairgrieve -- I'm sorry --
6 Dr. Eisenberg tells us that these bones were
7 found in the burn barrel. Zoom in first so you
8 can read the top. This is Exhibit 401. Evidence
9 Tag 7964, she told you was bones recovered from
10 one of the four Janda burn barrels that were
11 located.

12 She finds long bone shafts, metacarpal
13 fragments, vertebral -- vertebral fragments, and
14 a scapula fragment. And the helpful little
15 diagram here describes where you would find these
16 in your body. Now, obviously these are scattered
17 all over ones skeleton. It's not like somebody
18 dismembers an arm and burns that in the burn
19 barrel and you would expect to find only those
20 items. These were scattered and we'll talk about
21 why in just one second.

22 I think this was -- This is Exhibit 402,
23 the pelvic bones that were found in the quarry.
24 Now, again, possible, I'm not going to overstate
25 here. She was not conclusively able to determine

1 that they were human, but they were all burned to
2 the same degree. And she certainly could not
3 rule it out.

4 What explanation is there for finding
5 scattered bones of Teresa Halbach in the burn
6 barrel and in the burn pit. I'm going to propose
7 one possible theory, there could be others. You
8 may come up with others on your own. But I want
9 to show you, first, one of the instructions the
10 judge read you that's in your packet.

11 Focusing here on the reasonable
12 hypothesis. If you can reconcile the evidence
13 upon any reasonable hypothesis, consistent with
14 the defendant's innocence, you should do so and
15 return a verdict of not guilty.

16 I suggest that a reasonable hypothesis
17 is that somebody else burned Teresa Halbach's
18 body elsewhere, maybe in the quarry, maybe
19 somewhere else. And then they used that burn
20 barrel that was found on the Janda's property as
21 a container to transport the remains, as many as
22 they could scoop in, to Mr. Avery's backyard.

23 And they dump it in the burn pit, or
24 scatter it about, whichever, think that they've
25 got it all, turn it back over. And think about

1 how heavy these burn barrels are, you are not
2 going to be able to lift them up and turn them
3 upside down as easily as you would be tipping
4 them over. And they inadvertently leave a few
5 behind. This is most likely happening in the
6 dark.

7 And the barrel gets, then, placed over
8 on the Janda property, along with the other three
9 that were there, and so there's four barrels
10 found. That explains why there's scattered bones
11 from all over, skeleton, found in the barrel.
12 Explains why most of them are there in
13 Mr. Avery's. And explains why any would be found
14 in the burn barrel at all.

15 If Mr. Avery wanted to get rid of the
16 bones, from his burn area, he would not put a
17 scattered few in someone else's burn barrel and
18 leave all the rest behind. That's not making
19 sense. It doesn't make sense. No one would do
20 that.

21 One other little interesting bit of
22 testimony that almost slid by me, actually, was
23 Mr. Dassey, Bobby Dassey's testimony. Sometimes
24 the truth comes out in little dribs and drabs
25 when people aren't expecting it. And on direct.

1 examination, as Mr. Kratz, I believe it was, was
2 trying to lead Mr. Dassey through a number of
3 photographs.

4 He asks him about the burn barrels that
5 your mom has out back. And Bobby says, we have
6 three. And then they try to correct him, and
7 he's like, I thought we had three. And yet four
8 are found on November 5th.

9 Where did that fourth one come from? I
10 submit it was the transport item used, perhaps
11 picked up, used to transport the bones and then
12 placed over where the others would -- where the
13 others were.

14 Let me tell you something about who
15 another possible suspect is. It may not, but
16 it's a reasonable hypothesis to explain the bones
17 the way they are. Now, when you realize -- The
18 reason I'm spending some time on this, is when
19 you realize that this is what may have happened
20 here, then you realize why it's so important.

21 Because if that body was burned
22 elsewhere and then moved and dumped on
23 Mr. Avery's burn pit, then Steven Avery is not
24 guilty, plain and simple. Because no one would
25 burn a body somewhere else and then move the

1 remains and dump them in your own backyard. No
2 one would do that.

3 Now, that's why the State has gone to
4 such trouble avoiding the fact that the bones
5 were moved, that's why you heard nothing about it
6 here. Because it does not fit with their theory
7 that Avery is guilty. They know that if you come
8 to believe that there is reasonable doubt about
9 whether those bones were moved to Mr. Avery's
10 backyard, then you are going to find him not
11 guilty.

12 You have to find him not guilty. Even
13 if, in the end, you aren't completely satisfied
14 how it occurred. Because although we offer you a
15 theory of defense, that does not mean that we
16 take on the burden of proof. The State has the
17 burden of proof. They have to answer the
18 questions that come to your mind, beyond a
19 reasonable doubt.

20 If someone is framed, they are not going
21 to be there. They are not going to see how
22 exactly it is done, but this is consistent with
23 the evidence, I submit.

24 Now, let's turn from the evidence that
25 appears to be incriminating, but is suspicious.

1 Let me turn for a moment to some of the evidence
2 that is lacking, that you would expect to find,
3 if Mr. Avery was really guilty.

4 There was blood identified in the RAV4,
5 that is, Mr. Avery's. And I don't know why,
6 frankly, we went through this exercise in
7 statistics in figuring out what a billion means,
8 when we're not, we've never challenged that. We
9 don't challenge that -- whether his profile --
10 when they come in and they say this is his blood,
11 this is not his blood, or whatever, there is no
12 dispute on that.

13 The question is, how did that blood get
14 there. And as you think, again, what a case
15 would look like if someone is framed, this is
16 very important as well. Because in the RAV4,
17 they find five, ultimately six stains, I believe,
18 which they theorize must have come from an
19 actively bleeding person, which means, the person
20 was not wearing gloves, and yet, they find no
21 fingerprints.

22 Why, because fingerprints are very
23 difficult to plant. Can't say it's never been
24 done, but it's extremely difficult to plant
25 someone's fingerprints. Much easier to plant

1 someone's blood, if you can get ahold of some.

2 So that right there is peculiar.

3 Now, is it because he wiped off his
4 fingerprints, took the time to wipe off all his
5 fingerprints, but missed the blood. Come on,
6 that doesn't make sense at all. Besides, we know
7 that there are eight unidentified fingerprints,
8 at this moment, that were found on that vehicle,
9 including some very incriminating locations.

10 I went through it with Mr. Riddle.
11 Right on the back rear cargo door of the RAV4 --
12 which of course I don't have -- right where you
13 would expect, if somebody is opening that door to
14 put a body in, they are going to find your
15 fingerprints, if you're not wearing gloves. And
16 if you're bleeding you're not wearing gloves.
17 You can't be. You can't have it both ways.

18 I would also point out, Dr. --
19 Mr. Riddle, I asked him, well, you took the
20 fingerprint standards of Lieutenant Lenk and
21 Sergeant Colborn. You know what the defense here
22 is. You know what we have been accusing them of
23 for the last month or more. Did they ask you to
24 compare these unidentified latents that were
25 found on Teresa Halbach's vehicle with Sergeant

1 Colborn or Lieutenant Lenk's standards, to see if
2 you could rule them out, or match. The answer,
3 no. Why, because they don't want you to know.

4 You cannot open this vehicle without
5 touching that latch. And this is where he said
6 he found them, the fingerprints. There, there,
7 and there. Riddle also found them on the hood.
8 Isn't that interesting. He says the lifting up
9 of the hood has been a big part of the State's
10 case. No one has compared those to Lenk and
11 Colborn.

12 The other thing that's kind of curious
13 is that no one at the scene sees any blood in the
14 vehicle. Granted it's -- part of the windows are
15 tinted, and it's -- but it's not dark. This
16 vehicle was found at 10:30, 11:00 a.m. in the
17 morning, on a Saturday.

18 And I believe Mr. -- or Special Agent
19 Fassbender, I believe he was the one, that says
20 he came with his flashlight. Maybe that was
21 Ertl. Was looking 5 or 10 minutes inside that
22 vehicle and didn't see any blood. Now, maybe you
23 won't see the blood on the black CD case, but if
24 indeed the vehicle is locked, you might want to
25 be looking inside to see if there's a key,

1 wouldn't you think.

2 You are going to be shining your
3 flashlight right there to see if maybe the key is
4 in the ignition, no one sees this rather peculiar
5 looking bloodstain that looks sort of like you
6 might get if you take a Q-tip and dab it.
7 Doesn't look consistent with the State's theory,
8 as I understand it.

9 And then you look at maybe the most
10 obvious lack of evidence. And that is the
11 complete lack of any blood or DNA of Teresa
12 Halbach anywhere inside Mr. Avery's entire
13 trailer and you heard what the police did with
14 that trailer. They peeled off the paneling, they
15 ripped up the carpeting.

16 You heard Mr. Ertl talk about how in one
17 instance he was familiar with, the suspect had
18 cleaned up the carpet with carpet cleaner and it
19 wasn't noticeable. When they peeled the carpet
20 back, it had soaked through to the pad. Well,
21 the police were at least smart enough to look for
22 that.

23 Here no blood on that pad. No blood on
24 the carpet. No bloody bedding. Admittedly, you
25 could burn the bedding, sure. You could get rid

1 of the bedding. But no blood on the mattress.
2 And there's no evidence that there was any change
3 in the mattress. And there's no evidence that
4 any mattress or box springs or any of that was
5 burned.

6 No blood spatter on the walls or the
7 ceiling. No bloody trail of a body being carried
8 out of that bedroom into the garage or into the
9 burn pit. Nothing on the carpet. Nothing on the
10 back stoop, the deck, anywhere. No scratches on
11 the headboard. No rope fibers on the headboard.
12 Nothing that would indicate somebody restrained,
13 struggling for their life, was murdered in that
14 bedroom.

15 Why am I telling you this? The State is
16 now saying he was -- I believe they are trying to
17 argue that she was killed in the garage, although
18 that's still not clear either. Why do I care
19 about the bedroom, because the Judge has told you
20 that you bring your common experiences too, you
21 can rely on those common experiences. And one of
22 the common experiences that you have all,
23 unfortunately, been exposed to, was the pre-trial
24 publicity in this case.

25 ATTORNEY KRATZ: Judge, I'm going to

1 interpose an objection. He is commenting on
2 pre-trial or out of court statements, whether by
3 counsel or by other witnesses. That is absolutely
4 improper. That is not a common experience that they
5 bring to the courtroom.

6 THE COURT: All right. Just a second, I'm
7 going to excuse the jury for a couple minutes.

8 (Jury not present.)

9 THE COURT: You may be seated.

10 ATTORNEY BUTING: Judge, I'm actually
11 bringing this up only to show them, and my next
12 explanation would be how important it is not to leap
13 to a quick judgment and why it's so important that
14 they disregard all of that kind of information they
15 may have heard before and focus on the evidence in
16 this case. That's where I'm going with this.

17 THE COURT: Okay. I wasn't sure from the
18 introduction comment if you were going to refer to
19 any information that was not introduced as evidence.
20 As I understand it, you are telling me you are not.

21 ATTORNEY BUTING: That's correct. That's
22 all I intend to say about it.

23 THE COURT: Mr. Kratz.

24 ATTORNEY KRATZ: When he starts with,
25 unfortunately, you were exposed to information, he

1 is pre-supposing, first of all, that they know that.

2 Secondly, Mr. Strang and Mr. Buting, in
3 jury selection, referred in great detail to out
4 of court statements in this particular case.

5 But, third, and most importantly, the
6 jury has already been instructed not to consider
7 anything that was outside the courtroom. So to
8 highlight some -- something they may have heard
9 on the news, or something earlier, is absolutely
10 improper and I'm suggesting that Mr. Buting knows
11 that.

12 ATTORNEY BUTING: I disagree. This jury
13 was exposed to false, misleading information for
14 months. And it's not until they came into this
15 courtroom that they heard the other side. That's
16 the point -- this is the best example I can think of
17 on why a case has to be decided and tried in the
18 courtroom.

19 The Court's instructed them. We talked
20 about it in voir dire. We couldn't ignore the
21 fact that at least three of these jurors who are
22 sitting here today came in saying, I think he's
23 guilty. They promised to put it aside, but
24 that's all I'm doing is reminding them of that.

25 THE COURT: One of the problems, as I

1 recall, is that the jurors, and I don't have each
2 individual juror's answer committed to memory, but
3 it's my understanding that they were exposed to
4 pre-trial publicity in varying degrees. For the
5 most part we wound up with jurors who weren't as
6 exposed to the publicity as some others. But I also
7 agree that we do not have a jury composed completely
8 of people who were not exposed to any pre-trial
9 publicity.

10 I'm a little concerned that, even the
11 reference to publicity, for the same reasons I
12 expressed as one of the reasons for dismissing
13 the false imprisonment charge is, references to
14 it could possibly lead the jurors to talking
15 about it in deliberations and that's something
16 that I don't think we want.

17 ATTORNEY BUTING: I agree. And that's as
18 far as I was going with it. I wasn't going to draw
19 any more references to it, other than to remind them
20 how I think this is the best example, now that they
21 have been through the process, to understand why it
22 is so important for them to only judge the case on
23 the facts, not speculating.

24 THE COURT: All right. I'm going to ask
25 you -- you can refer to speculation, but I'm going

1 to ask you to phrase it in some other way that
2 doesn't involve referring to pre-trial publicity, in
3 order to avoid the problems with it.

4 ATTORNEY BUTING: That's fine. I will just
5 finish by saying, that this case is an example of
6 why you can't leap to quick judgments and why you
7 should base your decision on the evidence in court.

8 THE COURT: That's fine. Anything else,
9 Mr. Kratz?

10 ATTORNEY KRATZ: I'm not sure how to
11 un-ring that bell, Judge.

12 ATTORNEY BUTING: Well, I wish I could
13 un-ring it too.

14 THE COURT: Both parties have made
15 arguments about un-ringing bells. I don't think the
16 comments that have been made thus far get us
17 significantly into that problem to require
18 corrective action. So as long as there's not going
19 to be a reference -- any further reference to any
20 pre-trial publicity, lets bring the jurors back and
21 allow Mr. Buting to continue.

22 ATTORNEY BUTING: Thank you.

23 (Jury present.)

24 THE COURT: You may be seated. Members of
25 the jury, we're hoping that our sound problems are

1 related to a bad battery, so the battery is being
2 replaced. In a minute, we'll resume.

3 ATTORNEY BUTING: All right. Where were
4 we. What I think this case is, is a good example of
5 why it is so important that people not leap to quick
6 judgments about a case, maybe decide something
7 that's based -- that's not based on the evidence you
8 hear in court. You promised, and I'm confident you
9 all will decide this case based only on the evidence
10 you have heard in court, and this case is a good
11 example why.

12 Let's look at what else evidence -- what
13 other evidence is lacking. Now, if the State's
14 theory is that she was shot in the garage, where
15 is her blood? None of her blood is found in that
16 garage.

17 We have heard testimony about high
18 velocity blood spatter that comes when someone is
19 shot from a bullet. There's none on the floor.
20 Maybe even more important, there's none on any of
21 all that -- any of that clutter that you saw.
22 When it's high velocity spatter, it can go
23 anywhere.

24 How would Mr. Avery be able to clean up
25 everything, not just on a floor, but every little

1 item. Because, remember, at least in March, they
2 picked up and handled every single, and examined
3 every piece of evidence. Every cooler, every
4 box, every can, every piece of junk that we all
5 have in our garage, they looked at. And that's
6 where you would expect to find spatter that no
7 one would be able to clean up, even if they tried
8 to clean up.

9 Now, is there evidence that he did clean
10 up at all? Well, his blood was found in the
11 garage. Why is that? If he's cleaning up, how
12 is it that his blood is found there. Is he able
13 to see a blood spot and say, oh, that's Teresa
14 Halbach's blood. Oh, that's mine, I can leave
15 mine, I will just clean up hers. Come on.

16 They have you believe that -- I'm
17 assuming he's going to get up here and say, this
18 is what happened because, of course, we haven't
19 heard it yet, that the bottle of bleach is so
20 incriminating. I don't know anybody who doesn't
21 have a bottle of a bleach somewhere in their
22 house. And an important part is, it was in his
23 house. They say it's in his bathroom, what they
24 didn't tell you until I got up and cross-examined
25 them, is that the bathroom is the laundry room.

1 So even there they try and mislead you into
2 thinking something means more than it does. A
3 bottle of bleach found in ones laundry room means
4 nothing. And it means nothing in this case.

5 And, by the way, if the theory is that
6 there's no blood of Teresa Halbach anywhere on
7 the floor of that garage, is that because he is
8 such a good cleaner, then why are there 10, 11
9 .22 shells laying all over the floor right in the
10 open. Don't you think if they are going to go to
11 the trouble of cleaning up the blood, after you
12 kill somebody, that maybe you might pick up the
13 shells that are right out there in plain view for
14 the police to find. Don't you think that would
15 be what you would do?

16 So those are some examples of the kind
17 of evidence, that if someone is being framed, you
18 might expect to find -- you might expect to find
19 lacking, because it doesn't fit with the reality
20 of what would have happened if the crime actually
21 occurred as the State apparently alleges.

22 We talked about one piece of
23 incriminating evidence and how that looked
24 suspicious. Let's look at maybe the biggest,
25 most glaring suspicious piece of evidence in this

1 case. The magic key, Exhibit A, in this theory
2 that the police planted evidence in this case.

3 Because if you believe that those police
4 officers put that key in his room, that they are
5 capable of planting that kind of evidence to try
6 and link him, then why not plant -- why couldn't
7 they have also planted blood. If they go to that
8 extent that they -- that they plant Teresa
9 Halbach's key in his bedroom to try and convict
10 him, then that's it, it's over, case over,
11 because you can't rely on anything else they have
12 given you.

13 Now, let's look at this key. First of
14 all, why would he bring the key in his house and
15 put it in his own bedroom. Why would you do
16 that? If you still got the vehicle, and you
17 still wanted somehow to use the key, to drive it
18 some place -- by the way, why would you want to
19 disconnect the battery, if you're still going to
20 use the key? What good does the key do if the
21 battery is disconnected? So that's a disconnect,
22 no pun intended here.

23 But why wouldn't you just leave the key
24 in the car? Why wouldn't you hide the key under
25 the -- neath the car, or somewhere where you know

1 it is? Why would you bring an incriminating item
2 like that into your own bedroom, especially since
3 you know, as of November 3rd, when Sergeant
4 Colborn comes to visit him, and November 4th,
5 when Lieutenant Lenk and Detective Remiker come
6 to visit him and all the television cameras are
7 there, that you are a person of interest, right?
8 You are not going to put the key in your bedroom.
9 Doesn't make sense.

10 And, then, the key is not found until
11 the 7th search of that trailer. You already had
12 four grown men in that little trailer. I'm
13 sorry, in that little bedroom they had four men,
14 for three hours, on Saturday night, November 5th.
15 And they come in here and they try to tell you
16 that's not really a thorough search. Three hours
17 in a little bedroom with four men, is not enough
18 time to do a thorough search? Who are they
19 trying to kid here.

20 And, then, it's not until November 8th,
21 when they have been in the bedroom, again, with
22 three men: Lenk, and Colborn, and Kucharski,
23 it's another hour or more before they find it
24 then. There's a common theme, by the way, that
25 we've been hearing in this case, whenever

1 something is mysteriously found much, much later
2 when it should have been, but earlier searches
3 didn't count, those were just cursory searches,
4 three hours cursory searches.

5 This computer rendering of the bedroom
6 is helpful just to show you how small this
7 bedroom is. How long does it take four men to go
8 through a closet, a dresser that's over here, a
9 desk and a bookcase, or World War II record album
10 holder, whatever it is. Seven entries.

11 Now, I submit that the reason it wasn't
12 found in the first entry is because there was a
13 watchdog along, Sergeant Tyson. The one thing
14 that they did was, they say it's okay to use
15 these Manitowoc officers for searches because
16 we're going to have a Calumet person there with
17 them to make sure nothing goes wrong.

18 Sergeant Tyson admitted he had never
19 been in a situation before where he had been told
20 to keep an eye on those guys, your fellow cops,
21 keep an eye on them. What are you doing putting
22 those three men into the person of interest, he's
23 a suspect in their eyes, what are you doing
24 putting three cops who have that kind of
25 potential conflict in that person's bedroom, that

1 you need to have another officer from another
2 agency watching over them, babysitting them.
3 That is absurd.

4 Lenk and Colborn volunteered for that
5 duty and they volunteered for a reason. But in
6 the first search Sergeant Tyson did his job. I
7 believe it when he says that he watched them. He
8 looked like a watchdog. He was watching them
9 like a hawk and he wasn't searching. That's
10 important too. They were doing the searching and
11 he was just doing the collecting. So the
12 opportunity wasn't there for Lenk or Colborn to
13 plant the key.

14 And then they are in there again, very
15 briefly the next day, again, with Tyson. Note
16 that each entry they are -- they are -- each time
17 they go in there, they were with Tyson, except
18 for November 8th and they go in with Deputy
19 Kucharski, who tried to make light of it by
20 saying that, you know, the possibility of
21 planting is about as likely as aliens coming down
22 and planting it.

23 But he had to admit, he was not told to
24 watch those officers. He was there with Lenk and
25 Colborn. He's told to search and that's what

1 he's doing, he's doing his job. And he's sitting
2 on the bed, after one hour. In fact, I think he
3 said he was getting almost done and took off his
4 gloves. He's sitting here, going through this
5 drawer.

6 Lieutenant Lenk is right here with his
7 back to him, like this, crouched down on the
8 floor, so he's not going see what's going on.
9 Lenk gets up, walks out the door, comes back in a
10 minute later, oh, my gosh, look at that, there's
11 a key. Low and behold, it's in plain view.

12 And so they come up with this theory,
13 this absolutely preposterous theory on how this
14 magic key, that no one ever finds before,
15 suddenly appears in plain view, out of this
16 bookcase. They find it right there, where those
17 slippers are. Right like that.

18 And how does it happen, well, they
19 decide, maybe they help the back of this cabinet
20 a little bit, but they decide that somehow this
21 key must be secreted in this cabinet, by Mr.
22 Avery, in his own bedroom, with everybody looking
23 at him, and that it somehow magically fell out
24 this -- this gap, bounces off the wall. And by
25 the way, we're talking about key, fob, and

1 plastic clip. Somehow bounces off the wall,
2 turns around the corner and lands, what is it 90
3 degrees from where it should be, where it would
4 have fallen.

5 Now, here is something else. I want you
6 to contrast what the State -- what kind of
7 evidence the State has given you. In this case,
8 we have been presented with a wooden gun rack, as
9 an Exhibit No. 196. This has really been
10 important in this case, hasn't it, this wooden
11 gun rack. It's meaningless. They have got --
12 And we have a got a photograph of it too. We
13 have the real thing and the photograph. What do
14 you need this for? Why do need this for? Why is
15 this in evidence. This is totally irrelevant.
16 They have pictures to show the guns are on the
17 wall, okay.

18 We have got a photograph of an empty
19 box. And we have got the box right here. We
20 have got a photograph of another empty box, and
21 we have got the empty box here too. What did
22 they give you on this bookcase, that, a
23 photograph. Where is the bookcase? Where is the
24 bookcase? Don't you think that's a little more
25 important in this case than that wooden gun rack.

1 They don't want you experimenting with
2 that bookcase and this key, because they know you
3 will see that it is incredibly improbable that
4 this key is going to find it's way out, the key,
5 the ring, the cloth fob, the plastic clip, and
6 not get hung up on anything. It's going to
7 bounce around like they say it will. So you ask
8 yourself why you haven't seen that, right there
9 in the property room. Nice picture of it.

10 ATTORNEY KRATZ: Judge, I'm going to
11 interpose an objection. Counsel is suggesting that
12 only the State could have introduced that, instead
13 of the defense.

14 ATTORNEY BUTING: State's burden.

15 THE COURT: I'm over --

16 ATTORNEY KRATZ: He's suggesting only the
17 State.

18 THE COURT: This is closing argument, the
19 objection is overruled.

20 ATTORNEY BUTING: While we're at it, while
21 we're talking about candor with the jury, I don't
22 know if you recall, but I do, in the opening
23 statements, these nice PowerPoint presentations that
24 Mr. Kratz has prepared, one of them he puts up there
25 in his opening statement and he shows this tailgate.

1 Puts up a nice PowerPoint slide showing the rear of
2 the vehicle like this.

3 And he's going through where Mr. Avery's
4 blood, DNA, was found on Teresa Halbach's
5 vehicle. And he's got one of his nice slick
6 arrows pointing right here with a circle. I see
7 that and I think, my gosh, I have been working on
8 this case for months, did I miss that; how could
9 I miss that the client's blood is supposedly on
10 the back tailgate. Well, when I looked more
11 carefully, and as we heard from Sherry Culhane,
12 he was wrong. There was no blood of Mr. Avery
13 ever found on the rear of that vehicle on the
14 tailgate. Now, Mr. Kratz is human, we all make
15 mistakes; I have certainly made plenty here. But
16 that's a pretty big mistake.

17 The key, also, by the way, has no blood.
18 Remember, she swabbed it and the stains were
19 clean and it only has his DNA. And, frankly,
20 counsel misspoke when he said, it's always the
21 last person -- when you are talking about trace
22 DNA from the fingers, it's always the last person
23 that touches it that's going to be on there, not
24 what the testimony was as I recall it. Testimony
25 was, the last person may have more of it, but you

1 are going to find a multiple, most likely, at
2 least two people. Particularly when it's an item
3 like a key that someone handles every day and
4 deposits their own DNA on.

5 And, finally, before we take a break
6 here, the source of Mr. Avery's DNA in his house
7 is plentiful. Toothbrushes, razors, all kind of
8 personal items in ones home, if Mr. Lenk and
9 Mr. Colborn wanted to put Mr. Avery's DNA on that
10 key, that was easily available. It doesn't have
11 Mr. Avery's fingerprints on the key; doesn't have
12 any of Teresa Halbach's DNA on the key.

13 Keep in mind, also, when you think about
14 the evidence that's lacking and evidence that's
15 suspicious, you came into this case, and as I
16 recall seeing up there on the PowerPoint slides,
17 there were four charges, now there's three.
18 Think about that, while we take our break. Is
19 this okay, your Honor?

20 THE COURT: Yes. All right. Members of
21 the jury, we'll take a break at this time. Again,
22 do not begin your discussions of the case until all
23 the arguments have been completed and the Court
24 submits the case to you. You are excused.

25 (Jury not present.)

1 THE COURT: Counsel, can I see you briefly
2 in chambers at the start of the break.

3 ATTORNEY BUTING: Sure.

4 (Recess taken.)

5 (Jury present.)

6 THE COURT: Members of the jury, before we
7 resume, I can report to you that I met with counsel
8 during the break. I just wanted to give you some
9 idea about where we were going from here. But we
10 are probably going to go late today in order to
11 finish the closing arguments of the parties. There
12 isn't going to be any time to begin deliberations
13 today.

14 After the closings are finished, we will
15 take a brief break to identify the alternate
16 jurors who will not be deliberating and then we
17 will adjourn for the day and begin deliberations
18 tomorrow morning. We are going to take breaks,
19 probably at faster intervals than normal, to keep
20 you fresh enough to follow the closing arguments,
21 but closing arguments will be what we will
22 complete today. Mr. Buting, you may resume.

23 ATTORNEY BUTING: Thank you, Judge. Before
24 I leave the magic key for a minute, I just want to
25 make sure I was clear enough that, again, this is

1 her car key, that obviously she used every single
2 day. It was Teresa Halbach's key.

3 And I believe Ms Culhane said she
4 swabbed all the way around that whole plastic
5 holder, all the way around it. Not just along
6 one edge of it. And yet she found none of Teresa
7 Halbach's DNA, not a shred of it. And found only
8 Mr. Avery's DNA, as if somehow the key had been
9 wiped clean and his DNA was placed on it. He
10 certainly is not going to do that. He's not
11 going to wipe off her DNA and leave his behind.

12 And as to the bookcase, why it's not
13 here, think about, again, it's their theory, that
14 this key could have found it's way magically out
15 of that bookcase and into its position. Their
16 burden of proof in the entire case, and also
17 their theory to explain to you how this very
18 unusual key materializes out of nowhere and yet
19 it is not here.

20 All right. Now, let's look at another
21 piece of evidence that initially appears,
22 certainly incriminating, but as you look more
23 closely, looks more and more suspicious. And
24 that is, Mr. Avery's blood in the RAV4.

25 Keep in mind that we're talking about a

1 very little amount of blood here. Mr. Kratz
2 maybe confused you when he made it seem like
3 there was a lot. Yeah, there's not one
4 microliter, but we're talking very small amounts
5 of blood. As a matter of fact, the photographs
6 that were taken by Mr. Groffy, before any swabs
7 were taken, before any of the blood is wiped off.
8 This is the front seat, I can barely see
9 anything, unless that -- if that's the spot of
10 blood, right there, that's awfully small,
11 particularly when you are talking about fabric.

12 The CD case, can't even find any blood,
13 can't see any blood. I believe Mr. Stahlke must
14 have misspoke when he said it seemed like it was
15 covered, that there was lots of blood on it.

16 The FBI guy who looked at it, the swabs,
17 we'll talk about that, Mr. -- Dr. LeBeau, later.
18 But he showed you pictures of those swabs and
19 there was hardly any blood on it. In fact, they
20 looked gray, like fingerprint dust, or something.

21 So, really, we have this and this, which
22 Mr. Stahlke says is consistent with active
23 bleeding. It is also consistent with active
24 planting. So when I first saw this, I thought,
25 you know, what is the source of Mr. Avery's

1 blood.

2 Well, we have heard about how his -- he
3 had blood in the bathroom. And so I looked at
4 these pictures, these were pictures that I
5 believe either Detective Remiker or Sergeant
6 Colborn testified that they went around and took
7 on Saturday night, at the apartment, before there
8 was any kind of seizures of swabs.

9 The first thing you do when you go in is
10 you take pictures and then you start collecting
11 evidence. Well, you look at this particular
12 swab, we'll do a close up on it. It's an awful
13 odd looking blood drop, with a little whole in
14 the middle, as if somebody would dab a Q-tip in
15 it, that was my first thought.

16 And, then, the blood vial. And I offer
17 that -- and we have offered that as a possible
18 source of the blood that's found, Mr. Avery's
19 blood that's found in the RAV4. It was in a
20 public office, in an unsecured area; not in a
21 vault where they keep locked up exhibits only;
22 not down in the basement where they normally keep
23 old files; but in that battered old cardboard box
24 that we saw sitting in the Clerk's Office,
25 because it was -- there were so many requests to

1 see it, from the media and the public, that that
2 made it more convenient.

3 They kept no good log back then, of
4 people who were asking to see files, see any
5 file, that one not withstanding. The clerk, Ms
6 Zigmunt, later tightened that up in, I think it
7 was October of '06, this past year. Now
8 everybody has to sign in before they can look at
9 any file. But back then she admitted that the
10 deputy clerks would be more casual about it. And
11 who would you be more casual about making someone
12 sign in than a police officer, who you would
13 normally trust.

14 So there would certainly be no reason
15 for these clerks to take note or think that some
16 police officer, Lieutenant Colborn, or Sergeant
17 Colborn, I'm sorry, Lieutenant Lenk or Sergeant
18 Colborn, would have any nefarious intent by
19 looking at Mr. Avery's file. And that area of
20 the file where it's kept is sort of screened off
21 from the rest of the unit.

22 And probably more likely, though, is the
23 after hours access that the deputies have. The
24 Manitowoc Sheriff's Department is responsible for
25 security in the courthouse so, understandably,

1 they have master keys that fit all the doors.
2 And how difficult, really, would it be for
3 someone like Lieutenant Lenk or Sergeant Colborn,
4 veteran officers, to come in after hours, or on
5 Saturday morning, and get what they needed. I
6 submit it would be not difficult at all.

7 Now, Mr. Kratz, I can hear him now, he's
8 going to get up here and say, where is the
9 evidence. This is all speculation. Where is the
10 evidence. As if he would expect anybody who was
11 being framed to have a videotape of the officer
12 taking the vial of blood and planting it.

13 Or as if he expects one of these police
14 officers, in front of everybody, under oath, on
15 streaming video on the internet, to admit, oh,
16 yes, of course, I took the blood and planted it.
17 Yes, I would admit that if I did it. Sure, I
18 would go away to federal prison probably but,
19 yeah, rather than lie under oath, I would rather
20 go to prison than admit that.

21 Come on. This is real life. It's not
22 TV. You can't expect a Perry Mason moment where
23 you're going to get somebody to admit, to you
24 guys, and everyone else in the world, that they
25 did this.

1 So what do we have, though. We have
2 reasonable inferences that can be drawn and
3 circumstantial evidence, just like they do.

4 The box, you have seen the video, I'm
5 not going to go through all that again, but I
6 want to just remind you, show you the box.
7 Evidence tape is very clearly cut, opened, and
8 the box is resealed with nothing but a piece of
9 scotch tape.

10 This one may show up a little better.
11 Inside the box was the styrofoam container, and
12 it was opened by all of us together, which also
13 had -- which also had evidence tape sealing it,
14 right along here. And on the video, you could
15 see very clearly that that was slit, as if by a
16 razor or scissors, or something sharp. So that
17 one would easily open this sort of clam shell
18 styrofoam container, and there is the vial of
19 blood.

20 The vial of blood has a hole, what
21 appeared to be any way, a hole in the middle,
22 right there, which is where professionals would
23 gain access to the blood, if they need it. But
24 this vial has something more, as even Dr. LeBeau
25 admitted. This vial has blood in between the

1 rubber stopper and the glass, so that the experts
2 who use these things all time, could say, even
3 Dr. LeBeau, I believe is the one, who said this
4 vial, clearly the top had clearly been taken off.

5 So, there's evidence that the box was
6 unsecured and the top had been removed at some
7 point. And the blood is still liquid. Can't
8 really show you it in there, the way they have
9 got it encapsulated in yet another glass tube.
10 You can't really see it, but you did see, I
11 think, in the video, as it was rocked back and
12 forth, the blood was still liquid and, therefore,
13 easily available to plant. And we're only
14 talking about a few drops. That's all that's
15 necessary to leave the amount of blood that they
16 found in that RAV4, a few drops, that's all.

17 Now, Lieutenant Lenk, whose name keeps
18 coming up at every important part of this case,
19 had reason to know that that blood of Mr. Avery's
20 was sitting in the courthouse. Because he was
21 the evidence tech -- the whole head of the
22 evidence department for Manitowoc. And he signs,
23 in 2000 -- what's the date here -- 2002,
24 September, he signed Exhibit 214, as the
25 transmitting, or submitting officer to submit

1 these items to the Crime Lab.

2 Now, I'm not trying to mislead you here,
3 these items do not include the vial that we're
4 talking about. But they clearly show that these
5 came from exhibits held by the court since the
6 end of the trial. And yet Lieutenant Lenk would
7 have you believe, in his testimony, that he had
8 no idea that that 1985 court file had any kind of
9 exhibits like that in there.

10 The one thing they did look for
11 fingerprints on, they looked for Lenk and
12 Colborn's fingerprints on the blood vial. No
13 surprise there. Second nature with cops when
14 they handle anything like that, a biological
15 piece of evidence, they are going to put their
16 gloves on. So, okay, they look there, don't find
17 any. But, again, they're looking for something
18 that they know isn't going to be there in the
19 first place, and trying to present that as if it
20 means something.

21 So then there's the question of the
22 opportunity to plant blood. And that's why we
23 heard all this testimony about the scene and
24 whether it was secure or not secure. Well, keep
25 in mind that that sheriff's department, even

1 though their bosses said, within 45 minutes of
2 getting there, that we're turning over this
3 investigation to Calumet, the one item, the one
4 item on that 40 acre property that they knew was
5 important, the main piece of evidence, was that
6 RAV4.

7 And they kept their officers in control
8 of it for four hours. Talk about the fox
9 guarding the hen house here, ladies and
10 gentlemen. Come on. Is that just a coincidence,
11 or is that Lenk and Colborn having some influence
12 here?

13 How carefully was it being watched?
14 Mr. Kratz told you that it was being maintained
15 very securely and carefully. Well, we heard that
16 until Special Agent Fassbender arrived at 2:25,
17 there was no log at all of who was coming and
18 going, looking at this main piece of evidence
19 that they knew about.

20 They rely on two civilians, Nikole and
21 Pamela Sturm, to be their watch dogs, so they can
22 see from this crusher, distance 369 feet, I think
23 it was, Mr. Austin measured. And, you know, I
24 don't fault the Sturms. I mean, its revision is
25 history, for them to say that they were watching

1 that carefully the whole time they were there,
2 that far away, to make sure nobody, even a police
3 officer, approached.

4 Why would they care. Once they knew it
5 was Teresa's vehicle, you know, the sad news that
6 it was, that's where their attention would be
7 drawn. They weren't watching this to see who
8 approached the RAV4.

9 And there was a tarp over the RAV4, for,
10 now, we find out, for an hour apparently,
11 according to the digital signatures that we can
12 find on digital photographs. And a tarp that's
13 built up in such a way that it's practically a
14 tent. That's not the best picture, but from a
15 distance, this large tented over object, being
16 very careful not to have the tarp touch the
17 sides, with a nice little opening here.

18 Now, maybe that's not when it was
19 planted, but it's certainly an opportunity.
20 Probably more likely is that it's getting dark,
21 and while the officer -- I don't believe, by the
22 way, that there was any testimony that Mr. -- or
23 Sergeant Orth was seated where Mr. Kratz said he
24 was. But even not withstanding that, what we did
25 hear was that there's other means of ingress and

1 egress to that property.

2 Sergeant Orth testified that while the
3 officers were somewhere in this area, remember
4 this picture was taken after the vehicle had been
5 removed, but that there's -- there's ways in and
6 out from the west. I will show you in a moment,
7 if I can find the overhead.

8 A little farther up, one can see the --
9 how the roads down here, we have lots of ways to
10 get in and put that -- First of all, for someone
11 to plant the vehicle. And, secondly, for anyone
12 to approach it while it's there. And an even
13 more distant shot that shows all the ways in to
14 this plot of land.

15 So while maybe directly to the south of
16 that berm it is not immediately accessible,
17 there's all these other ways in from here, or
18 from here. When somebody who knows the area,
19 perhaps someone who's been a patrol sergeant for
20 many years, knows the county like the back of his
21 hand, is going to know how to get to that RAV4.

22 Then we have this whole question of
23 whether the vehicle is locked or not. Well, the
24 Sturms said they thought it was locked, but then
25 when they were questioned more carefully it turns

1 out that Nikole didn't check the rear tailgate.
2 She checked it with her sleeve, the other four
3 doors, but not the rear tailgate.

4 If it was locked, by the way, who do you
5 go to when you lock your keys out. Most of the
6 time you go to call the cops. Who better knows
7 how to open up a car, quickly, than police? So
8 the fact that it was or wasn't locked isn't
9 crucial in this case, in my estimation.

10 But on this evidence, it's not entirely
11 clear, when it gets to the Crime Lab, it really
12 is locked. You will have to rely on your memory
13 for that, but I think the record is unclear,
14 frankly.

15 There is also, I want to point out, all
16 you would have to open, by the way, are two
17 doors, to put the blood where it was found. The
18 driver's side, you can reach everything in that
19 front seat and that one rear passenger door. So
20 you wouldn't have to have them all open and
21 sitting in the car in order to do this.

22 And then we have the interesting
23 circumstance of Lieutenant Lenk and his behavior
24 on November 5th and since then, in which he
25 testified, in a prior hearing in this case.

1 Lieutenant Lenk is the only officer, the only
2 witness in this case who was -- who has lied
3 under oath. He gave sworn testimony one day that
4 he didn't get to this site until 6:30 or 7:00,
5 when it is getting dark, but came in front of you
6 today and says, again, under oath, that it was
7 2:00.

8 Well, what happened in the interim? He
9 forgot about the logs. And when you look at the
10 logs, he signs out, but he never signs in.
11 Fassbender had those logs starting at 2:25. So
12 lo and behold, Lenk now appears on the scene at
13 2:00, to explain why he never logged in. Because
14 otherwise the alternative is, he comes at 6:30 or
15 7:00 and evades the guard that's doing the log.
16 That doesn't look good either.

17 So ask yourself, what evidence there is,
18 what inferences you can draw from a witness who
19 gives two different versions, under oath, about a
20 critical point like this. His whereabouts, by
21 the way, that entire day, he never writes a
22 report.

23 So, I also expect, again, because they
24 get to go last, I'm having to anticipate, and you
25 may have to answer some other questions that they

1 raise. But I expect that they are going to say
2 this would have to be this complicated wide
3 ranging conspiracy in order to frame Mr. Avery.
4 Not true. Not true at all. This could be done
5 by two officers, really one officer, the one
6 officer who keeps coming up, Lieutenant Lenk,
7 whose name is on the evidence transmittal from
8 the 1985 case, just a couple years earlier.

9 Lieutenant Lenk, who shows up on
10 November 5th without logging in. Lieutenant
11 Lenk, who finds the magic key. Lieutenant Lenk,
12 who four months later, four months after
13 Manitowoc no longer is needed, with no legitimate
14 reason, is back at that scene on March 1st and
15 what's found the next day, the magic bullet,
16 which we'll talk about in a moment.

17 Actually, let's talk about it now.
18 Again, every time they try and -- Every time they
19 find something that they should have found
20 before, it was because, oh, that prior search was
21 just for a missing person. We signed a search
22 warrant affidavit in which we said we were
23 looking for evidence of a homicide. But, oh, we
24 were just looking for a missing person, we didn't
25 know what we were looking for.

1 They are in that garage on November 6th,
2 for an hour and 47 minutes, three officers. They
3 find 10 or 11 shell casings, but they found -- if
4 they saw a bullet, don't you think they would
5 pick up that bullet? Don't you think that might
6 be important?

7 Now, where was it found? Right smack
8 dab in the middle, one of them. This is the
9 March 1st photo, but No. 9, right as you walk in
10 the door, the main overhead door, it's sitting
11 right there in a crack. Now, to you and I, that
12 may not look like much, but to an officer who's
13 looking for -- if they found .22 shell
14 cartridges, is going to be looking for a bullet,
15 that's going to be pretty obvious. But it's not
16 found until March 1st. And then the other, most
17 important one, is found back here, up against the
18 wall.

19 Now, one or two things had to happen,
20 either they missed it, during the first search,
21 or the scene had been altered between the first
22 search and March 1st. And, in fact, we know
23 that's what happened. We had the officers
24 identify, look at this, there's a different car
25 in there, there's this big engine hoist.

1 Mr. Avery wasn't altering it, but other people in
2 his family obviously had access, someone's car
3 was parked in there. Things probably moved
4 around, who knows.

5 But then we have testimony from Rollie
6 Johnson, about his many gofer hunts. He says
7 that if you go out there now, when the snow
8 melts, you will find his .22 shells all over the
9 place, including right -- most likely in that
10 garage. His gun, his .22 and, yeah, those shell
11 casings were fired in that .22, from that .22,
12 you can tell that because of the way the pin
13 hits.

14 But, according to Mr. Johnson, his --
15 the remnants of his firings, even years from now,
16 are probably still there. Especially if you
17 think about that, the Item FL, No. 23 that's
18 under the air compressor. That probably hasn't
19 been moved in years. Who knows how long that
20 bullet had been there.

21 It didn't have Teresa Halbach's DNA on
22 it, which we will talk about it in a moment. And
23 that bullet is probably totally irrelevant to
24 this case. Just one of many residues left over
25 from Mr. Johnson's target practices and whatnot.

1 I'm not sure it was entirely clear, so I
2 just want to go over with you and make sure it's
3 clear. The shell casings, we have two bullets
4 and 11 shell casings. The shell casings,
5 Mr. Newhouse was able to identify, came from that
6 gun, but he can't say that the bullet, the
7 ultimate bullet, FL, came from any of those shell
8 casings. And he can't say that Mr. Avery, for
9 that matter, ever handled any of them because
10 nobody did any fingerprints of them.

11 And, then, the second bullet, the one
12 they showed you that's down in the crack, that
13 was designated as Item FK, Mr. Newhouse said he
14 could not match to the gun, the .22 caliber
15 Glenfield Marlin that was found in Mr. Avery's
16 bedroom. He said that all he could say was that
17 it would come from a class -- gun of a similar
18 class, which I think included even a pistol that
19 we talked about, with a different brand name.

20 But we know, that on that very property,
21 the Avery 40 acre salvage yard area, there were
22 other, at least one other, maybe two, .22
23 Glenfield Marlin rifles. In Bobby Dassey's
24 bedroom, is one of them, exactly the same model,
25 one of the most common models in the world.

1 So, even Mr. Newhouse couldn't say
2 whether that bullet had any connection at all to
3 this case, or to Teresa Halbach, or even to the
4 gun that was found in Mr. Avery's bedroom, Rollie
5 Johnson's gun. He did say, however, that that
6 one item, under the air compressor, came from
7 that gun and no other.

8 And when I questioned that, how reliable
9 is that degree of science anyway. We're talking
10 about these eyeball comparisons to these --
11 comparison microscopes. It sounds very much like
12 the hair comparison analysis that had been
13 discredited years ago. And I predict this
14 so-called science is the next to go.

15 But at any rate, he was very defensive
16 about his field, perhaps understandably, but when
17 he wouldn't even admit that DNA is more objective
18 than this comparison thing he does, you got to
19 wonder. And, you also got to wonder why he
20 didn't show you the photos of the comparison of
21 the bullets, side by side, and neither did the
22 State.

23 He didn't want you to see those
24 comparison's, Mr. Newhouse, because he was afraid
25 when you looked at them you would see what I saw,

1 which is there's a lot of differences between
2 those two fields of view. And that his opinion,
3 that it came -- that they are one in the same,
4 they came from the same rifle, is questionable.

5 But, putting all that aside for a
6 second, even if he is correct, that that Item FL
7 that was fired from the .22 rifle that was
8 found -- Rollie Johnson's rifle, found in
9 Mr. Avery's bedroom, that still doesn't mean it's
10 connected to this case with any relevance.

11 Look at first, Mr. Olson, who does the
12 lead analysis from the fragments of the cranium
13 bones that he found. He said it's 99 percent
14 lead. Well, Mr. Newhouse, in his notes, and I
15 talked to him about this as well, he made a point
16 that this -- Remember he talked about the two
17 kind of bullets, some which are lead and some
18 which were coated.

19 And this one, I believe he said, was
20 coated with copper coating. Both of these
21 bullets -- fragments that he found, were coated
22 with copper. Where's the copper? I asked
23 Newhouse, did you -- did you try and compare that
24 -- the lead, little pieces of lead that he saw in
25 those x-rays, with the type of lead that's in

1 Item FL. And he said, no, he wasn't asked to.

2 So without some kind of connection
3 between Teresa Halbach and that bullet, the
4 bullet has no relevance in this case. It's just
5 a random fragment, that's found in an old garage,
6 that means nothing.

7 And so we come to Sherry Culhane. Now,
8 you know, one of the odd things about trying a
9 case with this kind of publicity, where other
10 people can watch at home, or wherever, is that
11 you get some feedback about how you do. Some of
12 it not so good. And some people told me maybe I
13 was a little hard on Sherry Culhane.

14 And if you think that, you know, I
15 apologize if I offended anybody with my
16 cross-examination of her, but I ask you not to
17 hold it against Mr. Avery. Because I have a job
18 to do and as an advocate, I need to point out, if
19 someone goes over the line and goes too far, you
20 have to understand it.

21 Now, I don't have a problem with almost
22 everything that Sherry Culhane did in this case,
23 and I said so. I haven't been up here disputing
24 her statistical calculation. I haven't disputed
25 any of her -- the Power Points where she's lining

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up the profile of one to the next.

And it's true that she did help exonerate Mr. Avery in 2003, although she sat on it for a year and he spent an extra year in prison, she did exonerate him by finding an exclusion and then a match to Mr. Gregory Allen. And we appreciate that. And I didn't mean to not appreciate that.

But I also pointed out, it's not like she's a defense witness either. She helped convict him in 1985, with this now discredited science of hair comparison analysis, where she rendered opinions to jurors just like yourself. So most of what she did in this case was fine; in fact, it was more than fine. Because it really excluded Mr. Avery from -- either Teresa Halbach from all these items, or Mr. Avery from the other items. Really the other way around, she's looking for Teresa Halbach's DNA in incriminating places. And she doesn't find it.

So I can imagine how frustrating it might be when you get a phone message that tells you this, early on, try to put her in his house or garage. Now, this is not blind testing, by any means. These agents are telling Ms Culhane

1 what they want. And this is November 11th.

2 Well, here it is, she's working on this
3 bullet fragment now, in March. And she still has
4 not found one item that links Teresa Halbach to
5 Mr. Avery's house or garage. So she's got to
6 feel some pressure. This is the biggest case of
7 her career. The biggest case the Crime Lab has
8 ever had: 380 items, 180, I think, submitted just
9 to her unit.

10 It's almost five months late and nothing
11 has been found. So when she gets this last
12 bullet fragment, she recognizes, I think she
13 said, it's a probative piece of evidence. She
14 knew what it was. And when she gets this
15 contaminated test, the pressure is on for her to
16 go way out on a limb, farther than she's ever
17 gone in her life. Never before has she ever
18 asked to deviate from a protocol to make an
19 inclusion, until this case.

20 Now, she probably convinced herself that
21 it's okay because it's just in the control, who
22 cares. There's no evidence that the bullet is
23 contaminated, right? Well, we talked about that,
24 what controls are, and why they have them, and
25 how you can find contamination in controls very

1 easily, because if a control has anything but
2 zero DNA, it's been contaminated.

3 What you can't tell is when a piece of
4 evidence shows up with someone's DNA, you can't
5 tell whether it's there because it has been
6 contaminated or not. And so what you do is, you
7 run a control. And the protocol says, if that
8 control is contaminated, you toss it out, and
9 that's the end of it. Because they know, from
10 their own tests, that there's cross contamination
11 that can occur from one evidence item to the
12 next. And they can never rule it out if there's
13 a contaminated control.

14 So where is Teresa Halbach's DNA coming
15 from? Ms Culhane says, she's theorizing and she
16 thinks, well, maybe -- maybe I'm talking too much
17 or I'm too close to the bench and that that's how
18 her DNA got on there. But in truth, she doesn't
19 know how her DNA got on there.

20 And what we do know is, that Teresa
21 Halbach's DNA was right there at her bench, right
22 underneath the same bench that she's working on,
23 is her storage area. We talked about the central
24 storage area for evidence. She checked it out in
25 November. She never put it back until mid April,

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I think it was.

And all that while, she's got Teresa Halbach's DNA, from the RAV4, in the cargo area, sitting right there on her bench. That's a bad practice right there. But when you get a contaminated control, you can't tell how and whether Teresa Halbach's DNA ended up there in the same extraction mechanism that she's doing or not. You just can't tell.

And their own logs, their own contamination logs that I introduced, talk about how difficult it is. We went through it. I won't go through it again with you. But there are instances in here where it specifically says, evidence from one case has been contaminated into another.

And they look and they try and figure out why, corrective measures. And they can't figure it out. They can't figure it out. So how are we supposed to figure it out? How are you supposed to figure it out? You can't. And that's why the protocol says, you toss it out and you do it over.

Only she had a problem, because she had used it all up. She took a chance, rather than

1 trying to swab it, to put it in this buffer and
2 dissolve it all. And she had a one shot, one
3 chance with this DNA test. And when it came back
4 contaminated, she was kind of stuck, you know,
5 this was probative.

6 And so she went out on that limb and
7 said, I'm asking for a deviation from the
8 protocol. We're going to call this Teresa
9 Halbach's DNA. And why is that so important?
10 Why -- Why do we know that it's unreliable? What
11 else is there to tell us, maybe, that it's an
12 unreliable conclusion? It's the only place. All
13 these other items, it's the only thing that's
14 ever come up with Teresa Halbach's DNA.

15 You people look a little bit tired,
16 anybody want to stretch for a moment? Would you
17 like to get up and stretch? Is that okay, Judge?

18 THE COURT: That's a good idea.

19 ATTORNEY BUTING: All right. Let me --
20 There's one other area, though, where -- that we
21 have to talk about, that Mr. Avery's DNA is found
22 on. And that's the hood latch. But that's the most
23 easy -- easiest to understand, really, because --
24 First of all, note that it's not found until month's
25 later, which means that it wasn't found in the first

1 sweep of the car that Sherry Culhane does.

2 And who followed Sherry Culhane into
3 that vehicle, who's the next person? The first
4 thing they do is DNA, so that no one is
5 contaminating anything. Next one to come in is
6 Mr. Stahlke, the blood spatter guy.

7 He admits he is leaning in, he's got his
8 hands in there. He's touching. And I think he's
9 even -- I don't remember if he admits actually
10 touching the blood itself, but he's certainly all
11 over the area where it was, with his gloves.

12 And then someone asked him to get the
13 odometer reading. So he turns the key and
14 there's nothing. So he realizes maybe the
15 battery is dead. He comes around to the hood,
16 and he said, he didn't change his gloves. And he
17 opens the hood and, then, of course, sees the
18 battery is disconnected. And they have to do
19 something else to get the odometer reading.

20 But that's -- that's the problem with
21 DNA, it's so easily translated -- or transferred
22 in the environment. That's why you are supposed
23 to peel off your gloves. And he didn't.

24 Let's move on to some of the other
25 aspects of this case that are really peculiar.

1 How about a complete lack of any motive for
2 Mr. Avery to kill Teresa Halbach. Why would he
3 kill Teresa Halbach? It's a man who's wrongly
4 incarcerated, spent years in prison. Gets out,
5 has a good lawsuit pending; he's going to get a
6 whole lot of money, in all likelihood. Why would
7 he kill somebody? That makes no sense.

8 First thing that leaps out at you when
9 you heard about this charge, maybe more peculiar,
10 is why Teresa Halbach? Why kill some woman that
11 just comes over and takes pictures of your car
12 four or five times? Why her?

13 And just quickly, this theory that
14 somehow he was luring her over by using the name
15 B. Janda, is completely bogus, because the very
16 same day, one of the other customers did the same
17 thing. You give the name of the owner. Mr. -- I
18 may have it backyards, Mr. Schmitz, I believe,
19 called for -- Mr. Sippel called and left
20 Mr. Schmitz's name because he's the owner and he
21 was the one who was going to be there when the
22 car was looked at.

23 If he is really going to plan to kill
24 Teresa Halbach, specifically, why not just call
25 her on the cell phone? Why leave a paper trail?

1 Why call the office, you know, leave your
2 address, Avery Road? I mean, hello, Avery Road,
3 doesn't take a rocket scientist to trace it back
4 to him.

5 And where was she killed? In the
6 garage? We still don't know, from the State's
7 theory. But think about this, maybe he's got
8 some explanation he's going to come up with here,
9 but if she's killed in the garage and she's
10 burned in the burn pit, what's she doing in the
11 back of the RAV4?

12 He put's her into the cargo area of the
13 RAV4 so he can drive 20 feet around the other
14 side of the building to take her out and put her
15 into the burn pit? Makes no sense at all. It's
16 another reason to suspect that that burn pit is
17 not the original site of burning, because her
18 body was very clearly inside that rear of that
19 RAV4.

20 Why burn the phone, and the camcorder,
21 and the -- or I'm sorry, the camera, and the palm
22 pilot? Why burn those items in your own burn
23 barrel? You are surrounded by quarries. You are
24 out in a rural area. You have got 4,000 junk
25 cars. You have crushed cars you can put it in.

1 Why do you burn it? What's the point?
2 Get rid of it. It's easy to get rid of. Toss it
3 in one of the ponds. Bury it. No one is going
4 to find pieces of metal. Especially, again, if
5 after November 3rd and 4th, it's obvious, the
6 police are looking at you.

7 Mr. Kratz says, the location of that car
8 tells us it was going to be crushed. And think
9 what would have happened if that car -- if
10 Patricia Sturm had not found that car on Saturday
11 afternoon, that car would have been crushed and
12 we would have lost that evidence forever.

13 Well, ask yourself, why wasn't it
14 crushed, already? You got a crusher, I mean, you
15 got a crusher on your property. You got -- 54
16 cars are crushed there. It's obviously used all
17 the time. Why isn't it already crushed on
18 November 5th, especially if you know the cops are
19 looking at you? Common sense.

20 And why try and build this complicated
21 outdoor fire to get rid of a body, when you have
22 got something like this on your property, that
23 can melt aluminum to liquid. Big enough, easily,
24 to do the job you need, if that's what you are
25 going to do. You would use that. But, of

1 course, that doesn't fit with the State's theory,
2 because if you did use the smelter, you wouldn't
3 move the bones back on your property.

4 All right. Let me talk about the FBI,
5 Dr. LeBeau. I suggest he is not a credible
6 witness. And more importantly, the test, for
7 what it was used, for the opinions that were
8 given, is not credible for that.

9 He gets the award for the most absurd
10 expert opinion of anybody that's come into this
11 courtroom and this trial. When he says, I can
12 conclude to a reasonable degree of scientific
13 evidence, that when I test those three items, and
14 don't find EDTA, these other three items that I
15 never bothered to test, they don't have EDTA
16 either.

17 How can you ever make that kind of
18 conclusion? That tells you how sloppy he is with
19 his opinions, how willing he is to give them what
20 they want.

21 Compare his testimony to Dr. Janine
22 Arvizu, who was forthright, not dogmatic. She
23 gave Mr. -- Dr. LeBeau his due. She agreed with
24 him when he was right and pointed out where he
25 was wrong.

1 She said that this protocol is fine,
2 perhaps, the test, if EDTA is, in fact, present.
3 But to then use it beyond that and say that the
4 absence of it, the absence of EDTA by doing this
5 test proves it's not there, goes too far. It
6 even goes beyond the scope of the protocol
7 itself.

8 Because the protocol says that this
9 procedure allows for the screening and
10 confirmation of EDTA in the suspected bloodstain.
11 Doesn't say that you can then conclude, if you
12 don't get it, that's it's not there. And the
13 reason why is -- it took Dr. Arvizu to figure
14 out, I certainly couldn't -- it's this whole idea
15 of limit of detection.

16 The test that he did, injecting
17 something right into the -- into this instrument,
18 this whatever it was, MS/MS thing, that's easy.
19 I mean, yeah, you are going to get a low -- you
20 know, you are going to be able to get a low limit
21 of detection because it's pure, put right into
22 there.

23 It's the extraction process, where you
24 are taking something out of the fabric or a swab,
25 diluting it, extracting it and going through that

1 whole process of filtering, that it becomes more
2 difficult. Your level of detection is now much
3 higher.

4 In addition, the protocol was rushed.
5 Think about that. Think about how this whole
6 thing came about. The FBI has not tested for
7 EDTA in 10 years, since the O.J. Simpson case.
8 His explanation is, because no one asked. Think
9 about that. Why do you think no one asked?

10 First of all, we can't ask for it, as
11 the defense, the defense bar. Only the
12 prosecution can ask for it. What did they do in
13 that case? They screwed it up. They found EDTA
14 and later argued, whether they were right or
15 wrong, we will never know, later claimed, oh,
16 that was just a carryover from a different
17 sample. Well, the jury was told that there was
18 EDTA in that case, look what happened.

19 What prosecutor is going to trust them
20 to do this same kind of test and not screw up
21 their case? This prosecution team. Because they
22 were desperate to try and do something to
23 discredit the defense of planting, whatever it
24 took.

25 And, so, when it normally takes three to

1 four months to develop one of these protocols,
2 they suddenly come up with one in two weeks. And
3 they are testing it and validating it and
4 actually doing the test samples before, as
5 Dr. Arvizu said, before they even got their
6 results of their own competency tests from this
7 procedure.

8 So why is the FBI involved in this case
9 at all? Again, this shows credibility, a lack of
10 it. They try to say, oh, we're concerned about
11 police misconduct. We want our public officials
12 to be truthful. And if there's some officer who
13 is planting, we want to know about it.

14 Well, I asked them, what investigation
15 did you start? Where is the grand jury? What's
16 the U.S. attorney doing? Is there even any
17 investigator on the case from the whole FBI,
18 that's talked to any witness? No.

19 All they have got is this lab that's
20 asked to do this new protocol and here's what
21 they are told. Purpose of this request is to
22 establish the presence of EDTA in the vial of
23 blood, thereby eliminating the allegation that
24 this vial was used to plant evidence. That's it.
25 It's not to find out whether these cops are

1 corrupt. It's to eliminate the defense. So are
2 we surprised at the results? I'm certainly not.

3 The real reason the FBI got involved in
4 this case is because Mr. Avery had the audacity,
5 and, you know, this is what I'm going to hear,
6 probably, how dare he accuse these fine officers
7 and besmirch their reputations.

8 And when that happens, they circle the
9 wagons. Cops, when they get accused of
10 misconduct, they circle the wagons. That's the
11 code of silence, or that's the bond they have.
12 And that's why Calumet and DCI were so quick to
13 jump on the bandwagon, when Lenk and Colborn were
14 professing they did nothing wrong. They had
15 nothing to do with this. And Lenk and Colborn
16 probably counted on that.

17 Quickly, a couple of other peculiar
18 things about the timeline. The -- Bobby Dassey
19 says that he sees Teresa Halbach at 2:45, he
20 leaves at three, and the vehicle is still there,
21 something like that. He has no good way of
22 verifying the time, but he tells the officer,
23 talk to Scott Tadych -- Tadych, he can tell you
24 precisely, is the word he used, precisely what
25 time it was.

1 Well, how does he know that Tadych can
2 tell precisely what time it was that he
3 supposedly is being seen, unless the two of them
4 maybe got together, talked about a story they had
5 come up with.

6 Remember, those two people, unlike
7 anybody else that was asked about an alibi and
8 maybe weren't, but those two people alibied
9 themselves. Without each other, there is no
10 alibi for either one of them. Nobody sees Dassey
11 go hunting in the woods. Taking a shower, by the
12 way, before he goes off hunting, like his Irish
13 Spring soap is going to help attract deer. Come
14 on.

15 And he goes there so that -- he wants to
16 get there before dusk, because that's when the
17 deer feed. I'm not a hunter, but we know what
18 time he left and came home. It was well before
19 dusk, he is home at 5. That doesn't make sense.

20 More importantly, Lisa Buchner, the
21 school bus driver, is a completely disinterested
22 party and she does have a reason to know the
23 time, precisely, because she has got a regular
24 route that she drives, 3:30 to 3:40 every day.
25 School lets out 3:05. She's drives, drops the

1 people off. She's dropping those Dassey boys off
2 at that time.

3 What does she say? She says she saw a
4 woman taking pictures of a van. Now, how many
5 women are out there taking pictures of a van at
6 that same time period. She's honest and says I
7 don't remember if it was Monday, the 31st,
8 Tuesday, the 1st, or Wednesday, November 2nd.
9 That's what she tells Investigator Wiegert on
10 November 7th, just one week afterwards now, when
11 it's fresh in mind.

12 And she's so concerned about it, she
13 went to the barricades on November 5th and said,
14 hey, I think I saw her. I think I saw her. I
15 don't remember what day but, you know. That's
16 what she describes, this woman taking pictures.
17 The State, 16, 17 months later, is able to
18 confuse her, and say, well, yeah, maybe it was a
19 week earlier, maybe it was a couple weeks
20 earlier, but that's not what she said when it was
21 fresh in her mind.

22 The State will argue that the location
23 wasn't right. She said she saw someone taking --
24 she saw her taking the pictures of something down
25 around the turn around circle. And it's true,

1 that's not where Barb Janda's car was, or this
2 van was. It was up the road a ways. Well,
3 either she's mistaken about that or -- and I
4 submit this is a very real possibility -- she is
5 doing a hustle shot, because she's been flagged ←
6 down on her way out and asked to take another
7 picture. By who?

8 We know it's happened before. We have
9 evidence. Angela Schuster said, just a few weeks
10 earlier, Tom Janda had flagged her down and taken
11 a hustle shot, on the way out.

12 And John Leurquin, the propane driver,
13 yeah, he's not as certain, but he does
14 corroborate Lisa Buchner in that he sees this
15 green SUV around the same time. He doesn't know
16 who's driving, and maybe it wasn't Teresa Halbach
17 at that point. This person who was hustling a
18 shot perhaps, was driving away with. But he
19 recalled it because it was different, wasn't the
20 usual regular vehicles that he always sees.

21 So when the State tells you that Bobby
22 Dassey is this credible witness, who's the last
23 person to see Teresa Halbach alive, maybe he's
24 right, if he's the killer. Or Scott Tadych, his
25 only alibi. He tells him --

objection

1 ATTORNEY KRATZ: Judge, I'm sorry, I'm
2 going to interpose an objection on third party
3 liability. I would like to be heard.

4 ATTORNEY BUTING: I will rephrase that. I
5 will withdraw that.

6 ATTORNEY KRATZ: I don't want it rephrased,
7 I want to be heard.

8 THE COURT: I'm going to let Mr. Buting
9 finish up, then I will hear your objection.

10 ATTORNEY KRATZ: Thank you, Judge.

11 ATTORNEY BUTING: Police, when they
12 interview Mr. Dassey, just accept his story,
13 unquestioning -- unquestioningly. And they accept
14 Mr. Tadych's story. They don't go check out his
15 alibi for later, where he says he is visiting his
16 mother at the hospital. Well, where is the proof of
17 that?

18 Why do you believe him, especially when
19 he tells you that, when he comes back, he sees
20 this fire, and then he knows what time it is
21 because he leaves around 7:45, he wants to get
22 home so he can watch Prison Break. Prison Break,
23 at 8:00, in Wisconsin. Did they check that out
24 to see what time it comes on?

25 Do you still want to be heard or?

1 THE COURT: You can continue.

2 ATTORNEY BUTING: All right. I will talk
3 briefly about the other, since Mr. Kratz said that
4 these -- Mr. Fassbender and Wiegert were
5 investigating, parallel, these other suspects,
6 including the boyfriends, ex-boyfriends, whatever,
7 but look at what they did. They admit that, yeah,
8 sure, Mr. Avery may be a suspect or a person of
9 interest because we know he was one of the people
10 who saw her on the last day.

11 But who else saw her on the last day,
12 George Zipperer, and look how he behaved. Mr.
13 Avery says, come on in, very cooperative.
14 Zipperer is belligerent. But we didn't know
15 that.

16 Hillegas, former boyfriend, no alibi,
17 didn't even ask him.

18 Male roommate, Mr. Bloedorn, who doesn't
19 report her missing for four days. What's up with
20 that? Don't ask him for an alibi. Where was he?

21 Bradley Czech, male friend with a little
22 bit more personal relationship with her, perhaps.
23 Again, no alibis checked.

24 Mr. Pearce, an employer who never
25 bothers to report her missing, for four days.

1 All of these roles that these people
2 play, the officers admitted would normally, in a
3 normal missing person or homicide investigation,
4 be considered possible suspects that you would at
5 least look at and check out, but not here.

6 And what about all the other people on
7 the Avery property on October 31st? What's up
8 with that? Where are their alibis? Customers
9 and other people who work and live there.

10 And, interestingly, going quickly back
11 to this hustle shot for a minute, I asked, you
12 know, you think maybe -- well, of course, if she
13 was flagged down, there wouldn't be any record in
14 her palm pilot.

15 But if it was a different kind of hustle
16 shot that she was on her way to go do, the FBI
17 technician, or whatever, that came here and
18 talked about the electronics, said that he might
19 have been able to recover that kind of data from
20 the palm pilot, but wasn't asked to. They were
21 concerned about him trying to prove that it was
22 Teresa Halbach's palm pilot, not what was on it.

23 And, then, there's what I consider the
24 mysterious part of Teresa Halbach's life. And I
25 mean no disrespect to the Halbach's family,

1 whatsoever, when I say this. But Teresa had her
2 own private life. We know that. She had at
3 least three circles of friends, I think it was
4 described: Her family, people that she worked
5 with in the community, marketing and whatnot, and
6 the Green Bay friends.

7 And apparently they didn't intersect
8 very much. Because she's missing for four days
9 before anyone reports it. And maybe most
10 interestingly is, we know that on Saturday night
11 she was out, with somebody, or she was -- I can't
12 say she was out with somebody, but we know that
13 she went out, some Halloween party somewhere,
14 bar, wherever, in Green Bay area is what
15 Mr. Hillegas, I think, said he thought, or maybe
16 Mike Halbach.

17 And yet, despite all those fliers that
18 were sent around, all over the state, thousands
19 of them, not one person has come forward to say I
20 was with her Saturday night. Something is weird
21 about that. Especially when you combine it -- I
22 believe Mr. Pearce, I may be misquoting him, but
23 I believe he, at one point, had some thought that
24 maybe she had met somebody on the weekend and
25 that's where she was and why she wasn't showing

1 up.

2 But then we have the weird thing about
3 the voice mail. Why did the police not follow up
4 on this. We were not confused about these
5 records, but I'm glad that Mr. Zimmerman was able
6 to enlighten us, that the messages that are on
7 this exhibit, 372, 18 of them, would not
8 constitute a full mailbox. He said that very
9 clearly.

10 And what he said was, when I asked him
11 if this -- if this persons account was sending
12 out a message when you called, that said mailbox
13 is full, would something more have to be on it
14 than what's on these records. And he said, yes.
15 And he said that, yes, that meant something had
16 to have been erased. Something on her voice mail
17 was erased by somebody.

18 And to do that, you would have to have
19 her password. And I'm not at all accusing the
20 Halbachs of that. But somebody else close, that
21 had her password, and for some reason thought it
22 necessary to erase a message. What was so
23 important on her voice mail, or perhaps so
24 incriminating on her voice mail, that would
25 necessitate somebody, close enough to her that

1 has her password, erasing one or more messages.

2 These are all reasonable doubts, ladies
3 and gentlemen. These are all questions that
4 police and law enforcement ignored, because it
5 points away from Steven Avery, who wouldn't have
6 had her password and points to someone else.

7 Mr. Strang will finish up and give you a
8 little bigger picture in a moment, but I'm
9 confident that you are going to find more than
10 reasonable doubt and find Mr. Avery not guilty.
11 Thank you.

12 THE COURT: All right. Members of the
13 jury, we're going to take a break at this time. I'm
14 going to talk to the attorneys about scheduling.
15 Again, do not discuss this matter during the break.
16 We'll call you back shortly.

17 (Jury not present.)

18 THE COURT: You may be seated. First of
19 all, Mr. Kratz, I will hear your objection at this
20 time.

21 *3rd party arg* ATTORNEY KRATZ: Thank you, Judge. This
22 *validity* Court has entered numerous pre-trial rulings for
23 which Mr. Buting was a party. One of those
24 pre-trial rulings prohibited any reference to a
25 possible third party, that is, a killer, other than

1 Brendan Dassey, without advance ruling of the Court.
2 This Court entered a written order, as I recall, as
3 to that matter.

4 Mr. Buting, in front of this jury,
5 indicated that maybe Bobby Dassey is the killer.
6 There's two things that I ask the Court to
7 entertain: First of all, inquire of Mr. Buting
8 whether that was an intentional violation of the
9 Court's previous ruling; that is, whether he
10 recalled the Court's previous ruling as to third
11 party liability and whether or not Mr. Buting was
12 fishing for a mistrial.

13 And if not, that is, if the Court is
14 unwilling or otherwise able to make its own
15 ruling as to intentional versus negligent
16 reference to Bobby Dassey, we are asking for an
17 admonishment in front of the jury as to the
18 nature; that is, that it intentionally or
19 purposely violated a pre-trial ruling of this
20 Court.

21 Certainly earlier, in Mr. Buting's
22 testimony, when referring to the burn barrels
23 with Bobby Dassey, he had referred to Bobby
24 Dassey as a possible other suspect. However, it
25 wasn't as blatant in calling Bobby Dassey the

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killer.

And I don't know whether Mr. Buting thinks that he's entitled, because he's representing Mr. Avery, to play by a separate set of rules, or to ignore pre-trial rulings of the Court, and it certainly does call for an admonishment and I would suggest it calls for a colloquy, with the Court, as to whether this was an intentional violation of a previous Court order.

I would note that, Judge, both Dassey and Tadych were specifically ruled out in the pre-trial rule or the pre-trial order.

THE COURT: Mr. Buting.

ATTORNEY BUTING: Judge, I'm aware of the pre-trial ruling. I don't believe I exceeded the Court's ruling. When you are doing closing arguments, of course, sometimes you say things differently than you intend. If I did, I certainly, I think, brought it back within the realm of investigative bias, which was the primary point that we're trying to make and throughout this case.

But maybe more importantly, the Court's ruling was that we were not allowed to present any evidence, extrinsic evidence, of a third

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party. But I don't know that that included that we couldn't argue reasonable inferences from what the evidence presented.

I don't think I was -- I wasn't even intending to go that far, quite frankly. I was trying to keep a little farther back from that. But I don't think that under *Denny* there's -- what they're talking about is presenting evidence trying to point the finger at somebody else. Reasonable inferences, I think, is another matter and I think it's reasonable inference from the evidence.

THE COURT: Mr. Kratz.

ATTORNEY KRATZ: No further argument, Judge.

THE COURT: All right. I'm taking a look at my order, after a 14 page decision, the order is that the defense is precluded from offering any direct evidence to a third party, other than Brendan Dassey participated in the commission of the crimes as charged in the Amended Information. I don't recall that I was asked to place a limit on closing argument. I think there is a differentiation between the two.

I don't know how I would have ruled on

difference between evidence and closing

1 it, frankly, had I had one, because I don't know
2 that the *Denny* case specifically addresses the
3 issue. I don't know that another case
4 specifically addresses the issue.

5 But my recollection is, and the wording
6 of my order is, that it was directed to the
7 introduction of evidence. I'm not sure that the
8 Court can prevent the defense from arguing
9 inferences on the evidence as it was presented.
10 The State gets a chance to respond in rebuttal.

11 I don't know. I will hear further from
12 the State if you wish, Mr. Kratz, but I'm looking
13 at my order and it only relates to direct
14 evidence. I don't know that I can rely on that
15 order to address your concerns.

16 ATTORNEY KRATZ: If the Court excludes
17 evidence of third party liability, and there's no
18 evidence in the record, how does Mr. Buting think
19 that he can comment on that evidence, or lack of
20 evidence. He can't. I mean, it absolutely flies in
21 the face of the third party liability court order.

22 In other words, Judge, to be precluded
23 from presenting any evidence, but then to be
24 allowed to stand up in front of this jury and say
25 maybe Bobby Dassey is the killer, how could we

1 possibly have notice to either predict that, or
2 to present evidence that -- that might suggest
3 differently. That absolutely flies in the face
4 of the -- if not the words of the order,
5 certainly the intent of that order.

6 THE COURT: Mr. Buting.

7 ATTORNEY BUTING: Well, Judge, as the Court
8 I think has made clear, Mr. Avery, by his not guilty
9 plea, means he isn't the killer, so somebody else
10 has to be. What I was trying to do was simply point
11 out all of the other avenues that the police could
12 have examined and didn't.

13 And I think in the context, overall, of
14 every -- everything else that I have argued in
15 the argument, I think I'm within that. And I
16 don't think there is anything close to a
17 violation of the Court's order barring any kind
18 of direct evidence.

19 Again, it wasn't even my intent to go
20 outside the realm of investigative bias, failure
21 to look at suspects. But if I did, I think in
22 the overall context of the whole argument we have
23 been making throughout this case, I think the
24 jury is not going to be confused and it's going
25 to be clear that that's the purpose for which

1 it's being offered.

2 THE COURT: I -- I don't know, without
3 doing some research, the answer to the question the
4 State is raising here; that is, whether the logical
5 inference from a *Denny* decision that denies the
6 right to introduce evidence provide -- or prevents
7 the defense from arguing on the basis of evidence
8 that was presented, that there's third party
9 liability.

10 Let me suggest this, as I understand
11 what Mr. Buting is saying, he is saying, I may
12 have gotten carried away in the way I worded it.
13 My purpose in making the references was not to
14 suggest that there was evidence in the record
15 that any of these parties committed the crime,
16 but rather that the State did not sufficiently
17 investigate other parties.

18 We're still going to be hearing from
19 Mr. Strang. If Mr. Strang, at the beginning of
20 his argument, clarifies that point for the jury,
21 is that sufficient to address the State's
22 concerns?

23 ATTORNEY KRATZ: We would ask for an
24 admonishment. If that's the Court's ruling,
25 however, that the Court believes that that is a more

1 appropriate resolution of the case, I understand
2 that that's the Court's order.

3 THE COURT: Here's what I am going to do.
4 I'm going to give Mr. Strang a chance to do that
5 when he makes his argument, to clarify it, assuming,
6 Mr. Strang, that you feel the way your co-counsel
7 does about what the intention was.

8 ATTORNEY STRANG: Yeah, I -- More to the
9 point, I have to apologize, I was shortening my
10 closing argument --

11 THE COURT: Don't worry about it, because
12 that's something I'm going to discuss with the
13 parties in chambers. The juror's eyes are starting
14 to glass over. We're looking at your closing, plus
15 rebuttal from the State, I don't think it's fair to
16 the jurors to keep them here as long as that may
17 take.

18 I think both parties will be better
19 served if we come back tomorrow, when the jurors
20 are fresh. I do think, however, it's necessary
21 to address the alternate juror issue, and I'm
22 going to talk with the parties about that, in
23 chambers, before we come back.

24 ATTORNEY STRANG: Do we want to just
25 address, in chambers, what it is I should say, or

1 consider saying? I'm sorry, I just missed that.

2 THE COURT: You will have the evening to
3 think about that.

4 ATTORNEY STRANG: Okay.

5 THE COURT: I'm going to go off the record
6 right now. I will see counsel in chambers for a
7 short conference.

8 (Recess taken.)

9 THE COURT: I will indicate for the record,
10 I met with counsel in chambers and I indicated that,
11 based on the time of day and the fact we have got
12 part of defense argument, plus State rebuttal left,
13 I was concerned that the jurors, certainly by the
14 time we got to the State's rebuttal, would be too
15 tired to appreciate what was being said.

16 The Court has an interest in making sure
17 that the jurors have an opportunity to digest,
18 understand and comprehend the arguments that are
19 given. And while at the start of today, it would
20 have been my preference to complete closing
21 arguments today, sometimes justice takes more
22 time than we plan on in the morning.

23 So what I'm going to do, when the jurors
24 come back, is adjourn for the day. The Court is
25 going to begin the -- because we're as far into

1 closing arguments as we are, I'm going to begin
2 the sequestration process and the jurors will be
3 staying in a hotel tonight. It's my
4 understanding that the parties have a stipulation
5 to propose to the Court concerning the -- at
6 least two of the three alternate jurors.
7 Mr. Strang.

8 ATTORNEY STRANG: We do, your Honor. And I
9 would be happy to take a first stab at the
10 agreement, as I understand it, between the parties.
11 I will preface that by saying that I have explained
12 this agreement to Mr. Avery and I think it's
13 entirely acceptable to him. It's not complicated.
14 We had enough time to talk about it. And I'm
15 satisfied that he both understands and approves the
16 agreement that I will try to articulate now, late in
17 the day.

18 In short, the parties have agreed that
19 each will have an extra peremptory strike, in
20 effect, to be exercised here in the ordinary
21 manner of exercising peremptory strikes. That
22 will remove 2 of the 15 jurors that we presently
23 have, leaving 13, which would be 12 and 1
24 alternate.

25 And, of course, whether the Court keeps

1 an alternate, or how to handle the designation of
2 an alternate, and then what to do with an
3 alternate, is the Court's prerogative and not the
4 parties. But as I understand the agreement here,
5 for purposes of the record, it does encompass one
6 extra peremptory strike for each party, to be
7 exercised now.

8 THE COURT: Mr. Kratz.

9 ATTORNEY KRATZ: For today's purposes,
10 Judge, that is the scope of our agreement, that each
11 party intends to exercise an additional peremptory
12 strike this afternoon.

13 THE COURT: Okay. And this is in lieu of
14 drawing the names of the jurors out by lot, which
15 would be the process contemplated by the statute, in
16 the absence of agreement by the parties.

17 ATTORNEY STRANG: It is, your Honor, from
18 the defense advantage point.

19 THE COURT: Mr. Kratz.

20 ATTORNEY KRATZ: That's my understanding,
21 Judge.

22 THE COURT: And, Mr. Avery, it's correct
23 that you have discussed this with your counsel and
24 you are in agreement with this procedure.

25 THE DEFENDANT: Yes, I am.

1 THE COURT: Thank you. Anything else
2 before we bring the jurors back in?

3 ATTORNEY KRATZ: If I could have just a
4 moment with counsel, your Honor.

5 THE COURT: Go ahead.

6 ATTORNEY KRATZ: We're all set, Judge.

7 THE COURT: All right. You can bring the
8 jury in.

9 (Jury present.)

10 THE COURT: You may be seated. Members of
11 the jury, I understand I told you an hour and a half
12 or two hours ago or so, I don't remember when, that
13 we were going to attempt to complete closing
14 arguments this evening. In light of the point that
15 we're at in the proceedings now, I am concerned that
16 fatigue might be a factor that prevents you, as
17 jurors, from giving the attention that is deserved
18 for the closing arguments.

19 So what we're going to do is adjourn for
20 today and resume the completion of closing
21 arguments tomorrow morning. As I told you at the
22 beginning of the trial, we started out, initially
23 we had four extra jurors, we are now down to
24 three. Because of the fact we're this close to
25 the end of the trial, and I don't want to require

1 the extra jurors to participate longer than is
2 necessary, we have decided that we're going to
3 excuse two of the three extra jurors today.

4 The parties have agreed to a procedure
5 whereby each of the parties will exercise one --
6 will exercise a peremptory strike. If you recall
7 back at the time of initial jury selection,
8 that's how we got from 30 down to 16. So they
9 are going to do that today.

10 When they are done, the strikes will be
11 shown to me. I will identify the two jurors that
12 the parties have selected. I will meet with
13 those two jurors before excusing you today, as is
14 my practice any time alternate jurors are
15 excused.

16 For the 13 of you who are remaining,
17 because of the fact we are well into closing
18 arguments, we are going to begin sequestration
19 this evening. We have hotel accommodations for
20 you. We have dinner arranged for you. And you
21 can decide, when you get on the bus, I guess,
22 whether you want to check in at the hotel first
23 or go to dinner first. But because of the fact
24 we're at this late stage of the proceedings,
25 that's how we're going to handle things.

1 At this time I think the Clerk has a
2 sheet and we will allow the parties to make their
3 stipulated peremptory strike.

4 ATTORNEY KRATZ: Judge, could Mr. Strang
5 and I approach, just very briefly.

6 THE COURT: Yes.

7 (Side bar taken.)

8 THE COURT: Counsel, raised an issue for me
9 that I believe has been dealt with through the media
10 coordinator, but I will address it on the record,
11 since it was raised. And that is, there was some
12 conversation about whether the excused jurors would
13 be available to the media.

14 I'm not going to allow that at this time
15 until a verdict is reached at this case. It is
16 unlikely, but not impossible, that the jurors
17 could be called back. And for that reason I'm
18 not going to have the excused jurors available to
19 the media until a verdict is reached in this
20 case.

21 All right. Based on the information on
22 the sheet, the excused jurors are Terri Temme and
23 Laura Barber. I will meet with Ms Barber and Ms
24 Temme before we leave today. And I am going to
25 excuse the remainder of the jury at this time.

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STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 1

STATE OF WISCONSIN,
PLAINTIFF, JURY TRIAL - DAY 24
vs. CLOSING ARGUMENTS, CONTD.
Case No. 05 CF 381
STEVEN A. AVERY,
DEFENDANT.

DATE: MARCH 15, 2007

BEFORE: Hon. Patrick L. Willis
Circuit Court Judge

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

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

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

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

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

STEVEN A. AVERY
Defendant
Appeared in person.

TRANSCRIPT OF PROCEEDINGS

Reported by Diane Teshneck, RPR

Official Court Reporter



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Don't close

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(Jury not present.)

THE COURT: At this time we're back on the record in the case of State of Wisconsin vs. Steven Avery, Case No. 05 CF 381. We're here for a continuation of closing arguments this morning. Will the parties present state their appearances for the record.

ATTORNEY KRATZ: Good morning, Judge. The State appears by Calumet County D.A. Ken Kratz, Assistant Attorney General Tom Fallon, Assistant D.A. Norm Gahn appearing as Special Prosecutors.

ATTORNEY STRANG: Good morning as well. Steven Avery is present, again. And Jerome Buting and Dean Strang standing for him.

THE COURT: All right. Before we bring in the jury and continue with closing arguments there was one matter I wanted to clarify for the record. During the course of these proceedings we have had some individual voir dire with the jurors. And I wanted to clarify the Court's understanding that neither party is asking that any of the jurors be excused for cause, based on any of the information adduced at the voir dire. Mr. Kratz.

ATTORNEY KRATZ: That's correct, Judge.

THE COURT: Mr. Strang.

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ATTORNEY STRANG: That is also correct.

THE COURT: Very well. Is there anything else the parties wish to take up outside the presence of the jury before we resume with closings.

ATTORNEY KRATZ: No, Judge.

ATTORNEY STRANG: No, sir.

THE COURT: All right. We'll bring the jurors in at this time.

(Jury present.)

THE COURT: You may be seated. Good morning, again, members of the jury. At this time we're ready to resume closing arguments. Mr. Strang will be speaking first on behalf of the defendant.

ATTORNEY STRANG: Thank you. Good morning.

JURORS: Good morning.

ATTORNEY STRANG: You know, I -- what's it been, five weeks, or six weeks, or whatever it's been, and the rules within which we operate fundamentally allow me only to speak at you. At this point, I would be ready to speak with you. I can't exactly. But I do want to do my best to talk with you this morning. Can't hear?

JUROR: It's kind of soft.

ATTORNEY STRANG: Kind of soft.

THE COURT: Which number is that?

1 ATTORNEY STRANG: I'm No. 7. I'm getting
2 nods, you hear me, whether you want to or not.

3 I want -- I want you to step back just a
4 little bit here and let's try to work at
5 assembling a bit what you might do in approaching
6 your task. And you have got such a mass of
7 information, really, over the last five weeks,
8 let's call it. There are some things you are not
9 going to be able to do, I think. But there are
10 also some things you can do. And I want to talk
11 about what I see as the line between those
12 things.

13 You, unfortunately, are not going to be
14 able to solve the murder here. And I say that
15 for this reason, if Steven Avery did it, if -- if
16 he's the guy who murdered Teresa Halbach, then --
17 then, in a sense you are not going to solve that.
18 They already think that.

19 This is the person they think all the
20 evidence points to, the person they have
21 identified as doing it. You can agree or
22 disagree with that, with that -- that theory of
23 prosecution. But, fundamentally, you and I
24 aren't solving a murder, because if Steven Avery
25 didn't do it, we can't tell you who did.

1 You know, Jerry Buting, Jerome Buting,
2 in Court, you know, is not going to tell you --
3 doesn't mean to tell you that, for instance,
4 Bobby Dassey murdered Teresa Halbach. We don't
5 mean to tell you that someone else murdered
6 Teresa Halbach. It's really kind of a point, we
7 don't have a police department, you don't have a
8 police department.

9 We're not going to be able to solve the
10 murder, if Steven Avery did not do it. So, you
11 know, you can agree with the State, you can agree
12 with the defense, but at some level you are not
13 solving the murder, as much as it's natural for
14 all of us to want do that.

15 Second thing I think you are not going
16 to be able to do, I'm quite certain you are not
17 going to be able to do, is bring Teresa Halbach
18 back through that door, or better yet, back
19 through the door of her mom's house. We are not
20 going to be able to do that. Convicting a guilty
21 guy, convicting the person who killed her,
22 wouldn't do it. Convicting someone who didn't
23 kill her, certainly won't do it.

24 The life that was before October 31,
25 2005, never will be lost. It's etched in mom's

1 heart. It's etched in her brother's, and her
2 sister's minds, in their memories, in the people
3 they are. That life is not lost. The life that
4 could have been, going forward beginning
5 November 1, 2005 is forever lost, not forgotten,
6 but lost.

7 This is human tragedy, and if you or I
8 understood why people have been killing each
9 other since we crawled out of caves, we would
10 stop it. But somebody killed this woman and that
11 life going forward is lost. You can't get it
12 back. I can't get it back. The gentleman at
13 this table can't get it back.

14 The other thing I think that you are not
15 going to be able to do, you can't do, 13 people,
16 12 people, can't do, is we can't provide closure
17 here in any real meaningful way. It's not what
18 courtrooms are good for. You would like to be
19 able to do that for Teresa Halbach's family.

20 I think you would like to be able to do
21 that for Steven Avery's family, provide some
22 closure. Provide it for him, for crying out
23 loud. You would probably like to do that, too,
24 if you could. But there again, the time since
25 November of 2005 really, fundamentally, is lost,

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as a matter of closure for Steven Avery.

He's never really, in the broader public, been presumed innocent. He's never really had the presumption to which he was entitled as an American, as a citizen accused. You folks may be the only people in the world, other than those of us at my table, who do presume him innocent.

You can't do anything about it. We can't do anything about that, for the rest of the world. And as I say, courtrooms are pitiful, pathetic places to try and provide closure for Delores, closure for the Halbach family. Not that it's not important that the system not work, it is important that the system work. Because when it works, we can provide justice, or some semblance of justice. But justice and closure are -- are two different things.

Nobody is always happy with justice, or at peace necessarily with justice. And in that sense, closure would be something more. Something more personal for that family, and for this family, and for Steven. You'd provide it if you could, I know you would. You won't be able to do it.

1 And in some ways you are going to be
2 told that you ought not try to do any of these
3 things. Because I think Judge Willis will tell
4 you, after the lawyers are done speaking at long
5 last, I think he will tell you that you have got
6 to decide this case, as finders of fact, without
7 sympathy, without prejudice, without passion,
8 without all the things that might go into solving
9 murders or providing closure. You will be told
10 instead that you won't, you can't, be swayed by
11 sympathy, or prejudice, or passion.

12 But there are some very important things
13 that you can do here, now that I have identified
14 the things you can't. There are some very
15 important things you can do. You can honor your
16 oath. You can keep a promise that you made
17 before the world, more importantly, that you made
18 for yourself. You put your own conscience on the
19 line. You can honor the oath that you have taken
20 and that you will take, as jurors. You can obey
21 the oath.

22 That's no small thing. You are under an
23 enormous amount of pressure, internally and
24 externally. This table, my table, a courtroom
25 full of people, a community at large, terribly

1 serious issues for everybody. So when I say you
2 can honor and obey your oath, it's a big deal.

3 You also can apply the law, honestly and
4 courageously, part of what you are duty bound to
5 do, as the Judge delivers the law to you in the
6 form of those jury instructions. You can apply
7 that. You can decide this case, if you choose,
8 on the evidence in the courtroom and only the
9 evidence in the courtroom.

10 You have the power to do that. You have
11 a duty to do it, but more importantly you have
12 the power to do it. You get to make the choice
13 to do that. It's something you can do. You can
14 decide whether allegations have been proved,
15 beyond a reasonable doubt, in considering all of
16 the evidence.

17 I don't take it for granted that jurors
18 do that, in the end. Because jurors are all
19 human, just like I am. But if you choose to do
20 that, you can. It's within your grasp. And I
21 think, finally, you can, if you choose, you can
22 get it right.

23 In the limited parameters available to
24 you, you can get it right. You can go home,
25 whenever you are done, and say, I know in my

1 head, because I used my head, I know in my heart,
2 because I used my heart, I know in my conscience,
3 because I listened to my conscience, that I got
4 it right. You can do that. And if you do, you
5 will also have set it right.

6 Just as I said I was going to ask you,
7 when I spoke in opening statement, when it was
8 about 19 below zero outside, or whatever it was
9 that day, you will set a lot of things right, if
10 you get it right, here. The 1985 case won't
11 matter so much any more, if justice is done this
12 time.

13 Will that ever go away? No, but it just
14 won't matter so much any more, the injustice that
15 was done to Steven then, because there is --
16 there is something redemptive in human beings
17 going back and trying again and getting it right
18 eventually.

19 So I want to ask you simply to commit to
20 doing the things you can do, and to living with,
21 reconciling yourself to the things you can't do.
22 You are not going to solve a murder -- a murder,
23 but you may spare someone who's not a murderer.
24 You are not going to bring Teresa Halbach back to
25 her family, but at some level, just by this trial

1 ending, you can give her back to her family.

2 What I mean by that, I mean for crying
3 out loud, what an artificial thing we do -- and I
4 love this, I love being a lawyer, I love it --
5 but what an artificial strange thing it is that
6 we do here, rules of evidence, formal procedures.
7 And for crying out loud, right down to taking
8 body parts and putting exhibit numbers on them,
9 explain a person's phone records on a screen for
10 a room full of strangers to look at.

11 It is what we do. It's what we have to
12 do here, at some level. Clinical discussions of
13 death, dry discussions of who you are calling, or
14 who's calling you, on your cell phone, just for
15 example. It's important. It's necessary.

16 But, when this trial ends, with a just
17 verdict, although you can't bring her back, in
18 some ways you can give her back, you know. We
19 can be past that and remember the Teresa Halbach
20 who was, rather than the 15 loci of her DNA.

21 You won't give closure, but maybe,
22 maybe, you can create an opening; if not closure,
23 an opening when we finish this trial, for people
24 to get out of these pews, out of these
25 uncomfortable pews, go back about their lives,

1 and in church, and in community, and wherever --
2 wherever the heck people hang out, in family
3 rooms, there pursue closure.

4 And the sense of restoration or
5 reconciliation that we find, or seek, in places
6 other than courtrooms, with uncomfortable pews to
7 sit in. So maybe, as you finish this case,
8 although you can't give closure, maybe you can
9 give the opening for it.

10 How do you undertake then, to do the
11 things that you can do. It's witnesses, it was
12 helpful for Mr. Kratz to give you pictures of the
13 witnesses so you can associate the face with the
14 name again. But much more fundamentally, how do
15 you -- how do you assemble and assimilate this
16 mass of information and approach it in a
17 practical way.

18 You can't do it by hoping the DNA will
19 tell you a story. You know, unfortunately, for
20 example, DNA, doesn't tell stories. People tell
21 stories. People have stories. DNA is
22 submicroscopic bits of protein. Mine's a little
23 different than yours, but, you know,
24 fundamentally we're all about 99.9 percent the
25 same, probably. Doesn't tell a story. It

1 doesn't tell why someone did something, doesn't
2 tell when it got where it got.

3 If a human being made a mistake with the
4 DNA, it doesn't tell you anything at all about
5 whether -- whether it should have been here, or
6 wasn't here, or whatnot. It doesn't -- It
7 doesn't tell you a story, unfortunately, although
8 it makes good rhetoric, in a closing argument.

9 So what you have to do in the end is,
10 you have to look and listen to people here. Even
11 when they are talking about science, or filling
12 their -- with the propane truck, or whatever. In
13 this process, to do your job, to do the thing you
14 can, you have got to look at real intently on the
15 witness stand and listen to people. And you have
16 got to sort out who you believe and who you
17 don't, in the end.

18 So I want to at least suggest that you
19 ask two very basic questions here as -- as a
20 framework, a possible framework for getting at
21 the things you can do here, if you choose. First
22 question, you know, he says he is innocent.
23 Anybody can say they are innocent.

24 Back at the time before you were around,
25 before anybody was really looking at him, you

1 might ask first, was he doing the things that an
2 innocent person might do. As you look back at
3 it, was he acting and was he behaving like an
4 innocent man. That's one question you could ask,
5 sort of approaching this whole mass of evidence.

6 A second question you might ask yourself
7 is, for the law enforcement professionals and the
8 prosecutors, primarily the state employees and
9 state witnesses, call them law enforcement people
10 generally, the ones who are so convinced he is
11 guilty, back before they got here, were -- were
12 they behaving as honest people acting in good
13 faith do.

14 You could ask yourself that question,
15 again, as sort of a framework for approaching
16 this mass of evidence. Back before they knew you
17 were going to look at them, as you see it now,
18 were they behaving honestly, were they acting in
19 good faith. Now, these -- these are just two
20 suggestions, just some lawyer's idea. You can go
21 about this whatever way you want. But this might
22 be helpful.

23 And ask yourself, as to the folks who
24 think Steven Avery is guilty, do you believe them
25 in the end, and believe them to a level that you

1 would not even pause or hesitate, when called
2 upon to act in the most important affairs of
3 life. That's language right out of this
4 reasonable doubt instruction that you got.

5 And just taking a part of it, and it's
6 sitting under your chairs, or wherever your
7 instructions are, you don't have to pick it up
8 and look at it now, but you will find that. I
9 think it's a helpful practical guide in deciding
10 whether something is proven, whether you believe
11 it, beyond a reasonable doubt. It's, you know,
12 would you -- given the information you have in
13 the end, would you pause or hesitate in the most
14 important affairs of life.

15 There's no getting around that this is
16 one of the most important affairs of your life,
17 of your lives. A young woman is dead, for no
18 conceivable good reason. And a man is on trial
19 for doing it. Enormous consequences.

20 And Mrs. Halbach, and everybody who
21 loved and cared about this young woman, brothers,
22 sisters, friends, uncles, aunts, you name it.
23 And to Mrs. Avery, whose own story is tragic.
24 You know, and to the people who fought for his
25 innocence, the handful of people who believed

1 him, before the rest of the world finally got it
2 right, who went through all that, Mrs. Avery, and
3 then two years later to have this come crashing
4 down on her. This is an important affair. And
5 it is for you now, too.

6 So, I start with my first question, did
7 he behave as an innocent man might behave. Let's
8 go back, let's go back to roughly October, 2005.
9 What's he doing? What's Steven Avery doing?
10 Well, he is living in a trailer that he borrowed
11 from Rollie Johnson. That's pretty modest.
12 That's a damn sight better than a prison cell,
13 that he had been in. He's got himself a
14 girlfriend. He's working in the family business.
15 This is all honest stuff. So far.

16 He has a lawsuit started, for a whole
17 lot of money, based on he's got two indisputable
18 points on his side in that lawsuit. One, he was
19 innocent of the earlier case, but, you know, he
20 rotted in prison for a while anyway. So, you
21 know, he is innocent, but he went to prison.
22 He's got two pretty good starting points in a
23 lawsuit, in getting some money. And that's what
24 he's got two other lawyers pursuing for him, back
25 in 2005. He's got his mom and dad back. I don't

1 mean to be ignoring Allen, but when I speak of
2 Delores and anybody else, he's got his family
3 back, is the point.

4 And as this -- as this case starts to
5 take shape, you know, as Teresa gets reported
6 missing, and they find out that she had a photo
7 shoot out at the Avery property. The very night,
8 November 3, she's reported missing, Sergeant
9 Colborn comes out to the property, bumps into
10 Steven Avery.

11 Steven is not expecting the police.
12 There's no way he would have even known she had
13 been reported missing at this point. Bumps into
14 Sergeant Colborn and he is cooperative. By
15 Sergeant Colborn's own account, he is
16 cooperative, open, talks to Sergeant Colborn.
17 Doesn't say I'm not talking to you, you know.

18 The next morning, same thing. Detective
19 Remiker and Lieutenant Lenk come out to visit
20 him. He's cooperative, cooperative to the point
21 of saying you can come into my house, when they
22 ask, go ahead, come in my house.

23 I think it's later on Friday,
24 November 4, when David Beach comes and, you know,
25 has the poster. He wants to put the poster up.

1 This is Teresa's relative, nice younger guy who
2 testified, I think the first day of testimony.
3 And David Beach has a conversation with Steve
4 Avery and Steve is forthright. He's calm. He
5 appears concerned, according to Mr. Beach.

6 To me, this is useful, because at that
7 point he is not posing. He is not in a
8 courtroom. He doesn't know how this is all going
9 to play out. These -- These are people who are
10 seeing him real, if you will, just having, you
11 know, encounters with him. And this is their
12 take on what -- on what they are getting from his
13 behavior and what he says.

14 Is he behaving like an innocent man?
15 Well, he has Teresa Halbach's cell phone number.
16 We get a glimpse of her, she's obviously willing
17 to give this out. She says so in the voice mail
18 message. She leaves her cell phone number on the
19 voice mail message. They caught that, that she
20 leaves on the Janda voice -- or answering
21 machine.

22 And Steve has her cell phone number. He
23 has got it written down in two places in his
24 house. They are on his computer desk somewhere.
25 They are there on November 5 when the police

1 descend and the -- the Avery people get excluded
2 from the property. And the police have it for a
3 week. They are there. He hasn't destroyed her
4 cell phone number, hasn't tried to get rid of it,
5 you know. It is there in not one, but two
6 places.

7 So, you know, I don't know, if you can
8 burn a cell phone, and if you can burn an A310
9 Digital Power Shot Camera, I don't know why you
10 can't burn two pieces of paper that have a cell
11 phone number on it. That's not what he does,
12 obviously.

13 There was a van for sale. Heaven knows
14 there was a van, you saw about 10 pictures of
15 this silly maroon van sitting out there. Why --
16 Why do I, you know, why do I suggest that's
17 evidence, if you will, of Steve behaving like an
18 innocent guy would behave? Well, you know, if
19 you're -- if you are going to lure the
20 photographer to your property so you can have
21 your evil way with her, and kill her, you don't
22 need a car, you don't need anything for sale.
23 You just lie and say, you know, I want you to
24 come out and take a picture of a '73 Eldorado,
25 or, you know, whatever it is.

1 There's a van. It's the van he tells
2 Auto Trader. It's owned by Barb Janda, just like
3 he tells Auto Trader, B. Janda. And gives B.
4 Janda's telephone number. Turns out there is no
5 dispute, of which I'm aware. The Dassey boys,
6 you know, Scott Tadych, the people who know about
7 this, who testified, yeah, there's a van. It's
8 sitting there. She's trying to sell it. It's
9 hers.

10 I think that's suggestive of innocent
11 behavior. Not of, you know, luring, or
12 concocting some scheme so that you can murder
13 somebody.

14 Look, again, what he's doing in October
15 and early November, 2005, while he's still in his
16 house. The gun's over the bed. Are they hidden?
17 Has he -- you know, has he run off and burned
18 them, or asked his nephew to take them and thrown
19 them in the bottom of a pond or something, or
20 even moved them to the spare bedroom? No, the
21 guns are where they are. They are right where
22 Rollie Johnson left them.

23 Did he crush the car, no. Did he empty
24 the burn barrel, try to hide, you know, whatever
25 is in the burn barrel? Did he melt the license

1 plates? Did he get rid of the key that
2 supposedly is found, you know, next to the foot
3 of his bed, or across the way from the foot of
4 his bed, next to his desk? No, you know, he
5 doesn't do any of that. I don't think the key is
6 there. But if you believe that it's -- that it's
7 there, you know, if you believe it's there, then
8 it's awfully incriminating, if you believe he put
9 it there.

10 But, you know, I don't know why he would
11 keep the key, and that key alone, of all of
12 Teresa Halbach's possessions, if he has
13 previously disconnected the battery so that the
14 key won't work, unless he reconnect the battery
15 for some reason. And he's got a junkyard, for
16 crying out loud. Leave the key in the trunk
17 where the keys are for all the other junk
18 vehicles. Leave it in the ignition, put it in
19 the grass, I don't know. Bring that, and that
20 alone, to your bedroom.

21 But you know, in general, the behavior
22 you are seeing from Steven Avery on November 3
23 and November 4 is open, cooperative, sure you can
24 search my house, contrasted to the behavior of a
25 George Zipperer, who is one of the other

1 appointments Teresa has that afternoon.
2 Uncooperative, hostile, dishonest with the
3 police, won't let him in the house for a long
4 time, even after he knows this young woman is
5 missing. You get this from -- some of it from
6 JoEllen Zipperer and some of it from Detective
7 Remiker.

8 How about burning trash, plastic smell,
9 burning trash at about, give or take, 3:45 on
10 Monday afternoon, how about. Well, that really
11 sort of takes you to Bobby Dassey, and Blaine
12 Dassey, and Lisa Buchner, and John Leurquin, to
13 decide what burning trash means.

14 If Bobby Dassey is right and Teresa
15 Halbach has been there at 2:45, then burning
16 trash at 3:45 with a plastic smell is potentially
17 incriminating. Bob Fabian sees this, smells the
18 plastic burning as well. That's potentially
19 incriminating if Bobby is right.

20 I'm wondering why Bob Fabian doesn't
21 smell the quite distinctive odor of a burning
22 tire. You know, rubber burning, with black smoke
23 pouring thickly out of the burning barrel, if
24 supposedly the tire is being used to burn the
25 cell phone, the camera, and the palm pilot.

1 But setting that aside, to me there is a
2 more fundamental problem with that. I don't
3 think Bobby Dassey is right. You know, Blaine
4 Dassey has a good reason to know when he gets off
5 the bus every day, it's 3:30 to 3:40. He comes
6 home, Bobby is sleeping. Bobby is there and he's
7 sleeping. This is what his own brother
8 remembers.

9 More, the bus driver has a pretty good
10 reason to know what time. She's driving the same
11 route every afternoon, dropping off the same
12 kids, in the same place, at about the same time,
13 every afternoon.

14 She's no friend of Steven Avery. She's
15 not connected to Steven Avery. She's not
16 coached. She's not trying to oversell what she
17 remembers. But that's when she drops the Dassey
18 boys off. And one of the days that week, either
19 Halloween, or Tuesday, the 1st, or Wednesday,
20 November 2nd, she remembers seeing a female
21 photographer taking pictures of a van.

22 If facts are stubborn, as counsel says,
23 then that -- then that's a pretty stubborn fact.
24 Just because she's not overselling it, and she
25 has no reason to want -- to care how this case

1 comes out, you know.

2 So is it possible that some other female
3 photographer was there on Tuesday, November 2nd,
4 taking a picture of a van? Well, is it possible?
5 Sure, it's possible. But even Investigator
6 Wiegert concedes, when pushed a little bit about
7 that, that he doesn't have any information about
8 another female photographer coming to take a
9 picture of another van.

10 So this is pretty reliable stuff, that
11 Teresa is there at more like 3:30 or 3:40, not
12 2:45. John Leurquin sees a green SUV leaving.
13 What does he care about Steven Avery? For that
14 matter, what does he really care about Teresa
15 Halbach. And he doesn't have -- he doesn't have
16 a dog in this fight.

17 What he has to do is sit and stare out
18 the front windshield of his truck, every day for
19 half an hour, 3:30 to 4, quitting time, as he
20 fills the LP truck. He has got nothing to do
21 except look at the world. Filters out the school
22 bus, filters out, you know, the cars he sees
23 coming and going every day. That's common sense,
24 that makes sense.

25 When something new goes by, it's not a

1 heavily traveled road, he notices. Is he
2 overselling the point, no. Can't say it's that
3 SUV, can't say it's a Toyota RAV4. Looks
4 similar, can't say who is driving it. Didn't see
5 whether it turned right or left at the stop sign
6 on Highway 147. You know, he's not gilding the
7 lily, so to speak. He's not overselling what he
8 saw.

9 So, to me -- you guys are the ones that
10 matter -- but to me, that's fairly reliable
11 stuff. It's reported to the police, candidly,
12 when they ask. Lisa Buchner for that matter goes
13 up to the barricade, that Saturday, says I have
14 some information maybe you want. They interview
15 her two days later, you know, the following
16 Monday, when it's fresh in mind. And she tells
17 them what she knows. Tells them what she doesn't
18 know, for that matter.

19 So, you know, you got Bobby stacked up
20 against Blaine, Lisa Buchner and John Leurquin,
21 and it looks to me like the more probable time
22 frame is 3:30ish that she's there. And if that's
23 so, then burning garbage in your burn barrel at
24 3:45 is just burning garbage in your burn barrel.
25 It's innocent. Bob Fabian smells plastic, so

1 what. It's a white plastic garbage bag that, you
2 know, Blaine sees.

3 And you got plastic in your garbage, you
4 know, I'll bet you do, unless you live in town
5 where you've got a nice blue recycling tub or
6 something, and you separate that stuff out. But
7 this doesn't look like much, if the time frame is
8 different than Bobby Dassey has it.

9 So how about -- how about the 4:35 p.m.
10 phone call to Teresa's cell phone, what my
11 colleague referred to as the alibi phone call.
12 And the State argues he is doing that to create
13 an alibi, because he knows that will create a
14 record on the cell phone bills, cell phone
15 company records.

16 Okay. All right. I mean, first of all,
17 it makes the *67 calls not very important,
18 because they are going to create a record too.
19 And if he knows a 4:35 call is going to create a
20 record, then he also knows that the 2:24 and 2:33
21 call are going to create a record. But maybe
22 more importantly than that, this isn't much of a
23 alibi.

24 It's a cell phone, calling a cell phone,
25 you can be anywhere, doesn't place you in any

1 particular, you know, spot on the planet. It's
2 not like you are at home in your kitchen, because
3 you called on your land line, you know, with a 6
4 foot cord keeping you from going any further.
5 It's a cell phone. It's not a good alibi, you
6 know, it doesn't get you anywhere, or suggest
7 that it's guilty behavior.

8 This call, also, draws more attention to
9 you, not less. I mean, you are going to show up
10 on the cell phone records. It is your cell phone
11 you are using. It's not -- This isn't something
12 you do if you are trying to alibi yourself.

13 But if, while we're looking at phone
14 calls and moving through Steve's behavior on
15 October 31, you know, hey, there are two
16 telephone calls the State hasn't talked much
17 about yet, if at all, but they stipulate on this.
18 They agreed. There are two phone calls from the
19 Manitowoc County Jail to Steven Avery's land
20 line.

21 He's got a cordless phone, it may even
22 be in one of the pictures in the bedroom, so he
23 can wander around. But it is, you know, it is a
24 cordless land line phone, they have stipulated.
25 These phone calls come in from his girlfriend,

1 Jodi, from the jail. First one is at 5:36 in the
2 afternoon, 15 minutes of talking, tape recorded.
3 Investigator Wiegert has listened to it. And
4 then another one at 8:57 p.m., tape recorded,
5 then listened to by the police, 15 minutes long,
6 talking to his girlfriend.

7 This is what somebody who's in the
8 process of burning a body is going to be doing?
9 Are you kidding me? You know, I mean, you think
10 maybe you would have heard those tapes played if
11 there had been something incriminating, or out of
12 the ordinary about the 15 minute conversations
13 with the girlfriend, that night, Halloween night?
14 It's more just evidence of every day life, doing
15 what an innocent person might well be doing. And
16 that's how October 31 comes to an end.

17 Later that week -- and I, you know,
18 Blaine Dassey tells you this, he didn't make a
19 big point out of it, but he told you, and I want
20 to remind you about that, later that week Steve
21 Avery suggests to Blaine, maybe he wants to
22 invite some of his friends over for a bonfire, at
23 Steve's place. Blaine's in high school, high
24 school kids, bonfire, he makes the suggestion.
25 It never happens, for whatever -- I don't even

1 know that Blaine explained why, but it just --
2 the bonfire never happens later in the week.

3 But, you know, if you had burned a body
4 in your burn pit, or you even knew that there
5 were bones in your burn pit, spread around, human
6 remains, you are going to invite some high school
7 kids over to have a bonfire and sit around the
8 same burn area? I'm not. That doesn't seem to
9 me that somebody who's guilty, that that's
10 something he would do, an invitation he would
11 extend to his nephew. A bunch of random high
12 school kids, come on over to my make shift
13 crematorium for a bonfire and stand around.

14 What does he do here, in terms of
15 behaving like an innocent guy, or not. Well,
16 look at the witnesses we called on his behalf.
17 Now, all walks of life, many fewer witnesses than
18 the State called, but as I say, all walks of
19 life. And what struck me, at least, about the
20 folks who testified for you, because we called
21 them, is I thought to a person, these folks were
22 natural, they were real.

23 They weren't swiveling in their chair to
24 look at you and give you a talk, as if they were
25 an old friend of yours every time they are asked

1 a question. They are not advocating anything, as
2 far as I could pick up. Or as I say, sort of
3 selling you something, overselling something.
4 They are candid on cross-examination, just as
5 they were on direct examination. I thought, at
6 least, that's what this group of people shared.

7 Was I surprised that we had to call the
8 bus driver, rather than the State calling, to
9 help you with the time frame that afternoon,
10 yeah, I was surprised. But we did it, since they
11 didn't. And now you have got that information.

12 But, you know, these -- these people
13 rang true to my ear, at least. And it's your
14 ears that matter.

15 So let me move to my second question:
16 Can you believe the police? Can you believe the
17 law enforcement folks who are so sure that Steven
18 Avery's guilty? What do you see about their
19 behavior before they are on the stage here?
20 Well, look at what they say and do when they
21 don't know that you are going to be listening and
22 seeing.

23 Let's start with Andy Colborn, since I
24 sort of started with him on November 3. He calls
25 in, does a license check on Teresa Halbach's car.

1 He says he thinks it was probably on November 3,
2 not sure, but probably November 3, that he did
3 that. But remember he's working on November 3,
4 so he would have had his radio.

5 And it's Detective Remiker who says
6 ordinarily you would use your radio when you are
7 calling in a license check to dispatch. He uses
8 his cell phone instead. The tape you hear is
9 clearly a phone call, not a radio in. So I think
10 it's probably more likely that this license check
11 is November 4, when Sergeant Colborn acknowledges
12 he was off.

13 Didn't work on November 4. And you may
14 remember, Mr. Kratz asked him, do you remember
15 what you were doing on November 4, 2005. He
16 says, yes, I do. I was off. I remember what I
17 was doing. Doesn't tell you what he was doing,
18 other than to deny he went to the Avery Salvage
19 yard, or denied he had anything to do with
20 planting evidence. But he is off.

21 And I'm not going to play it for you
22 again, it's in evidence, but -- Let's see if this
23 comes up. That's -- That's what you hear on the
24 tape that we played.

25 SERGEANT COLBORN: Lynn.

1 DISPATCHER: Hi Andy.

2 SERGEANT COLBORN: Can you run Sam,

3 William, Henry, 582, see if it comes back to that

4 da da da da da -- then they start talking over

5 each other. I can't make it out. You can listen

6 to it if you want. Then she goes off on talking

7 about needing a Spanish interpreter, chitty

8 chatting while she's doing the license check.

9 She's comes back and she confirms it's

10 Teresa Halbach's license plate, the missing

11 person.

12 Sergeant Colborn says, '99 Toyota, and

13 so on.

14 Why is he doing that? Why is he doing

15 that? Why is he calling in a license check on

16 November 3, or November 4, which ever day it is?

17 You can get that information from Investigator

18 Wiegert, or if you want to call your dispatcher,

19 ask your dispatcher.

20 This sounds a lot like what road patrol

21 officers do when they come across a stalled car,

22 an abandoned car, a car where it shouldn't be.

23 That's what this sounds like. Draw your own

24 conclusions, obviously look at it like from any

25 other piece of evidence. But what's important is

1 he is doing this, not on a witness stand, he is
2 doing this when he doesn't know anybody is going
3 to be seeing, or hearing, or evaluating it later.

4 Stay -- Move off Sergeant Colborn, but
5 stay in the Manitowoc County Sheriff's Department
6 for the moment. Mr. Kratz argued to you
7 yesterday that Special Agent Fassbender, starting
8 November 5, devoted his resources where this
9 thing was likely going. Where this thing was
10 likely going.

11 True, I guess he did, in the sense that
12 it was certainly clear pretty quickly where this
13 thing, this investigation, was going. In my
14 opening, and with Detective Remiker, we had a
15 chance to hear, at 11:30 in the morning, on
16 November 5, half an hour after the first police
17 officers arrived at the Avery property, there to,
18 you know, see the concealed Toyota that the
19 Sturm's had found. Half an hour later, for you
20 to hear, at a time when he, you know, he wouldn't
21 have known it, Manitowoc detective, Dennis
22 Jacobs, talking to his dispatcher:

23 Can you tell me, do we have a body or
24 anything yet?

25 DISPATCHER: I don't believe so.

1 Very next thing he says:

2 Do we have Steven Avery in custody,
3 though?

4 Yeah, it's pretty clear where this is
5 going. By the time Special Agent Fassbender
6 arrives, you know, at 2:25, 3 hours later that
7 afternoon almost, it's pretty clear where it's
8 going. And five minutes after this one
9 conversation --

10 THE COURT: Mr. Strang, I'm getting a
11 signal for a break, so we're going to take a short
12 break and then we'll resume in 10 minutes.

13 (Jury not present.)

14 THE COURT: You may be seated. Let's
15 report back at 10:15.

16 (Recess taken.)

17 (Jury present.)

18 THE COURT: Mr. Strang, you may resume.

19 ATTORNEY STRANG: Thank you.

20 So five minutes later, five minutes
21 after Detective Jacobs called with the
22 dispatcher, he is on the phone with Detective
23 Remiker, or the radio, I don't remember now, but
24 you got the tape in evidence. Of course,
25 Detective Remiker does testify, and you may

1 remember him, kind of presented himself as
2 someone who thought they were barking up the
3 wrong tree, that Steve didn't do this, when he
4 testifies. That morning, just about an hour
5 after the Sturms have first found the Toyota.

6 Okay. Other than the car, do we have
7 anything else?

8 Not yet.

9 Okay. Is he in custody?

10 ATTORNEY STRANG: It's not who are you
11 talking about, who do you mean by he.

12 Negative, nothing yet.

13 One pronoun, he, and these guys know who
14 they are talking about at 11:35 in the morning.
15 Are these folks acting in a way that seems good
16 faith and honest to you, back then? Six days
17 after this, Special Agent Fassbender makes the
18 telephone call to Sherry Culhane at the Crime
19 Lab, try to give her some direction. And, you
20 know, she's holding herself out as a scientist,
21 that's how she holds herself out.

22 Is Special Agent Fassbender asking for
23 science, on the exhibit that Mr. Buting showed
24 you? Is he asking for science there, for a good
25 cautious, objective, let's see where the science

1 leads us kind of thing, when he's asking, try to
2 put her -- put her in his house or garage.
3 That's not a very good fit, in my view, with the
4 State's, counsel's argument here, when they
5 submit evidence, they are not looking for a
6 specific answer. Oh, really.

7 The memo belies that. The phone memo
8 does. And Sherry Culhane, on the stand, herself,
9 tells you, that by the time these buccal swabs
10 are taken in November, 2005, from all kinds of
11 people other than Steven Avery, members of his
12 family, these are elimination samples.

13 Elimination samples. We have already decided
14 they didn't do it, we're just trying to eliminate
15 if we find their DA -- their DNA anywhere.

16 Sherry Culhane, for that matter, had she
17 followed the protocol on her testing, the bottom
18 line folks, had she followed her protocol on the
19 testing of that bullet found in March. She can't
20 say it's Teresa Halbach's DNA. First time in her
21 career, 23 years, first time, on the last chance
22 to put Teresa Halbach in his house or garage, she
23 deviates from the protocol and includes Teresa
24 Halbach.

25 Now, it was just the control that was

1 contaminated. It was just Sherry Culhane's DNA.
2 That doesn't turn the evidentiary sample into
3 having Teresa Halbach's DNA. Okay. All right.
4 Fine. But the protocol presumably is there for a
5 reason. Protocols are the foundation of good
6 science. And the protocol says, if you have got
7 contamination, you set that experiment aside and
8 you do it again, you don't rely on that one.

9 Science ought to be reliable. It ought
10 to be consistent. And it ought to be cautious,
11 otherwise, it's not science. And the results
12 simply aren't reliable. That's why you have a
13 control. And when you get contamination, you now
14 know that something has gone wrong with this.

15 And to say that the contamination is
16 over here, but not over here, is a little like
17 saying, I don't know, maybe no one even eats TV
18 dinners any more, maybe they're microwave dinners
19 now, I guess, from what I see in the grocery
20 store. But whatever, however you heat this stuff
21 up, when you pull off the plastic, or the tin, or
22 whatever covers the meal, you know, and the
23 little peach cobbler has a fly in it, in that
24 little compartment, you don't eat the Salisbury
25 steak either, okay. You know, this is -- this is

1 not fancy stuff in the end. It's -- It is and
2 should be common sense, at some level, in the
3 end. But she deviates, for the first time in 23
4 years.

5 The end -- This continues, the end of
6 January, 2007, bringing us up to six weeks ago.
7 Now, the State goes all the way to Virginia, to
8 Quantico, to get the FBI. Are they trying -- Is
9 the FBI trying to root out possible police
10 corruption? Are they concerned about the
11 integrity, of policing in northeastern Wisconsin?
12 Trying to find out if there's a bad cop or not?
13 I think the decision is already made.

14 You have this, too, Special Agent Gerald
15 Mullen of the FBI, memo to the FBI laboratory,
16 this January 30th --

17 ATTORNEY KRATZ: Judge, I'm sorry, I don't
18 mean to interrupt. I believe the defense is
19 entitled to one closing. Mr. Buting covered exactly
20 the same territory yesterday. I understood they
21 were going to split and talk about different items.
22 I simply wanted to interpose an objection. My
23 apologies to counsel, but that was my understanding
24 from the Court.

25 ATTORNEY STRANG: I would be more concerned

1 about boring you. Mr. Buting did cover it. It's
2 there.

3 But I want to say something about EDTA
4 that Mr. Buting did not. Janine Arvizu, who is
5 not a doctor, Mr. Buting misspoke, she didn't
6 complete her dissertation. She did the other
7 Ph.D. work. I want to make sure you got out of
8 that what she had to tell you. And it's this,
9 the FBI protocol that they put together in a
10 couple of weeks here, is good for identifying and
11 confirming the presence of EDTA. It is not
12 designed for confirming the absence of EDTA. It
13 has to do with the detection limits. The
14 instrument has a detection limit and the method
15 has a detection limit.

16 So, look, if you were interested in
17 finding out whether your friend is at home, and
18 the instrument you chose was a telephone, call
19 him at his house, ring his telephone number, if
20 he answers the phone, you have confirmed his
21 presence with your instrument. He is there, you
22 have called his home, not his cell phone, he is
23 there. He's got to be, if he's answering his
24 phone. You have confirmed his presence.

25 However, if your instrument is your

1 telephone and you call his home and it just rings
2 and rings, and it's not answered, you have not
3 confirmed his absence. He could be in the
4 shower. He could be in the basement folding the
5 laundry, he could be in bed sleeping. He could
6 be pouting and just not answering the phone
7 because he sees it's you calling on the caller ID
8 and he doesn't want to talk to you today.
9 Whatever it is, you haven't confirmed his absence
10 with the telephone. You haven't designed a
11 protocol to get you to that.

12 Your method, in other words, of
13 detection, isn't suited to confirming absence,
14 only presence. If you like fresh baked hot apple
15 pie, and I put you in a room and I blindfold you
16 and we walk in, a fresh baked hot apple pie, your
17 nose is the instrument. It has a detection
18 limit.

19 A dog has a better instrument, lower
20 detection limit, fancier instrument. He can
21 detect less of the smell of apple pie than you
22 can, but you have got this instrument to use. If
23 it's within your detection limits, and the pie
24 is, you know, slid on the table under you while
25 you are blindfolded, you will detect it with your

1 instrument.

2 However, if the method is no good,
3 because we have got to consider that, you are not
4 smelling an apple pie. Well, is the room too
5 big, are the windows open, is the pie too far
6 away, does the room smell badly of something else
7 that's interfering with your instrument detecting
8 the fresh baked apple pie? We have method
9 detection problems and limits. Or is the apple
10 pie, not fresh baked, but it's an 11 year old
11 apple pie? You may not detect that either, with
12 your instrument. I don't think Janine Arvizu was
13 really telling you more than that. And,
14 unfortunately, Dr. LeBeau was trying to tell you
15 more than that and overselling his case.

16 Now, others who matter, in the law
17 enforcement group who think Steve is guilty.
18 Mr. Lenk and Mr. Colborn. They denied here, of
19 course, but what are they doing, in 2002, when
20 the evidence slip has to be signed for
21 transmission of the hair sample and fingernail
22 clippings, or whatever it is, to the Crime Lab,
23 and the evidence custodian at the time, Detective
24 Sergeant James Lenk, signs off.

25 Is he really, as he claims here, simply

1 signing the form, giving it to Sergeant Shallue
2 and allowing Sergeant Shallue to fill out the
3 otherwise blank form? You are entitled to
4 disbelieve that. Or at least to say he's not an
5 honest evidence custodian if he is doing that at
6 the time. He is begging to be fired, because he
7 is not documenting what's going where. Or if
8 he's just telling you here, to distance himself
9 from that file in the Clerk's Office, you are
10 entitled to consider that too.

11 Would Lieutenant Lenk lie, in the end?
12 Would he lie, as a sworn law enforcement officer?
13 Well, all I can tell you is, he did, twice, and
14 you heard it. I have the transcript from the
15 earlier hearing. Here he says he arrives at
16 2:00. When he's asked under oath before, it's
17 6:30 or 7, once when he's asked, and the other
18 time he's asked, it's late afternoon. This isn't
19 15 minutes off, folks. It's under oath and it's
20 a difference of four and a half or five hours.

21 At that time of year, November, 2005,
22 it's the difference between broad daylight and
23 pitch black. He was under oath, and he gave two
24 very different answers to the same question, at
25 two different times, under oath. He was the only

1 witness, in five weeks, shown to have made
2 inconsistent statements, under oath.

3 Others made inconsistent statements and
4 were shown to have. Blaine Dassey comes to mind.
5 Scott Tadych comes to mind. Both of them are
6 asked, at first, by the police, was there a
7 bonfire, on Halloween, no, no bonfire. Later
8 they get asked again, now there is a bonfire. In
9 fact, Scott Tadych comes here and says big
10 bonfire, flames to the top of the roof. Same
11 guy, again, I showed, when first asked by the
12 police, no bonfire. Closer in time to October
13 31, no, didn't see a bonfire that night.

14 That's inconsistent statements, but they
15 are not under oath. They still, as the Judge
16 instructed you yesterday, are something you can
17 consider, consistency or inconsistency of a
18 witness' statements, over time. Still you can
19 consider those when you decide who you believe,
20 and not under oath.

21 Blaine explained that a little bit.
22 Explained his changes of his story. Well, the
23 police kept asking him. They didn't like the
24 answer, they asked him again. Got angry with him
25 and his mother, at the restaurant, when they

1 wouldn't reject Uncle Steve. Is that because
2 Blaine is scared of Uncle Steve?

3 My recollection, yours will govern,
4 there's 12 of you and one of me, but my
5 recollection of that testimony is that the
6 question was whether Blaine Dassey was scared,
7 and the answer was something like, no, not
8 really, but he used to boss us around. You will
9 decide that.

10 But in any event, Lieutenant Lenk, by
11 the time he gets to you folks, is telling you
12 some really implausible things. Like, I had
13 never been to Steven Avery's house. I have never
14 been on the Avery property, but somehow, just out
15 of habit, I turned right at the end of Avery
16 Road, and I -- I -- I just happened to drive
17 straight to Steven Avery's trailer. Okay.

18 So this -- You know, what they are doing
19 and whether -- whether you think you can trust
20 them back when they are not aware they are going
21 to be observed or revealed later, is important in
22 the same way what he does, back before he knows
23 it's going to be played out to you, is important
24 in assessing who you believe. Are they acting
25 honestly? Is he acting like an innocent person

1 would act, or might act?

2 It is important because it comes down to
3 the bias in the end. You know, would, in the
4 end, police officers plant evidence? And that's
5 a hard one, you know. That's why it's helpful to
6 say, boy, are they behaving honestly and in good
7 faith up to then. Because in the end, would they
8 plant evidence against someone. Now, you will
9 have to decide whether you have a reasonable
10 doubt about that, or whether, you know, we have
11 shown that to you at any level, or not.

12 But, look, it is a matter of bias, if it
13 happened. And what you critically, I think, need
14 to understand, that if and when police officers
15 plant evidence, they are not doing it to frame an
16 innocent man. They are doing it because they
17 believe the man guilty. They are not doing it to
18 frame an innocent man. They are doing it to
19 ensure the conviction of someone they have
20 decided is guilty.

21 That's why you plant evidence. Other
22 than in the strangest, you know, most abandoned
23 of conscience sort of police officer, they aren't
24 after framing an innocent person, they are after
25 ensuring the conviction of someone they just

1 believe is guilty.

2 So as you approach the whole concept of
3 planting you have got to understand the bias that
4 would drive it, not, you know, boy, they are out
5 to get an innocent guy. It's just the opposite.
6 It's just the opposite. But it's also just as
7 corrosive to do it. Because juries decide guilt,
8 not police officers who are involved in the hunt.
9 You know, they get invested too, in the outcome,
10 and in whom they suspect, who they think is good
11 for something.

12 And, you know, the State pooh-poohs the
13 idea that a civil lawsuit, for a whole lot of
14 money, against the Manitowoc Sheriff's
15 Department, would have caused anyone to so
16 dislike Steven Avery that they would plant
17 evidence against him. Well, look what the mere
18 suggestion that they did plant evidence has done,
19 in terms of a reaction here.

20 The defensiveness of the case that the
21 State presented to you, the anger about the mere
22 suggestion of planting evidence, the
23 self-righteousness, the hostility, the trying to
24 have it both ways with you. We trusted the
25 Manitowoc people, they were skilled. They were

1 honest. They were the best available evidence
2 technicians.

3 But we also had somebody watching. We
4 were short of manpower. We needed them. But, in
5 the first search of Steven Avery's -- first
6 lengthy search of Steven Avery's house, on the
7 evening of November 5, we got enough people that
8 two of them can be taking photos. Two of them
9 can be taking photos, in this little trailer, as
10 you heard. You hear the State trying to have it
11 both ways, here.

12 And in sort of getting at the bias that
13 would drive a police officer, potentially, to
14 plant evidence, it's this -- it's this need, this
15 belief that he is not really innocent. He's
16 guilty, he's got to be guilty. It's what you
17 hear from Detective Jacobs and Detective Remiker,
18 it's that quality. It's the sense that this is
19 where this is going, three hours in, when all we
20 have got is the car, on a big property with a
21 whole lot of other people there.

22 It's the -- After five weeks of evidence
23 and 501 exhibits, it's the State standing up and
24 telling you it's clear. What in the world is
25 clear and simple when it takes five weeks and 501

1 exhibits to try to show. And whatever this is,
2 whatever, whichever way you come out, this case
3 isn't clear and simple.

4 And that's where the civil lawsuit feeds
5 in. It's not that it feeds in with bad cops. It
6 feeds in with good cops, in the sense that it
7 erodes, fundamentally, the sense of identity, we
8 get the bad guys, we don't get the good guys.

9 And here it is, they got it wrong, that
10 department got it wrong. Not only do they get it
11 wrong, but the right guy is still out there and
12 he commits another rape, Gregory Allen. This
13 goes to my identity, if I wear that same uniform.
14 Even if I'm aligned with these people, as you
15 hear the sort of reaction from the prosecutors to
16 this.

17 And now, you know, since -- since he
18 really couldn't have been that innocent, he's got
19 to be guilty of this one. He must be the right
20 guy this time. So you -- you know, nobody means
21 to do this, but you start looking around things
22 that are inconvenient, that don't quite square up
23 with the theory that he did it.

24 One example, and one example only, from
25 the blood, Teresa Halbach's blood in her own car.

1 If it were true, as the State now says, that
2 Steven Avery shot Teresa Halbach in his own
3 garage, killed her there, and if it were true
4 that he then burned her in the area immediately
5 behind the garage, why, why is her bloody head
6 ever in the Toyota at all. It's farther to take
7 her back to her car than it is to take her around
8 the corner of your garage, to the burn site, if
9 that's what it is.

10 So the State sort of ignore's the fact
11 that if Steve Avery had done it, and done it in
12 the way they say, her blood wouldn't be in the
13 car. The bloody hair stain wouldn't be there.
14 It is there, of course, so it suggests that
15 somebody did have to use the car as a transport.
16 She wasn't burned there -- or wasn't killed
17 there, but that's inconvenient. You guys have to
18 be, in the end, if you're going to do what you
19 can do here, more objective than that.

20 You can't overlook the inconvenient,
21 because it doesn't fit. You can't overlook, for
22 example, in deciding whether Lieutenant Lenk
23 dropped the key on the floor, rather than finding
24 it honestly.

25 You can't overlook the fact that all her

1 other keys are gone, the three or four other keys
2 that Tom Pearce described, and which common sense
3 would tell you would be on your key ring, and
4 they are not there. It's the kind of thing
5 that's inconvenient, but you can't overlook it,
6 even if they do.

7 The overlooking of the inconvenient,
8 really, I think, reaches its peak, if you will,
9 here in the State's opening statement, where
10 knowing that human bone fragments are found, at
11 least in the burn barrel, a long way from the
12 burn area behind Steve's garage. And maybe, in
13 the quarry, to the south.

14 Knowing, in other words, that their own
15 experts will say, yeah, bones were moved here,
16 the State never tells you in its opening
17 statement, there's a second place, and maybe even
18 a third, where human bone fragments, burnt human
19 bone fragments, are found. And we have no
20 evidence that it's more than one person. You
21 don't get told that, it's inconvenient.

22 But it also is true. And that's why, in
23 the end, it does become so important to decide,
24 burned here and a few moved elsewhere, or burned
25 somewhere else and most of them dumped here,

1 behind Avery's garage. That's why that says so
2 much about his guilt or innocence, in the end.

3 Look, I have got to sit down. Which no
4 defense lawyer ever likes to do because, in the
5 closing argument, because the prosecution gets to
6 stand back up. In a sense, they get the last
7 word, in closing argument.

8 I'm not going to get to answer the
9 passion, or the anger, or the replies that will
10 come, when I sit down. I got to turn him over to
11 you and let them have the last word. And as hard
12 as that is on me, the greater burden is on you.
13 The greater burden is on you. Because you have
14 got to try to do the things you can do here, and
15 you have got to find a way to live with the
16 things you can't do, but would like to do here.

17 You have got the great burden of
18 reaching a just, fair, and conscientious
19 decision. And so, in a sense, I'm -- in a sense
20 I'm going to rely on Judge Willis to give my
21 rebuttal to their rebuttal, in a sense. Because
22 I think he will tell you, when all is said and
23 done, that you won't be swayed by sympathy,
24 prejudice, or passion.

25 And I think that will be an answer to

1 what's about to come. I think he will, Judge
2 Willis will, I think, in the end, tell you,
3 charge you, to be very careful and deliberate --
4 deliberate in weighing the evidence, and to keep
5 your duty steadfastly. And that will be
6 sufficient answer, for me, to what's about to
7 come.

8 So I ask you, please, give it your full
9 and fair consideration. Do that critically here,
10 as citizens of Manitowoc County, where we stayed
11 to pick a jury, where we stayed to pick the 12 of
12 you, the 13 of you. And get it right. Get it
13 right.

14 Steven Avery has not been proved guilty
15 of murdering or mutilating the corpse of Teresa
16 Halbach. He's not been proved guilty of that,
17 beyond a reasonable doubt. It's because he is
18 not guilty. And that's what I'm asking you to
19 say in getting it right.

20 THE COURT: Members of the jury, there
21 is -- as counsel indicated, there's one more
22 argument, the State gets a chance for rebuttal. I'm
23 going to take a 10 minute break at this time, then
24 we'll come back to hear the State's argument and I
25 will give you final instructions.

1 Again, as I reminded you yesterday,
2 because the arguments are not complete yet, do
3 not begin your deliberations until all the
4 arguments have been made and I give you final
5 instructions.

6 (Jury not present.)

7 THE COURT: You may be seated. Counsel, I
8 will see you back at 11.

9 (Recess taken.)

10 (Jury present.)

11 THE COURT: And, Mr. Kratz, you may begin.

12 ATTORNEY KRATZ: Thank you, Judge.

13 This part of the case is the shortest
14 part, that is, the shortest argument, thankfully,
15 but it's also the most difficult, because I have
16 to limit my comments to what the defense has
17 argued. And it's also the part that it's a
18 little bit out of my comfort zone.

19 As you may have noticed throughout this
20 trial, I have tried to be courteous. I have
21 tried to examine witnesses with the fairness, and
22 the dignity, and the respect for which they
23 deserve in the courtroom. I have tried never to
24 cut off a juror (sic). When a juror (sic) wanted
25 to explain an answer, I tried never to say, stop,

1 I don't want to hear it, or the jury doesn't want
2 to hear what the answer might be. And so this
3 argument is different than that. It's
4 necessarily not as civil. It's necessarily not
5 my style, so I want to say that upfront.

6 Highly charged statements have been
7 given by the defense in their closing arguments.
8 And it's my responsibility to meet those,
9 hopefully, with compelling argument, the things
10 that you will find important when dismissing or
11 discarding some of what the defense has tried to
12 have you believe here.

13 I may personally like Mr. Strang, and I
14 may personally like Mr. Buting, but their
15 arguments I most certainly do not like. I think
16 they are unfair. I think they are unfair to you.
17 I think in many instances they have been what's
18 called disingenuous, which means that I don't
19 think that they have been totally truthful. And
20 in all candor towards you, I think they have
21 tried to fool you on a number of occasions.

22 I have got a job to do. I have got a
23 job to do as the lead prosecutor in this case, to
24 make sure that you are not fooled, to make sure
25 that you aren't sold something that isn't true.

1 And that's what this argument is all about.

2 The very first argument that Mr. Strang
3 made in the beginning of his opening statement,
4 he made it again in the beginning of his closing
5 statement, and at the end of his closing
6 statement, referenced the 1985 wrongful
7 conviction of that man, Steven Avery.

8 Steven Avery was wrongfully convicted in
9 1985. We all understand that. We all believe
10 that. But don't one of you consider anything
11 about that case when deciding the facts of Teresa
12 Halbach. Teresa Halbach, the Halbach family, and
13 the interests of justice deserve that you decide
14 it on this case, not on whether or not Mr. Avery
15 deserves some sympathy, or whether or not
16 Mr. Avery deserves to set it right. That's
17 something for civil lawsuits. That's something
18 for other jurisdictions to deal with and to
19 handle.

20 It is absolutely improper for Mr. Strang
21 to ask you to, in any way, consider that 1985
22 lawsuit, when finally coming to a decision in
23 this case, and in Mr. Strang's statement, in his
24 opening statement, to send him home. Sending
25 Mr. Avery home, if that is going to happen, is

1 going to be because the State, the prosecution
2 team, all of the agencies that you heard about,
3 didn't meet its burden, we didn't meet our burden
4 of proof on this case, not because Mr. Avery was
5 convicted in 1985.

6 Let me also suggest to you that any case
7 this big, especially what we have called the
8 largest criminal investigation. I don't know if
9 it is the largest in state history, but it is
10 certainly the largest that anybody that you have
11 heard of has ever talked about. Any case that
12 big, with that many witnesses, and you have just
13 gotten a sliver of the number of witnesses, and a
14 sliver of the number of exhibits that are
15 available in this case.

16 Five or six weeks may seem like a long
17 trial. Let me assure you, it could have been a
18 lot, lot longer, if we would have done the kinds
19 of things that Mr. Strang asked us to do. As an
20 example, if we would have followed every what's
21 called "blind alley", if we would have put in
22 what's called "negative evidence"; that is,
23 eliminate everybody who's not even a suspect in
24 this case, which is what law enforcement did.
25 That's their job. That's law enforcement's job.

1 And then, once we get to the prosecution
2 stage, it is our job to present evidence on who
3 we believe committed the crime. Does everybody
4 understand that? So, if we put in the entire
5 case, if you will, that would certainly be
6 something more than what would be relevant for
7 State of Wisconsin vs. Steven Avery. That's what
8 this case is about, not the '85 case.

9 The very first issue that I want to talk
10 about is perhaps the most problematic for the
11 jurors. I want to address this upfront, because
12 I believe that there were misrepresentations made
13 in the defense closing. I believe they tried to
14 fool you in their closing when they indicate that
15 Mr. Lenk comes in and all of a sudden there's a
16 key there.

17 Well, that's part of the story, and
18 that, of course, is a true statement. But what
19 the defense neglected, in their closing, to tell
20 you, was everything that Sergeant Colborn told
21 you about this particular investigation. I put
22 these two photos up because I'm calling them the
23 before and the after shot. And I put them next
24 to each other for a very, very important reason,
25 because they say a picture states a thousand

1 words.

2 This should do that for you, the before
3 and the after picture. These are taken just a
4 couple of minutes apart from each other, but
5 importantly, they are taken before the search,
6 before what Mr. Colborn talked about, not so
7 gently, or never so gently manipulating the
8 cabinet, and then after that had already been
9 accomplished.

10 A couple of important things to note.
11 First of all, we talked, I think in my closing or
12 in my opening perhaps even, about the slippers,
13 about how you, through your common sense, can
14 reconcile those slippers, that piece of evidence,
15 not just where they are situated with the wall
16 socket there, but you can understand how both
17 this cabinet was pushed to the left, pushing the
18 left slipper over to the left, and pushing the
19 right slipper over and actually flipping the left
20 slipper over. All right.

21 And then after jostling, and after
22 pushing, and after removing all the books, and
23 after Sergeant Colborn talked about putting those
24 books back in, and I want to get a correct
25 verbiage, "handled them none too gently", a key

1 comes out the back end of this particular
2 cabinet. Now, what hasn't been pointed out to
3 you yet, many of you being observant, may have
4 already noticed the before and the after.

5 This is the book that they were talking
6 about, that particular binder that was slammed
7 back into the cabinet. The before picture has
8 the binder virtually adjacent, or next to the
9 cabinet itself. The after picture has it several
10 inches back in. Why is that important? Why does
11 that one fact corroborate or lend credence to
12 Sergeant Colborn?

13 Sergeant Colborn said he slammed that
14 book back, none too gently. You have to kind of
15 envision this cabinet cocked, and the back of the
16 cabinet opened, the book slamming back, and the
17 key falling through that particular cabinet. And
18 so the testimony in connection with all of the
19 physical evidence, and not just what Mr. Strang
20 or Buting might tell you some of the evidence is,
21 where Lieutenant Lenk comes in and says, oh,
22 there's a key, which did happen, but the
23 explanation is absolutely plausible.

24 But more than that, we're going to need
25 to delve into this key and into this planting

1 issue, whether or not the key was planted. Was
2 the key planted. All right. To get to that
3 supposition, or to get to that conclusion, which
4 really is a supposition, because you are going to
5 have to guess, you have to know some things about
6 Sergeant Lenk -- excuse me -- Lieutenant Lenk,
7 and Sergeant Colborn. You have to know if they
8 are good, honest, decent cops, or if they are
9 not.

10 Now, we asked some questions, and you
11 can weigh their credibility. And they both
12 appeared indignant about this. They both
13 appeared upset about even being accused of such a
14 thing. And that demeanor, that credibility, is
15 something that you can and you should take into
16 consideration, in fact, when each of them said
17 absolutely not, absolutely not would I ever plant
18 evidence in this case.

19 But as importantly than that is the lack
20 of evidence. Mr. Strang was allowed, quite
21 properly, to talk about the lack of evidence that
22 the State would have presented. Wouldn't you
23 have expected evidence, is I think the way
24 Mr. Strang had placed it. Well, that works both
25 ways. And subpoena power and power to bring in

1 physical evidence applies equally to the State as
2 it does to the defense.

3 We know that because the defense has
4 subpoenaed some witnesses. They have brought
5 some witnesses in here. They have subpoenaed
6 some documents, and you have seen those
7 subpoenaed documents in this case.

8 Well, don't you think, folks, that if
9 either Sergeant Colborn or Lieutenant Lenk had a
10 pimple, had a blemish on their record for
11 truthfulness, or for honesty, or for planting
12 evidence, or for doing anything that was opposed
13 to the oath that they took to uphold the law in
14 Manitowoc County, don't you think you would have
15 heard about that. Don't you think that those two
16 good lawyers, excellent, in fact, defense
17 attorneys, would have presented that to you.

18 So when Mr. Strang tells you to look at
19 the big picture, and when he talks about, let's
20 see how they acted beforehand, beforehand you
21 didn't hear any evidence at all about Mr. Lenk or
22 Mr. Colborn. That is significant. But as
23 significant is the facts and circumstances
24 surrounding this particular bedroom.

25 And when Mr. Kucharski, Deputy

1 Kucharski, talked about sitting on this bed, and
2 actually facing towards the door, his feet, I
3 think the testimony was, were facing where the
4 key ends up when Lieutenant Lenk exits the room
5 and comes back. Don't you have to kind of ask
6 yourself the question, how did the key get there?

7 If it was planted, how did that key get
8 there? Did Lieutenant Lenk, as he's walking
9 here, throw it? Did he kind of lob it over
10 Mr. Kucharski. Well, that's ridiculous.
11 Absolutely ridiculous. And although all three of
12 these officers, and in fact the prosecution team,
13 would have preferred, obviously, that the key
14 wouldn't have been found in this way, it was.
15 All right.

16 Cases come to you how they are. And
17 again, under the microscope of a case of this
18 magnitude, there is going to be some human
19 factors. And there's going to be some things
20 that you are going to have to wrestle with. And
21 this is one of those things. I'm not going to
22 short change you on that particular case.

23 And you may take a long time in deciding
24 whether or not that key is significant, or
25 whether the key is not significant. But let me

1 ask you, just kind of for the sake of talking, as
2 Mr. Strang wanted to talk with you rather than at
3 you, I certainly have a style that I would prefer
4 that as well. Let's assume they never found the
5 key. Let's assume this key isn't part of this
6 case at all.

7 Let's assume Mr. Strang's theory is
8 correct, that these cops aren't trying to plant
9 an innocent person, but trying to make sure that
10 a guilty person is found guilty. Well, can't you
11 then, with that argument, set the key aside? Do
12 you have the ability, as a jury, to set that key
13 aside, if in fact it doesn't matter whether or
14 not Mr. Avery is guilty or not guilty in this
15 analysis? Can you set that aside and decide is
16 there enough other evidence, or is the key the
17 only thing that points to Mr. Avery?

18 Well, if this was a CSI case, one of
19 those cases on TV where sometimes that key, or
20 sometimes one little piece of evidence like that
21 may decide the guilt or innocence, it would make
22 a difference. But that key, in the big picture,
23 in the big scheme of things here, means very
24 little. All right.

25 Now, I'm telling you that not because I

1 don't want you to consider it, not because I
2 think that it's not important, or not because the
3 credibility of these officers is in question to
4 the State at all. What I am suggesting, though,
5 is that if you buy Mr. Strang's argument, if you
6 buy Mr. Strang's argument that they were trying
7 to make sure that a guilty person was found
8 guilty, then assigning accountability to the
9 murder for Teresa Halbach, shouldn't matter
10 whether or not that key was planted.

11 In other words, it shouldn't matter to
12 the Halbach family. You shouldn't be punishing
13 the police officers, in other words, the other
14 officers that were involved in this
15 investigation, if you come to that conclusion.
16 You are not going to. You are not going to come
17 to that conclusion because you have heard nothing
18 about these police officers that they would do
19 such a thing. But my suggestion is simply not to
20 focus all your attention.

21 In the law, that's called searching for
22 doubt. The Judge has told you, and may even tell
23 you again in your closing instruction, that you
24 are to search for the truth, you are not to
25 search for doubt. In other words, you don't go

1 into this case saying, well, let's look at where
2 all the discrepancies are first. That's the
3 place maybe that we should start, because as my
4 closing argument suggested to you, there's got to
5 be a reason, right. There's got to be a reason
6 that we have been here for five weeks.

7 No, there doesn't. There doesn't have
8 to be a reason why you have been here for five
9 weeks, other than the defendant's constitutional
10 right to a trial. And so the Judge will tell you
11 not to start there. The Judge will tell you not
12 to start at searching for doubt.

13 The Judge will tell you that the whole
14 process, the beginning of the process, the
15 middle, and the end, is to search for the truth.
16 To search for the truth in this case is who
17 killed Teresa Halbach, not whether or not we can
18 find some discrepancies.

19 More about the key. Mr. Buting, I
20 believe it was, had the imagination, let's call
21 it, to suggest to you that maybe officers were
22 taking a toothbrush and were kind of rubbing Mr.
23 Avery's toothbrush on the key and that's how the
24 DNA got on the key. Common sense should tell you
25 that these kind of motions, what are called

1 furtive motions, or for lay people, for people
2 like you, it's called suspicious looking things,
3 is something that you should probably discard.
4 Because if they take Mr. Avery's toothbrush and
5 start rubbing it on the key, you know, and then
6 kind of hold it behind their back, that becomes
7 almost cartoonish, that becomes something that is
8 not at all plausible.

9 But as important, when did that happen,
10 when did they plant the DNA on Mr. Avery's key.
11 Because we're not just talking about planting a
12 key. If it was planting a key, that's damning
13 enough. It's damning enough to have this
14 particular key found in Mr. Avery's bedroom. But
15 what makes it irrefutable is that Mr. Avery's
16 DNA, positive, hundred percent match, is on that
17 key. Right?

18 And you heard the testimony from Ms
19 Culhane, and perhaps others, that the last person
20 to handle a key or an object is most likely to
21 leave the DNA on the key. Now, Mr. Strang and
22 Mr. Buting have asked you to just discard that,
23 ignore it, ignore that expert opinion. I don't
24 know why they are asking you to do that, because
25 it doesn't fit with their theory of defense. But

1 it's the DNA on the key that has to be planted
2 too. Please understand that. It's not just
3 planting the key, it's planting the DNI -- the
4 DNA on the key as well.

5 If they planted the key, where did they
6 get the key? Now, that leads to an interesting
7 series of questions as well. There are only two
8 ways that law enforcement can get this key. All
9 right. Because the vehicle was locked, and
10 because on the 5th of November officers don't
11 really have access, as you have seen by the scene
12 security. They had to have access to the key
13 before the 5th.

14 And so there's only two ways to do that.
15 One, they can kind of stumble across it in a
16 scenario that Mr. Strang suggests, maybe off duty
17 or something like that. Or the last person to
18 hold that key, other than Teresa Halbach, is the
19 person who killed her.

20 Now, you heard that testimony in this
21 case. It may have drawn an objection, I don't
22 remember right now, use your own collective
23 knowledge as to whether it did. But that makes
24 sense, that the last person, other than Teresa,
25 to hold this key, is the person who killed her.

1 And if that's the case, then you hold these two
2 gentlemen responsible for suggesting that to you.

3 In other words, despite Mr. Buting
4 standing up here, I think it was the beginning of
5 yesterday, saying, look, folks, we're not saying
6 that the cops killed Teresa Halbach, what we're
7 saying is that somebody else, I think his words
8 were, "skillfully exploited law enforcement
9 bias", as if there's somebody smart enough out
10 there that could do that. We're going to talk
11 about that in just a minute.

12 But when you go down one layer, when you
13 scrape one layer of this manure off of the
14 topsoil, which is what it is, you scrape one
15 layer, you will realize that the cops had to kill
16 her. The cops had to be involved in killing
17 Teresa Halbach.

18 Now, are you prepared to say that? Are
19 you, as the jury, in order to find Mr. Avery not
20 guilty, willing to say that your cops, that your
21 Manitowoc County Sheriff's deputies, Lieutenant
22 Lenk, Sergeant Colborn, because of Mr. Avery's
23 lawsuit, that Sergeant Colborn and Lieutenant
24 Lenk didn't have a dime of stake in, at least
25 financially, that they weren't involved in in

1 1985, that they gave a deposition in about
2 receiving a phone call and transferring the phone
3 call, and that's the extent to it, but because of
4 that involvement, are you willing to say that
5 these two otherwise honest cops came across a 25
6 year old photographer, killed her, mutilated her,
7 burned her bones, all to set up and to frame
8 Mr. Avery. You have got to be willing to say
9 that. You have got to make that leap. Because
10 of this question right there, where did they get
11 the key.

12 The key isn't alone. The key is
13 attached, at least at some point, to something
14 called a lanyard, something that's around the
15 neck, similar to what you all are wearing as
16 juror badges. We know that that comes from Katie
17 Halbach. We know that that is found inside of
18 Teresa's SUV. And so where one is the other one
19 is. All right.

20 So I hope that makes sense. I hope you
21 understand that, at least for the first time in
22 my rebuttal, I'm going to be suggesting that you
23 dig down that one further step and understand
24 exactly what these two gentlemen are suggesting
25 to you. Despite Mr. Buting trying to sell you on

1 the fact that we're not saying the cops did it,
2 that's exactly what they are saying. That's
3 exactly what they are arguing to you, and you
4 have to be prepared to go there.

5 The next time that Mr. Buting tried to
6 fool you was when he told you that the police
7 never checked out other suspects in this case.
8 Well, you heard from Mr. Wiegert, you heard from
9 Mr. Fassbender, more particularly, that other
10 suspects were checked out. But let's think about
11 other suspects. Who were the other suspects in
12 this case? Where was the evidence pointing so
13 strongly, other than to Mr. Avery? Where was it?
14 Where was the evidence pointing?

15 Well, one choice was, Mr. Schmitz was
16 one of the people that saw Ms Halbach. Mr.
17 Schmitz, as you heard, was interviewed, was
18 checked out, but guess what, folks, Teresa
19 Halbach left that photo shoot alive. That kind
20 of eliminates Mr. Schmitz, doesn't it, from being
21 a suspect in this case.

22 Number two, was JoEllen Zipperer. And
23 although a nice little old lady like that
24 probably could have killed and mutilated Teresa
25 Halbach, guess what, folks, Teresa Halbach left

1 Mrs. Zipperer alive at about 2:27 p.m.

2 The third suspect then, or the third
3 logical person, was Mr. Avery, that's the third
4 customer that Teresa sees that day. That's the
5 only person that Teresa Halbach doesn't leave
6 alive, or at least isn't seen alive, after
7 meeting with Mr. Avery. So Schmitz and Zipperer
8 can be and were, early on, I will admit that,
9 were early on, eliminated as suspects in the
10 case.

11 As the case develops though, you heard
12 from Mr. Fassbender, that all the clues started
13 pointing towards one person. All right. So when
14 we talk about roommates and we talk about old
15 boyfriends, what you would think about as typical
16 suspects that may in fact be investigated,
17 doesn't make a whole lot of sense in devoting a
18 lot of resources in investigating those people
19 when the car is found in a different location.
20 When blood is found in that car, that turns out
21 to be that of Mr. Avery.

22 But I guess most importantly, when the
23 bones of the victim are found 20 feet or so
24 behind the property belonging to Mr. Avery, you
25 stop looking. You stop looking for people like

1 boyfriends, or other customers, or this kind of a
2 search. And you narrow it to who had access to
3 Teresa Halbach at that particular time. So it's
4 disingenuous, it's what I'm calling fooling you,
5 to suggest that other suspects in this case were
6 not ever checked out.

7 Mr. Strang talked about this phone call.
8 Now, this is going to take a really, really good
9 memory. And I hope one of you, and the 12 of you
10 collectively, we call it collective memory, which
11 means that when you deliberate in this case you
12 can talk about those kinds of -- those kinds of
13 things. When Mr. Strang first played this, or
14 attempted to play this particular tape, for
15 Mr. Colborn, I wonder if anybody remembers the
16 very next thing that happened.

17 I raised my hand and I said, objection,
18 your Honor. I said, I want some authentication.
19 Before Mr. Strang can play this tape, I objected
20 and said, I want to know the date and the time of
21 the tape. Because it's unfair to play this tape
22 for the jury without telling them the date and
23 the time that it's played. All right.

24 So it's foreseeing this very argument
25 that Mr. Strang made about a half an hour ago, or

1 an hour ago; that is, the tape could have been
2 the 3rd, but I think it was the 4th. Okay.
3 That's what Mr. Strang said to you, that
4 Mr. Colborn, the answer by Mr. Colborn was it was
5 on the third, but I think it was the 4th.

6 What the heck do I care, Mr. Strang,
7 what you think. What do I care if you think that
8 it was the 4th, or that it fits into your theory
9 of defense. This case is about evidence. It's
10 not about what Mr. Strang thinks. The answer
11 given on the witness stand was, it was the 3rd,
12 while on duty.

13 And the explanation about why it was a
14 phone call rather than a radio transmission, or a
15 dispatch kind of call, is because Mr. Wiegert had
16 called Mr. Colborn, if you remember, on the
17 phone. All right. He called him on the phone
18 and said can you check this out.

19 So in turn, Mr. Colborn called dispatch
20 and said I want to verify this particular plate.
21 Nothing sinister about that. Nothing unusual
22 about that. This isn't a traffic stop. It's not
23 a stop where you would radio it in, where your
24 time and your date become important and you want
25 to log in that kind of thing. It's not a traffic

1 stop at all. It's simply verifying Mr. Wiegert's
2 information, verifying the year, the license
3 plate, the make and model of the vehicle, nothing
4 sinister.

5 Now, I'm going to ask you to reject what
6 Mr. Strang said because that's not evidence. In
7 fact, what I'm saying to you right now is not
8 evidence. Evidence comes from the witness stand.
9 All right.

10 The answer to that question was the 3rd
11 of November. That is important. It's important
12 whether it was the 3rd, or whether it was the
13 4th. Now, when Mr. Strang answered my objection
14 by saying, well, we'll let the witness tell the
15 jury when it is. And the Judge allowed that, and
16 the witness did tell the jury when that was, that
17 it was the 3rd.

18 Mr. Strang still today, still today,
19 fools you, and stands before you and says, don't
20 believe Mr. Colborn, I think it was the 4th. All
21 right. That's the difference between evidence
22 and speculation. That's the difference between
23 the State's case and what the defense is trying
24 to sell you in their arguments.

25 Bones were moved in this case. There's

1 no question of that. Who moved the bones, to the
2 State, or for the theory of the prosecution is
3 easy. Mr. Avery moved the bones. He moved the
4 big bones. He moved the big bones, the ones he
5 could identify as human bones, from his burn pit,
6 over to his sister's burn barrel. All right.
7 That's a couple hundred feet away.

8 If you think about the selfishness
9 involved in that particular act, that I think
10 is -- is one factor. But I guess more
11 importantly is directing attention away from
12 himself. Might be that first night, might be the
13 31st, might be the 1st or the 2nd, because he has
14 got a couple of days, as it turns out, before the
15 police officers actually start the investigation.

16 But let's also remember this,
17 collectively, I want the 12 of you to remember
18 this when you deliberate. I want at least one of
19 you to say this when you are back in the jury
20 room. Although now we know that the cops didn't
21 get the search warrant, and they didn't come on
22 the property until the 5th of November, okay. We
23 know that now. Steven Avery didn't know that.

24 Steven Avery didn't know that Teresa
25 Halbach wasn't going to be reported missing until

1 the third, or that the flyover search wasn't
2 going to find the car, or that Ms Sturm even was
3 going to find the car on the 5th. For all Steven
4 Avery knows, the cops are on their way. Right
5 away. On their way, right away, the afternoon,
6 the late afternoon or early evening of the 31st.

7 Why is that important? Because as it
8 goes through some of this evidence and your
9 collective memories, and as you deliberate this
10 case, please remember that. Because there are
11 things that Mr. Avery does that the defense is
12 saying, well, why would he do all of those kind
13 of things.

14 Mr. Avery did all of those things on the
15 31st because he didn't know that the cops weren't
16 going to be knocking on his door, that very
17 night. They didn't know that -- Mr. Avery didn't
18 know that Teresa wasn't meeting a friend for
19 dinner, or that she wasn't going to be missed, or
20 that she didn't have another appointment, after
21 she was killed by Mr. Avery.

22 And so that's why he starts burning
23 things right away. That's why at 3:45 the
24 electronics are already being burned. That's
25 why, as we will be arguing and showing you,

1 Mr. Avery disposes of the body at the earliest
2 possible moment, that he moves the SUV at the
3 earliest possible moment, that he removes the
4 license plates.

5 He does all of those things, again, with
6 the benefit, as you saw in the photograph that
7 Mr. Remiker put in, of a police scanner, that's
8 inside and on top of the bar in Mr. Avery's. The
9 police scanner, so that Mr. Avery can hear, are
10 the cops on their way. Which, again, should
11 bolster, or should tell you why Sergeant Colborn
12 uses the telephone rather than using the radio,
13 it's because of things just like that, things
14 like officer's safety. But, again, I'm advancing
15 a little bit, and I want to make sure that I get
16 to those points.

17 The bones were moved, but they were
18 moved by Mr. Avery. These bones in the quarry,
19 I'm going to take about 20 seconds to talk about,
20 because the best anybody can say is that they are
21 possible human. What does possible human mean?
22 Well, it means we don't know what it is. All
23 right.

24 The best anthropologists in the world
25 don't know what these bones are. Dr. Eisenberg

1 didn't know what they were. Dr. Fairgrieve
2 didn't know what they were, he agreed with that.

3 And you heard a stipulation being read
4 to you by a person by the name of Les McCurdy.
5 Stipulation just means an agreement between the
6 parties, that these bones, we felt it important
7 enough, were sent out to the FBI. And Les
8 McCurdy from the FBI determined that these bones
9 were so degraded, that they were in such a shape
10 that even through testing, what's called
11 mitochondrial DNA testing, whether they are human
12 or not, could not, even by the FBI, be
13 determined.

14 So the bones in the quarry are really
15 not evidence in this case. And so Mr. Strang has
16 made a big deal out of showing you maps, and a
17 little flag, and things like that about a
18 possible bones. Again, speculation, conjecture,
19 is not part of this case. Facts are going to be
20 what decides this case.

21 ATTORNEY STRANG: Your Honor, I'm going to
22 interpose an objection. Like the 1985 case, there
23 is evidence here concerning the bones from the
24 quarry, possible human bones. It is proper for any
25 lawyer to argue all of the evidence, or any of the

1 evidence, in the case, including the 1985 case, or
2 the quarry bones, and I would like the jury so
3 instructed.

4 THE COURT: What I will instruct the jurors
5 is, remind you again, what you are hearing at this
6 time are arguments, not evidence. Your job, when
7 you are deliberating, is to remember the evidence as
8 it's been submitted, and draw your own conclusions
9 from that evidence. Mr. Kratz, you may proceed.

10 ATTORNEY KRATZ: Thank you, Judge.

11 The primary burn site, that is, where
12 the bones started burning, are important in a
13 sense and they are not important in a sense. All
14 right. It seems obvious what the answer is, but
15 if, again, you drag that first layer off of the
16 defense argument, it isn't going to make any
17 difference. But, of course, the primary burn
18 location is in Mr. Avery's pit. This is the
19 primary burn location.

20 And why do we say that? Dr. Fairgrieve,
21 I'm going to start from the other side,
22 Dr. Fairgrieve, the defense expert in this case,
23 said that he's had a case where bones were moved
24 from one location to the other, and that in that
25 case the bones moved to -- to the location had

1 more bones than were actually there. But what
2 Dr. Fairgrieve didn't do, and what he doesn't
3 know, are all the things that Dr. Eisenberg did,
4 and all the things that Dr. Eisenberg knows.

5 Dr. Eisenberg, of course, looked at the
6 bones. I guess that's the most important factor.
7 But this is one of those things that's common
8 sense. This is one of those things that
9 shouldn't take you a long time collectively.
10 Shouldn't take the 12 of you very long to decide
11 where the primary burn location is. It is the
12 pit. It's not most likely the burn pit, it is
13 this location.

14 How do we know that? Well, Teresa was
15 invited, or lured, whatever term you want to use,
16 on to that property. Her vehicle is there.
17 That's the last place that she is seen alive, is
18 just several feet from this location. Her burned
19 affects are on that particular property, just a
20 few feet away. Importantly though, her bone, her
21 tissue, especially her skull fragments, all of
22 them, all of them, are in this location.

23 Her clothes are there, at least what's
24 left of her clothes, are mixed in with those
25 bones, the rivets for her jeans are there. And

1 common sense, her bones and her jeans are in the
2 same place, because she's burned their. She's
3 burned in that location.

4 She was called there by Mr. Avery. And
5 the number one, if we're doing -- I'm going to
6 switch them around. The number one reason why
7 this is the primary burn location is that on
8 October 31st, Mr. Avery had a big whopping fire
9 there, on the 31st of October. And we haven't
10 heard any evidence of a big whopping fire, the
11 kind that would consume, fully consume a human
12 body, anywhere else on that property. That's the
13 primary burn location, ladies and gentlemen. You
14 can find that, and you should find that, beyond a
15 reasonable doubt. That shouldn't be a question
16 for you.

17 Mr. Buting said that there were no
18 fingerprints found on the SUV. I will just,
19 again, in 20 seconds, tell you that the
20 testimony, that perhaps Mr. Buting is ignoring,
21 from Mr. Riddle, or at least didn't tell you
22 about, from Mr. Riddle, the fingerprint guy, was
23 that of the eight latent prints that were lifted
24 in the case, none of them were suitable for
25 identification. All right.

1 So what Mr. Riddle also told you is
2 that, if you took your hand right now and placed
3 it onto an object, it's very likely that you
4 wouldn't leave fingerprints. That's why DNA
5 evidence is so much more powerful than
6 fingerprint evidence, at least nowadays, because
7 of those dynamics that are involved. Because of
8 the amount of sweat in your hands, and the oils,
9 and all of those kind of things, all are called
10 into question. I just mention that because I am
11 obligated to because Mr. Buting had mentioned
12 that.

13 They also, they meaning the defense,
14 talked about Teresa's body in the SUV. Once
15 again, expert testimony was that a 5 foot 6 inch
16 person could, in fact, fit in this particular
17 compartment of the RAV 4. And I guess you need
18 look no further than this area, the stamp, as I
19 talked about, the hair impression 25 year old
20 Teresa has left in that location. You can almost
21 see Teresa being pushed in, or shoved in, or
22 stuck in that location, which brings me, or will
23 bring me, to a point in just a moment.

24 Mr. Strang -- excuse me -- Mr. Buting,
25 actually asked you whether or not it would be

1 reasonable for police, by use of flashlights, to
2 see the stain that was by the ignition. When I
3 heard that I just about dropped my pen. All
4 right. There's the location, and that's the
5 stain that Mr. Buting is saying, why didn't the
6 cops see this.

7 Somebody want to tell me where a
8 flashlight has to be shined -- shown, from the
9 outside, to see that stain. You can see that
10 through the front window? You can see that
11 through one of the side windows? Are you going
12 to see that through the very back? Where are you
13 going to shine a flashlight that you are going to
14 be able to see that particular stain. All right.
15 That's disingenuous. It's the kind of argument
16 that you should be discarding, that you should be
17 saying it doesn't make any sense at all.

18 Mr. Buting also asked, well, if this
19 piece of evidence is -- excuse me -- if the
20 cabinet, the bookcase, is so important, why
21 didn't the State bring it into the courtroom. I
22 mentioned before, I think it's obvious, the State
23 doesn't have exclusive control over any evidence
24 in this particular case, at least as is presented
25 in court. The defense has just as much right to

1 bring that up here as the State did. All right.

2 We have taken photos, and I'm not going
3 to apologize for that. I'm not going to
4 apologize for what Mr. Buting calls my slick
5 PowerPoints. My God, a second grader can do a
6 PowerPoint examination. And the fact that
7 Mr. Buting wants to fumble around, he can do
8 that. I'm not going to do that to the jury.

9 But what we did do, is we took
10 photographs of all of the evidence to make it
11 easier to present, so that you could see all the
12 evidence. We brought in boxes of items like the
13 Palm Zire palm pilot box. We have the item
14 itself, but we also have a picture of it. We
15 have a picture of everything, as you have seen.
16 And so we're using pictures instead of the thing
17 itself.

18 And you can see, and at least
19 understand, with big clumsy kinds of items, the
20 reasons that we're doing that, for ease for the
21 jury. So that you can see big things, and you
22 can see small things, so we can zoom into areas,
23 and sometimes we don't need to do that.

24 Defense also suggested that there was no
25 blood on the CD case. Are you kidding me?

1 Mr. Buting may have showed you a picture, and I
2 didn't know where he got his picture from, but
3 the blood is obvious on the CD case. By the way,
4 I believe you are going to be getting the
5 photographs back into the jury room. That's
6 something the Judge will decide, not me. But you
7 can look at the picture itself and determine
8 whether or not there is blood on the CD case.
9 Again, another example of being disingenuous,
10 another example of trying to fool you.

11 Next time this happened in Mr. Buting's
12 argument yesterday was when he talked about this
13 stain, on the bathroom floor. Mr. Buting
14 actually walked up to this particular exhibit and
15 said, well, it looks like somebody took a Q-tip
16 and put it right into that sample of blood.
17 Which you heard some of the blood from
18 Mr. Avery's bathroom was analyzed, that it was in
19 fact Mr. Avery's blood, there isn't any question
20 about that.

21 But what Mr. Buting didn't tell you,
22 and what you heard testimony of, is when this
23 blood sample was collected. Do you remember? Do
24 you remember when this blood sample was
25 collected? Remember Detective Remiker and

1 Mr. Tyson, on the first night, talking about
2 going through the entire trailer and collecting
3 all the blood, and that they finished sometime
4 after 10:00 p.m., as it was approaching
5 11:00 p.m., it was pouring rain outside. You all
6 remember that, you remember that from the 5th of
7 November.

8 Mr. Buting is trying to sell you, he is
9 trying to fool you into thinking that maybe this
10 is the source of the blood in the SUV. Folks,
11 the SUV was already in an enclosed and locked
12 trailer, on its way to Madison, with Crime Lab
13 personnel and law enforcement personnel all
14 surrounding it.

15 To suggest to you that this might be the
16 source of any of all of that blood that you saw
17 in the SUV is, again, disingenuous. It's trying
18 to fool you. And it's my job, as the prosecutor,
19 to point those things out to you. It's my job to
20 show you just how absurd and ridiculous some of
21 those arguments are.

22 Mr. Buting then talked about the bullet,
23 and about the DNA, and suggested that, well, they
24 are both in the same room with Sherry Culhane, Ms
25 Culhane, the analyst in this particular case.

1 What Mr. Buting doesn't tell you, though, doesn't
2 remind you, though, when Mr. Gahn made this point
3 very clear, because of what's called the
4 contamination issue with the bullet in this case,
5 is that the extract for a sample of evidence is
6 done separately, and at a separate time than the
7 extract or the control is done.

8 Remember Ms Culhane telling you that the
9 samples are locked away in a cabinet. She was
10 talking about her bench, and how it's cleaned
11 off, and those kind of things. And I don't know
12 if Mr. Buting, I suspect he wants you to believe,
13 if you remember collectively, if you remember
14 about Ms Culhane, if he's suggesting that the Pap
15 smear, or the DNA from Teresa Halbach, somehow
16 got out of the sealed envelope that it was in,
17 the standard, somehow maybe walked across her
18 desk, somehow it jumped into the vial, or onto
19 the bullet. And that's the kind of thing that
20 Mr. Buting wants you to believe. That's
21 disingenuous, doesn't happen that way.

22 Mr. Gahn knew that was an important
23 point and he took time, meticulous time with Ms
24 Culhane, to explain that process for you. It's
25 Teresa Halbach's DNA on that bullet because,

1 unfortunately, it went through her body. Not
2 because the DNA from her Pap smear or from other
3 standard that was within the Crime Lab somehow
4 transmitted itself or made its way onto that
5 bullet.

6 There are areas of agreement and this
7 is, I guess, a positive part of the trial. There
8 are some areas of agreement between expert
9 witnesses in this case. Ms Arvizu, and I'm so
10 happy that Mr. Strang cleared that up, it's not
11 Dr. Arvizu. Mr. Strang called it a mistake that
12 Mr. Buting made, calling her, or raising her to
13 the level of doctor. She doesn't have her Ph.D.,
14 like Dr. LeBeau does, the Ph.D., the head of the
15 toxicology unit at the FBI lab.

16 But Ms Arvizu, even the defense expert
17 conceded on cross-examination, from Mr. Gahn, a
18 couple of things. Number one, that a qualitative
19 procedure is a solid scientific procedure. Don't
20 have to do quantitative. In fact, in this case,
21 when there's nothing there; in other words, when
22 three of the samples don't have any EDTA, you
23 can't quantitate it. How do you quantitate
24 nothing? All right. You can't do that.

25 And so for your purposes, when these

1 tests had to be done at the last minute, you
2 heard why, you heard why we didn't get these to
3 the FBI until the last minute. You heard from
4 Mr. Wiegert, that Mr. Wiegert and the State
5 didn't even know about this vial of blood until
6 sometime in December. And you heard that on
7 February 5th, the 5th of February, when you were
8 being selected is when this was sent out to the
9 FBI.

10 Back to Ms Arvizu, though, she
11 recognized that the protocol that was developed
12 was a good protocol, that it was based upon
13 scientific articles, that Dr. LeBeau had made,
14 what she called, significant improvements to any
15 prior protocols that the FBI had done, based upon
16 those articles, and was no question at all that
17 Dr. LeBeau was able to find several things.

18 First of all, that there was EDTA in the
19 vial of blood. Number two, that there was no
20 detectable EDTA on the three blood samples. Now
21 what Ms Arvizu did have some concern was about is
22 that this expert only tested three of the
23 samples. All right. Three of the swabs that --
24 that we're talking about. And I think -- I don't
25 think that's the next slide, it is not. I will

1 show those in just a minute, when we get to the
2 EDTA part of this case. But there wasn't any
3 question that EDTA was present in the vial and no
4 EDTA was detectable on the samples.

5 We also heard agreement between
6 Dr. Fairgrieve and Dr. Eisenberg. The agreement
7 that we have heard. In fact, we liked
8 Dr. Fairgrieve very much, from Canada, and
9 although he is not board certified, you should
10 not hold that against him. Dr. Eisenberg is, and
11 that is only a handful of anthropologists that
12 reach that level. But we actually thought
13 Dr. Fairgrieve was a very, very nice man and a
14 very good expert.

15 And he testifies mostly for -- in
16 Canada, for -- for the prosecution. And I
17 suspect that's why he conceded several things
18 about his colleague, Dr. Eisenberg. First of
19 all, that the gunshot wounds were present. That
20 there were gunshot wounds that were found in this
21 case, two of them, one in the left parietal, one
22 in the occipital region.

23 He called them peri-mortem, meaning that
24 they were about or around the time of death. He
25 agreed that there was only one person, the bones

1 of one person that we're talking about, which
2 makes sense, and that the gunshot wounds were
3 inflicted in this case before this burning
4 process. All right. So Dr. Fairgrieve and
5 Dr. Eisenberg had many -- and other than the
6 primary burn site, which Dr. Eisenberg rendered
7 an opinion about, and Dr. Fairgrieve was
8 unwilling to do that -- most other areas were, in
9 fact, something that -- that they had agreed
10 upon.

11 Judge, should we take just a couple
12 minutes for a stretch break?

13 THE COURT: Very well, we can do that.

14 ATTORNEY KRATZ: I know it's been about 45,
15 50 minutes. Let's do that and then I will conclude
16 my remarks.

17 THE COURT: Let's take five minutes, at the
18 request of one of the jurors.

19 ATTORNEY KRATZ: We'll do that judge.

20 (Recess taken.)

21 (Jury present.)

22 THE COURT: Mr. Kratz, you may continue.

23 ATTORNEY KRATZ: I appreciate it, Judge,
24 thank you.

25 Defense argued that there was no blood

1 found in the trailer. Since Teresa wasn't killed
2 in the trailer, there shouldn't be. But what was
3 found in the trailer is extremely important.
4 Remember the testimony early on in this case,
5 that on the 5th, on the very first search of
6 Mr. Avery's trailer, they found the very same
7 *Auto Trader Magazine*, the very same type of bill
8 of sale that we put in this exhibit, that's from
9 Mrs. Zipperer, the very same *Auto Trader*
10 *Magazine*, very same bill of sale. Teresa was in
11 that trailer. She was in the trailer, but she
12 was not killed in that trailer.

13 Defense has a hard decision to make
14 regarding Ms Culhane, is she competent, or is she
15 incompetent. And you guys already know why that
16 question has arisen and why it is such a pointed
17 question. Because if she's talented enough with
18 one hair, with one piece of evidence, to
19 exonerate Mr. Avery, why isn't she talented
20 enough with 180 items of physical evidence to
21 contribute to his conviction.

22 So it's a hard argument to make that in
23 one case, and in one circumstance, a couple years
24 ago, she was very talented, she knew exactly what
25 she was doing, but all of a sudden, she's

1 bumbling, some mill worker, some person on a line
2 type person, who really doesn't have any
3 expertise. Well, you don't get it both ways.
4 She's either talented, she either knows what
5 she's doing, as the head of the DNA Unit at the
6 Madison Crime Lab, or she's incompetent.

7 You already know the State's opinion
8 regarding Ms Culhane. We have heard a lot about
9 the Crime Lab Contamination Logs, 89 out of the
10 50,000 or so cases. I will let you guys do the
11 math, as far as what the rate of error, or the
12 contamination rate is.

13 Mr. Buting mentioned yesterday that
14 perhaps the hood latch, perhaps the DNA that is
15 found here was caused by that of Mr. Stahlke,
16 because Mr. Stahlke reached up under and opened
17 up and found that the battery cable was
18 disconnected. Well, so what. Mr. Stahlke talked
19 about he was rummaging around, he was actually
20 touching all kinds of DNA and touching all kinds
21 of blood, or any of those kind of things?
22 Absolutely not.

23 These are professionals. These are
24 people that process evidence for a living.
25 Mr. Stahlke had gloves on when he opened -- latex

1 gloves when he opened this particular vehicle.
2 So it is not Mr. Stahlke's, it was Mr. Avery's
3 DNA that is on the hood latch.

4 Now, the defense also asked why would
5 Mr. Avery disconnect the battery. You heard them
6 asking for speculation, guessing why Mr. Avery
7 would disconnect a battery. I have got an answer
8 and I'm going to tell you right now, right now,
9 that this is speculation. This is guessing. All
10 right. This isn't evidence. It's not even close
11 to it. It's kind of what the defense has been
12 doing through at least their closing arguments.

13 But I am going to speculate and I'm
14 going to guess that a man who hid the SUV and
15 knew that people were going to come looking for
16 that SUV, thought a little bit ahead, not just to
17 crush the car, and taking -- or in unhooking the
18 battery. But when citizen searchers looked at
19 40 acres of cars, and they looked and they go,
20 oh, my goodness gracious, how am I going to find
21 that. Mr. Avery may have thought about those
22 little devices that most of us have on our newer
23 cars. Where we're able to press a button and our
24 lights go on, or an alarm goes on, or something
25 flashes, where you can find your car in a parking

1 lot, if you are like me sometimes and I forget
2 where I have parked my car.

3 Is that why Mr. Avery unhooked the
4 battery, so that the citizen searchers that he
5 knew were coming couldn't just press a button and
6 of the 40,000 (sic) cars, could walk right to
7 that. That's possible. All right. That's an
8 inference, a logical inference, that could be
9 drawn. But that's speculating, and that's not
10 what I'm going to do. That's not what I'm asking
11 you to do. I'm not asking you at all in this
12 case to speculate. I'm simply answering
13 Mr. Buting's question.

14 Where was Teresa killed. This is a easy
15 answer, or at least it is an answer that is
16 directed by all of the physical evidence in this
17 case. Teresa Halbach, as we know, came to the
18 trailer of Steven Avery. We know that they
19 completed their transaction. How do we know
20 that, because the book and the bill of sale was
21 given to Mr. Avery. That's something that, as
22 you heard, happens at the end of the transaction.
23 That's sitting on Mr. Avery's computer desk.

24 We know sometime later, that is, we know
25 sometime in the future, a bullet is found in this

1 exact area, has Teresa Halbach's DNA on it. All
2 right. The inference, and this is an inference
3 that I'm asking you to draw, is that Teresa
4 Halbach was killed in the garage. She was killed
5 in Steven Avery's garage.

6 Now, we have heard testimony about
7 luminal finding blood, that is a reagent, a
8 chemical that is used by the Crime Lab is spread
9 out. There's two things that are most reactive
10 with luminal, one is human blood and the other is
11 bleach. Bleach coincidentally is the one thing
12 that eats up or destroys DNA.

13 We have heard about just to the left and
14 just to the back of this tractor, about a three
15 to 4 foot area, large area that lit up or glowed
16 very brightly. Mr. Ertl testified about that.
17 He was the person who processed that area. I'm
18 asking you to infer that Mr. Avery cleaned up
19 this area with bleach.

20 Now, you knew that inference, or that
21 suggestion from the State, I think, was coming.
22 We have put in the bleach. We have talked about
23 the luminal. We have gotten expert testimony
24 from Mr. Ertl that the two things that light up,
25 it wasn't blood, but it was, in fact, bleach.

1 You heard from Blaine Dassey,
2 importantly, that the garage, other than the junk
3 on the surrounding edges of this garage, looked
4 pretty much like this, from the sense of the
5 Suzuki and the snowmobile, which were in there
6 later on that week, were on the side of the
7 garage at the time. So Teresa Halbach's vehicle
8 is backed in, backed into the garage.

9 Teresa Halbach is killed. She's laying
10 down. She's shot twice, once in the left side of
11 her head, once in the back of her head, or I
12 guess I should more accurately say she's shot at
13 least twice. Because two bullet's were found,
14 two entrance wounds were found to her head. We
15 do have the 11 shell casings on the 6th that were
16 recovered. How many times Mr. Avery actually
17 shot this poor girl, you probably aren't going to
18 be able to determine, but it's at least twice,
19 and it's at least twice to the head.

20 What does he do though, later, with
21 Teresa Halbach. It's the State's theory in this
22 case, and we're entitled to a theory, just like
23 the defense, that after backing in the SUV, into
24 the garage, which was, again, empty at the time,
25 after closing the garage door, which Mr. Fabian

1 testified is how he saw it at around dusk,
2 Mr. Avery does a couple of things.

3 Remember he doesn't know if the cops or
4 somebody is coming looking for Teresa. He has
5 got lots to do. He has got lots of things in the
6 next several hours to do in this case. He has to
7 get rid of all of Teresa's stuff, her camera, her
8 cell phone, her PDA, which very well may be in a
9 purse or something, in the vehicle, which he
10 burns. We know that those are in the burn
11 barrel. We're going to talk about that in just a
12 minute.

13 And he places Teresa Halbach in the
14 back, or the cargo area of her own SUV. Now, in
15 doing that, Mr. Avery does a couple of things.
16 He doesn't do it very gently, because we know
17 that there's motion involved. He throws, if you
18 will, Teresa, in the back, because of the blood
19 spatter across the back of the open gate. But
20 Teresa is laying at rest; she is resting at
21 peace, having been killed by Mr. Avery, kind of
22 diagonally in the back of that SUV.

23 And because of her hair imprint, you are
24 able to deduce that. You are able to know that.
25 Again, remember my closing argument, those are

1 more indications of Teresa telling you this is
2 where I was. All right. This is where he put
3 me. And those are inferences, again, that you
4 should and can adopt. Why, because it's not dark
5 yet, and he needs a big rip roaring fire before
6 he can dispose of and mutilate this body.

7 Again, he has got to do all of this
8 stuff quickly, because he doesn't know if the
9 police are coming. So we hear then, at at least
10 7:30, perhaps before then, but at 7:30 there's
11 already a fire, a big fire in the back. Although
12 it's dark out, there's a big fire in the back of
13 his garage. And we'll talk about some of the
14 more details there. But as long as Mr. Buting
15 asked about the theory of prosecution, again,
16 which we are entitled, that is, in fact, the
17 theory of the State's prosecution.

18 Mr. Buting then asked, why would you
19 build a fire when you have a smelter. The
20 smelter, as we know, or at least this is from the
21 top of the smelter, which kind of melts aluminum
22 as I understand it, is, if you heard the
23 testimony, or if you saw the business buildings,
24 the out buildings, much closer to the residences
25 of the parents, of Delores and Allen. Much

1 closer to the residence of Charles Avery, the
2 brother. Early on in this case we identified
3 what all those buildings were and what were in
4 all of those separate buildings.

5 But what Mr. Avery had to do required
6 some alone time. Mr. Avery needed some privacy.
7 And so Mr. Avery chose his burn area. He chose
8 the place where somebody wouldn't happen upon
9 him, or ask him what he was doing. He was
10 building a fire like he had done many times
11 before.

12 It's an area over which he had control.
13 No other family members would be. And,
14 importantly, Mr. Pevytoe, the arson investigator,
15 remember he went through the smelter, eliminates
16 the smelter as a possible burn location for the
17 body.

18 Mr. Buting asked yesterday did we
19 confuse Lisa Buchner in the case. When she
20 originally testified, Mr. Strang, I believe,
21 questioned her. Mr. Strang provided the answer.
22 Again, this takes a good memory. This takes a
23 lot of you to remember Lisa Buchner's question
24 and answer. But the question was that -- I'm
25 paraphrasing but -- directing your attention to

1 the 31st of October, what did you see? Well,
2 what that does, when you ask a question like
3 that, as a skilled lawyer, and Mr. Strang
4 certainly is a skilled lawyer, Mr. Strang can
5 then come up here and can say, well, she said it
6 was the 31st of October.

7 But she didn't, did she. She never said
8 that it was the 31st of October. When
9 questioned, very courteously by Mr. Gahn, again,
10 about what date really was it, she said, I don't
11 know. When Mr. Gahn asked her, where was the
12 location, that she was clear about. Wasn't down
13 by Mr. Avery's trailer at all. It was one of
14 these cars that's parked at the corner that are
15 for sale.

16 Well, importantly, that excludes,
17 excludes, Teresa Halbach as the person taking
18 this picture. Not only is the time wrong,
19 because we have Bobby Dassey who doesn't have any
20 questions about what this person looks like, or
21 the time this happened, or that it was before he
22 went deer hunting and knew and was able to
23 recognize that that was Teresa Halbach.

24 But we have the defense own witness
25 saying, I don't know. I don't know the date that

1 this happened. Could have been the 1st, could
2 have been the 2nd. Mr. Gahn said, could it have
3 been a week ago, yeah, a week before. Could it
4 have been two weeks before, yeah, it could have
5 been two weeks before.

6 What does that do, how does that help?
7 As Mr. Strang argued in his closing, do you
8 believe that that's the truth, or do you believe
9 that that's disingenuous, again? Is that a
10 misrepresentation of what Ms Buchner actually
11 said? In other words, how does it help? How
12 does it help you? Between Bobby Dassey and Lisa
13 Buchner, who has the better memory? Who was in a
14 position to see what was going on that day? And
15 those kinds of questions you are going to need to
16 answer.

17 Same kind of thing with the other lay
18 witness that was called in this case, some
19 gentleman who was a propane employee, as I
20 understand, who talked about seeing a green
21 mid-sized SUV. Well, ask yourselves, is that a
22 green, mid-sized SUV? I will argue, no, that
23 that's not a green mid-size SUV.

24 But there's interpretations and there
25 are things that may or may not be important about

1 that. However, it hardly helps the equation. It
2 hardly helps you decide in this case whether or
3 not that was Ms Halbach. In fact, we know it
4 wasn't, because Ms Halbach never did leave that
5 property.

6 All right. You need to buckle up here.
7 Because here's where the absurdity starts.
8 Mr. Buting wants you to believe that some unknown
9 person, somebody that Mr. Buting can't identify,
10 somebody that the defense cannot identify,
11 actually undetected, took one of the four burn
12 barrels belonging to Barb Janda.

13 Suggested that that theory also
14 includes -- By the way, that would take more than
15 one person if you think about it, 55 gallon drum,
16 carrying this, we're talking about more than one
17 person. But we're going to go just for now with
18 Mr. Buting's theory in this case, and that at
19 some remote location, Teresa's burned, that the
20 bones are dumped, and that the burn barrel is put
21 back.

22 Mr. Buting doesn't tell you, though, are
23 the eight or nine steps in between that you as a
24 jury have to find as facts, in order to kind of
25 buy this. Okay. When somebody is trying to sell

1 you something, and when you decide whether or not
2 you are going to buy that, you should understand
3 all of the steps that you have to buy.

4 You have to buy that they could first of
5 all take one of these barrels undetected. All
6 right. Next, that they have Teresa Halbach lying
7 dead somewhere. Whoever this is, has Teresa
8 already lying dead in some remote location. And
9 rather, rather than dispose of Teresa Halbach, if
10 they were inclined to do so, at that remote
11 location, Mr. Buting is asking you to believe
12 that she's burned, that her body is mutilated,
13 that her body is then loaded, apparently, into
14 this 55 gallon drum of Barb Janda, that has been
15 stolen, it's a theft, that's been somehow
16 secreted off of the property.

17 What you are then being asked to believe
18 is that they loaded back on whatever vehicle it
19 is that they are able to transport Ms Halbach,
20 after, remember, the at least hour and a half to
21 2 and a half hours at 1600 degrees that it takes
22 to fully cremate a body, that they load all of
23 these remains. And rather than dumping them
24 someplace else, they bring them back to the very
25 place that Steven Avery, on the day that Teresa

1 Halbach was killed, had a big fire.

2 And they decide to dump the bones. Now,
3 they don't decide to dump all the bones,
4 Mr. Buting's theory goes. They only dump the
5 bones, some of them, and they leave some of them.
6 But interestingly, the ones they dump are the
7 little ones, and the ones they leave in the
8 barrel are the big ones.

9 Undetected. But they are able to do
10 this, undetected, just a couple of feet from
11 Mr. Avery's trailer. Then Mr. Buting wants you
12 to believe that they are able to put back the
13 barrel that has been taken off of the property,
14 again, undetected, and leave.

15 Now, Mr. Buting called that a plausible
16 explanation, one theory as to how these bones can
17 be in two different places. I hope you agree
18 with me as to the plausibility of that defense
19 theory.

20 Coupled with that theory, what you have
21 to buy into, what you have to believe, is that
22 there is somebody else out there, that there is
23 somebody, not a police officer. All right. So
24 that narrows the scope of people that are able to
25 do this. Somebody who's not a police officer,

1 who skillfully exploited the law enforcement
2 bias. That the real killer knew about,
3 apparently, the lawsuit, or the animosity, or the
4 embarrassment, or something about the 1985 case
5 enough, where it was important enough to them to
6 kill some innocent 25 year old victim and plant
7 it on Mr. Avery's property.

8 That's absurd. If this wasn't such a
9 important decision that you had to make, it would
10 be laughable. It would be something that if
11 somebody told you at a party, or somebody told
12 you at your home, you would say nobody would
13 believe that. And nobody should. Nobody should
14 believe this series of situations or coincidences
15 that would necessarily lead you to find Mr. Avery
16 not guilty.

17 The SUV was planted in this case, or at
18 least the defense will have you believe that the
19 SUV was planted, that somebody planted the SUV.
20 The fact of the matter is that this SUV was
21 concealed. It was obscured. Somebody didn't
22 want it to be found. Let me say that again.
23 What you are looking at right here, how the SUV
24 was found by Ms Sturm, was by somebody who didn't
25 want this SUV to be found. All right. That

1 makes sense.

2 Well, if you are going to plant
3 evidence, you have to want it to be found.
4 Because if Mr. Avery is going to be accused of
5 some murder that he didn't do in this case, you
6 would expect to find this vehicle, if it was
7 planted, in the Avery parking lot, or by
8 Mr. Avery's trailer, or in some location where it
9 would be found.

10 Again, it was only through happenstance
11 and by very fortuitous intervention that vehicle
12 was ever found. Very important, collectively
13 again, and using your common sense to understand
14 that concept, that this vehicle was obscured in
15 such a way that whoever put it there, like this,
16 didn't want it to be found.

17 Defense wants you to ignore this, and
18 for good reason. The defense wants you to ignore
19 the electronics that were found in the burn
20 barrel. Why, because there's no explanation for
21 it. Because it doesn't fit in any, in any theory
22 that the defense has advanced in this case. All
23 right. No law enforcement planting theory, no
24 civilian planting theory, no individual who
25 skillfully exploited the law enforcement bias

1 theory, explains why these things are burned in
2 Mr. Avery's burn barrel.

3 And so apparently the defense wants you
4 to ignore that. Well, remember the instruction,
5 and reasonable doubt is not -- is a doubt based
6 upon reason and common sense, but in
7 consideration of the evidence, which means all of
8 the evidence in this case, not just some of it.

9 So my point, ladies and gentlemen, is if
10 you are going to buy into one of these theories,
11 you have got to ask yourself, collectively, what
12 the heck is this. Her phone, her PDA, her
13 camera, are all found about 20 feet from
14 Mr. Avery's door, and he is found, that day,
15 burning in that particular barrel. If Mr. Avery
16 is not involved in the death and mutilation of
17 Teresa Halbach, then why are these things in that
18 barrel.

19 Also, you can't ignore the fact, please,
20 collectively remember, that after 2:41 p.m.,
21 after 2:41 p.m. on the 31st, Teresa Halbach's
22 phone is never used again. Never used again.
23 Her phone is in that burn barrel. Her phone is
24 being burned. And you, as the jury, have to
25 decide why. There's a couple of explanations,

1 one is that the defendant killed her and burned
2 it, and the other one, I guess, the defense wants
3 you to just come up with on your own.

4 That brings me to the conclusion, or the
5 last question, and that's, did the cops kill
6 Teresa Halbach. Again, the defense says no. But
7 if the cops had her blood, if the cops had her
8 bones, and before the 5th, if the cops knew she
9 was dead, let me say that again, if before the
10 5th the cops knew that Teresa Halbach was dead,
11 they were either told that by the real killer, or
12 they killed Teresa Halbach.

13 You have got to be willing to accept one
14 of those scenarios. And I don't think you can.
15 And I don't think you should. And I don't think
16 that the evidence points to that at all.

17 Mr. Strang, in his opening statement,
18 promised you what the defense was going to be.
19 Mr. Strang told you that it's no surprise that
20 the blood from an unsecured vial in the box in
21 the Clerk's Office, that Lieutenant Lenk examined
22 in 2002, ends up in the Toyota. At the start of
23 the case, that was what the defense was. That's
24 what the defense theory was. That's what the
25 defense said their theory of defense and what the

1 evidence was going to show in this case.

2 Vial planting, though, causes some
3 risks, risks to, what I'm characterizing as risks
4 to the defense. Because when you announce that
5 defense, the State gets to meet that defense. We
6 get an opportunity to tell you, the jury, through
7 witnesses, whether or not that's plausible,
8 whether or not that could happen, or whether or
9 not that's implausible.

10 And there's two ways to do that. First,
11 is the common sense way to do that. The vial
12 planting defense for Mr. Avery, and for the
13 defense team, is that either Mr. Lenk or
14 Mr. Colborn got through this door. All right.
15 They got through a door that they didn't have a
16 key to, and they got through a door that they
17 didn't have the code to. That's the first part
18 of this.

19 The next thing that they are asking you
20 to buy is that they knew that there was a file
21 someplace in the Clerk of Court's Office,
22 sometime between the 3rd and the 5th of November.
23 Now, why do I say the 3rd and the 5th, because
24 the 3rd is when Teresa is reported missing,
25 doesn't pay to plant evidence and to steal a vial

1 of blood before we know that it's going to do any
2 good. And the 5th is when Pam Sturm finds her.
3 So between the 3rd and the 5th they have to know
4 that this box actually exists.

5 They also need you to buy that they know
6 that there is a box within the box. That there
7 is a vial of blood inside of that particular box
8 in the Clerk's Office. They need you to
9 believe -- They need you to believe that they get
10 through a door they have no key, that they have
11 no code, they find a box that they don't know the
12 existence of, they find the vial that they don't
13 know the existence of, and then they are able to
14 get their hands on that vial of blood.

15 They also need you to believe that
16 nobody sees them do this, that they are able to
17 do that undetected, to secret it, again, to
18 remove it from the Clerk of Court's Office in
19 Manitowoc, to plant the blood, assuming they know
20 how to do that, in six different places.

21 I'm stopping right here, because I need
22 to. Because for the defense version to hold any
23 water at all, the van -- excuse me -- the SUV
24 can't be found yet. They have to plant the blood
25 before it's found. Again, there's only two ways

1 that they can do that. Either they kill this 25
2 year old girl, or they found her murdered
3 somewhere else.

4 And if they found her murdered somewhere
5 else, then weren't they taking quite a chance,
6 weren't Mr. Lenk and Colborn, if you admit or buy
7 what it is that these two gentlemen are selling,
8 wouldn't you have to agree that they took a
9 chance that this very 25 year old photographer
10 was also last seen alive by that man.

11 My God, they got lucky, didn't they. To
12 go and find the vial of blood, even assuming they
13 knew where it was, that the dead woman that they
14 had in their possession, theoretically, was also
15 the last person to have seen Mr. Avery. It
16 doesn't make sense. All right.

17 That's the common sense way to deal with
18 the vial of blood planting. By the way, because
19 the vial of blood is still in the Clerk's Office,
20 you have to reverse this process. You have got
21 to get the blood back after we do the planting.
22 We have to get through, again, the door that we
23 have no key to, and we have no code to, and into
24 the box, and get this thing secreted back in
25 there, undetected, with nobody seeing.

1 That's not reasonable. That's not a
2 reasonable doubt. Reasonable doubts are for
3 innocent people. Reasonable doubts are things
4 that juries adopt when all the evidence points to
5 that. And this planting, this vial planting
6 defense, even from a common sense standpoint, is
7 absolutely ludicrous.

8 But what we were able to do, what you
9 heard, is scientifically exclude that vial of
10 blood. You heard from Dr. LeBeau, who testified
11 that this blood is loaded with EDTA and this
12 blood, and this blood, and this blood, have no
13 detectable levels of EDTA. And so instead of
14 calling all of the people with keys and with
15 codes, and people in the Clerk's Office, and who
16 might have seen Lieutenant Lenk or Colborn, or
17 all those kinds of things, instead of doing it
18 that way, we only had to call one witness, who
19 scientifically could tell you that there is
20 absolutely no way that that vial of blood was
21 used to plant.

22 In fact, that very question was asked of
23 Dr. LeBeau, the head of the toxicology section,
24 or the unit at the FBI. And he said, by a
25 reasonable degree of scientific certainty, this

1 vial of blood is excluded, that means it's not
2 it, it's excluded as the source of those three
3 bloodstains.

4 Now, why is that important. Lieutenant
5 Lenk and Sergeant Colborn, as I mentioned
6 earlier, are good, decent, honest cops, sworn to
7 uphold the law. Kinds of officers Manitowoc
8 citizens should be proud to have on your police
9 force. They are the kinds of guys that you want
10 investigating cases for you, for Manitowoc
11 County. And again, they are not just some cops,
12 they are your cops, that's why a Manitowoc jury
13 decides this case.

14 This isn't just two guys, it's Jim Lenk
15 and it's Andy Colborn. And when you accuse
16 police officers of official misconduct, that's
17 serious business. Mr. Strang correctly predicted
18 that there would be some anger about this issue,
19 coming from the prosecution side, and there is.

20 Let me tell you why. Their livelihood,
21 their reputations, their families, everything in
22 their 20 plus years of law enforcement are on the
23 line, when some lawyer accuses them of
24 misconduct. Not just any misconduct, but
25 planting evidence in a murder case. All right.

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Serious, serious business.

And as a representative of the State, as the prosecutor in this case, I'm here to tell you folks, that if you are going to allege that some Manitowoc cop is crooked, that some Manitowoc cop committed a crime, you better have something to back it up. And when you don't, and when there is a witness from the FBI who says that didn't happen, and when common sense said, that didn't happen, these men are owed an apology. Their good name, their reputations, need to be restored to them.

And Mr. Strang talked about what a guilty verdict, or a not guilty verdict, may do in this case. A guilty verdict is most importantly attributed to whether or not Mr. Avery committed these horrific acts in these cases. But also the issue of official or police misconduct should be something that angers you, just as its angers me.

Mr. Buting said that he might have been a little rough on Ms Culhane, that he owed her an apology. I'm hoping that the comments that have been directed towards Jim Lenk and towards Andy Colborn, at the conclusion of this case, are also

1 met with an apology.

2 But what I heard yesterday, what I heard
3 yesterday, from Mr. Buting, when he suggested
4 that perhaps it was Teresa's lifestyle that
5 contributed to her homicide, I'm paraphrasing,
6 but he said, because she was at some party, what
7 do we know about this party that she was at on
8 Saturday, or what do we know about some phone
9 calls that she had gotten, or what do we know
10 about her living arrangements.

11 Do you blame a 25 year old homicide
12 victim? And when you suggest that that victim
13 had some responsibility, or something to do with
14 her own demise, you need to be held accountable
15 for that. You need to be taken to task for that.
16 And, again, as the prosecutor, I'm expressing my
17 indignance about that.

18 Any suggestion that these good people of
19 the Halbach family have to endure in listening to
20 Mr. Buting stand before you and say, what about
21 this woman's lifestyle, or what about this party,
22 or what about who she's living with, is
23 absolutely out of bounds, absolutely improper,
24 has no place in this case.

25 What does have a place in this case is

1 the facts. And now I have come full circle. And
2 at the conclusion of this, my final argument
3 before you, the jurors, you have seen, and should
4 see by now, the stark difference between the
5 State's facts, between our reliance on the facts,
6 and the defense necessarily relying upon
7 speculation.

8 Physical evidence, the DNA evidence, the
9 eyewitness testimony, the scientific evidence,
10 the big fire that Mr. Avery had, common sense all
11 point to one person and there's a reason for
12 that. As the jury in this case, you have a duty.
13 You have a duty to return what's called a true
14 verdict. You have a duty to search for the
15 truth.

16 I agree with Mr. Strang that you do have
17 a duty in this case, but I disagree when Mr.
18 Strang tells you that your finding of guilt in
19 this case is not going to solve the crime. It
20 is. It's going to solve the crime.

21 And I'm here to tell you, also, as the
22 prosecutor, and collectively, the three of us
23 prosecutors, with lots and lots of years of
24 experience, are also going to tell you that it
25 will provide closure. It will provide closure

1 for the Halbach family, at least in the legal
2 sense. And it's in the sense for what you are
3 charged to do, and that is to assign
4 responsibility. It's to assign accountability
5 for the death of Teresa Halbach.

6 I don't believe it is a difficult
7 decision. It's a complex series of facts. And
8 it is a very, very serious case. But it's not a
9 difficult case. It's not a difficult decision
10 that you have to make, because everything in this
11 case pointed towards one person, towards one
12 defendant.

13 I'm thanking you, at the conclusion of
14 this case, on behalf of the State of Wisconsin.
15 And urging you, urging you, to follow the Court's
16 instructions, to follow the evidence in the case,
17 and return verdicts of guilty. Thank you. Thank
18 you, Judge.

19 THE COURT: Now, members of the jury, the
20 duties of counsel and the Court have been performed.
21 The case has been argued by counsel. The Court has
22 instructed you regarding the rules of law which
23 should govern you in your deliberations. The time
24 has now come when the great burden of reaching a
25 just, fair, and conscientious decision of this case

1 is to be thrown wholly upon you, the jurors selected
2 for this important duty.

3 You will not be swayed by sympathy,
4 prejudice, or passion. You will be very careful
5 and deliberate in weighing the evidence. I
6 charge you to keep your duty steadfastly in mind
7 and, as upright citizens, to render a just and
8 true verdict, or in this case, just and true
9 verdicts.

10 The following six forms of verdict will
11 be submitted to you concerning the charges
12 against the defendant, Steven A. Avery.

13 One reading: We, the jury, find the
14 defendant, Steven A. Avery, guilty of first
15 degree intentional homicide, as charged in the
16 first count of the Information.

17 A second reading: We, the jury, find
18 the defendant, Steven A. Avery, not guilty of
19 first degree intentional homicide, as charged in
20 the first count of the Information.

21 A third reading: We, the jury, find the
22 defendant, Steven A. Avery, guilty of mutilating
23 a corpse, as charged in the second count of the
24 Information.

25 And a fourth reading: We, the jury,

1 find the defendant, Steven A. Avery, not guilty
2 of mutilating a corpse, as charged in the second
3 count of the Information.

4 A fifth reading: We, the jury, find the
5 defendant, Steven A. Avery, guilty of possession
6 of a firearm, as charged in the third count of
7 the Information.

8 And a sixth reading: We, the jury, find
9 the defendant, Steven A. Avery, not guilty of
10 possession of a firearm, as charged in the third
11 count of the information.

12 It is for you to determine whether the
13 defendant is guilty, or not guilty, of each of
14 the offenses charged. You must make a finding as
15 to each count of the Information.

16 Each count charges a separate crime and
17 you must consider each one separately. Your
18 verdict for the crime charged in one count must
19 not affect your verdict on any other count.

20 This is a criminal, not a civil case,
21 therefore, before the jury may return a verdict
22 which may legally be received, the verdict must
23 be reached unanimously. In a criminal case, all
24 12 jurors must agree in order to arrive at a
25 verdict.

1 When you return to the jury room, select
2 one of your members to preside over your
3 deliberations. That person's vote is entitled to
4 no greater weight than the vote of any other
5 juror.

6 When you have agreed upon your verdicts,
7 have them signed and dated by the person you have
8 selected to preside. I ask that you return the
9 unsigned verdict forms as well.

10 At this point, I'm going to ask the
11 media folks to shut the audio down because the
12 Court is going to be identifying one of the
13 jurors by name. I believe somebody is supposed
14 to signal me once that's been done. Thank you.

15 Members of the jury, as I previously
16 indicated, just before the beginning of
17 deliberations, any remaining alternate jurors
18 would be selected. We are now at that point in
19 the trial.

20 The alternate juror will be sequestered
21 separately from the other jurors until
22 deliberations are completed, to be available in
23 the event one of the other 12 jurors becomes
24 unable to complete deliberations.

25 The alternate juror in this case has

1 been determined to be Nancy Stienmetz. Ms
2 Stienmetz, with the consent of counsel for both
3 parties, I will be meeting with you shortly, in
4 chambers, to explain your remaining role in this
5 case.

6 At this time I will ask the Clerk to
7 swear the officer.

8 (Jury bailiff sworn.)

9 THE COURT: The jury is excused. Ms
10 Stienmetz, you'll be waiting in the hallway to meet
11 with me.

12 (Jury not present.)

13 THE COURT: You may be seated. Counsel, if
14 you should leave the courtroom area, I ask you to
15 keep the Clerk's Office informed of your
16 whereabouts.

17 ATTORNEY STRANG: The remaining task to
18 tend to is that we had agreed, I think, that all
19 photographs would go to the jury without a request.
20 But since then, I don't remember if I did this on
21 the record or not, but had moved to exclude some of
22 the exhibits already admitted, and photographs of
23 those.

24 I have numbers of them in my brief case,
25 but they are the handcuffs, leg irons, electrical

1 cords, and as I say, related pictures. So the
2 Court would need to rule on those, because if to
3 be excluded, of course, those photographs ought
4 not go.

5 THE COURT: I recall being informed that I
6 could anticipate the receipt of such a motion; I
7 don't know that I have received it yet. But I was
8 notified of it and my recollection is that the
9 parties were going to discuss the potentially
10 disputed items of evidence in order to determine
11 whether there would be a stipulation proposed.

12 ATTORNEY STRANG: I don't know that we had
13 much further conversation, so the question may be
14 best put to the State.

15 ATTORNEY KRATZ: If I could just have a
16 moment, Judge, I will be happy to identify those for
17 the Court. Exhibit 173, Exhibit 174.

18 ATTORNEY STRANG: 228 and 229.

19 ATTORNEY KRATZ: Thank you, counsel. 228,
20 and 229, although those are items themselves.

21 ATTORNEY STRANG: Yes, some of these are
22 photographs and some are the items themselves. And
23 I don't have which is which.

24 ATTORNEY KRATZ: All right. 228 -- 229 has
25 already been withdrawn, I think, as an exhibit. 228

1 is the other photo that is at issue in the case.
2 And those three photos, then, that have been
3 identified, we have no objection they be removed
4 from the binder of photos, and that the balance of
5 the photos be tendered to the jury at this time.

6 THE COURT: All right. Can you give me the
7 numbers of the photos again.

8 ATTORNEY STRANG: 173, 174, 228, and
9 Mr. Kratz says that 229 already was withdrawn.

10 ATTORNEY KRATZ: Right. Those are the
11 three exhibits.

12 ATTORNEY STRANG: Then the items themselves
13 are Exhibits 203, 204, and 249. Those are the
14 actual items.

15 ATTORNEY KRATZ: They wouldn't be going
16 back anyway, Judge.

17 THE COURT: Pardon me?

18 ATTORNEY KRATZ: The items wouldn't be
19 going back anyway.

20 THE COURT: I understand the motion to be
21 going beyond that.

22 ATTORNEY STRANG: Right. But they -- I'm
23 asking that they be excluded, that is, that the
24 Court reconsider the ruling admitting them, exclude
25 those things as exhibits. I agree, of course, with

1 Mr. Kratz, that these things wouldn't be going to
2 the jury anyway, absent a request, but I'm looking
3 to have them excluded as evidence altogether.

4 THE COURT: My only hesitation there is,
5 given the stage of the trial at which this is being
6 raised. I take it you are not asking for some type
7 of further instruction to the jury that they have
8 been withdrawn.

9 ATTORNEY STRANG: I'm not, no. I mean, we
10 would have addressed that before closing arguments.

11 THE COURT: Does the State have any
12 objection?

13 ATTORNEY KRATZ: The only issue, Judge, is
14 if they would ask to see those items, I think that
15 could be addressed at that time. I don't believe
16 that the items themselves, that is the physical
17 items themselves, need to be addressed at this time.
18 Certainly an argument could be made as to the
19 relevance, they are part of the record. And up and
20 until the time that those may be asked for, I
21 believe that request by counsel is premature.

22 THE COURT: Let me ask this. Is the
23 defense, with the understanding that both parties
24 agree that these six exhibits that have been
25 identified, that is, three photos and three physical

1 items, with the understanding that they will not be
2 sent to the jury, and I believe there's a
3 stipulation that the three photos can simply be
4 withdrawn, is the defense willing to postpone
5 further consideration of its request to withdraw the
6 other exhibits to such time as the jury requests to
7 see them?

8 ATTORNEY STRANG: Sure, because there is --
9 it's true, there is no practical effect other than
10 cleaning up the record, and that can be done any
11 time.

12 THE COURT: So, based on the stipulation of
13 the parties then, items -- Exhibits 173, 174 and 228
14 that are photos, are withdrawn, and items 203, 204,
15 and 249, will not be sent to the jury room if
16 requested.

17 ATTORNEY STRANG: That's right. Now, I
18 have to say, I had -- our exhibit shows 229.

19 THE COURT: I have been told -- my
20 understanding was that's already been withdrawn.

21 ATTORNEY STRANG: Let's just confirm that
22 with the clerk, I probably am wrong, but 229, Janet.

23 THE CLERK: I didn't show that as
24 withdrawn.

25 ATTORNEY KRATZ: It should be, I have no

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problem with that.

THE COURT: All right. 229, then, is also withdrawn.

ATTORNEY STRANG: Very well.

ATTORNEY KRATZ: Thank you.

THE COURT: Very well, we're in recess.

ATTORNEY BUTING: Judge, one other matter.

THE COURT: Yes.

ATTORNEY BUTING: I don't know what other exhibits you intend to send back to the jury, other than the photographs, but certainly we would object to the expert's reports going back.

THE COURT: Let me clarify my understanding further. If I understand what the parties are telling me, and I want to make sure I'm not reading too much in, I'm glad, Mr. Buting, that you brought this up. If the jury requests permission to see any of the other photos, are the parties saying I can send them back, or the parties wish to be heard before they are sent back?

ATTORNEY STRANG: Photos can be sent without jury request.

ATTORNEY KRATZ: Right now.

ATTORNEY STRANG: That's what we agreed.

THE COURT: You are asking the Court to

1 send them back.

2 ATTORNEY KRATZ: Right now, yes.

3 THE COURT: Okay.

4 ATTORNEY KRATZ: But any other exhibits, if
5 they ask to be seen, we would all like to be heard
6 on that.

7 ATTORNEY STRANG: And maybe we didn't have
8 an agreement on this, I expressed the view to
9 counsel that we also could send CV's for all experts
10 back, without request. If they are not in
11 agreement --

12 ATTORNEY KRATZ: No, that--

13 THE COURT: I'm a little concerned if we're
14 sending all photos, that's one thing. I hate to
15 send back nothing but all CV's and nothing else, for
16 fear that it might draw undue attention to them. So
17 I'm going to wait, and if the jury requests to see
18 anything other than the remaining photos, I will
19 notify the parties, just as I would if I receive a
20 question from the jury, and the parties will have a
21 chance to be heard before they go back.

22 ATTORNEY KRATZ: That sounds good.

23 THE COURT: Fair enough?

24 ATTORNEY KRATZ: Thank you, Judge.

25 ATTORNEY STRANG: Yes.

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THE COURT: All right. We're adjourned for
this time.

(Court in recess, jury deliberating.)

1 206 and 207 into evidence?

2 THE COURT: Any objection?

3 ATTORNEY KRATZ: No.

4 THE COURT: They are admitted.

5 (Recess taken.)

6 (Jury present.)

7 THE COURT: Mr. Kratz, at this time you may
8 call your next witness.

9 ATTORNEY KRATZ: State will call Andrew
10 Colborn to the stand.

11 THE CLERK: Please raise your right hand.

12 **SERGEANT ANDREW L. COLBORN**, called as a
13 witness herein, having been first duly sworn, was
14 examined and testified as follows:

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

17 THE WITNESS: Andrew L. Colborn,
18 C-o-l-b-o-r-n.

19 ATTORNEY KRATZ: You don't have to be quite
20 so close.

21 **DIRECT EXAMINATION**

22 BY ATTORNEY KRATZ:

23 Q. Mr. Colborn, can you tell us, how are you
24 employed, please.

25 A. I'm a patrol sergeant with the Manitowoc County



1 Sheriff's Department.

2 Q. How long have you been a law enforcement officer?

3 A. Since 1996.

4 Q. Prior to 1996, what did you do?

5 A. I was a Corrections Officer from 1992 to 1994,
6 also with the Manitowoc County Sheriff's
7 Department.

8 Q. What does a Corrections Officer do?

9 A. A Corrections Officer is a non-sworn, non-law
10 enforcement officer, that is a responsibility for
11 security of the jail.

12 Q. All right. How was it that you became a sworn
13 law enforcement officer?

14 A. When a position opened up at the Manitowoc County
15 Sheriff's Department, I did perform the State
16 written test, performed an agility test, went on
17 an eligibility list, and eventually I was
18 selected.

19 Q. What are your current duties with the Manitowoc
20 County Sheriff's Department?

21 A. I'm a assistant shift commander for the noon to 8
22 shift so I have some administrative duties and
23 then I have some patrol duties.

24 Q. Prior to being selected as a law enforcement
25 officer, did you have any duties in your prior

1 life that in any way prepared you for being a law
2 enforcement officer?

3 A. No.

4 Q. Sergeant, you hold the rank of sergeant?

5 A. Yes, sir.

6 Q. And in early November of 2005, did you hold that
7 same rank?

8 A. Yes, sir.

9 Q. What were your duties back in early November of
10 '05?

11 A. Essentially the same duties that I hold today. I
12 was a patrol supervisor on -- I work a six day
13 on, three day off rotation. So on the days that
14 the lieutenant that's assigned to the shift is
15 off, I would be the shift commander.

16 Q. So you have supervisory responsibilities as well?

17 A. Yes, sir.

18 Q. I'm going to direct your attention to
19 November 3rd of 2005, ask if you were employed on
20 that evening?

21 A. Yes, sir.

22 Q. Do you recall what your duties were on
23 November 3rd?

24 A. I was the shift commander for the noon to 8
25 shift, that's the shift I'm assigned to.

1 Q. Sometime during that shift, Sergeant Colborn,
2 were you informed of a Calumet County missing
3 persons investigation that was ongoing?

4 A. Yes, sir.

5 Q. And being involved in that -- or excuse me, being
6 aware of that investigation, were you asked to
7 assist in any way?

8 A. Yes, sir.

9 Q. Tell the jury how you were asked to assist?

10 A. I was contacted by, I believe it was inspector or
11 Investigator Mark Wiegert from the Calumet County
12 Sheriff's Office, who contacted the dispatch
13 center by telephone, who then transferred the
14 call to my patrol car.

15 He asked if I could respond to, I
16 believe he gave me the address of 12928 Avery
17 Road. He asked if I knew where that was and I
18 told him, yes, I believe that that was the
19 address of Avery Auto Salvage. And he asked if I
20 could go there and check for a missing person
21 because they had a missing person report that had
22 generated in Calumet County and it had been
23 determined, through the course of their
24 investigation, that she had been out at the Avery
25 Salvage Yard, taking pictures of a vehicle that

1 was for sale.

2 Q. At the time that Investigator Wiegert asked for
3 your assistance, did Investigator Wiegert tell
4 you other places within Manitowoc County that Ms
5 Halbach had known to have been on the 31st of
6 October?

7 A. I don't believe in the -- in the initial phone
8 call that he did.

9 Q. All right. Some time later that evening you
10 heard?

11 A. Yes, sometime later that evening he gave me
12 another address on County Highway B and another
13 name and asked me to check there as well.

14 Q. What name was that, just so -- we're going to
15 eventually get there?

16 A. I believe the first name was George; I know the
17 last name was Zipperer.

18 Q. Sergeant Colborn, are you at all familiar with
19 the Avery salvage business itself?

20 A. Yes.

21 Q. Tell the jury how you are familiar with that
22 business.

23 A. I have been, personally, a customer of the Avery
24 Auto Salvage business; as well as, I have had
25 contacts there through with law enforcement. And

1 I have children that are the same age as some of
2 the owners of Avery Auto Salvage, so I had
3 contact with them through the course of school
4 events.

5 Q. All right. Let's take those -- Well, when we
6 discuss this, I'm going show you what's been
7 received as Exhibit 86, can you tell us what that
8 is, please.

9 A. That's an overhead, like an airplane view,
10 birds-eye view of the Avery Auto Salvage.

11 Q. Prior to the 3rd of November, 2005, had you been
12 to that property?

13 A. Prior to 2005?

14 Q. Prior to November 3rd of 2005, had you been to
15 that property?

16 A. Yes.

17 Q. And under what circumstances, can you tell the
18 jury about that?

19 A. Again, as a customer.

20 Q. Let's talk about that, first. What do you mean
21 as a customer.

22 A. I have several older vehicles, one, as a matter
23 of fact, is a 1950 Chevrolet pickup truck. And
24 I -- in the process of tinkering around with it,
25 I have gone to several auto salvage and I have

1 always been referred to the Avery Auto Salvage as
2 the place to go if you are looking for an older
3 model vehicle parts -- or parts for an older
4 model vehicle.

5 Q. Was there one person in particular that you would
6 normally have contact with at the Avery Auto
7 Salvage?

8 A. No, actually, usually there were two; either I
9 had contact with Charles Avery or Earl Avery.

10 Q. All right. They are brothers and, in fact, the
11 owners of the business; is that right?

12 A. Yes, sir.

13 Q. Let me ask you this, Sergeant Colborn, if you
14 know, prior to the 3rd of November, 2005, when
15 was the last time you were at the Avery Auto
16 Salvage business?

17 A. I think the last time I was at the Avery Auto
18 Salvage business would have been 1999.

19 Q. All right. So at least six years previously?

20 A. Yes, sir.

21 Q. But you knew where it was?

22 A. Yes, sir.

23 Q. Then, on November 3rd, [after Mr. Wiegert asked
24 for your help;] did you proceed to this scene?

25 A. Yes, sir.

1 Q. And that's 2005; is that right?

2 A. Yes, sir.

3 Q. Can you tell the jury, please, what happened when
4 you got there on November 3rd?

5 A. Again, I knew that Earl Avery, who was probably
6 the person that I have had the most contact with
7 or know the best, doesn't live on the Avery Auto
8 Salvage property, so my initial -- what I was
9 initially trying to do was to make contact with
10 Charles Avery, who does reside on there.

11 I knew Charles to -- I didn't know if he
12 owned the business, but I certainly knew that he
13 managed the business. So I was going to make
14 contact with him and ask him if he had seen
15 someone on the property taking pictures of a
16 vehicle that was for sale.

17 Q. In looking for Charles Avery, do you remember
18 what building you went to?

19 A. Well, initially, I was kind of surprised when I
20 drove in, because the shop area, a lot of --
21 there were new buildings and things had changed
22 since the last time I was there. But I was
23 attempting to make contact at his residence,
24 which I believe is right behind that large,
25 square shaped building.

1 Q. We're handing you a laser pointer to assist you
2 in your --

3 A. I believe that --

4 Q. -- testimony.

5 A. I thought that was his residence right there.

6 Q. And you were pointing actually to the residence
7 which would be just the south of the --

8 A. That one right there.

9 Q. You have to wait until I finish my question, sir.
10 You are pointing to a trailer or a residence just
11 south of the Avery business itself. And I think
12 counsel is willing to stipulate that is Charles
13 Avery's residence.

14 ATTORNEY STRANG: Certainly my
15 understanding.

16 THE COURT: All right. The record will
17 reflect the stipulation.

18 Q. (By Attorney Kratz)~ Did you drive or walk into
19 this property?

20 A. I drove.

21 Q. Can you tell the jury where you came in from,
22 please.

23 A. There is -- To my knowledge there is only one
24 entrance onto the property and that's off Avery
25 Road, which the whole of Avery Road isn't

1 pictured on that picture. But I ended up coming
2 down that dirt road there and parking almost
3 where there is a vehicle parked right now.

4 Q. Why don't you show us where you parked. If I
5 zoomed into that location would that help us?
6 All right. We have now zoomed in to Exhibit 86,
7 could you, again, show the jury about where it
8 was that you parked.

9 You are pointing which would be just to
10 the north of the large building, which is
11 something we have been calling the new office or
12 the new shop building; is that correct?

13 A. Yes, sir.

14 Q. All right. After parking at that location, tell
15 the jury what happened. By the way, about what
16 time was this that you got there?

17 A. I'm guessing around 7:00, between 6:30 and 7:30.

18 Q. Was it light out or was it dark?

19 A. It was dark.

20 Q. After parking there, Sergeant Colborn, what
21 happened?

22 A. I got -- I exited my squad car and I was going to
23 walk down the road, that road right there, in
24 order to access Charles' residence. Almost as
25 soon as I got out of my car I heard something

1 behind me. I turned and Steve Avery was walking
2 towards me and he had come out of that residence
3 right there.

4 Q. Do you know whose residence that is?

5 A. I believe that's Al and Delores Avery's
6 residence.

15:42 Ep. 7

7 Q. Did you have any conversation with Steven Avery
8 at that time?

9 A. Yes, I did.

10 Q. And could you describe that conversation for the
11 jury, please?

12 A. I think Steve initiated the conversation with me
13 by asking me what I wanted, what I was doing
14 there.

15 Q. Were you dressed similar to what you are dressed
16 today?

17 A. Yes, I was in uniform.

18 Q. Did you have a marked squad car?

19 A. Yes, I did.

20 Q. What did you tell Mr. Avery?

21 A. I told Avery -- Mr. Avery, that there was -- [I]
22 had received a call from Calumet County and that
23 they had informed me that there was a girl
24 missing from Calumet County and [asked him if] TH she
25 had come out to their property to photograph a

15:46 Ep. 7

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vehicle that they were selling.

Q. Did Mr. Avery have a response for you?

A. Yes, he said that she had been there.

Q. Did he tell you what day she had been there?

A. I think I might have told him that, what day that she should have been out there. I don't recall if we mentioned a date, but I do remember asking him what time she had been out there.

Q. Did Mr. Avery recall this young woman?

A. Yes.

Q. Did he name her for you?

A. No.

Q. Did he tell you what she had done at his property that day?

A. He said that she was taking some pictures of a van that his sister was selling.

Q. Mr. Avery tell you how long the woman had been on his property?

A. He said 5 or 10 minutes.

Q. Did you inquire of Mr. Avery whether or not he had personal contact with this woman on the date she was out there?

A. ^{and} I asked Mr. Avery if she had said where she was going. And he said, I never talked to her. She was only here 5 or 10 minutes and she left.

15:57

and 16:00

1 Q. But he never talked to her?

2 A. That's what he told me, he never talked to her.

3 Q. Did he describe that further, how he knew she was
4 there?

5 A. He said he saw her out the window taking the
6 pictures.

7 Q. Okay. Did you complete that conversation with
8 Steven Avery? Do you recall that conversation?

9 A. I told Mr. Avery that her parents and her family
10 were getting worried and was he sure that she
11 didn't mention where she might have been going
12 after she left. And he said, no, I didn't talk
13 to her. She was only here a few minutes and then
14 she left.

15 Q. What was Mr. Avery's demeanor like as he was
16 talking to you; was he cooperative?

17 A. Yes, he was very cordial.

18 Q. Mr. Avery indicate to you the time, that is, when
19 this young woman had been on his property?

20 A. He said he thought between 2:00 or 2:30.

21 Q. What did you do then?

22 A. I believe I thanked him for talking with me and I
23 started to get back in my car. And I believe
24 Mr. Avery told me that he hoped she turned up
25 soon.

1 Q. What did you do then?

2 A. I left. I left the property and I contacted --
3 he is the under sheriff of our department now,
4 but at the time he was the deputy inspector of
5 the operations division. I called him.

6 Q. What's his name?

7 A. Greg Schetter. And I let him know that Calumet
8 County was investigating a missing persons case
9 and that one of the places that it had been
10 mentioned that this party was at was on -- at the
11 Avery Salvage Yard and I just left there and made
12 contact and that I was unable to locate that
13 person. And he suggested that I probably contact
14 Lieutenant Lenk and see if he wanted -- if
15 Lieutenant Lenk wanted any of our detectives to
16 assist Calumet County in searching any place
17 else.

18 Q. Did you do that?

19 A. Yes, I did.

20 Q. And did you speak with Lieutenant Lenk that
21 evening?

22 A. Yes, by phone. And then when I got into the
23 department, because prior to going into the
24 department I went past the other residence. I
25 must have also contacted Investigator Wiegert and

1 let him know that I hadn't located.

2 And he, I believe, at that time told me
3 of the other address. So I purposely drove past
4 that residence. I saw it was dark, but that
5 there were cars in the driveway. But the
6 residence was dark. I didn't see any lights on
7 there. So I ended my tour of duty for patrol.

8 Q. Let me just stop you. Whose residence was this
9 that you drove past?

10 A. George Zipperer's.

11 Q. Go ahead. What did you do?

12 A. I ended my patrol tour of duty, but I remained on
13 duty to assist Calumet County Detective Dederling
14 and Detective Remiker in making contact at George
15 Zipperer's residence.

16 Q. Was that done at that time?

17 A. It was done, you know, within probably a half
18 hour or 45 minutes of my getting back to the
19 department.

20 Q. The question, Sergeant Colborn, did you assist in
21 that process?

22 A. Yes, sir.

23 Q. You mentioned that there was a Calumet detective
24 that was involved, as well as Manitowoc; is that
25 right?

1 A. Yes, sir.

2 Q. In meeting with the Zipperers?

3 A. Yes, sir.

4 Q. And, again, do you remember who they were?

5 A. I believe his name is John Dederling.

6 Q. All right. When you -- I'm just going to go back
7 just briefly to your contact with Mr. Avery. You
8 mentioned that he was cooperative; is that right?

9 A. Yes, sir.

10 Q. I want you to remember back, as best you can,
11 Sergeant Colborn, at that initial meeting with
12 Mr. Avery, you, Sergeant Andy Colborn, did you
13 have any feelings or any inclination that
14 Mr. Avery may have been involved in Ms Halbach's
15 disappearance?

16 A. Not at that time, no.

17 Q. Did you do anything on the 3rd of November to
18 further investigate Mr. Avery?

19 A. On November 3rd?

20 Q. Yes.

21 A. No, sir.

22 Q. Did you ever go back onto his property on the
23 3rd?

24 A. No, sir.

25 Q. After going to the Zipperers with Detective -- I

1 think it was Remiker and Dederling, what did you
2 do after that?

3 A. After we were done, completed at the Zipperers?

4 Q. Yes.

5 A. I went home. I was done with -- you know, I was
6 already on overtime. I checked out and went
7 home.

8 Q. Do you know about what time that was?

9 A. 10:30, 11:00 at night, maybe.

10 Q. All right. Do you remember what you did the rest
11 of that evening?

12 A. Just probably fell asleep on the couch. I went
13 to bed and, you know, fell asleep.

14 Q. The next day, on the forth of November, were you
15 working that day?

16 A. No, sir, I was off that day.

17 Q. It's a Friday; is that right?

18 A. Yes, sir.

19 Q. Do you remember what you did on the 4th? We'll
20 get back to that, but do you recall, generally,
21 your day on the 4th of November?

22 A. Yes, sir.

23 Q. Move your attention one day further, on the 5th,
24 Saturday, the 5th of November; do you recall what
25 you were doing that day or that morning?

1 A. That was also a regularly scheduled day off for
2 me. Yes, I recall what I did on that day.

3 Q. We'll get into the morning, but let me just jump
4 right to this investigation. Were you contacted
5 at all by any supervisors or superiors that day
6 and asked to participate in this case?

7 A. I was contacted by the noon to 8 shift commander
8 for that day, and he did ask me to come into work
9 and pick up a patrol vehicle and respond out to
10 the Avery Salvage Yard.

11 Q. Did you do that?

12 A. Yes.

13 Q. In a marked vehicle?

14 A. Yes, I did take a marked vehicle out there.

15 Q. And about what time was it that you arrived at
16 the Avery scene itself; do you recall?

17 A. I know I left my house between 4:00 and 4:30. I
18 probably got out to the Avery Salvage Yard
19 between 5:15, 5:30 maybe.

20 Q. To your best recollection?

21 A. Yes.

22 Q. What happened when you got to the Avery salvage
23 business?

24 A. I made contact with the same supervisor who had
25 called me and I asked him, what do you want me to

1 do. And he informed me that there was a deputy
2 there that had some personal business or matters
3 to attend to. She had been out there since
4 apparently earlier in the day. And he asked me
5 to transport that deputy back to the department
6 so that she could get her own private vehicle and
7 go home. And then come back out to the Avery
8 Salvage Yard and provide security.

9 Q. Did you do that?

10 A. Yes.

11 Q. What did you do when you got back to the Avery
12 business?

13 A. Tried to stay in the car as much as possible
14 because it was pouring rain. But they directed
15 my attention to a place way off in the salvage
16 yard where I could see some lights. And
17 somewhere up in this area here they just told me
18 to sit in the car and not let anyone go down any
19 of these roads.

20 Q. Providing scene security up near what would be
21 the business buildings?

22 A. Yes.

23 Q. Did you do that?

24 A. Yes.

25 Q. How long did you have that responsibility.

1 A. Maybe like an hour, hour and a half. And I was
2 then told that, actually, I could go home. So I
3 was preparing to do that. I was checking all my
4 equipment to make sure I had everything that I
5 got out there -- came out there with. And then I
6 was told that I was going to be needed in a
7 different capacity and not to go home.

8 Q. All right. Let me ask you this, Sergeant
9 Colborn, any time that day, any time on the 5th
10 of November, did you ever make your way down
11 towards the pond, or down towards the southeast
12 quadrant of the Avery salvage property?

13 A. No, sir.

14 Q. Could you point to that area for us, with the
15 laser pointer. Point to the northeast corner of
16 the property. I'll specifically ask you about
17 that area, did you go near that area at all on
18 the 5th of November?

19 A. No, sir.

20 Q. How about on the 3rd when you were there 2 days
21 earlier, talking to Steven Avery?

22 A. No, sir.

23 Q. And were you down there at all on the 4th of
24 November?

25 A. No, sir.

1 Q. When initially being told that you could leave,
2 or that you were in effect packing up to leave,
3 who was it that approached you with other duties?

4 A. Detective Remiker.

5 Q. Do you know what you were being asked to do then?

6 A. He just said, you may want to check in with
7 Inspector Wiegert -- Detective Wiegert, before
8 you go home, because you can see the huge area
9 here, it's going to have to be checked, and we
10 don't have a lot of people here to do that.

11 Q. Do you know how many sworn law enforcement
12 officers were on scene at that time, or is that
13 something that you wouldn't even have a guess on?

14 A. No, I didn't take a head count. I don't know. I
15 would ball park it at 50 or less, but I don't
16 know.

17 Q. All right. Now, 50 sounds like a lot of police
18 officers; do you think that's a lot for that size
19 scene?

20 ATTORNEY STRANG: Irrelevant.

21 THE COURT: Sustained.

22 Q. (By Attorney Kratz)~ Did you check in with
23 Investigator Wiegert before you left?

24 A. Yes.

25 Q. And can you tell the jury, please, what -- what

1 that conversation was?

2 A. I believe he asked me if I was an evidence
3 technician and I said, yes, I am. And --

4 Q. Let me stop you there. What all goes into being
5 an evidence technician?

6 A. It's an investigative portion, it's an
7 investigative duty some police officers are
8 trained to do and some who may not be interested
9 in that are not. Not every police officer is an
10 evidence technician. You do get special training
11 on how to do photographing, how to identify
12 evidence, how to collect evidence without
13 destroying it.

14 Q. All right. And you had been through that
15 training?

16 A. Yes, sir.

17 Q. With Manitowoc County, that is, with the
18 sheriff's department, had you performed evidence
19 collection duties prior to November 5th of 2005?

20 A. Yes, sir.

21 Q. How long had you been an evidence tech?

22 A. Since 1997.

23 Q. Have you ever executed a search warrant or
24 collected evidence in that capacity before?

25 A. Yes, sir.

1 Q. After Investigator Wiegert asked you if you were
2 an evidence tech, what were you told to do?

3 A. I was just told to stand by, not to go home. So
4 I went back out to my patrol car.

5 Q. And, again, where was that parked, if you can
6 show us?

7 A. I may, you know, have moved it closer to the
8 Command Post, but initially I was parked right in
9 this area here.

10 Q. Again, near the business buildings?

11 A. Yes, sir.

12 Q. How long did you wait for further assignment?

13 A. Maybe 5, 10 minutes.

14 Q. Now, Sergeant Colborn, did you know what
15 assignment you were going to be given; in other
16 words, did you know where you were going to be
17 directed that night?

18 A. No, sir.

19 Q. What's the next direction that you recall
20 receiving?

21 A. I believe the next person I made contact with was
22 Sergeant Bill Tyson from the Calumet County
23 Sheriff's Department. And he was with Lieutenant
24 Lenk and Detective Remiker. I believe he came
25 out of the Command Post. They kind of motioned

1 to me. So walked up to them and Sergeant Tyson
2 said, you are going to be working for me and we
3 are going to be going to Steve Avery's trailer.

4 Q. What did working for me mean, or what do you
5 believe it meant?

6 A. Well, I had been told by this time that the
7 Calumet County Sheriff's Department was leading
8 up this investigation. So I interpreted working
9 for me as, you are the boss and you are going to
10 tell me what to do.

11 Q. Okay. Were you okay with that?

12 A. Yes.

13 Q. Did you then proceed with Deputy Tyson to the
14 Steven Avery trailer?

15 A. Yes, sir.

16 Q. Do you remember how you got there, how you got
17 down there?

18 A. I believe we took two cars. I believe Sergeant
19 Tyson took his Calumet County patrol car and we
20 probably -- I don't think we took my marked unit,
21 I think I got in Detective Remiker's car, or
22 Lieutenant Lenk's car, whichever. It was an
23 unmarked Manitowoc County car.

24 Q. All right. Tell us again, if you can look at
25 Exhibit 86, now where did you drive, where did

1 you guys go then?

2 A. I had never been to Steve Avery's trailer before
3 so I really didn't know where it was. But we
4 drove down this road to that trailer right there.

5 Q. I will zoom in again on Exhibit 86; do you recall
6 where the cars were parked?

7 A. I believe we parked them in this driveway here
8 that goes up to that garage.

9 Q. Do you recall that particular search that
10 evening?

11 A. Yes, sir.

12 Q. How is it that you have a independent memory of
13 that first search of Steven Avery's trailer?

14 A. Because I was involved in it.

15 Q. Okay. Did each of the search team members have a
16 specific responsibility within that trailer, if
17 you know?

18 A. Not really. I did have the specific
19 responsibility of photographing. But as far as
20 collecting, I mean, we all worked as a team. It
21 wasn't like one person went here and one person
22 went there. We were always -- worked together as
23 a team, always within arm's length of one
24 another.

25 Q. Was that by design, do you know?

1 A. I don't know if it was by design, per se, but it
2 just seemed that this would be the best way for
3 things to work and that we could be the most
4 careful and concise, working together as a team.

5 Q. All right. Let me ask you, Sergeant Colborn, did
6 you know the kinds of things that you were
7 looking for in Steven Avery's trailer?

8 A. Not specific -- specifically, no.

9 Q. Was there generally a term of things that you
10 were looking for?

11 A. I was looking for any evidence that would
12 substantiate or eliminate her having been there.

13 Q. Who's her?

14 A. Teresa Halbach.

15 Q. What rooms were it that the four of you searched?

16 A. I believe that first night we did search the
17 entire trailer. We started in what I term to be
18 the master bedroom or the largest bedroom.

19 Q. All right. We have already heard from Sergeant
20 Tyson so what responsibilities -- I'm just
21 talking about you now, not the others -- but what
22 responsibilities did you have in the search of
23 that bedroom?

24 A. Again, initially, I did all the photographing
25 that night with a 35mm camera. And then I was

1 looking in -- there was a bookcase type piece of
2 furniture next to the bed and a desk next to
3 that.

4 And while I say it's the larger bedroom,
5 it's still kind of a small bedroom so those
6 pieces of furniture were almost tight together.
7 And there was very little distance between the
8 bed and those pieces of furniture, I mean, maybe
9 2 foot. And that's the area that I was
10 specifically searching --

11 Q. How many --

12 A. -- in that bedroom.

13 Q. I'm sorry. How many men were in that bedroom?

14 A. There was myself, Detective Remiker, Lieutenant
15 Lenk and Sergeant Tyson.

16 Q. I'm going to put on the screen an exhibit which
17 has already been received; it's Exhibit 103.
18 It's a computer generated exhibit. Zoom in,
19 specifically, into the bedroom; does that help
20 you better orient yourself to Steven Avery's
21 bedroom?

22 A. Yes.

23 Q. Take the laser pointer, please, and tell the
24 jurors in what area you had initial
25 responsibility to search on the 5th of November.

1 A. This cabinet right here, I guess we could call
2 that a bookcase, and this desk right here.

3 Q. All right. And did you -- Let's talk about the
4 cabinet first. Mr. Wiegert is going to hand you
5 what's been marked as Exhibit No. 203 and on 204,
6 ask if you found those items in Mr. Avery's
7 bedroom on the 5th of November?

8 A. Yes, sir.

9 Q. Tell the jury where you found them, please.

10 A. That's a shelf right there, there's a little
11 space between that shelf and the top of the
12 cabinet. I found them inside there, inside that
13 area.

14 Q. Now, after finding or locating a piece of
15 physical evidence during this search, that is, on
16 the 5th, what did you do with that evidence?

17 A. As soon as I located something that, in my
18 opinion, was of evidence, which doesn't
19 necessarily make it evidence, but if it was, in
20 my opinion, to be of evidentiary value, I stopped
21 what I was doing. I informed Sergeant Tyson,
22 hey, I found some leg irons and handcuffs in
23 here.

24 Then Sergeant Tyson would come over. I
25 would photograph them, then he collected them and

1 put them -- you know, went through the
2 administrative duties that the Calumet County
3 Sheriff's Department requires for logging
4 evidence.

5 Q. The actual seizure, or the collection of them,
6 was whose responsibility?

7 A. Calumet County's.

8 Q. Sergeant Tyson?

9 A. Well, on that evening, yes, Sergeant Tyson,
10 sorry.

11 Q. When you look at Exhibit 103, this computer
12 generated diagram, other than the roof being
13 ripped off, for obvious reasons, does that look
14 the same or similar as it did on the 5th of
15 November?

16 A. Yes, sir.

17 Q. You see on the wall above the bed, the headboard,
18 there is a gun rack; do you see that?

19 A. Yes.

20 Q. Is that how it looked on the 5th of November as
21 well?

22 A. Yes.

23 Q. Did you see any firearms on that gun rack that
24 aft -- that evening?

25 A. There were two firearms on that gun rack, just

1 pretty much like it is in the picture.

2 Q. Were you able, Sergeant Colborn, to identify
3 those guns, or at least what kind of guns they
4 were?

5 A. I know as soon as we walked into the room we
6 noticed the guns right away. I probably stood
7 right about here and I could see that one of the
8 guns, I believe it's this lower one, was a
9 muzzleloader, and it had a piece of masking tape
10 on the stock that said Steve.

11 Q. What about the gun on top; is that a long gun as
12 well?

13 A. It's a .22 caliber rifle.

14 Q. Now, let me ask you, to the best of your
15 recollection, Sergeant Colborn, were those guns,
16 were those firearms seized from Mr. Avery's
17 bedroom on the 5th of November?

18 A. I don't think we did take them on the 5th of
19 November, no.

20 Q. So the jury understands, at that time, that is,
21 that first day, that first night that you guys --
22 you guys meaning the law enforcement -- got
23 there, had Teresa Halbach's body or any of her
24 remains been located?

25 A. No, sir.

1 Q. Did you even know that you were dealing with a
2 crime at that time?

3 A. I -- Initially, we were still treating this more
4 or less as a missing person.

5 Q. All right. But you were looking for items that
6 had obvious evidentiary value; is that right?

7 A. Yes, sir.

8 Q. What were some of the other rooms that -- or let
9 me just -- let me just make this clear, while in
10 that room, while in that bedroom searching, did
11 you notice any -- anything on the floor;
12 specifically, did you notice any car key on the
13 floor?

14 A. No, sir.

15 Q. In looking at, or on top of, either the desk or
16 the bookcase, did you notice any car key or
17 something that may have had obvious evidentiary
18 value in that regard?

19 A. Not really, no.

20 Q. Okay. What other rooms were searched that night?

21 A. I believe we searched every -- every room in the
22 trailer that evening.

23 Q. Try to get to a overview here. This has been
24 received as Exhibit No. 102, does this appear to
25 be an overview of the Avery trailer, again, a

1 computer generated diagram?

2 A. Yes, sir.

3 Q. Lists both bedrooms, the bathroom, living room,
4 dining room and kitchen area; is that right?

5 A. Yes, sir.

6 Q. Each of those rooms searched that evening?

7 A. Yes, sir.

8 Q. You said you were taking 35mm photography in that
9 trailer; is that correct?

10 A. Yes, sir.

11 Q. Were there other photographs also being taken?

12 A. I believe Detective Remiker had brought a small
13 digital camera in as well and he was taking some
14 digital photos as well.

15 Q. I show you a photo that's been received as
16 evidence. This is Exhibit No. 163 and ask if you
17 recognize this particular photo.

18 A. That's a photograph of the master bedroom area I
19 was just talking about in Steve Avery's trailer.

20 Q. Is that how it looked on the 5th of November?

21 A. Yes, sir.

22 Q. Exhibit No. 175, again, which has been received,
23 could you tell us what this is, if you know.

24 A. That's in the living room area of that same
25 trailer, the same residence. And this is like a

1 corner of the living room that was set up as a
2 computer work area.

3 Q. Was that an area that you and your colleagues
4 searched that evening?

5 A. Detective Remiker was the primary officer that
6 looked at that area, but he did call me over a
7 couple times to have me take pictures of items
8 that he had found.

9 Q. You can't fit four grown men into that --

10 A. No, sir.

11 Q. -- corner; is that right? After the search was
12 completed, or when the search was wrapping up,
13 could you tell us how that search ended, how that
14 effort ended?

15 A. The items that we had decided were of evidentiary
16 value that night were placed in Sergeant Tyson's
17 patrol vehicle and he stayed with the evidence.
18 We all went back to the Command Post. And not
19 exactly sure which Calumet County officer told us
20 what time to be there the next day, but we were
21 instructed to return the next day; myself,
22 Lieutenant Lenk, and Detective Remiker. And we
23 all left at the same time.

24 Q. After leaving the residence on the 5th, can you
25 tell the jury where you went, please.

1 A. I would have gone back to the Manitowoc County
2 Sheriff's Department, which is in the city of
3 Manitowoc and to get my personal vehicle, so I
4 could go home.

5 Q. Do you know about what time you cleared the
6 scene; in other words, about what time you left,
7 if you remember?

8 A. I'm sorry, I don't. I know it was late, that's
9 all.

10 Q. The next day, that is, on the 6th of November,
11 were you asked to come back to the scene?

12 A. Yes, sir.

13 Q. And what were you asked to do on the 6th?

14 A. On the 6th, when I came out there, again, with
15 Detective Remiker and Lieutenant Lenk and I
16 believe just -- this time just Lieutenant Lenk
17 went into the Command Post to make contact with
18 who we would be working with with Cal County that
19 day.

20 And Detective Remiker and I just kind of
21 waited until he came back out. And we were
22 introduced to Deputy Kucharski. And then Deputy
23 Kucharski informed us what our assignment would
24 be for that day.

25 Q. Okay. Prior to arriving on the scene, once

1 again, did you know what your assignment was
2 going to be?

3 A. No, I had no idea.

4 Q. Was an evidence collection team formed or
5 developed that morning, on the 6th?

6 A. Yes, sir.

7 Q. Do you remember who was involved in that team?

8 A. It was myself, Lieutenant Lenk, Detective
9 Remiker, and Deputy Kucharski, who's a employee
10 of the Calumet County Sheriff's Department.

11 Q. Once again, was it determined who would be in
12 charge of that group of search individuals?

13 A. After the first day, we didn't, you know -- I
14 didn't need to be told who was in charge, I knew.
15 But Deputy Kucharski told me that he would be
16 responsible for collecting and maintaining
17 security on any evidence that was located that
18 day.

19 Q. All right. What areas, then, of search were you
20 involved with, if any, on the 6th of November?

21 A. Initially, we started at the garage, at Steve
22 Avery's residence.

23 Q. Tell me about this garage, please?

24 A. It's a wooden, frame structure, maybe like a car
25 and a half garage. Not -- Not attached to the

1 residence. It had a vehicle parked out in front
2 of it, a black Ford pickup truck.

3 Q. I show you what's been received in evidence as
4 Exhibit No. 38, can you tell us what we're
5 looking at here, please.

6 A. That's Steve Avery's residence. That's his
7 garage. That's his pickup truck.

8 Q. All right. And that garage was searched; is that
9 right?

10 A. Yes, sir.

11 Q. Who was that searched by?

12 A. The aforementioned team; myself, Lieutenant Lenk,
13 Detective Remiker, and Deputy Kucharski.

14 Q. Do you remember the interior of that garage on
15 the 5th of November?

16 A. Yes, sir.

17 Q. Can you briefly describe that for the jury?

18 A. There was a smaller sport utility vehicle parked
19 in one half of the garage. It was a Suzuki
20 Samurai. There was a snowmobile also parked in
21 there, a Skidoo snowmobile. And there were some
22 other benches and tools that kind of went all the
23 way around the garage. There wasn't a lot of
24 room in there, with all the other apparatus that
25 was in there.

1 Q. In this case, already, and I think the defense
2 had asked and has been admitted, Exhibit No. 119,
3 ask you to take a look at Exhibit No. 119. Tell
4 us what we're looking at here.

5 A. That would be the interior of Steve Avery's
6 garage.

7 Q. Fair to say there's a lot of stuff in there?

8 A. Yes, sir.

9 Q. What kind of search was performed of that garage?

10 A. Well, the same type of, you know, search that we
11 had performed the night before in his residence.
12 We were looking for anything that would lead us
13 to believe that there was a missing person in
14 there.

15 Q. Each of the items that we see, and we can even
16 zoom into some of these things, was each and
17 every one of those items removed from the garage
18 and thoroughly searched, or searched under each
19 and every one of these items?

20 A. No. No, sir.

21 Q. Wasn't that kind of search?

22 A. No.

23 Q. In a very broad way, that is, in a overview
24 fashion, because we're going to hear from Deputy
25 Kucharski, but in a very broad sense, can you

1 tell us the kinds of things that were recovered
2 or viewed while you were in that garage?

3 A. Almost as soon as we stepped in the garage I
4 noticed, as did everyone else, that there were
5 several spent shell casings lying on the floor of
6 the garage.

7 Q. What's a shell casing?

8 A. It's the brass portion of a bullet. After the
9 bullet has been expended or fired, the casing is
10 usually ejected through from the firearm and
11 lands in close proximity to the shooter, usually
12 on the ground.

13 Q. Let me ask you this, Sergeant Colborn, are you
14 familiar with shell casings for different kinds
15 of, or different calibers of firearms?

16 A. Yes.

17 Q. By visual inspection, that is, without picking
18 them up or without even taking a look at those
19 shell casings, were you able to determine what
20 caliber weapon was used to fire those bullets?

21 A. Yes.

22 Q. How were you are able to determine that?

23 A. The shell casings that were laying on the ground
24 were small, for one. They were brass and they
25 didn't have a center primer. They had been fired

1 on the corner of the bottom of the casing; in
2 other words, the rim of the casing. And a
3 .22 caliber weapon is one of the only weapons
4 that is a rim fire weapon. Most weapons have a
5 primer in the center of the bullet. This does
6 not; it's fired off the rim.

7 Q. How many, what you believed were .22 caliber
8 shell casings, were readily apparent or viewable
9 to the naked eye as you entered that garage?

10 A. There were quite a few, 12 maybe, 12 plus.

11 Q. Do you know for sure?

12 A. No, sir, I don't.

13 Q. During the course of that search, were the shell
14 casings that were at least out in plain view
15 seized by Deputy Kucharski?

16 A. Yes, we photographed them first, where they were
17 lying. Initially, Deputy Kucharski and I were
18 both doing photographs, but then we thought
19 perhaps that was a bit redundant. So I just
20 let -- Deputy Kucharski felt more than
21 comfortable taking the photographs so I just
22 stopped taking pictures and assisted with
23 locating.

24 Q. About how long did the search of this garage
25 take?

1 A. One hour, one and a half hours.

2 Q. Looking at the stuff, I will call it junk; I
3 don't know if I will get an objection about that,
4 but probably not. Looking at the junk that we
5 see here, in a one hour search, were you able to
6 thoroughly search this garage?

7 A. No. I mean, if we were looking for something
8 minute, you could spend easily an hour just in
9 this area right here.

10 Q. All right. Were you given other search
11 assignments that day?

12 A. Yes, sir.

13 Q. Can you tell us where you were next assigned to
14 search?

15 A. I believe the next assignment, I believe, was the
16 Ford pickup truck that was parked right in front
17 of the garage.

18 Q. And that was Steve's black truck that we had seen
19 before?

20 A. I do have to mention, there were several times,
21 and I believe this was one of them, where we
22 would be searching a specific area, somebody from
23 Cal County would come and say, I need your
24 assistance doing this. So we would stop what we
25 were doing and assist them with another project

1 and then go back. So I believe before we started
2 searching that Ford pickup truck, I was asked to
3 photograph some burning barrels and assist in
4 loading them up into a covered trailer.

5 Q. All right. Did you do that?

6 A. Yes, sir.

7 Q. Just as long as we have this picture up, first,
8 we're going to go back to Exhibit 38; was that
9 the truck that you assisted in searching?

10 A. Yes.

11 Q. Now, you talked about some burn barrels, where
12 were these located?

13 A. Behind or to the side of Steve's garage. There
14 was three or four of them.

15 Q. Did you know whose burn barrels those were?

16 A. No, I didn't.

17 Q. You said that there were others that were
18 assisting in the recovery of those; do you know
19 who those other individuals were?

20 A. I didn't know, you know, everyone's name from the
21 Calumet County Sheriff's Department, or the
22 Department of Criminal Investigations that was
23 working there. I just recognized that some of
24 the officers were not at all connected with
25 Manitowoc County, but they were uniformed. And I

1 saw Calumet County, you know, Sheriff's
2 Department patches on their uniforms, but I do
3 not know them by name.

4 Q. There were some Manitowoc officers also involved?

5 A. Yes.

6 Q. Those burn barrels, I think a picture of them has
7 been received as Exhibit 52, I'm going to show
8 you that picture; do you recognize that?

9 A. Yes, I took that picture.

10 Q. Who is that we see in the picture?

11 A. That's Detective Dave Remiker from the Manitowoc
12 Sheriff's Department.

13 Q. These are the four burn barrels that you assisted
14 in recovering and loading; is that right?

15 A. Yes, sir.

16 Q. Looks like it's raining here again; is that
17 right?

18 A. Yes. I wanted to get a picture to show that we
19 were trying our best to protect the contents of
20 the barrel; that's the reason that tarp is on
21 there.

22 Q. After those barrels were loaded, did you proceed
23 to complete the search of Steve's black truck?

24 A. Yes, sir.

25 Q. All right. After that effort, what did you do

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then?

A. Again, this is going to be one of those times that I was pulled away for another project. We were almost completed with the search of Steve's truck when I was -- again, another Calumet County supervisor told me -- or asked me where the Maribel Caves Park was. And I said, you know, I described where it was, but not being from Manitowoc County, he didn't really know where it was. And he said, well, some searchers have found some things at the Maribel Caves Park, can you go out there; see what they have, if you think it's evidence, pick it up. So myself and Detective Remiker went out to Maribel Caves Park where we made contact with a civilian search party. And they showed us some things that they had found and we ended up bagging them up and turning them over to the Calumet County Sheriff's Department.

Q. What did do you then?

A. When I got back, then, I believe, the search of Steve's truck, I think, had been completed then. You know, in my absence, Deputy Kucharski had completed the search and then I would have to take a look at his report to see what our next

1 assignment was. I believe we were sent to Chuck
2 Avery's residence -- no, either Chuck's or
3 Steve's sister. And I'm not positive which one
4 was next.

5 Q. Who's Steve's sister?

6 A. Her first name is Barb. I believe at that time
7 her last name was Janda.

8 Q. All right. Did you assist in the search of Barb
9 Janda's trailer?

10 A. Yes.

11 Q. And we're going to hear from Detective Remiker
12 later, but do you recall being present when a
13 telephone answering machine was located.

14 A. Yes.

15 Q. This has been received as Exhibit No. 55, can you
16 tell us what we're looking at, please.

17 A. I believe that's the answering machine that was
18 in Barb Janda's residence.

19 Q. Who else was present when this answering machine
20 was investigated or searched?

21 A. It was the same search team that had gone into
22 Steve Avery's garage; Lieutenant Lenk, myself,
23 Detective Remiker, and Deputy Kucharski.

24 Q. Were the messages on this machine examined?

25 A. When we -- When we found the answering machine, I

1 saw that there were messages on there. I said,
2 let's unplug it and take the answering machine.
3 And, of course, the conversation between all of
4 us, we said, well, what if somehow in the
5 unplugging process we lose the messages. So,
6 yes, we hit the play button and listened to the
7 messages and Detective Remiker recorded the
8 messages as they were being played.

9 Q. Did you have occasion that day to reenter Steven
10 Avery's trailer?

11 A. I believe that was the day that I was asked to --
12 our whole team was asked to go back into Steve's
13 trailer and obtain serial number -- I think that
14 was the day -- that we were asked to obtain a
15 serial number off Steve's computer, the tower
16 portion of his computer.

17 Q. Are you sure about that, or are you guessing?

18 A. I'm not positive if that was the day or not. I
19 know that was one of the assignments that I
20 completed. I thought it was that day, but I'm
21 not positive. I do know, also, that that day we
22 had to go back into Steve Avery's trailer and
23 collect his weapons.

24 Q. Can you, again, describe those weapons.

25 A. He had a, like a two place or gun rack over his

1 bed. There were two weapons on the gun rack; one
2 was a .22 caliber rifle, and the other was a --
3 if I remember correctly -- was a .50 caliber
4 muzzleloader.

5 Q. We're going to have these marked, actually.

6 ATTORNEY KRATZ: Mr. Fallon, if you could
7 have them marked.

8 ATTORNEY FALLON: They're marked.

9 ATTORNEY KRATZ: Oh, I'm sorry.

10 Q. (By Attorney Kratz)~ Do you see a picture of the
11 .22 caliber rifle?

12 A. Yes, sir.

13 Q. And what exhibit number is that?

14 A. It is Exhibit 164.

15 Q. See if I can find that here. Do you recognize
16 Exhibit No. 164?

17 A. Yes, it's a .22 caliber rifle that we located in
18 Steve Avery's bedroom.

19 Q. I have put up a photograph of Exhibit No. 164;
20 again, does that .22 caliber rifle look the same
21 or similar as it did when it was seized on the
22 6th of November?

23 A. Yes, sir.

24 Q. Did you, by the way, that day, on the 6th, have
25 occasion to, at all, inspect or further inspect,

1 that rifle?

2 A. When we collected the rifle, in order to manage
3 an evidence room, we first needed to make sure
4 that the weapon wasn't loaded. So I did pull the
5 action back to see if it was going to eject a
6 round. And I believe I pulled the tube out,
7 which is under the barrel there.

8 Q. Why don't you show you us with the laser pointer.

9 A. That portion of the weapon is the magazine. To
10 load it, you pull a tube out, I believe, an
11 insert rounds through that notch right there.

12 This is the action of the magazine; it's
13 a semi-automatic weapon. So I pulled this action
14 back to see if there was a round inside the
15 barrel. And I believe the safety is right there
16 on the weapon and I would have checked to make
17 sure that the safety was on, because if someone
18 handling the weapon, obviously, if it was loaded
19 with the safety off, it could fire.

20 Q. Sure. Are you familiar with a semi-automatic
21 rifle such as Exhibit No. 164?

22 A. Yes, sir.

23 Q. Now, a tube loaded or a tube fed magazine, for
24 those on the jury that aren't gun enthusiasts,
25 can you tell us just -- just generally how that

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works?

A. This portion of the weapon right here is where it's loaded. At the very end here, you can twist a knob and you pull out like a plastic plunger and you load -- you would have to turn the weapon almost upside down. But if you can see that, there's a little notch there, that's where you put the rounds in and then you just slide this tube back in until it locks.

And if it doesn't lock, you put too many rounds in. You have to get it so that that locks. As you fire the weapon, there's a spring on there and it just keeps pushing the rounds back to the chamber.

Q. After a .22, you mentioned a rim fire bullets, but after the shell casings are ejected, where do they come out of?

A. Out of that area right there, that silver area.

Q. And with a semi-automatic weapon, do you have to reload it, or cock it, or do anything that any -- any action like that that we might hear with other weapons?

A. No, sir. A semi-automatic weapon will continue to fire as fast as you can pull the trigger. You must release the trigger to its sear each time,

1 but it will continue to fire as fast as you can
2 pull the trigger, until all the shells are
3 expended.

4 Q. By the way, Sergeant Colborn, I don't know if you
5 know this, but do you know what kind of weapon
6 this is; what brand name weapon?

7 A. I know when we catalogued the weapon, when we
8 took it, and when Deputy Kucharski took it in as
9 evidence, I read the manufacturer name to him,
10 but I don't recall who manufactured that weapon.

11 Q. That's fine. Thank you. You said there was a
12 second weapon that was seized; is that right?

13 A. Yes, sir. You gave me a photograph that's marked
14 Exhibit 165.

15 Q. Why don't you tell us what that is?

16 A. That's a muzzleloading weapon, similar to like a
17 musket from the Revolutionary War or frontier
18 period. It's called muzzleloading because that's
19 where you load it, through the muzzle.

20 Q. Where were these items seized from?

21 A. Steve Avery's bedroom, on a gun rack that was
22 hanging above his bed.

23 Q. Is there anything else that was seized from
24 Mr. Avery's trailer that day, that is, on the 6th
25 of November, that you can recall?

1 A. Not that I recall, no, sir.

2 Q. Any other buildings that you were asked to search
3 that day?

4 A. Not that I specifically recall, no.

5 Q. All right.

6 ATTORNEY KRATZ: Judge, before going into
7 the next day's search for the 7th, this might be a
8 good time for a lunch break.

9 THE COURT: All right. The Court agrees.
10 Members of the jury, we're going to take our lunch
11 break at this time. Again, do not discuss the case
12 in any fashion and during the break and we'll resume
13 at 1:00.

14 (Jury not present.)

15 THE COURT: You may be seated. Go off the
16 record at this time.

17 (Off the record discussion.)

18 THE COURT: At this time we'll go back on
19 the record. Mr. Kratz.

20 ATTORNEY KRATZ: Judge, before we break for
21 lunch, Mr. Strang was kind enough to alert me that
22 this witness may be cross-examined with the
23 assistance of a audio CD. Mr. Strang gave me a CD
24 that has 24 tracks on it. I don't know if he
25 intends to play all 24 tracks in the

1 cross-examination, but it would certainly assist us
2 in orienting as to the time and the context of those
3 conversations, if those could be identified. If
4 they can't, that's fine, but if the tracks
5 themselves, rather than listen to all 24 during the
6 lunch hour, could be identified, we would appreciate
7 that.

8 THE COURT: Mr. Strang.

9 ATTORNEY STRANG: Well, I provided the CD
10 out of an abundance of caution. I think these --
11 these taped calls are all calls that the State, like
12 the defense, received during the hearing on
13 August 9, 2006, from the Manitowoc County Sheriff's
14 Department. We should probably excuse the witness.

15 THE COURT: I was just thinking about that
16 myself. Mr. Colborn, if you can step out of the
17 courtroom for a minute, we'll continue here. The
18 witness has now left the courtroom.

19 ATTORNEY STRANG: Right. As I say, I'm
20 quite confident that when we received the CD's from
21 the Manitowoc County Sheriff's Department on
22 August 9, 2006, the State also received the very
23 same recorded calls, both radio transmissions and
24 some land lines at the sheriff's department that are
25 answered by dispatchers. Out of an abundance of

1 caution, I gave Mr. Kratz another copy of the disc
2 I'm going to mark today. But I'm not interested in
3 disclosing my cross-examination over the lunch hour
4 while, you know, the State is free to prepare
5 including with the witness.

6 THE COURT: All right. If it's information
7 that the parties already have, I don't know what's
8 going to come in but, Mr. Kratz, if you need a break
9 before redirect, I will take up a request at that
10 time.

11 ATTORNEY KRATZ: That's fine and counsel
12 may hear the very same response later in the trial.
13 That's fine. Thank you, Judge.

14 THE COURT: Okay.

15 (Noon recess taken.)

16 THE COURT: Mr. Kratz, at this time you may
17 resume your direct examination of Mr. Colborn.

18 ATTORNEY KRATZ: Thank you, Judge.

19 **DIRECT EXAMINATION**

20 BY ATTORNEY KRATZ:

21 Q. Sergeant Colborn, we left off with the next day,
22 I believe, of your involvement with the -- on
23 Monday, the 7th of November; do you remember that
24 day?

25 A. Yes, sir.

1 Q. Were you asked to return to the Avery property?

2 A. Yes, I was.

3 Q. And, by the way, who were you asked to return

4 there by?

5 A. The Calumet County Sheriff's Office, or

6 Department of Criminal Investigation, one of

7 those officers.

8 Q. If you could speak up just a little bit,

9 Sergeant, I would appreciate it.

10 A. I was either asked to return by the Calumet

11 County Sheriff's Department, one of their

12 supervisors, or by the Department of

13 Corrections -- or Department of Criminal

14 Investigations, Agent Tom Fassbender.

15 Q. Were you, for lack of a better word, volunteering

16 for this service, or these duties?

17 A. No.

18 Q. On the 7th of November, then, do you recall about

19 what time you returned to the salvage yard?

20 A. Somewhere between 6:30 in the morning and 7:30 in

21 the morning, I believe.

22 Q. Sergeant Colborn, what were you asked to do on

23 the 7th, if you recall?

24 A. On the -- On Monday, I was informed that -- by

25 Sergeant Tice that I -- Tyson, that I would be

1 working with him, again. This would be the same
2 Sergeant Tyson that I had worked with on
3 Saturday.

4 And he informed us that our assignment
5 that day was to go into the Avery Salvage Yard
6 and open any trunks of vehicles that had not yet
7 been searched, because the trunks, apparently,
8 they couldn't find the keys for these vehicles
9 and we were to look inside the trunks of these
10 vehicles.

11 Q. Were there any other members of your team, other
12 than you and Sergeant Tyson?

13 A. Also Lieutenant Lenk was with me that day.

14 Q. And did you, in fact, assist in opening up or
15 searching trunks that hadn't yet been opened?

16 A. Yes, I did.

17 Q. What else happened on the 7th?

18 A. That took the better part of the morning. I
19 believe in the afternoon we were instructed to
20 start collecting -- you know, specifically
21 instructed to collect -- I take that back. At
22 some point we were also asked to get a -- I
23 believe this was the day that we were asked to
24 get the serial number off Steven Avery's
25 computer.

1 Q. Did you assist Sergeant Tyson in that regard?

2 A. Yes, I did.

3 Q. Can you tell the jury what you did, please.

4 A. The serial number is on the back of the computer.

5 And the portion of the computer that we needed

6 the serial number was underneath a desk that had

7 been shown earlier, the photograph that was shown

8 earlier. So I crawled underneath the desk and

9 used a flashlight to obtain the manufacturer and

10 the serial number of the computer, which Sergeant

11 Tyson wrote down.

12 Q. All right. How long did that process take?

13 A. At the most, 10 minutes.

14 Q. Did you go in any other part of the residence, or

15 did you confine yourself to the living room area?

16 A. I just confined myself to the area where the

17 computer was that day.

18 Q. What else did you do then?

19 A. I believe then we were instructed to -- I believe

20 we were instructed, then, to start collecting

21 some firearms from the other residences that were

22 on the Avery property. I believe, specifically,

23 Barb Janda's residence.

24 Q. And did you do that?

25 A. Yes, sir.

1 Q. All right. What's the next thing you did on the
2 7th?

3 A. I know at one point I was asked to take some
4 photographs, I believe, of a burning barrel that
5 was on Steve Avery's property. I did do that.

6 Q. Which -- Which burn barrel did you take
7 photographs of?

8 A. It was a burn barrel that was on, I would -- that
9 was in close proximity to Steve's trailer. And I
10 remember it had a car wheel by it.

11 Q. To orient us to that, there's an exhibit which
12 has been received, it's Exhibit 114. It's,
13 again, an exterior computer animation. If you
14 take your laser pointer up there, tell us what
15 we're looking at, and what burn barrel you were
16 asked to examine and photograph?

17 A. That burn barrel right there. I remember right
18 on one -- either this side or this side of it
19 there was a car wheel standing on its edge with a
20 tire missing.

21 Q. Did it appear to you, at least as you went to
22 that scene and as you look at Exhibit 114, who
23 that burn barrel is attached to?

24 A. Yes, it's the burn barrel for that residence,
25 right there, Steve Avery's residence.

1 Q. Now, Sergeant, you talked about some different
2 kinds of photography. I think you talked about
3 digital as well as 35mm photography; do you
4 remember that day, the 7th of November, what kind
5 of photography you were performing?

6 A. 35mm, I did not do any digital photography the
7 entire time I was out there, personally.

8 Q. That way you talked about a wheel next to the
9 burn barrel, I'm going to show you what's been
10 marked as Exhibit No. 158, in fact, Mr. Fallon is
11 going to hand it to you, but I would ask you if
12 you could tell us what this is an image of.

13 A. That is a car wheel, that's at the very edge of
14 Steve Avery's burn barrel. And those wires, I
15 believe, that are around the wheel are actually
16 part of the make up of the tire, probably like
17 portions of the steel belt.

18 Q. As we get closer, do a little bit of a close up,
19 can you see that better now on the screen?

20 A. Yes, sir.

21 Q. By the way, Exhibit 158, is that a photo that you
22 took or likely took?

23 A. Yes, sir.

24 ATTORNEY KRATZ: In all honesty, Judge, so
25 that I don't forget, I'm going to move the admission

1 of Exhibit 158 at this time.

2 THE COURT: Any objection?

3 ATTORNEY STRANG: None.

4 THE COURT: 158 is received.

5 Q. (By Attorney Kratz)~ Were you asked to do
6 anything else on the 7th, Sergeant?

7 A. I believe I was also -- At some point, apparently
8 the Command Post received word that some
9 searchers had located an area that -- it looked
10 suspicious, there was plastic poking up from the
11 ground and it looked like the ground had been
12 disturbed. So I was asked to go to that area
13 along with the Wisconsin State Crime Lab,
14 Sergeant Tyson, and Lieutenant Lenk and help the
15 Crime Lab, if they requested it, to excavate that
16 area.

17 Q. Do you know on what roadway this was?

18 A. I believe it was off Kuss, White Cedar Road.

19 Q. This is something that Mr. Ertl, yesterday,
20 talked about a potential burial site but what
21 wasn't; was that your understanding, that it
22 turned out not to be?

23 A. Yes, it turned out to be nothing.

24 Q. Did you do anything else on the 7th.

25 A. I think by the time we were down with that, that

1 consumed the rest of the day.

2 Q. Let's move on then to the 8th, which would be
3 Tuesday, the 8th of November, were you asked to
4 return to the property?

5 A. Yes, sir.

6 Q. Again, who were you asked to return there by?

7 A. By -- No, I didn't get the -- the -- wasn't told
8 to me directly. Usually Lieutenant Lenk met with
9 members of the Calumet County Sheriff's
10 Department and Department of Criminal
11 Investigations at the completion of each day and
12 then I would just check with Lieutenant Lenk, are
13 we needed tomorrow or no.

14 Q. I see.

15 A. And then he said, we're needed tomorrow.

16 Q. Did you show up then on the 8th?

17 A. Yes, sir.

18 Q. And who were you attached to, or who were you
19 assigned to that day?

20 A. I was assigned to Deputy Dan Kucharski from the
21 Calumet County Sheriff's Department.

22 Q. Do you know what you were asked to do on the 8th?

23 A. Yes, Deputy Kucharski, Lieutenant Lenk, and
24 myself were instructed, by Special Agent
25 Fassbender, to look for some specific printed

1 material inside Steven Avery's residence.

2 Q. Okay.

3 A. And to collect same.

4 Q. Did you have occasion to enter Steven Avery's
5 bedroom on the 8th of November?

6 A. Yes, sir.

7 Q. Who did you enter that bedroom with.

8 A. Deputy Kucharski and Lieutenant Lenk.

9 Q. How long did you spend in that bedroom on the
10 8th, if you recall?

11 A. An hour or so.

12 Q. Were you directed to perform any search of that
13 trailer, specifically of that bedroom?

14 A. Before -- Actually, before we started on the
15 bedroom, I was instructed to, with Deputy
16 Kucharski, to remove the computer and to wait
17 until the computer was picked up by another law
18 enforcement officer.

19 Q. Okay. Did you do that?

20 A. Yes, sir.

21 Q. Then, moving to the bedroom, my question is,
22 whether you were to perform a search that day?

23 A. Yes, sir.

24 Q. I'm showing you what's been marked for
25 identification as Exhibit No. 208; can you tell

1 us what that is, please.

2 A. These are photographs of a cabinet that's right
3 next to the desk in Steve Avery's bedroom, that
4 would be the same bedroom where the firearms were
5 that I described before and --

6 Q. We're just talking about the first one now,
7 Exhibit 208.

8 A. That's this photograph here. It's a picture
9 of -- this is a desk.

10 Q. I'm actually going to put a view up for the jury
11 so that we can -- Okay. If you want to use your
12 laser pointer where everybody can see what you
13 are talking about then.

14 A. This is a desk. There's an open area, that's the
15 picture. This is a cabinet, you can see how
16 closely it is positioned to the desk there.

17 Q. Let me just stop you, is this something that you
18 earlier called a bookcase.

19 A. This cabinet, I'm sorry, yes, I called it a
20 bookcase and that's actually, I guess, what it
21 is, a bookcase.

22 Q. Just so that the jury understands, was this the
23 item from which the handcuffs and the leg irons
24 were seized a couple days earlier?

25 A. Yes, sir. It's easier to see now, with this

1 picture, the leg irons and handcuffs were located
2 in this area here.

3 Q. Now, this particular photograph, you can see a
4 pair of slippers, bedroom slippers next to it; is
5 that right?

6 A. Yes, sir.

7 Q. You can see a electrical outlet or a socket; is
8 that right?

9 A. Yes, sir.

10 Q. Can you point to that, please. Were you asked,
11 or at least as part of your responsibilities of
12 searching the bedroom, were you asked to do a
13 thorough search of this piece of furniture?

14 A. Yes.

15 Q. And did you do that?

16 A. Yes.

17 Q. In performing that search, Sergeant Colborn, did
18 you move or manipulate this piece of furniture at
19 all?

20 A. Yes, sir.

21 Q. Can you describe that for the jury, please.

22 A. As I stated before, we were looking for specific
23 printed or photographs. There is a narrow area
24 between this bookcase and this desk, right there.
25 And in order to make sure that there was no

1 evidence or anything else that we needed lodged
2 between there, I actually tipped this to the side
3 and twisted it away from the wall.

4 Q. If you can describe that further, I don't know if
5 you can do it with your words, or show us with
6 your hands, how you did it?

7 A. [I will be the first to admit,] 16:41
8 gentle, as we were, you know, getting
9 exasperated. [I handled it rather roughly,]
10 [twisting it, shaking it, pulling it.]

11 Q. And that's the bookcase that you are talking
12 about?

13 A. Yes, this piece of furniture right here, a
14 bookcase.

15 Q. I'm sorry. Sergeant, in shaking and twisting
16 that particular bookcase, did you pull it away
17 from the wall itself, that you can see behind
18 there?

19 A. Yes, I did.

20 Q. After that process was complete, were the
21 items -- The binder that we can see in the lower
22 left hand corner of the bookcase; can you point
23 to that, please. Was that, and the other items
24 within that bookcase, removed and examined by
25 yourself and your -- other members of your team?

1 A. Yes, sir.

2 Q. Did you have occasion to replace those items into
3 that bookcase after having pulled it from the
4 wall?

5 A. Yes, sir.

6 Q. What was done with the bookcase after that
7 thorough search of the -- of those materials was
8 completed?

9 A. The items that we didn't use -- or collect as
10 evidence, that binder and some of the other
11 things there were kind of stuffed, rather
12 forcefully, back in there. And other items that
13 we were going to collect as evidence were -- we
14 had so many that we didn't have a container in
15 the room large enough to hold them all. So
16 Lieutenant Lenk exited the bedroom to get a
17 larger container and I began to search this desk
18 here.

19 Q. By a larger container, what are you talking
20 about?

21 A. A box.

22 Q. Now, at this time, that is, as the search was
23 completed, what was done with that piece of
24 furniture; what was done with the bookcase
25 itself?

1 A. It was still kind of away from the wall, but it
2 was more or less stuffed back into its original
3 position.

4 Q. The next exhibit, Exhibit No. 209, describe what
5 that is, please.

6 A. That's just a different photograph of the same
7 bookcase.

8 Q. I'm going to allow the jury to see that as well.
9 Is this the photo that you are talking about
10 of -- of the bookcase?

11 A. Yes, sir.

12 Q. The next exhibit, No. 210, can you describe what
13 that is for us, please.

14 A. 210 is a picture, a photograph of the -- Well,
15 you can see that we have some materials there
16 stuffed in a bag. Then there's the bedroom
17 slippers. And now there is a key with a fob,
18 lying between the bedroom slippers.

19 Q. Sergeant Colborn, I'm going to direct your
20 attention, then, to the large screen. I would
21 like you to carefully take the laser pointer and
22 describe for the jury what it is that we're
23 looking at?

24 A. These were some items that we had bagged up. I
25 don't recall what that is. These were the same

1 bedroom slippers that were in the other
2 photograph, but you can see that they have been
3 jostled. That's the electrical outlet. And now
4 there is a key and with this connecting canvas or
5 nylon fob and a black plastic buckle, lying on
6 the floor.

7 Q. The piece of furniture, that is, the bookcase
8 that we see in Exhibit 210, has that been removed
9 or replaced to its original position?

10 A. I can't say we have got it exactly 100 percent
11 where it was, but it's very close to its original
12 position, yes.

13 Q. So the jury understands the timing of these,
14 Exhibit No. 208 shows the slippers right next to
15 the outlet. And this exhibit, 210, shows the
16 slippers pushed to what would be the left and
17 actually a little bit closer to the photographer;
18 is that fair?

19 A. That's correct.

20 Q. Do you recognize this image, that is, ^{Sergeant 16:50} [did you see
21 this image on the 8th of November?]

22 [A. Yes.]

23 Q. Can you describe that moment, or that event, for
24 the jury, please.

25 A. As I had mentioned earlier, Lieutenant Lenk had

1 exited -- That is the door coming into the
2 bedroom; he had gone through that door to get a 16:55
3 bigger container. [I was searching the desk here.
4 Deputy Kucharski was sitting on the bed,] which
5 also isn't in the photograph, but is in very
6 close proximity to this piece of furniture, the
7 bookcase, [filling out paperwork.]
8 [Lieutenant Lenk] got about right here,
9 his feet would have been right here, so he was in
10 the room, and [said something to the effect of,]
11 [there's a key on the floor here,] or, look,
12 there's a key. I don't know what his exact
13 verbiage was but he identified that there was a
14 key on the floor.

15 I turned around, as I wasn't very far
16 away, I turned around and looked and I observed
17 this key, lying right where it is. And I
18 observed this key had this black rubberized or
19 plastic end on it, which they didn't -- you know,
20 that's a newer model car key, due to that plastic
21 or rubberized end. And I also observed that
22 embossed on there was a Toyota emblem.

23 And we told Deputy Kucharski, get a
24 photograph of this, right away, which he did,
25 which is this photograph. I did not take this

1 photograph.

2 Q. By the way, as you and Deputy Kucharski and
3 Lieutenant Lenk observed this, did any of the
4 three of you approach or touch this piece of
5 evidence at that time?

6 A. I may have been standing in this area here, you
7 know. This piece of furniture is only 2 and a
8 half, 3 feet tall, maybe. So I could easily see
9 over it to see the key.

10 I did not approach the key. Lieutenant
11 Lenk did not come into the room. Deputy
12 Kucharski photographed the key from, you know,
13 from whatever angle this picture was taken at.
14 That's as close as we got.

15 Q. My question, again, was, ^{17:06} *let me ask you, Sergeant Colborn,* did either yourself,
16 Lieutenant Lenk, or Deputy Kucharski, prior to
17 this photo was taken, *touch that key?*

18 A. No, sir.

19 Q. Why not?

20 A. I think all three of us knew at the same time
21 that there was a very good chance, seeing a
22 Toyota emblem embossed on that key, knowing that
23 Teresa Halbach's vehicle was a Toyota, *that this*
24 was a very important piece of evidence. And, you
25 know, none of us were going to taint that.

1 Q. Let me ask you, Sergeant Colborn, you guys -- you
2 specifically, Lieutenant Lenk, and now Deputy
3 Kucharski, had been in this room for quite some
4 time before this key appears in this position;
5 isn't that right?

6 A. Yes, sir.

7 Q. Did this surprise you, that you saw this key
8 there?

9 A. Yes, I was very surprised.

10 Q. Did the three of you talk about that, we hadn't
11 seen it before, anything like that?

12 A. I -- I believe I said to myself, damn, how did I
13 miss that.

14 Q. Now, other than the bedroom slippers being pushed
15 to the side, had anything else changed, other
16 than the pulling out and the twisting and the
17 jostling of the cabinet?

18 A. As we looked at the cabinet, it appeared that in
19 the process of us stuffing everything back into
20 the cabinet, we had separated the back of the
21 cabinet, the small piece of paneling that would
22 be the back of the cabinet, from the frame of the
23 cabinet itself.

24 Q. Let me stop you there. Did you have occasion,
25 then, to go look at the back of this piece of

1 furniture, the back of the cabinet, after this
2 key was processed?

3 A. Yes.

4 Q. I know I'm jumping ahead just a little bit, but
5 could you describe what you saw; could you
6 describe the back panel of the cabinet?

7 A. It would be made out of a -- I'm trying to think
8 of the right word, like a piece of wood, the same
9 thickness maybe as a piece of paneling that one
10 would put on a wall. You know, it's a thin piece
11 of wood, it's not -- it's not like it's a quarter
12 inch piece of plywood nailed to the back of the
13 cabinet. It's a thin piece of wood.

14 The piece of furniture itself is old and
15 not in the best state of repair. And I believe
16 it was just very small, short brads or nails that
17 held the piece of paneling or the piece of wood
18 to the back of the cabinet. And I'm sure that
19 when we were putting things in we exercised more
20 than enough force to push it away. And there was
21 a gap now between the back of the -- the piece of
22 paneling on the back of the cabinet and the frame
23 of the cabinet itself.

24 Q. I'm going to show you an exhibit that's been
25 received as Exhibit No. 169; although taken on a

1 different day, we're all in agreement about that,
2 does Exhibit 169 look the same as when you
3 witnessed the back of this cabinet on the 8th of
4 November?

5 A. Yes, sir.

6 Q. What was done with the key, if you remember?

7 A. Initially, it was photographed and Lieutenant
8 Lenk and I both -- when I say told, it was not
9 like we were ordering him, but we just
10 communicated to Deputy Kucharski that he needed
11 to make sure he put on a fresh set of gloves;
12 pick up that key, put it in a separate container,
13 totally by itself; and we needed to contact the
14 Command Post right away and let them know that we
15 had located a key that could possibly be a key to
16 Teresa's vehicle.

17 Q. Did somebody from the Command Post come to your
18 location then?

19 A. Two people from the Command Post came to our
20 location. Special Agent Fassbender and
21 Investigator Wiegert.

22 Q. Were you present when the lead investigators were
23 shown this key that was discovered?

24 A. Yes. We packaged the key and we went into the
25 living room and that's where we remained until

1 the two investigators came and looked at the key.

2 ATTORNEY KRATZ: What exhibit number is
3 next, Madam Clerk?

4 THE CLERK: 211.

5 Q. (By Attorney Kratz)~ Sergeant Colborn --

6 ATTORNEY KRATZ: And, Judge, the record
7 should reflect that the evidence bag is being opened
8 with the assistance of Investigator Wiegert.

9 Q. (By Attorney Kratz)~ But Sergeant Colborn, you
10 are going to be shown the contents of what is
11 being marked as Exhibit No. 211.

12 (Exhibit No. 211 marked for identification.)

13 ATTORNEY KRATZ: Deputy Wiegert, if you
14 would be so kind as to show it to this witness.

15 Q. (By Attorney Kratz)~ Sergeant Colborn, please
16 don't -- don't touch this exhibit. But an
17 exhibit that has now been marked for
18 identification as Exhibit 211 is being shown to
19 you.

20 ATTORNEY KRATZ: If you stand to the side a
21 little bit, Investigator Wiegert, I would appreciate
22 it.

23 Q. (By Attorney Kratz)~ Tell the jury what that is,
24 please.

25 A. That appears to be the exact same key as pictured

1 right there on that photograph. It's a long key,
2 with a black plastic end, with a Toyota emblem on
3 the end of it. And that same nylon, actually, I
4 think corresponds to something that someone would
5 wear around their neck and clip to the other
6 plastic end.

7 ATTORNEY KRATZ: With permission, Judge,
8 may Investigator Wiegert post it or at least show
9 the jurors?

10 THE COURT: Any objection?

11 ATTORNEY STRANG: Nope.

12 THE COURT: Yes, you may do so.

13 ATTORNEY KRATZ: Hold it up by one end,
14 Investigator, and show the jurors, please.

15 THE COURT: The record should probably also
16 reflect he's wearing rubber gloves at this time, or
17 unless you can describe them more accurately.

18 ATTORNEY KRATZ: Latex gloves. And
19 although Mr. Kucharski will be testifying as well,
20 Judge, I don't believe there is any contest as to --
21 as to this exhibit and I will move its admission at
22 this time.

23 THE COURT: Any objection?

24 ATTORNEY STRANG: Well, there's plenty of
25 contest as to that exhibit, but not as to it having

1 been authenticated and identified. And I don't have
2 any objection to it being received.

3 ATTORNEY KRATZ: Thank you.

4 THE COURT: All right. The exhibit will be
5 received.

6 ATTORNEY KRATZ: Thank you.

7 Q. (By Attorney Kratz)~ After Special Agent
8 Fassbender and Investigator Wiegert were shown
9 that key, do you know what happened to that key?

10 A. Just -- excuse me, we decided, between the three
11 of us, just to wait in the living room. Special
12 Agent Fassbender and Investigator Wiegert said
13 that another law enforcement officer would be
14 coming down to take possession of the key.

15 So we all three just waited until he got
16 there. We turned the key over and I believe we
17 were told that it would be going to Madison, to
18 the Crime Lab, where Teresa's vehicle already
19 was.

20 Q. Sergeant Colborn, after this search, after this
21 thorough search of Mr. Avery's residence was
22 completed, were you asked to perform a similar
23 thorough search of somebody else's residence that
24 day?

25 A. Yes, I believe it was Charles Avery's residence.

1 Q. And was that search performed by the same team;
2 that is, yourself, Lieutenant Lenk and Deputy
3 Kucharski from Calumet County?

4 A. Yes, sir.

5 Q. Sergeant Colborn, we have heard some references
6 this week, and even last, to your involvement in
7 this case. And now that you are here, now that
8 you are in court, I have some questions regarding
9 your knowledge of Mr. Avery.

10 First of all, prior to November of 2005,
11 had you been involved at all in the
12 investigation, testifying against, or prosecution
13 of Steven Avery in any previous criminal
14 proceedings?

15 A. No, sir.

16 Q. Had you ever been personally named in any civil
17 lawsuits, or ever personally been accused of any
18 wrongdoing regarding Mr. Steven Avery?

19 A. No, sir.

20 Q. *Sergeant Colborn,* You were asked, as I understand, as part of a
21 civil lawsuit, to provide what's called a
22 deposition,] to be questioned by some lawyers; is
23 that right?

24 A. Yes, sir.

25 Q. Do you recall when that occurred?

1 A. I believe it was in October of 2005.

2 Q. Do you remember how long that deposition, how
3 long that -- that process took?

4 A. I thought it was less than an hour, but an hour
5 or less.

6 Q. All right. You were asked some questions, is
7 that right, under oath?

8 A. Yes, sir.

9 Q. Did you answer those questions to the best of
10 your knowledge and ability?

11 A. Yes, I did.

12 Q. Do you recall the context in which you were asked
13 those questions; in other words, do you recall
14 what you were asked about?

15 A. Yes, sir.

16 Q. Can you tell the jury what you were asked about?

17 A. In 1994 or '95 I had received a telephone call
18 when I was working as my capacity as a
19 corrections officer in the Manitowoc County Jail.
20 Telephone call was from somebody who identified
21 himself as a detective.] And I answered the
22 phone, Manitowoc County Jail, Officer Colborn.

23 Apparently this person's assumption was
24 that I was a police officer, not a corrections
25 officer, [and began telling me that he had

1 received information that somebody who had
2 committed an assault, in Manitowoc County, was in
3 their custody, and we may have somebody in our
4 jail, on that assault charge, that may not have
5 done it.

6 I told this individual, you are probably
7 going to want to speak to a detective, and I
8 transferred the call to a detective, to the
9 Detective Division, at the Manitowoc County
10 Sheriff's Department. That's the extent of my
11 testimony.

12 Q. That's it? That's your connection to Mr. Avery?

13 A. Yes, sir.

14 Q. Well, did that ^{18:45} cause you enough embarrassment and
15 enough angst ^{that you obtained and planted blood} in which to set up Mr. Avery for a
16 charge of murder?

17 A. No.

18 Q. Did that deposition cause you such problems from
19 within your department [that you obtained and
20 planted blood, so that it would be found and
21 Mr. Avery would be wrongfully accused of a
22 homicide case?

23 A. No, sir.

24 Q. Have you ever planted any evidence against
25 Mr. Avery?

1 A. That's ridiculous, no, I have not.

2 Q. Have you ever planted any evidence against
3 anybody in the course of your law enforcement
4 career?

19:04

5 A. I have to say that this is the first time my
6 integrity has ever been questioned and, no, I
7 have not.

8 ATTORNEY KRATZ: That's all I have for
9 Sergeant Colborn, Judge.

10 THE COURT: Mr. Strang.

11 **CROSS-EXAMINATION**

12 BY ATTORNEY STRANG:

13 Q. This is the first time your integrity has been
14 questioned?

15 A. As it applies to being a police officer, yes.

16 Q. Okay. And it's not the first time Mr. Avery's
17 has been, so I have some questions for you. You
18 were, in November of 2005, in the Road Patrol
19 Division of the Manitowoc County Sheriff's
20 Department?

21 A. Yes, sir.

22 Q. You were a sergeant in that division?

23 A. Yes, sir.

24 Q. Were there other sergeants in that division?

25 A. Yes, sir.

1 Q. How many?

2 A. There's one lieutenant and two sergeants assigned
3 per shift; there's three shifts. We're looking
4 at six sergeants, three lieutenants.

5 Q. Your shift particularly was noon to 8:00 p.m.?

6 A. Yes, sir.

7 Q. That made you the assistant shift commander as
8 opposed to the other sergeant?

9 A. Yes, sir.

10 Q. And the shift commander, himself, when the
11 lieutenant had a day off?

12 A. Yes, sir.

13 Q. The Road Patrol Division does exactly that, it
14 patrols the roads of Manitowoc County?

15 A. Yes, sir.

16 Q. Typically in marked squad cars?

17 A. Yes, sir.

18 Q. Speeding and other traffic law enforcement?

19 A. Yes, sir.

20 Q. Calls for help from citizens, a variety of calls?

21 A. Yes, sir.

22 Q. You might be the first to respond to a domestic
23 violence call, let's say?

24 A. Yes, sir.

25 Q. You might respond to a flat tire on the side of

1 the road?

2 A. Yes, sir.

3 Q. This division, during the noon to 8:00 shift,
4 back in, let's say, November, 2005, had
5 approximately how many officers out on the road
6 during that noon to 8:00 shift?

7 A. Well, I believe that par -- four or five officers
8 counting the shift commander.

9 Q. Roughly?

10 A. Yes, sir.

11 Q. I understand. And the shift commander had some
12 administrative duties, but also had some road
13 patrol duties?

14 A. Yes, sir.

15 Q. Collection of evidence was not typically a duty
16 of the Road Patrol Division?

17 A. Yes, it is.

18 Q. That is, some members of the Road Patrol Division
19 may be trained in the collection of evidence,
20 correct?

21 A. Correct.

22 Q. Just as some members of the other divisions of
23 the Manitowoc County Sheriff's Department may
24 have special training as evidence technicians or
25 in evidence collection?

1 A. Correct.

2 Q. The Sheriff's Department includes as one of its
3 divisions, or bureaus, units, if you will, an
4 Investigative Unit?

5 A. Yes, sir. To make it easier, both patrol and
6 investigations are assigned to the Operations
7 Division of the Manitowoc County Sheriff's
8 Department.

9 Q. Very well. Thank you. But they are separate
10 units within the operations division?

11 A. Yes, sir.

12 Q. You had been trained in evidence collection as a
13 technician?

14 A. Yes, sir.

15 Q. That went back to, I think, 1997?

16 A. Yes, sir.

17 Q. That was something for which you volunteered?

18 A. Yes.

19 Q. You were accepted or someone accepted your offer
20 and you got some special training?

21 A. Yes, sir.

22 Q. One of the people from whom you got that special
23 training is seated right over there, second to my
24 right in the back, true?

25 A. Evidence tech training?

1 Q. Yes.

2 A. No, sir.

3 Q. Didn't get that kind of training from Special
4 Agent Fassbender?

5 A. No, I did not.

6 Q. What training did you get from Special Agent
7 Fassbender? I'm talking about well before
8 November, 2005 now.

9 A. Special Agent Fassbender was my DAT, which is
10 defense and arrest tactics, instructor during the
11 recruit academy at Fox Valley Tech.

12 Q. All right. Having nothing directly to do with
13 evidence collection?

14 A. That's correct, sir.

15 Q. But you went through a recruit academy?

16 A. Yes, sir.

17 Q. As do all police recruits or candidate officers?

18 A. Yes, sir.

19 Q. How long did that academy last?

20 A. It was 400 hours when I went through the academy.
21 Ten weeks, roughly.

22 Q. Roughly 10 weeks full-time?

23 A. Yes, sir.

24 Q. All right. We'll come back to that a little bit
25 later in a different context. Did you have any

1 training as an evidence technician from
2 Lieutenant James Lenk?

3 A. Yes.

4 Q. He, you know, to be a lieutenant in charge of the
5 Detective Unit within the Operations Division?

6 A. Yes, sir.

7 Q. Are there more than one lieutenant in the
8 Detective Unit?

9 A. No, sir.

10 Q. So he's the chief detective, in fact, of
11 Manitowoc County?

12 A. Yes, sir.

13 Q. Within the Sheriff's Department. He was involved
14 in training you as an evidence technician?

15 A. I am not exactly sure how to answer that without
16 elaborating somewhat.

17 Q. Well, let's start with a yes or a no.

18 A. Yes, he has given me training material during the
19 course of my career.

20 Q. Okay. And has he given you anything more formal
21 than that; in other words, I'm going to let you
22 elaborate here, but we'll do this in a question
23 and answer format.

24 A. Lieutenant Lenk personally hasn't trained me on
25 any specific issue. We would have semi-annual,

1 or sometimes quarterly meetings, of all the
2 evidence techs, where Lieutenant Lenk might
3 present some new information or somebody who had
4 recently gone to training might present some new
5 information. But Lieutenant Lenk never took me
6 one-on-one and trained me in any sort of specific
7 application of being an evidence technician.

8 Q. But you have sort of in house, in service,
9 programs --

10 A. Yes, sir.

11 Q. -- if you will? Sharing information on new
12 techniques or new teaching?

13 A. Yes, sir.

14 Q. Sometimes that comes from Lieutenant Lenk?

15 A. Yes, sir.

16 Q. Other times he may simply be involved in
17 overseeing the meeting?

18 A. Yes, sir.

19 Q. You have known Lieutenant Lenk, personally, how
20 long?

21 A. Since 1996, so 10, 11 years.

22 Q. Was it '96 that you actually became a sworn
23 officer?

24 A. Yes, sir.

25 Q. And if I understood you, the period as a

1 corrections officer in the Manitowoc County Jail
2 was '92 to '94?

3 A. '92 to '96.

4 Q. I'm sorry, then I misunderstood you. You went
5 directly from the jail to the recruit academy and
6 then as a sworn officer?

7 A. Yes, sir.

8 Q. It was 1996, then, when you joined the department
9 as a sworn officer, that you met the man who is
10 now Lieutenant Lenk?

11 A. Yes, sir.

12 Q. He, at that time, was also in the road unit or
13 the Road Patrol Unit?

14 A. Yes, sir.

15 Q. You became friendly with Lieutenant Lenk?

16 A. Yes.

17 Q. Let's call him James Lenk and not worry about his
18 rank, at any given time, all right. Do you call
19 him Jim?

20 A. Yes, I do.

21 Q. You worked closely with him for several years?

22 A. Yes. I have worked with him several times, yes.

23 Q. He is one of the people on the department to whom
24 you feel personally close?

25 A. We don't do anything together socially, but I

1 feel he is an experienced officer and if I have a
2 investigative type question, I feel comfortable
3 talking with him about it.

4 Q. All right. And the time came in 2005 or 2006
5 when you decided that you aspired to some rank
6 higher than sergeant within the department, true?

7 A. I'm sorry, could you repeat.

8 Q. The time came in 2005, or perhaps in 2006, I
9 don't know when, but at some point, certainly
10 before the elections in 2006, you began to aspire
11 to a rank higher than sergeant in your
12 department?

13 A. Yes.

14 Q. You decided to run for sheriff?

15 A. That's correct.

16 Q. Of Manitowoc County?

17 A. That is correct.

18 Q. Another officer, within the department, at the
19 same time, also was running for sheriff in the
20 same 2006 election?

21 A. Yes.

22 Q. That created a situation in which two officers
23 from the same department were running against
24 each other?

25 A. Yes.

1 Q. There was some tension, at least, in that
2 situation?

3 A. Are you talking about in 2006, last summer?

4 Q. Well, whenever the campaign began to heat up.

5 A. I don't really think the campaign ever got
6 heated, but I didn't really feel any tension.

7 Q. Okay. But, one of the things you both were
8 interested in doing, and the other gentleman is a
9 man named Robert Hermann, correct?

10 A. Yes.

11 Q. The brother of Todd Hermann?

12 A. Yes.

13 Q. One of the things that you and Robert Hermann
14 both did was sort of see who would support you
15 and who might support the other fellow in the
16 race for sheriff?

17 A. No.

18 Q. Weren't interested who was on your side?

19 A. No, I wasn't.

20 Q. Do you know whether Lieutenant Lenk was on your
21 side?

22 A. I have no idea how Lieutenant Lenk voted during
23 the sheriff's campaign. I would hope that he
24 supported me, but it wouldn't change my feeling
25 one iota if he didn't.

1 Q. I understand that. But how long was it between
2 the time you declared your candidacy publicly and
3 the time of the election?

4 A. I thought we had to have our nomination papers
5 filed in May of 2006 and the election was in
6 November of 2006.

7 Q. Okay. So let's call it five, six months,
8 roughly. I'm just trying to get a rough time
9 frame here, okay. Lieutenant Lenk's working
10 hours, you know, to overlap in part with your
11 own, on the days you are both at work?

12 A. Yes.

13 Q. That is, he would typically work something like
14 an 8 to 5 kind of shift?

15 A. I'm not sure what his duty hours are, but
16 somewhere in that time frame.

17 Q. In other words, in the afternoon, you two would
18 be on duty at the same time?

19 A. Yes, sir.

20 Q. And in all that time, he never approached you and
21 gave you an attaboy, or told you he was in his
22 corner -- in your corner, or that he couldn't be,
23 nothing?

24 ATTORNEY KRATZ: Judge, I'm going to object
25 as irrelevant. Is this sometime after November of

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24
25

2005?

ATTORNEY STRANG: It is.

ATTORNEY KRATZ: I can't see the relevance, then, to what happened at the Avery salvage property; I will interpose that objection then.

THE COURT: Mr. Strang.

ATTORNEY STRANG: Well, I'm happy to be heard out of the presence, if the Court wishes that.

THE COURT: All right. I think what I will do at this time is excuse the jury for a few minutes.

ATTORNEY STRANG: We can excuse the witness as well.

THE COURT: Mr. Colborn, you are excused as well.

(Jury not present.)

(Witness not present.)

THE COURT: Mr. Strang.

ATTORNEY STRANG: This isn't a long line of inquiry, your Honor, but clearly this is relevant to Sergeant Colborn's bias or potential for bias here. Lieutenant Lenk was his partner through several days of searching. Consistently, as the testimony has shown, they were paired together, usually with Detective Remiker as well.

1 Together they were deposed, within 48
2 hours, in Steven Avery's lawsuit. I expect to
3 elicit testimony that they discussed their
4 depositions. Now, together, it is the two of
5 them who, in Sergeant Colborn's words, had their
6 integrity questioned.

7 Whether these two stood together and had
8 each other's back during a race for a higher
9 office that well could have been affected by the
10 lawsuit that Steven Avery had filed, by further
11 developments in that lawsuit, I think is directly
12 relevant to this witness' credibility and bias.

13 THE COURT: Mr. Kratz.

14 ATTORNEY KRATZ: We're talking about two
15 different things, Judge. Testimonial bias, which
16 would be today, and is this witness prepared to
17 shade his testimony to the benefit that perhaps of
18 Lieutenant Lenk or somebody like that, Mr. Strang's
19 area of inquiry is appropriate, if in fact the Court
20 finds that to be relevant.

21 However, what Mr. Strang is really
22 talking about is having each other's back, or
23 motive, or being in partnership, for lack of a
24 better term, in planting evidence or being
25 involved in criminal behavior and activity. Then

1 that only becomes relevant if they had this
2 connection, if they had this friendship or this
3 bond, before November of 2005.

4 So, if that is in fact the dual purpose
5 of this, then I would ask Mr. Strang to confine
6 his bias inquiry, at least as it regards
7 Lieutenant Lenk and the election, and to that
8 which might affect his testimony today; it would
9 have no relevance as to what occurred in November
10 of 2005.

11 THE COURT: How do you propose that that be
12 conveyed to the jury, what the purpose of his
13 questioning is?

14 ATTORNEY KRATZ: Well, as asked, then,
15 Judge, it is -- it is irrelevant and should be
16 inadmissible. If we direct it more towards
17 testimonial, that is, if he wants to get into, would
18 you do something to help your buddy, Jim Lenk,
19 today, in testifying, I think that's -- that that's
20 appropriate, but that should be made clear.

21 And if we're getting into more than
22 that, that is, as Mr. Strang, using his words, I
23 have your back, if we're talking about back in
24 November of 2005, their previous friendship may,
25 in fact, be relevant and all those kind of

1 things, but not what happened in the 2006
2 election.

3 ATTORNEY STRANG: Let's bring us back to
4 the actual line of questioning, because I don't know
5 that we need to slice the salami that thin. What
6 I'm doing now is simply following up on and
7 exploring his claim that he has no idea whether Jim
8 Lenk supported him or not for sheriff. He hopes he
9 did, but if Mr. Lenk did not vote for him, it
10 wouldn't affect, by one iota, his view of Mr. Lenk.

11 And I'm following that up, since he's
12 already acknowledged that he thinks well of Mr.
13 Lenk and has worked with him and known him since
14 1996. I'm also going to ask him when it is that
15 becoming sheriff popped into his head, since
16 presumably that was some -- some day before the
17 day in May, 2006, when he had to file his
18 candidacy papers. And that's really,
19 essentially, all the farther I'm going with this.

20 THE COURT: All right. It seems to me of
21 marginal probative value, but if you are telling me
22 you are almost done, I will let you ask a few more
23 questions and then move on. All right. We can
24 bring the jurors back. And then if the
25 Victim/Witness Coordinator is here, she can bring

1 Mr. Colborn in.

2 (Jury present.)

3 THE COURT: You may be seated. And
4 Mr. Strang, you may resume your questioning.

5 ATTORNEY STRANG: Thank you.

6 Q. (By Attorney Strang)~ So the question was,
7 Sergeant Colborn, in the months leading up to
8 this election, are you telling this jury that
9 there wasn't any time when Lieutenant Lenk
10 approached you and told you either that he was in
11 your corner or couldn't support you, for sure?

12 A. No, I'm not saying that.

13 Q. Well, what did he tell you about whether he was
14 supporting you?

15 A. We did not have -- I tried my hardest not to have
16 any discussions about the election at work
17 because I didn't want it to distract from work.
18 Privately, Lieutenant Lenk gave me every
19 indication that he was supporting me.

20 Q. Privately, you took him to be in your corner?

21 A. Yes.

22 Q. You may want to get just a little bit closer to
23 the mike, the mike is sort of touchy. When was
24 it that you began to think seriously about
25 running for sheriff, yourself?

1 A. January or February of 2006.

2 Q. Had the idea occurred to you back in 2005?

3 A. I can't recall, specifically. I may have thought
4 about it, but ...

5 Q. But at least by January or February, 2006, you
6 had a building sense that, maybe I could do the
7 top job in this department?

8 A. Yes, sir.

9 Q. Maybe I could do some things a little bit
10 differently than I see them being done?

11 A. Yes, sir.

12 Q. Maybe I could bring something important to the
13 job of sheriff and serve the citizens of
14 Manitowoc County?

15 A. Yes, sir.

16 Q. By May that idea had become strong enough to
17 cause you to go through all the steps necessary
18 to declare a candidacy?

19 A. Yes, sir.

20 Q. You had not run for an elected office before?

21 A. Actually, yes, I had.

22 Q. Okay. At a countywide level?

23 A. Yes.

24 Q. All right. So at least that process you were
25 familiar with and willing to undergo again?

1 A. Yes.

2 Q. Knocking on doors, speaking at Lion's Club
3 dinners, that kind of thing?

4 A. Yes, sir.

5 Q. Now, it was, I think, October 13, 2005, in
6 specific, in which your deposition was taken in
7 Mr. Avery's lawsuit?

8 A. Yes, sir.

9 Q. Was this the first time you had ever had your
10 deposition taken?

11 A. Yes, sir.

12 Q. New experience for you?

13 A. Yes.

14 Q. You were not so much asked to attend a deposition
15 as you were the recipient of a subpoena to do so?

16 A. I believe so, yes, sir.

17 Q. That deposition process involved being sworn,
18 same oath you took today, essentially?

19 A. Yes, sir.

20 Q. But in a conference room or library of a lawyer's
21 office?

22 A. Yes, sir.

23 Q. You were questioned by Mr. Avery's lawyers at
24 that deposition?

25 A. Yes, sir.

1 Q. You sat across the table from Mr. Avery, himself,
2 that day, October 13, 2005?

3 A. I know Mr. Avery was in the room, I don't -- no,
4 it wasn't like I was directly across from him.

5 Q. No.

6 A. He was down at the end of the table.

7 Q. Yeah, and I didn't mean directly across, but the
8 two of you shared this conference room and the
9 table?

10 A. Yes, sir.

11 Q. Along with other people?

12 A. Yes, sir.

13 Q. Court reporter?

14 A. Yes, sir.

15 Q. Various lawyers?

16 A. Yes, sir.

17 Q. Some of the questions concerned a telephone call
18 that you had taken?

19 A. Yes.

20 Q. You understood the call, which today you can
21 place only as 1994 or 1995?

22 A. That's correct, sir.

23 Q. You understood the call to be coming from someone
24 who was a detective?

25 A. Yes, sir.

1 Q. Detective with a law enforcement agency?

2 A. Yes.

3 Q. In an adjoining or nearby county?

4 A. I believe so, yes, sir.

5 Q. You don't remember the details today?

6 A. No, I don't, sir.

7 Q. And, indeed, on October 13, 2005, you didn't

8 remember many of the details either?

9 A. No, sir.

10 Q. But the gist of it was, we have got somebody here

11 in custody who we think maybe did an assault in

12 Manitowoc County, that was part of it?

13 A. Yes, sir.

14 Q. And we further think that you may have someone in

15 jail for the assault?

16 A. That was the gist of the phone conversation, yes.

17 Q. Right. And I understand you don't remember the

18 exact words, but that was the gist?

19 A. Yes, sir.

20 Q. Now, as a corrections officer in the jail, this

21 was not directly your responsibility?

22 A. No, sir.

23 Q. You passed, or tried to pass the call, to the

24 Detective Unit?

25 A. Yes, sir.

1 Q. But you understood that you were being told, by a
2 law enforcement officer, that Manitowoc County
3 may have someone locked up, who didn't commit the
4 crime for which he was imprisoned; that much you
5 understood?

6 A. Yes, sir.

7 Q. Was that a matter to shrug off for you?

8 A. I didn't shrug it off, sir. I did what the
9 caller asked me to do, connect him to a
10 detective.

11 Q. I think, actually, you suggested that perhaps the
12 caller should talk to a detective?

13 A. No, he specifically asked for a detective.

14 Q. How he happened to call the jail and get to you,
15 you have no idea?

16 A. No, I don't, sir.

17 Q. Lieutenant Lenk, you were aware, also was
18 deposed, had his deposition taken, in this same
19 lawsuit?

20 A. Yes, sir.

21 Q. This was a federal lawsuit?

22 A. I don't even know enough about it to know whose
23 jurisdiction it was.

24 Q. Okay.

25 A. I know there was a lawsuit.

1 Q. All right. Do you know if it was down in
2 Milwaukee?

3 A. The deposition? My deposition?

4 Q. Or the lawsuit, either one?

5 A. My deposition was in the City of Manitowoc. I
6 don't know where the lawsuit -- I don't know.

7 Q. Fair enough. But you did -- you did have an
8 opportunity to talk to Lieutenant Lenk about the
9 fact that he, too, was having his deposition
10 taken?

11 A. I don't recall discussing the deposition portion
12 of it with Lieutenant Lenk.

13 Q. What did you discuss, about the civil lawsuit,
14 with Lieutenant Lenk?

15 THE COURT: Excuse me, Counsel, are you
16 referring to some time before the deposition or
17 after?

18 Q. I'm referring to the time immediately before the
19 deposition, after you would have gotten your
20 subpoena.

21 A. Okay. Yes, I knew that Lieutenant Lenk had a
22 subpoena for the same deposition that I did, yes.

23 Q. Okay. And I'm not interested in the content of
24 your conversation, which probably would be
25 hearsay, but the two of you established that one

1 another had subpoenas for depositions in that
2 lawsuit?

3 A. Yes, sir.

4 Q. And, again, without going into the content,
5 aft -- shortly after your depositions were taken,
6 the two of you talked about the fact that your
7 depositions had been taken?

8 A. Not really, not beyond the fact of, you know, did
9 you go on the day that you were supposed to, yes,
10 and that was pretty much it.

11 Q. Okay. Fair enough. Did you have any concern
12 that you would be added as a defendant in that
13 lawsuit?

14 A. I don't know if concern is the correct word, I
15 know I expressed that I didn't have any knowledge
16 of that case. I wasn't a Manitowoc County
17 resident at that time.

18 Q. My question, though, was whether you had concern,
19 the thought crossed your mind, that you might be
20 added as a defendant in that civil lawsuit?

21 A. Yes, the thought crossed my mind that I might be
22 added as the defendant.

23 Q. You had never been the defendant in a lawsuit
24 before?

25 A. Not that I recall, no.

1 Q. Do you think you would recall?

2 A. I would think, but ...

3 Q. This isn't something you were relishing?

4 A. No.

5 Q. How do you think having been a defendant in
6 Mr. Avery's lawsuit, for his wrongful conviction,
7 would have affected your prospects in the race
8 for sheriff?

9 ATTORNEY KRATZ: Objection, speculation.

10 Q. (By Attorney Strang)~ Did you consider that?

11 THE COURT: Just a second. I'm going to
12 sustain the objection.

13 Q. (By Attorney Strang)~ Did you consider the
14 prospect of an effect on your race for sheriff,
15 if you were added to that lawsuit?

16 A. No, I didn't, sir.

17 Q. I would like to shift off the lawsuit and talk to
18 you about reports, police reports, for a little
19 bit. And I promised you we were going to get
20 back to the recruit academy, and we will.

21 Reports are something that police
22 officers, and by that I mean broadly; sheriff's
23 deputies, municipal police officers, special
24 agents of the Division of Criminal Investigation,
25 just law enforcement officers generally. All

1 right. Reports are something that is common to
2 the work of policemen?

3 A. Is that a question?

4 Q. It is.

5 A. Yes, reports are common to policing.

6 Q. That is one of the things you learned to do in
7 the recruit academy, was to prepare a report?

8 A. That's correct, sir.

9 Q. It is a regular routine, in policing, to prepare
10 reports of your activities, as they bear on a
11 criminal investigation?

12 A. Yes, sir.

13 Q. You were taught in the academy the basics of how
14 to prepare such a report?

15 A. Yes, sir.

16 Q. Reports have several purposes, I guess, one would
17 be to assure accurate collection of facts; that
18 would be one purpose of a police report?

19 A. Yes, sir.

20 Q. Another purpose would be to set down, on paper,
21 your memories before they begin to fade?

22 A. Yes, sir.

23 Q. A third purpose would be to allow others in the
24 department to benefit from knowing what facts you
25 had learned or steps you had taken in an

1 investigation?

2 A. That I don't -- that I don't know. Sometimes
3 reports are confidential and no other officers
4 view them.

5 Q. Sometimes, but let expands on that. In any sort
6 of a larger jurisdiction, let's use Manitowoc
7 County, the sheriff's department, policing is a
8 24 hour a day business?

9 A. Yes, sir.

10 Q. 365 days a year?

11 A. Yes, sir.

12 Q. That is, there may be very small towns that have
13 only a part-time police officer, constable,
14 police department, correct?

15 A. Yes, sir.

16 Q. But with the Manitowoc County Sheriff's
17 Department, it's around the clock, 24/7, 365 days
18 a year?

19 A. Yes, sir.

20 Q. Obviously, no single officer can work 24 hours,
21 seven days a week, so you divide the day into
22 shifts.

23 A. That's correct, sir.

24 Q. A criminal investigation that happens to begin on
25 one shift, may be carried over on another?

1 A. Yes, that's possible.

2 Q. Officers who actually don't work the same shift,
3 may be working on the same investigation?

4 A. Yes, sir.

5 Q. Witnesses may have to be interviewed and their
6 working hours may require officers who work on
7 the late shift, or the overnight shift, to
8 conduct the interviews?

9 A. Correct.

10 Q. So by preparing reports, officers on one shift
11 can share their information with officers on the
12 other shifts?

13 A. Absolutely.

14 Q. And in this sense, there is a collective benefit
15 that allows the department to continue its
16 criminal investigative duties, around the clock?

17 A. Yes, sir.

18 Q. Yet another purpose of police reports is to
19 report upward, to supervisors, what it is you are
20 doing?

21 A. Yes, sir.

22 Q. Reports typically are reviewed by supervisors?

23 A. Yes, they are.

24 Q. For accuracy?

25 A. Yes.

1 Q. For thoroughness?

2 A. Yes.

3 Q. For completeness?

4 A. Yes.

5 Q. Preparing reports is something that a thorough

6 police officer does?

7 A. Yes.

8 Q. Preparing reports is something that a police

9 officer should do in a timely fashion, true?

10 A. Yes.

11 Q. Because, again, one of the first purposes is to

12 get the facts down on paper accurately while they

13 are fresh in your mind?

14 A. Yes, sir.

15 Q. And preparing reports in a timely and thorough

16 way is something that a fair police officer does,

17 isn't it?

18 A. I would imagine, yes, sir.

19 Q. That is, you want the report to be objective?

20 A. Yes.

21 Q. Accurate in the sense of fair and factually

22 correct?

23 A. Yes.

24 Q. Not tilted or biased in any fashion?

25 A. Correct.

1 Q. The idea is to lay out the facts and see where
2 they lead?
3 A. Yes, sir.
4 Q. You prepare reports, then, and as they go up the
5 stream, for a supervisors review, the supervisor
6 typically will sign off or indicate approval in
7 some fashion?
8 A. Yes, sir.
9 Q. Or may send the report back for further work?
10 A. Yes, sir.
11 Q. You are a supervisor, yourself, in the Road
12 Patrol Unit?
13 A. Yes, sir.
14 Q. You fill this function. That's one of your
15 administrative duties, is to review reports
16 prepared by deputies under you, in the Road
17 Patrol Unit?
18 A. Yes, sir.
19 Q. You encourage them to file timely reports?
20 A. Yes.
21 Q. Thorough reports?
22 A. Yes.
23 Q. And fair reports?
24 A. Yes, sir.
25 Q. The reports, you know, after now 10, going on 11

1 years as a sworn law enforcement officer, then
2 sometimes will go further, to a prosecutor?

3 A. Yes, sir.

4 Q. Prosecutors rely on those police reports in
5 making charging decisions?

6 A. Yes, sir.

7 Q. If they elect to charge a case, you know as well,
8 in your criminal justice system, that the
9 reports, then, go to the defense, once a case has
10 been charged in court?

11 A. Yes, sir.

12 Q. The defense lawyers then rely on the thoroughness
13 of those reports?

14 A. Yes, sir.

15 Q. The accuracy of those reports?

16 A. Yes, sir.

17 Q. The timeliness of those reports?

18 A. Yes, sir.

19 Q. And at a very practical level, if later, you, as
20 the officer involved in some activity, have
21 forgotten exactly what happened, you can turn
22 back to your report?

23 A. Yes.

24 Q. Use it to refresh your recollection?

25 A. Yes, sir.

1 Q. Sometimes use the report of other officers to
2 refresh your recollection?

3 A. Yes, sir.

4 Q. Which, again, is you relying on the accuracy and
5 the thoroughness and the timeliness of reports by
6 other officers?

7 A. Yes, sir.

8 Q. And if you were to change your explanation of
9 what happened, either the prosecution or the
10 defense might use the report to show that you had
11 said something different in the report?

12 A. Yes, sir.

13 Q. If you don't prepare a report, then you haven't
14 committed anything to paper, correct?

15 A. Correct.

16 Q. And someone who doesn't commit anything to paper,
17 then, can't be pinned down on the details as
18 would someone who had put the details on paper?

19 A. Okay. I mean, that makes sense.

20 Q. Makes sense to you?

21 A. Mm-hmm.

22 Q. Now, let's go to this investigation, the
23 activities concerning this investigation, are you
24 with me?

25 A. Yes, sir.

19:33 E. 7

1 Q. November 3, 2005, when you learned from
2 Mr. Wiegert that Teresa Halbach was missing, was
3 just about exactly, to the day, three weeks after
4 your deposition in Steven Avery's lawsuit?

5 A. Yes, sir.

6 Q. You were the shift commander that day, as we have
7 established?

8 A. Yes, sir.

9 Q. You learned about Ms Halbach being missing at
10 about what time?

11 A. Somewhere between 6:30 and 7:30.

12 Q. You were scheduled to get off shift at eight?

13 A. Yes, sir.

14 Q. Nearing the end of your day?

15 A. Yes, sir.

16 Q. As shift commander, you could have assigned
17 anyone in road patrol to go out to the address on
18 Avery Road?

19 A. Yes.

20 Q. You chose to do it yourself?

21 A. Yes.

22 Q. Did you go alone?

23 A. Yes, I did.

24 Q. At that time, all you knew is that this address
25 on Avery Road was one of the appointments that Ms

19:45

1 Halbach evidently had the day she was last seen
2 by family or friends?

3 A. Yes, sir.

4 Q. You happened to meet Steve Avery -- or not meet
5 him for the first time, but run into him, so to
6 speak, when you went out there that evening?

7 A. Yes, sir.

8 Q. You talked with him?

9 A. Yes, I did.

10 Q. He was very cordial?

11 A. Yes, he was.

12 Q. And as you followed through, you saw events
13 unfold, eventually it was Steven Avery who was
14 charged with killing Teresa Halbach?

15 A. Yes, sir.

16 Q. That came a week, roughly, after your first
17 conversation with him on Thursday, November 3rd?

18 A. Yes, sir.

19 Q. Mr. Avery then was charged with the most serious
20 crime someone can commit in this state?

21 A. Yes, sir.

22 Q. When, sir, did you first make a written report of
23 anything having to do with the November 3, 2005,
24 meeting with Mr. Avery?

25 A. June of '06 I believe.

1 Q. Does June 29, 2006 sound correct?

2 A. Yes.

3 Q. A few days short of the 4th of July?

4 A. Yes, sir.

5 Q. Not quite 8 months after the conversation with
6 Mr. Avery?

7 A. Yes, sir.

8 Q. Was that a timely report?

9 A. I wasn't even aware that Manitowoc County had our
10 own report. I didn't find out about it till
11 then.

12 Q. You were aware that Manitowoc County sheriff's
13 deputies had played a substantial role at the
14 Avery property for a week, from November 5 to
15 November 12?

16 A. Yes.

17 Q. You saw literally dozens of fellow officers from
18 the Manitowoc County Sheriff's Department during
19 that week?

20 A. Yes.

21 Q. And your testimony today is you aren't aware that
22 any of them ever wrote any report?

23 A. No, I wasn't. I knew Calumet County Sheriff's
24 Department was handling the report portion of it.

25 Q. And somebody finally suggested to you, in June,

1 more than 7 months later, that maybe you ought to
2 write a report about that first interview with
3 Steven Avery?

4 A. They informed me that there was indeed a report
5 and that I should make an entry on it, yes.

6 Q. You made an entry on it?

7 A. Yes, I did.

8 Q. And that entry was all of about a page?

9 A. I guess it was a few paragraphs; I don't know how
10 many.

11 Q. Did you happen to notice when you were with
12 Mr. Avery on November 3, a big, fresh gash or cut
13 on his right middle finger?

14 A. No, I did not notice that.

15 Q. Didn't notice him bleeding?

16 A. No, sir, I didn't.

17 Q. Or notice anything that looked like it had been
18 recently bleeding or recently a fresh, open cut?

19 A. No, sir, I didn't notice any injury.

20 Q. That's why there is no mention of such an injury
21 in your report, true?

22 A. Correct.

23 ATTORNEY STRANG: What time does the Court
24 wish to take the afternoon break, for my purposes,
25 your Honor?

1 THE COURT: We'll go another 10 minutes.

2 ATTORNEY STRANG: Thank you.

3 Q. (By Attorney Strang)~ Now, did I understand you
4 correctly, in your testimony earlier today,
5 Sergeant Colborn, that today you remember what it
6 is you were doing on your day off, Friday,
7 November 4, 2005, the day after you first talked
8 to Steven Avery?

9 A. Yes.

10 Q. We were talking about timely and thorough and
11 accurate reports before. And I wonder if you
12 recall, oh, a little over a month ago, not quite
13 six weeks ago, in fact, January 11, 2007, being
14 interviewed by Investigator Steier of the Calumet
15 County Sheriff's Department; do you remember
16 that?

17 A. Yes.

18 Q. And you knew that Investigator Steier was
19 interviewing you in connection with this case?

20 A. Yes.

21 Q. You know, as a law enforcement officer, that it's
22 important, if one speaks to another -- to a
23 police officer, to give accurate information to
24 the officer?

25 A. Yes, sir.

1 Q. You know, in fact, that it's a crime in the state
2 of Wisconsin, intentionally to give false
3 information to a police officer?

4 A. Yes, sir.

5 Q. And on January 11, 2007, you recall Investigator
6 Steier asking you if you could recall what you
7 had done on Friday, November 4, 2005, your day
8 off; do you recall him asking you that?

9 A. Yes.

10 Q. And what you told him was, that you could not
11 recall what you had done on your off day; that's
12 what you told Investigator Steier?

13 A. Yes, at that precise second that he asked me, I
14 could not recall everything that I had done on
15 that day.

16 Q. You recalled later?

17 A. Yes.

18 Q. And when, sir, when did you call up Investigator
19 Steier and say, I'm sorry, I was wrong, I now
20 remember what I did on my day off, Friday,
21 November 4, 2005?

22 A. I didn't call Investigator Steier.

23 Q. [One of the things the road patrol officers,] under
24 your supervision, [frequently do, is] look for cars
25 that appear out of place?

53:25, & 5

1 A. Yes, sir.

2 Q. Or if they made a traffic stop, they will inquire
3 about the license plate or the registration
4 plates on an automobile?

5 A. Yes, sir.

6 Q. And they will call into dispatch and give the
7 dispatcher the license plate number of a car they
8 have stopped, or a car that looks out of place
9 for some reason, correct?

10 A. Yes, sir.

11 Q. And the dispatcher, very quickly these days, with
12 his or her computer screen, can get information
13 about who -- to whom a license plate is
14 registered?

15 A. Yes, sir.

16 Q. Also, the dispatcher can give you, right over the
17 phone or the radio, the information about what
18 car the license plate is registered to?

19 A. Yes, sir.

20 Q. This is useful so that you know who you may be
21 approaching, if there's a driver of the car
22 that's stopped?

23 A. Yes, sir.

24 Q. It's also useful to know whether the license
25 plate appears to be on the car for which it is

1 registered?

2 A. Yes, sir.

3 Q. If the car is abandoned or there's nobody in the
4 car, the registration tells you who the owner
5 presumably is?

6 A. Yes, sir.

7 Q. Are you the only Andy, to your knowledge, in the
8 Manitowoc County Sheriff's Department?

9 A. The only officer with the first name Andy?

10 Q. Yes.

11 A. No, I'm not.

12 Q. All right. [I'm going to ask you to listen, if
13 you would, to a short phone call.] And I will ask
14 you, first, if you are the Andy speaking. All
15 right?

16 A. Mm-hmm.

17 ATTORNEY KRATZ: Judge, before counsel does
18 this, could we have it identified as to the date and
19 time.

20 ATTORNEY STRANG: Absolutely, I will do the
21 best I can. In fact, I should mark it.

22 (Exhibit No. 212 marked for identification.)

23 ATTORNEY STRANG: This is a CD Rom that we
24 obtained from the -- or a copy of the CD Rom that we
25 obtained from the Manitowoc County Sheriff's

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Department, Exhibit 212, counsel. Thank you.

For counsel's benefit this will be track three. All I'm told by the sheriff's department is that these are calls between November 3 and November 12, 2005.

ATTORNEY KRATZ: Judge, we don't know when -- what he is about to play them is within a 9 day period?

ATTORNEY STRANG: If the witness made the call, I'm going to ask him when he made the call.

THE COURT: All right. Go ahead.

Manitowoc County Sheriff's Department.
This is Lynn.

Lynn.

Hi, Andy.

Can you run Sam William Henry 582. See if it comes back to (Inaudible.)

Sam William Henry 582.

ATTORNEY STRANG: Let me just stop it right there. In fact, I'm going to go back, because it was so soft at the beginning.

Manitowoc County Sheriff's Department.

This is Lynn.

Lynn.

Hi Andy.

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Can you run --

Q. (By Attorney Strang)~ Is that you?

A. It sounds like me. I believe it's me.

Q. Okay. I'll --

Sam William Henry 582. See if it comes
back to (Inaudible.)

Lynn.

Hi Andy.

Can you run Sam William Henry 582. See
if it comes back to (Inaudible.)

Sam William Henry 582. I (Inaudible.)
All righty. You speak any Spanish there, Andy?
I just a call at the top of the list, is my on
call didn't call me back. If I want to get in
trouble, Andy, I get in trouble. You know, what
am I supposed to do?

Well --

My favorite one is in the city of
Manitowoc. Okay. Shows that she's a missing
person. And it lists to Teresa Halbach.

All set.

Okay. Is that what you're looking for,
Andy?

'99 Toyota.

Yup.

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Okay. Thank you.

You're so welcome. Bye, bye.

Q. Okay. That's the entire call. Hangs up. That's your voice?

A. Yes, I believe that's my voice. Yes.

Q. When did you make that phone call inquiring about a license plate?

A. I don't know.

Q. Do you have any recollection of making that phone call? 15:37

A. It would have had to have been 11/03/05 or -- I'm guessing 11/03/05. to p. 184, L24

Q. Okay. But let's -- let's ask -- establish this first, do you remember making the call?

A. Not really, no.

Q. What you're asking the dispatcher, whose name is Lynn, is to run a plate that's Sam William Henry 582; did I hear that correctly?

A. Yes, sir.

Q. Sam William Henry is a phonetic code that law enforcement officers use, because sometimes it's hard to tell just a letter over radio?

A. Yes, sir.

Q. Sam William Henry would be SWH-582.

A. Yes.

1 Q. This license plate?

2 A. Yes, sir.

3 Q. I'm showing, for the benefit of the record, this
4 is either Exhibit 152 or 153?

5 THE CLERK: It's on the plate itself.

6 ATTORNEY STRANG: This one happens to be
7 153.

8 Q. (By Attorney Strang) And the dispatcher tells
9 you that the plate comes back to a missing person
10 or woman?

11 A. Yes, sir.

12 Q. Teresa Halbach. Mispronounces the last name, but
13 you recognize the name?

14 A. Yes, sir.

15 Q. And then you tell the dispatcher, Oh, '99 Toyota?

16 A. No, I thought she told me that.

17 Manitowoc County Sheriff's Department.

18 This is Lynn.

19 Lynn.

20 Hi Andy.

21 Can you run Sam William Henry 582, see
22 if it comes back to (Inaudible.)

23 Sam William Henry 582. I (Inaudible.)

24 All righty. Do you speak any Spanish there,

25 Andy? I just got a call that the top of my list,

1 is my on call didn't call me back. If I want to
2 get in trouble, Andy, I get in trouble. You
3 know, what am I supposed to do?

4 Well --

5 My favorite one is in the city of
6 Manitowoc. [Okay. Shows that she's a missing
7 person. And it lists to Teresa Halbach.]

8 All set.

9 Okay. That's what you're looking for,
10 Andy?

11 '99 Toyota?

12 Yup.

13 Okay. Thank you.

14 You are so welcome. Bye, bye.

15 Q. Actually you who suggests this is a '99 Toyota?

16 A. I asked if it was a '99 Toyota, yes.

17 Q. And the dispatcher confirmed that?

18 A. Yes.

19 Q. Were you looking at these plates when you called
20 them in?

21 A. No, sir.

22 Q. And your best guess is that you called them in on
23 November 3, 2005?

24 A. Yes, [probably after I received a phone call from
25 Investigator Wiegert letting me know that there]

back
to
p. 182

1 was a missing person.

2 Q. Investigator Wiegert, did he give you the license
3 plate number for Teresa Halbach when he called
4 you?

5 A. I don't remember the entire content of our
6 conversation but, obviously, he must have because
7 I was asking the dispatcher to run the plate for
8 me.

9 Q. Did you not trust that Investigator Wiegert got
10 the number right?

11 A. I don't -- That's just the way I would have done
12 it. I don't -- It's not a trust or distrust
13 issue.

14 ATTORNEY STRANG: I'm about to move to a
15 different area, your Honor.

16 THE COURT: All right. We'll take our
17 afternoon break at this time. Members of the jury,
18 do not discuss the case during break. And we'll
19 resume in about 15 minutes.

20 (Jury not present.)

21 THE COURT: Counsel, you should report back
22 a little before 3:00.

23 ATTORNEY STRANG: Thank you.

24 (Recess taken.)

25 THE COURT: Mr. Strang, you may resume your

1 cross-examination.

2 **CROSS-EXAMINATION CONTD**

3 BY ATTORNEY STRANG:

4 Q. So as you sit here today, Sergeant Colborn, you
5 don't recall whether Investigator Wiegert gave
6 you Ms Halbach's telephone number when he called
7 you that Thursday evening?

8 A. He never asked me anything about a telephone
9 number.

10 Q. But you think he must have given you her license
11 plate number? Did I say telephone number?

12 A. Yes, you did.

13 Q. I'm sorry. I apologize. What I meant is, you
14 don't recall, as you sit here today, whether
15 Mr. Weigert gave you Teresa Halbach's license
16 plate number when he called you on November 3?

17 A. No, I just don't remember the exact content of
18 our conversation then.

19 Q. But --

20 A. He had to have given it to me, because I wouldn't
21 have had the number any other way.

22 Q. Well, and you can understand how someone
23 listening to that might think that you were
24 calling in a license plate that you were looking
25 at on the back end of a 1999 Toyota; ~~from~~

1 listening to that tape, you can understand why
2 someone might think that, can't you?

3 ATTORNEY KRATZ: It's a conclusion, Judge.
4 He's conveying the problems to the jury.

5 THE COURT: I agree, the objection is
6 sustained.

7 Q. This call sounded like hundreds of other license
8 plate or registration checks you have done
9 through dispatch before?

10 A. Yes.

11 Q. But there's no way you should have been looking
12 at Teresa Halbach's license plate on November 3,
13 on the back end of a 1999 Toyota?

14 ATTORNEY KRATZ: Asked and answer, your
15 Honor, he already said he didn't and was not looking
16 at the license plate.

17 THE COURT: Sustained.

18 Q. (By Attorney Strang)~ There's no way you should
19 have been, is there?

20 A. I shouldn't have been and I was not looking at
21 the license plate.

22 Q. Because you are aware now that the first time
23 that Toyota was reported found was two days later
24 on November 5?

25 A. Yes, sir.

1 Q. You were aware that it was found, without its
2 license plates?
3 A. Yes, sir.
4 Q. You are aware that the license plates weren't
5 reported found until November 8, 2005?
6 A. Yes, sir.
7 Q. Now, you spent a good bit of your time, your
8 working hours at least, between November 5 and
9 November 9, at the Avery salvage property.
10 A. Yes, sir.
11 Q. You were asked on direct examination if you
12 remembered when you first arrived on Saturday,
13 November 5, at that property; do you recall that?
14 A. Yes, sir.
15 Q. And if I heard you correctly, which you said is
16 you thought somewhere between 5 and 5:15?
17 A. That's what I thought, yes.
18 Q. Is that your recollection as you sit here now?
19 A. Yes.
20 Q. Okay. Now, that's a question that you have been
21 asked at a prior hearing in this case, correct?
22 A. Yes.
23 Q. Back on August 9, 2006, you testified at a
24 hearing?
25 A. Yes.

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ATTORNEY STRANG: Page 42, counsel.

Q. (By Attorney Strang)~ And on August 9, 2006, you were asked the following question and gave this answer?

QUESTION: Okay. Now, moving onto Saturday, November 5th, did you -- can you tell me what time you arrived at the Avery property?

And your answer was:

ANSWER: Sometime between 6 and 6:30, in the evening.

And I will show you the transcript. Is that the question you were asked and the answer you gave on August 9?

A. Yes, it is.

Q. Now, since then, you have had a chance to get prepared to testify for this trial?

A. Yes, sir.

Q. One of the things you have had the benefit of doing is sitting down with the gentleman to my right, at the prosecution table?

A. Yes, sir.

Q. And they ran through some of the areas they expected to cover with you in your testimony?

A. Yes, sir.

Q. You did not have the benefit of doing that on, or

1 shortly before, August 9, 2006?

2 A. Yes, I did. Actually, we did it on 6/29/06, the
3 date you previously mentioned.

4 Q. Okay. Five or six weeks earlier?

5 A. Yes, sir.

6 Q. Specifically, have you had a chance, though,
7 since August 9, to look at the log sheet for
8 November 5, 2005, at the Avery property?

9 A. I have not.

10 Q. How is it that your memory improved or changed
11 and that you now think it was between 5 and 5:15
12 that you arrived, not 6 or 6:30?

13 A. I -- I don't know. I did review my time cards
14 for that pay period and I saw what time I went on
15 duty, so I -- when I answered Mr. Kratz's
16 question, I didn't think it would have taken me
17 from 6 or 6:30 to get there.

18 Q. Okay. So it's not so much that you actually
19 remember now, it's just that you have spent some
20 time trying to reconstruct time from your house
21 and when you got the call and what your time
22 records show?

23 A. Yes.

24 Q. Okay. And we have got Exhibit 142 in evidence
25 and I would say today you did pretty well. I

1 will show you Exhibit 142. I have got it open to
2 the page where I think you will find yourself
3 signing in; is that right?

4 A. Yes, sir.

5 Q. 5:12 p.m.?

6 A. Yes, sir.

7 Q. That would be the sign in out by the Command
8 Post, true?

9 A. I don't know. I -- I have never seen this form
10 before today. That's what it looks like.

11 Q. Well, the question really is, where do you
12 remember logging in?

13 A. I thought we logged in out by Avery Road and 147,
14 but if you say it's by the Command Post, that
15 could be.

16 Q. No, no, no, I wasn't there. Avery Road and 147,
17 in other words, even farther out from the Command
18 Post?

19 A. Yes, sir.

20 Q. To get anywhere near the property you had to log
21 in?

22 A. Yes, sir.

23 Q. All right. 5:12 p.m. you log in?

24 A. Yes, sir.

25 Q. Do you recall, now, whether Lieutenant James Lenk

1 was there when you arrived, on November 5?

2 A. I don't know if he was there or came later. I
3 don't know.

4 Q. Okay. And you do know that you logged out with
5 him and with Detective Remiker that evening; do
6 you recall that?

7 A. Yes, sir.

8 Q. And, indeed, we can see that if you flip forward
9 a couple three pages, can you find where you have
10 logged out, on Exhibit 142?

11 A. Yes, sir.

12 Q. The three of you, Lenk, Colborn, Remiker log out
13 another 10:41 p.m.?

14 A. Yes, sir.

15 Q. Now, you were, as I say, spending most of your
16 working hours out there, somewhere on the Avery
17 property, from November 5 through at least
18 November 9?

19 A. Yes, sir.

20 Q. You -- As you told us already, you went into
21 Steven Avery's trailer a number of different
22 times during those several days?

23 A. Yes, sir.

24 Q. You said on direct examination that, you know, at
25 least initially, you still viewed this as a

1 missing persons case?

2 A. Yes, sir.

3 Q. You also knew that by the time you entered
4 Mr. Avery's trailer at 7:30 on Saturday,
5 November 5, you were doing so with a search
6 warrant?

7 A. Yes.

8 Q. A search warrant in which a fellow law
9 enforcement officer had sworn that you were
10 looking for evidence of murder, among other
11 things?

12 A. I didn't know what the content of the search
13 warrant was or how they obtained it.

14 Q. Search warrants, though, you do know, are used in
15 criminal investigations?

16 A. Yes, sir.

17 Q. Not in missing person investigations?

18 A. I can't really answer that. I could imagine the
19 Court would give a search warrant for a missing
20 person if we could prove probable cause that that
21 missing person was at a certain spot.

22 Q. Isn't a search warrant ordinarily used --

23 A. Yes, it is.

24 Q. -- when there is probable cause to believe you
25 will find evidence of a crime?

1 A. Yes, it is.

2 Q. All right. And you were looking for evidence of
3 a crime, beginning on the evening of November 5,
4 true?

5 A. Yes, sir.

6 Q. One of the things you do, as an evidence
7 technician, is you wear latex gloves, just like
8 those that Mr. Wiegert had on earlier, when you
9 searched someone's home, or garage, or whatever
10 it is?

11 A. Yes, sir.

12 Q. You wear those, everybody involved, every law
13 enforcement officer involved in the search wears
14 them?

15 A. Yes, sir.

16 Q. That way you can't leave your own fingerprints at
17 the scene or on evidence?

18 A. Yes, sir.

19 Q. And in theory, you shouldn't be leaving your own
20 DNA on the scene or on evidence?

21 A. Correct, sir.

22 Q. So you're in the house on November 5, November 6,
23 November 7, November 8, true?

24 A. Yes, sir.

25 Q. And, finally, on November 8, Mr. Kratz asked you,

2143 & 7

to p. 196

1 were you doing a thorough search of the master
2 bedroom of Mr. Avery's trailer; do you remember
3 that?

4 A. Yes.

5 Q. Now, that thorough search, had you working on the
6 bookcase and on the desk?

7 A. Yes, sir.

8 Q. You described yourself as being, I think you said
9 none too gentle?

10 A. That's true.

11 Q. With the bookcase. And explained, I wasn't any
12 too gentle, as we were getting exasperated?

13 A. Yes, sir.

14 Q. What was exasperating you about the bookcase, or
15 that bedroom, on November 8, 2005?

16 A. The content of the material that we were
17 collecting.

18 Q. So you felt exasperated and that caused you to
19 take it out on the bookcase?

20 A. Didn't exactly take it out on the bookcase, it
21 just caused us to not be gentle in the handling
22 of the material.

23 Q. You were back in again on November 9, I don't
24 know that you covered that on direct, but you
25 actually were back into Mr. Avery's trailer,

1 briefly, on November 9, to look for a garage door
2 opener?

3 A. Yes, sir.

4 Q. That was also with Lieutenant Lenk, correct?

5 A. And a Calumet County deputy, yes, sir.

6 Q. Named Wendling, Deputy Wendling?

7 A. Yes, sir.

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8 Q. From Calumet County? [There was no time that you
9 went in Mr. Avery's home] during November of 2005
10 [when you were not also with Lieutenant Lenk?]

11 A. ~~Not that I recall.~~ No, sir.

12 Q. No time you went into Mr. Avery's garage when
13 Lieutenant Lenk was not also with you?

14 A. Not that I recall, no, sir.

15 Q. This case, you would describe as the largest
16 investigation in which you personally had
17 participated as a law enforcement officer?

18 A. Yes, sir.

19 Q. Some of the lengthiest searches, if we take
20 November 5 through November 9 as a whole, in
21 which you have participated?

22 A. Yes, sir.

23 Q. Led to very serious charges against Mr. Avery?

24 A. Yes, sir.

25 Q. You now know that the [law enforcement agencies

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involved, principally Calumet County Sheriff's Department and the Division of Criminal Investigation, have generated hundreds or thousands of pages of police reports?

A. Yes, sir.

Q. Your total contribution to those reports, is what, a little bit under half a page, as of November 8, 2005?

A. That's correct, sir.

Q. And then about another page as of June 29, 2006?

A. Correct.

Q. The report that you filed on, or shortly after, November 8, 2005, makes no mention of the Toyota key?

A. That's correct, sir.

Q. Would you like to see it?

A. No, I believe you.

Q. In fact, the only thing you discuss in your report is that on November 8, 2005, you were using these cotton swabs, about which we have all heard a lot, and distilled water, to collect some blood spots in the bathroom and laundry room of Mr. Avery's trailer?

A. Yes, sir.

Q. Were there things that you did not want to commit

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1 to paper, in a report?

2 A. No, sir.

3 Q. And it all began, I guess, your involvement in
4 this investigation began, that Thursday night,
5 November 3, 2005?

6 A. Yes, sir.

7 Q. And that's the -- that's the report that we
8 established you wrote more than 7, nearly 8
9 months later?

10 A. Yes, sir.

11 Q. That is, it was almost 8 months after that
12 conversation with Steven Avery, the first
13 conversation with him in this investigation, that
14 you wrote down what you say he said to you, back
15 on November 3?

16 A. Yes, sir.

17 Q. Did you have any rough notes, note pad, anything
18 to work off when you wrote that report in the
19 heat of June, 2006?

20 A. No, I did not, sir.

21 Q. Well, about 8 months, but then, again, while
22 we're on Steven Avery and your reports about him,
23 that phone call, the phone call you took way back
24 in 1994 or 1995, when you were working in the
25 jail, the phone call where a detective from

1 another law enforcement agency told you you may
2 have the wrong guy in jail, that one?

3 A. Yes, sir.

4 Q. Did you ever write a report about that?

5 A. No, sir.

6 Q. Well, actually you did, didn't you? It was about
7 8 years later, wasn't it?

8 A. I wrote a statement on it, yes, sir.

9 Q. You wrote a statement after Sheriff Peterson
10 suggested that maybe you should?

11 A. Yes, sir.

12 Q. You wrote that statement in 2003, about the 1994
13 or 1995 telephone call?

14 A. Yes.

15 Q. You wrote that statement in 2003, the day after
16 Steven Avery finally walked out of prison, didn't
17 you?

18 A. I don't know what day Steve was released from
19 prison, but I wrote the statement in 2003.

20 Q. September 12, 2003 sound right?

21 A. I said, I don't know the date that I wrote the
22 statement, but I know it was in 2003.

23 Q. Well, I think I do know the date you wrote it and
24 I'm a happy to show it to you.

25 ATTORNEY STRANG: I will mark it for

1 identification.

2 (Exhibit No. 213 marked for identification.)

3 Q. (By Attorney Strang)~ What do you know as
4 Exhibit 213?

5 A. That's the statement I wrote after speaking with
6 Detect -- or Sheriff Peterson.

7 Q. What's the date of your statement?

8 A. September 12, 2003.

9 Q. Do you remember that now as the day after Steven
10 Avery finally walked out a free man?

11 A. Sir, I already said I didn't know what day he got
12 released.

13 [ATTORNEY STRANG: That's all I have.] to p. 212

14 THE COURT: Mr. Kratz.

15 ATTORNEY KRATZ: I do have a issue outside
16 the presence of the jury, Judge. I ask that I be
17 able to be heard.

18 THE COURT: All right. At this time we'll
19 excuse the jurors for a few minutes.

20 (Jury not present.)

21 ATTORNEY KRATZ: I think the witness should
22 be excused as well.

23 THE COURT: All right. Mr. Colborn, you
24 may step outside. Mr. Kratz.

25 (Witness not present.)

1 ATTORNEY KRATZ: Thank you, Judge. As this
2 Court may know, this was a cross-examination which
3 was much anticipated. It was the subject of a great
4 deal of pre-trial litigation. It was the point in
5 the trial where the defense had represented to this
6 Court, in something that's called an offer of proof,
7 which is a lawyer's obligation, at least as this
8 Court presented it to the defense, to tell the Court
9 what the defense intended to show at trial.

10 When submitting the defense theory of
11 the case, in response to the State's motion to
12 exclude evidence of blood vial, of planting
13 evidence, the defense, in their offer of proof,
14 told this Court, promised this Court, that the
15 defense would -- with evidence, would show that
16 this witness, Mr. Colborn, or the next witness,
17 Mr. Lenk, somehow obtained a vial of blood from
18 the Clerk of Court's Office in Manitowoc County
19 and planted that evidence, or planted that blood
20 in Teresa Halbach's SUV.

21 Now, we have had heard Mr. Strang's
22 opening statement where planted evidence has been
23 eluded to. We have heard cross-examination of
24 other law enforcement witnesses, by Mr. Buting,
25 specifically, where he asked whether those

1 officers expected that their superiors would be
2 planting evidence in this case.

3 But now, when it would logically come up
4 in trial, now when evidence would logically be
5 presented, or when the very witness in the
6 defense offer of proof comes before this Court
7 and is able to be asked regarding sneaking into
8 the Clerk's Office, or stealing a vial of blood,
9 or planting evidence, we hear nothing.

10 And despite the contamination by the
11 defense throughout the entire jury selection
12 process, which this Court I think can take
13 judicial notice of, you heard all the questioning
14 about the vial of blood in the Clerk's Office in
15 jury selection, you heard the contamination in
16 press releases, you heard the contamination in
17 opening statements.

18 Now, for the first time, when evidence
19 should be placed into -- into the record, or at
20 least placed into this particular case, we hear
21 nothing. And so, Judge, I'm asking for
22 alternative direction, or rulings from the Court,
23 first, if the defense is abandoning their
24 planting evidence theory. The State needs to
25 know that and we need to know that now.

1 Because there shouldn't be any more --
2 any more questions of, are you friends with
3 Mr. Lenk, or any questions of any other witnesses
4 about a planting or about blood vials, if they
5 intend not to honor their offer of proof, if the
6 defense now intends not to, as they told this
7 Court in response to the State's motion to
8 exclude this very evidence, that they would prove
9 that evidence from the Clerk's Office, by way of
10 vial of blood would be brought into this case.

11 If they do, in fact, that is, if the
12 defense does in fact intend to abandon that
13 defense, then I will be asking for curative
14 instructions of this jury, at this time, that up
15 to this point in the trial they should disregard
16 Mr. Strang's opening statement, when he talked
17 about further evidence of planting evidence, of
18 any other witnesses that have been asked about
19 planting evidence, or any reference at all to
20 blood vial type evidence.

21 If, in fact, I'm mistaken, if I am
22 jumping the gun, if you will, if this is all
23 going to be Lieutenant Lenk now, rather than
24 Sergeant Colborn, then I am happy to be the first
25 one to stand corrected. But, if this defense is

1 going to be abandoned, before I redirect this
2 particular witness, the State is entitled to that
3 ruling and we're entitled to that information.

4 THE COURT: Mr. Strang.

5 ATTORNEY STRANG: I will stand on the
6 written materials we made, we tendered to the Court
7 and filed, with respect to a proffer of evidence and
8 reasonable inferences from evidence as to the blood
9 vial. I will stand on the transcript that our
10 capable court reporter has made of my opening
11 statement and simply note that, while he means no
12 inaccuracy and he is simply trying to give the Court
13 a summary, Mr. Kratz's description of our written
14 materials and my opening statement are not exactly
15 correct, and I will simply stand on them rather than
16 characterize them.

17 Second, just by the by, we haven't
18 gotten to the defense case-in-chief yet at all.
19 We're in the prosecution case-in-chief. So all
20 of this, at some level, would be wildly
21 premature. But, beyond that, to confront it most
22 directly, I'm idealistic. I'm certainly naive at
23 times. I am not so naive to think that someone
24 who may have planted blood evidence, who may have
25 been involved in planting a key, would come into

1 this courtroom, and simply, because asked under
2 oath, did you do it, say, oh, yes, I did it. We
3 are not going to have a *Perry Mason* moment here.

4 We will at some point have to establish
5 the existence of the blood vial in the Clerk's
6 Office and its state of being there so to speak.
7 And that could be done in the defense
8 case-in-chief; it could be done on
9 cross-examination in the State's case-in-chief,
10 if the opportunity should present itself with an
11 appropriate witness.

12 But I do not expect anyone, Lieutenant
13 Lenk, Sergeant Colborn, anyone else, to make an
14 admission, that you would see in the *Perry Mason*
15 show, on the witness stand. And the suggestion
16 that we should be held to getting one from such a
17 witness is preposterous. This jury will be
18 asked, in the end, by both sides, to rely on
19 reasonable inferences and common sense and on all
20 of the evidence.

21 So I don't think there's any relief to
22 be granted at the moment and there's no point in
23 discussing now what reasonable inferences may be
24 available at this point, since neither the jury
25 nor the parties know what the whole of the

1 evidence will be when the evidence is closed.

2 THE COURT: Mr. Kratz, anything else?

3 ATTORNEY KRATZ: Just -- I'm sure, Judge,
4 just one moment, if I could. I appreciate
5 Mr. Strang's response, Judge. And when Mr. Strang,
6 and I believe I wrote these words down correctly, we
7 will establish the blood vial in the Clerk's Office,
8 perhaps not through these witnesses; but it is, what
9 I have heard, that they are not abandoning that
10 defense.

11 That was my concern, because there's
12 nothing that requires Mr. Strang or Mr. Buting to
13 keep planting these little nuggets, if you will,
14 and then when the defense part comes, from them
15 saying, defense rests, or saying, now we have
16 abandoned it, when there is further contamination
17 of the jury.

18 That's our concern, Judge. We're able
19 to meet this defense and we intend to meet this
20 defense. But we have to do that in good faith
21 reliance, upon pre-trial rulings of this Court,
22 by pre-trial representations by the defense as to
23 where this trial is going, so that we don't
24 interrupt the flow of this case.

25 I don't want to object every time I hear

1 the word planting. I don't want to object every
2 time I hear the word, are you friends with
3 Lieutenant Lenk, or anything that might go down
4 that road. In fact, the defense intends to, as
5 their offer of proof, indicates to prove that up
6 at some point, or to embrace that as one of their
7 defenses.

8 And I know that's a clumsy term, and
9 with my apology to Mr. Strang, but I still
10 believe that we're entitled to know that. We're
11 entitled at some point, before there is further
12 contamination, if in fact this defense is going
13 to be abandoned at some point, the State is
14 entitled to know that. That was my point in
15 putting it on the record at this very moment,
16 before I proceed with my redirect examination.

17 THE COURT: I don't know that the defense
18 disagrees that if they should abandon that defense
19 that you would be entitled to some notice, but I
20 don't understand the defense to be saying that they
21 are abandoning that defense.

22 ATTORNEY STRANG: The Court is right on
23 both counts. And this is, you know, I would like to
24 know too whether the State is abandoning the false
25 imprisonment charge, but until we at least get to

1 the point where the State rests its case-in-chief,
2 that's all premature.

3 And I understand Mr. Kratz's concerns.
4 I don't know that if we were abandoning any
5 defense that I would have done the same
6 cross-examination, or for that matter, that
7 Mr. Colborn would have been called on direct at
8 all.

9 ATTORNEY KRATZ: What I would, just as a
10 final point, Judge, I would ask then, that before
11 the State rests, before the State concludes its part
12 of the case, that we be allowed a hearing, that we
13 be allowed an opportunity on an admissibility
14 hearing, or to meet what at least has been presented
15 to this point.

16 We have heard about vials of blood. We
17 have heard -- the jury has at least heard,
18 substantially during the voir dire process, about
19 a vial of blood in the Clerk's Office. We don't
20 have, obviously, any results from the FBI at this
21 particular point yet. But if and when we do get
22 those, I know that there is some disagreement as
23 to what's rebuttal evidence and can rebuttal, or
24 reply evidence, be put in even in the State's
25 case-in-chief.

1 Because if the defense, technically,
2 wouldn't call one single witness and the State
3 relied upon the defense representation that they
4 intended to put this in and the defense changed
5 their mind, we would be precluded from meeting
6 the challenges, or at least meeting the
7 assertions that have been made up to this point.

8 So, perhaps more by way of prediction
9 between now and the close of the State's case, we
10 will be asking for a hearing on this very issue.
11 I don't intend to have this conversation again.
12 Mr. Strang is right, we'll wait to see how the
13 case plays out.

14 But prior to the State being precluded
15 from meeting this defense, or at least from
16 presenting evidence relevant to this particular
17 topic, and before the State rests, we will be
18 asking for a more extensive opportunity to be
19 heard, even if it's just in writing, Judge. We
20 will submit something, but we will need some kind
21 of a ruling before the State does rest its case.

22 THE COURT: All right. If I'm reading your
23 comments correctly, you are not asking the Court to
24 do anything at this point in time, but you are
25 indicating that you may be asking for relief of some

1 kind at the close of the -- or before the close of
2 the State's case, pending whatever action the
3 defense takes between now and then.

4 ATTORNEY KRATZ: This was the earliest
5 opportunity and, in fact, the first obvious
6 opportunity to have heard that kind of evidence.
7 Since I didn't hear it, I'm putting the Court and
8 defense on notice of our position.

9 THE COURT: Mr. Strang.

10 ATTORNEY STRANG: Fair enough. And I -- I
11 think I should, you know, in the spirit of the
12 disclosure that Mr. Kratz has struck, add joining
13 part of what -- part of what he said. I mean,
14 clearly, because about half, I think, of the blood
15 vial sample has been sent off to the FBI for
16 testing, and we expect testing is ongoing, clearly
17 there will have to be a hearing. Mr. Kratz may have
18 one type of hearing in mind; we have another.
19 Certainly a **Walstad** hearing and there are a variety
20 of other issues that may arise with the FBI testing.

21 We are no closer to being able to
22 conduct any independent testing or to have an
23 expert to meet and assess the FBI's testing, than
24 we were when we first addressed this issue. We
25 have received a protocol from the FBI, thanks to

1 Mr. Gahn for that; we got that, I don't know, at
2 the end of last week, I think.

3 And we'll be filing a motion addressing,
4 in writing, the issues that this testing and the
5 denial of defense opportunity for independent
6 testing or even for a reasonable chance to find
7 an expert to meet and help us assess, possibly
8 contradict the FBI test results. It raises a
9 whole field of fair trial and due process issues
10 here. I will address those in writing.

11 I hope to file that before the end of
12 this week. I expect the State would want a
13 chance to respond in writing and, you know,
14 whatever I see as heading, is the Court needing
15 to schedule, conceivably. I mean, on Wednesday,
16 gets FBI results and what they are, the Court
17 needing to set a fair amount of time aside to
18 address the whole cluster of issues surrounding
19 that FBI testing.

20 THE COURT: All right. Anything else
21 before we bring the jury back in and allow the State
22 to redirect?

23 ATTORNEY KRATZ: No. And Mr. Strang's
24 comments are certainly well stated and we actually
25 join that, Judge; we will need a day and whether

1 it's going to be on a weekend or whether the Court
2 is going to allow a day or the better part of a day,
3 that the jury gets a probably much needed day off,
4 we'll need to schedule that within the trial. But I
5 am prepared with my redirect at this time, Judge.

6 THE COURT: Very well. We can bring the
7 witness back in and the jurors.

8 (Jury present.)

9 You may be seated. Mr. Kratz, at this
10 time you may begin your redirect.

11 ATTORNEY KRATZ: Thank you, Judge.

12 REDIRECT EXAMINATION

13 BY ATTORNEY KRATZ:

23:45 pg. 7

14 Q. [Sergeant Colborn,] just a very few follow-up
15 questions. Mr. Strang asked you if you had
16 written a report about that telephone call that
17 you had sometime in 1994 or '95; do you remember
18 that question?

19 A. Yes, sir.

20 Q. Do you remember your response?

21 A. My response was, no, that I did not write a
22 report about it.

23 Q. As you look back [back in 1994 or '95, if you
24 would have written a report, what would it have
25 been about?]

1 A. That is why I didn't do one, [I don't know what it
2 would have been about,] that I received a call and
3 transferred it to the Detective Division. [If I
4 wrote a report about every call that came in, I
5 would spend my whole day writing reports.] to p. 215

6 Q. Did this person ever identify the individual that
7 they were talking about?

8 A. No, sir. There were no names given.

9 Q. Let me ask you this,] as you sit here today, 18:37 E 7
10 [Sergeant Colborn, do you even know whether that
11 call was about Mr. Steven Avery?]

12 A. No, I don't.

13 Q. Mr. Strang also played a telephone call for you,
14 a call to the dispatch center, wherein you asked
15 to verify a license plate; do you recall that?

16 A. Yes, sir.

17 Q. Do you know if you made that inquiry of the
18 dispatch center before or after you went to the
19 Avery property on the 3rd of November?

20 A. I did not, no, sir. I would think -- I don't
21 know.

22 Q. Mr. Strang asked whether or not it was common for
23 you to check up on other agencies, or perhaps
24 I'm -- I'm misphrasing that, but when you are
25 assisting another agency, do you commonly verify

1 information that's provided by another agency?

2 A. All the time. I'm just trying to get -- you

3 know, a lot of times when you are driving a car,

4 you can't stop and take notes, so I'm trying to

5 get things in my head. And by calling the

6 dispatch center and running that plate again, it

7 got it in my head who that vehicle belonged to

8 and what type of vehicle that plate is associated

9 with.

10 Q. All right. Mr. Strang also asked you about a

11 interview that you had with a Investigator Steier

12 from the Calumet County Sheriff's Department

13 sometime in January of this year; is that

14 correct?

15 A. Yes, sir.

16 Q. Mr. Strang asked you if, when Investigator Steier

17 asked if you were able to, at that time, back in

18 January, to recreate your day, if you will, on

19 your day off on the 4th of November; is that the

20 substance?

21 A. Yes, sir.

22 Q. And in January, were you able to do that?

23 A. No, sir.

24 Q. Have you since been asked to recreate or to

25 reexamine your comings and goings on the 4th of

1 November?

2 A. Yes, sir.

3 Q. And have you now been able to do that?

4 A. Yes, sir.

5 Q. At any time during the 4th of November, were you
6 anywhere near the Avery salvage property?

7 A. No, I was not.

8 Q. At any time other than what we have heard about
9 on the 3rd, were you anywhere near that salvage
10 property.

11 A. No, I was not.

12 Q. Again, before arriving there on the 5th of
13 November, had you gone near or approached
14 anywhere around the Avery salvage property
15 itself?

16 A. No, sir, I had not.

17 ATTORNEY KRATZ: That's all the redirect I
18 have of this witness. Thank you, very much, sir.

19 THE COURT: Mr. Strang.

20 **RECROSS-EXAMINATION**

21 BY ATTORNEY STRANG:

22 Q. How many calls have you ever gotten in your law
23 enforcement career, from another police officer,
24 suggesting you had the wrong guy in jail?

25 A. I don't know. I can't recall any others.

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[ATTORNEY STRANG: That's all I have.]

THE COURT: All right. You are excused.

Mr. Kratz, the State may call its next witness.

ATTORNEY KRATZ: The State would call Lieutenant James Lenk, then.

THE CLERK: Please raise your right hand.

LIEUTENANT JAMES M. LENK, called as a witness herein, having been first duly sworn, was examined and testified as follows:

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

THE WITNESS: James M. Lenk, L-e-n-k.

DIRECT EXAMINATION

BY ATTORNEY KRATZ:

Q. Mr. Lenk, how are you employed?

A. I'm employed with the Manitowoc County Sheriff's Department.

Q. In what capacity, sir?

A. I'm a lieutenant of detectives.

Q. What are your duties as lieutenant?

A. To distribute work amongst the other detectives, to supervise other detectives, also to take cases myself.

Q. So, together with the supervisory responsibility, you have an active case load; is that right?

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

ANDREW L. COLBORN,

Plaintiff,

vs.

**NETFLIX, INC.; CHROME MEDIA LLC,
F/K/A SYNTHESIS FILMS, LLC;
LAURA RICCIARDI; AND MOIRA
DEMOS,**

Defendants.

Civil No.: 19-CV-484-BHL

**DEFENDANTS LAURA RICCIARDI, MOIRA DEMOS, AND CHROME MEDIA LLC'S
RESPONSES AND OBJECTIONS TO PLAINTIFF'S
SIXTH REQUEST FOR PRODUCTION OF DOCUMENTS**

Defendants Chrome Media, LLC f/k/a Synthesis Films, LLC; Laura Ricciardi; and Moira Demos (collectively, the "Producer Defendants") hereby object and respond to Plaintiff Andrew Colborn's Sixth Request for Production of Documents to the Producer Defendants (the "Requests"):

GENERAL RESPONSE AND GENERAL OBJECTIONS

1. The Producer Defendants are responding to the Requests as they interpret and understand them. The Producer Defendants reserve the right to supplement their objections and/or responses herein if Colborn subsequently asserts an interpretation of the Requests that differs from the Producer Defendants' understanding.
2. The Producer Defendants object to the Requests in their entirety and to each individual Request to the extent they are not proportional to the needs of the case considering the



parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense that will result to the Producer Defendants in locating and producing the requested documents (if they even exist) compared to any benefit to Colborn or relevance to the case.

3. The Producer Defendants object to each Request to the extent that each calls for material that is protected from discovery by the attorney-client privilege, work product doctrine, the common interest and/or joint defense privilege, tax return privilege, or any other applicable privilege, doctrine, or immunity. Nothing contained in these responses and objections is intended as, nor should in any way be deemed, a waiver of any attorney-client privilege, work product doctrine, common interest and/or joint defense privilege, tax return privilege, or any other applicable privilege, doctrine, or immunity. No such waiver will result from any inadvertent disclosure of material or information protected from discovery by the attorney-client privilege, attorney work product doctrine, the common interest and/or joint defense privilege, tax return privilege, or any other applicable privilege, doctrine, or immunity.

4. The Producer Defendants object to each Request to the extent that it calls for the disclosure of material that is confidential, proprietary and/or private, or that intrudes upon third parties' privacy or other legal interests.

5. The Producer Defendants object to each Request to the extent that it calls for the disclosure of material protected from disclosure under Article I, § 2(b) of the California Constitution, California Evidence Code section 1070, Wisconsin Statutes section 885.14 and the Wisconsin Constitution, any other applicable state's or jurisdiction's reporters' privilege or shield laws, the First and Fourteenth Amendments to the United States Constitution, and/or the common law reporters' privilege.

6. The Producer Defendants object to each Request to the extent that it seeks to impose obligations upon the Producer Defendants greater than those imposed by the Federal Rules of Civil Procedure and/or the Local Rules of the Eastern District of Wisconsin.

7. The Producer Defendants object to the Requests to the extent they seek information protected from disclosure by any statute, rule, or regulation.

8. The Producer Defendants object to the Requests to the extent that they seek information (1) not currently in the Producer Defendants' possession, custody, or control, or (2) that the Producer Defendants cannot locate after a reasonably diligent search. The Producer Defendants also object to the Requests to the extent they seek to subject the Producer Defendants to unreasonable and undue annoyance, oppression, burden, and expense; and/or seek to impose upon the Producer Defendants an obligation to investigate or discover information or materials from sources equally accessible to Colborn.

9. The Producer Defendants object to each Request to the extent that it is vague, overbroad, and unduly burdensome and costly to the Producer Defendants.

10. Notwithstanding the specificity of the Producer Defendants' responses set forth below, the Producer Defendants expressly incorporate this General Response and these General Objections by reference as though fully set forth into its specific objections to each of the Requests. Thus, if any objection contained above is not restated under the specific response to an individual Request, then this should not be construed as a waiver of any such objections.

RESPONSES TO REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

Please produce a copy of the feedback screenings as referenced by Laura Ricciardi in the podcast Crimestory podcast below at 34 minutes. Laura is quoted as saying “Part of what we learned from feedback screenings, which is always a small select group...”

<https://crimestory.com/2020/01/02/episode-83-the-twelve-days-of-crime-story-day-11-moira-demos-and-laura-ricciardi-making-a-murderer/>

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

The Producer Defendants incorporate by reference each objection set forth in the General Response and General Objections above as if fully stated here. The Producer Defendants also object to this Request to the extent that it calls for material that is protected from discovery by the attorney-client privilege, work product doctrine, the common interest and/or joint defense privilege, or any other applicable privilege, doctrine or immunity, including without limitation the applicable reporter’s privilege and/or reporter’s shield under Wisconsin, California, any other applicable state or jurisdiction, federal and/or common law. The Producer Defendants further object to this Request to the extent it calls for material disclosing a trade secret or other confidential research, source, development, or commercial information, and/or material protected from disclosure by the Producer Defendants’ and/or third parties’ rights of privacy. The Producer Defendants further object to this Request as vague, ambiguous, overbroad, and unduly burdensome. The Producer Defendants also object to this Request on the grounds that it seeks material that is not relevant or reasonably calculated to lead to the discovery of any admissible evidence, and to the extent it is not proportional to the needs of the case. The Producer Defendants object to the extent that Plaintiff is requesting discovery regarding *Making a*

Murderer 2, as the operative Second Amended Complaint does not put *Making a Murderer 2* at issue, and thus discovery regarding it is not relevant or reasonably calculated to lead to the discovery of any admissible evidence, is not proportional to the needs of the case, and is overbroad and unduly burdensome.

Subject to and without waiving their objections, and subject to their understanding of this Request, the Producer Defendants respond as follows: Ricciardi's reference to "feedback screenings" in the Crimestory podcast concerns informally screening footage for small select groups of people working on *Making a Murderer*. Producer Defendants did not archive whatever scenes or sequences were screened in those sessions. Furthermore, the Producer Defendants did not conduct other feedback screenings.

AMENDED REQUEST FOR PRODUCTION NO. 2:

Please produce all episode versions or drafts that were provided to Netflix, Inc. for purposes of the "4 or 5 passes of every episode" as described in the words of Moira Demos at approximately 58 minutes into the following video interview and thereafter:

The Making of Making a Murderer With Filmmakers Moira Demos and Laura Ricciardi
<https://youtu.be/Gei-wIjSGYs?t=3478>

Amended: Plaintiff restates his prior Request for Production No. 2 except that the words in the third line that state "at approximately 58 minutes into..." are replaced with the words "at approximately 53 minutes into..."

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

The Producer Defendants incorporate by reference each objection set forth in the General Response and General Objections above as if fully stated here. The Producer Defendants further

object to this Request as vague, ambiguous, overbroad, and unduly burdensome. The Producer Defendants also object to this Request to the extent that it calls for material that is protected from discovery by the attorney-client privilege, work product doctrine, the common interest and/or joint defense privilege, or any other applicable privilege, doctrine or immunity, including without limitation the applicable reporter's privilege and/or reporter's shield under Wisconsin, California, any other applicable state or jurisdiction, federal and/or common law. The Producer Defendants further object to this Request to the extent it calls for material disclosing a trade secret or other confidential research, source, development, or commercial information, and/or material protected from disclosure by the Producer Defendants' and/or third parties' rights of privacy. The Producer Defendants also object to this Request on the grounds that it seeks material that is not relevant or reasonably calculated to lead to the discovery of any admissible evidence, and to the extent it is not proportional to the needs of the case. The Producer Defendants object to the extent that Plaintiff is requesting discovery regarding *Making a Murderer 2*, as the operative Second Amended Complaint does not put *Making a Murderer 2* at issue, and thus discovery regarding it is not relevant or reasonably calculated to lead to the discovery of any admissible evidence, is not proportional to the needs of the case, and is overbroad and unduly burdensome.

Subject to and without waiving their objections, and subject to their understanding of this Request, the Producer Defendants respond as follows: the Producer Defendants do not have any documents responsive to this Request. A diligent search and reasonable inquiry have been made to comply with this Request, however, the Producer Defendants did not archive or otherwise retain, and do not possess, any "passes" or prior versions of episodes of *Making a Murderer*, and only have final versions of episodes.

REQUEST FOR PRODUCTION NO. 3:

Please produce all "notes" that were provided by representatives of Netflix, Inc. to any of the other Defendants as described by Moira Demos at approximately 58 minutes into the following video interview and thereafter: The Making of Making a Murderer With Filmmakers Moira Demos and Laura Ricciardi
<https://youtu.be/Gei-wIjSGYs?t=3479>

Amended: Plaintiff restates his prior Request for Production No. 3 except that the words in the second and third lines that state “at approximately 58 minutes into....” are replaced with the words “at approximately 53 minutes into....”

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

The Producer Defendants incorporate by reference each objection set forth in the General Response and General Objections above as if fully stated here. The Producer Defendants further object to this Request as vague (including but not limited to the use of the phrase “any of the other Defendants”), ambiguous, overbroad, and unduly burdensome. The Producer Defendants also object to this Request to the extent that it calls for material that is protected from discovery by the attorney-client privilege, work product doctrine, the common interest and/or joint defense privilege, or any other applicable privilege, doctrine or immunity, including without limitation the applicable reporter’s privilege and/or reporter’s shield under Wisconsin, California, any other applicable state or jurisdiction, federal and/or common law. The Producer Defendants further object to this Request to the extent it calls for material disclosing a trade secret or other confidential research, source, development, or commercial information, and/or material protected

from disclosure by the Producer Defendants' and/or third parties' rights of privacy. The Producer Defendants also object to this Request on the grounds that it seeks material that is not relevant or reasonably calculated to lead to the discovery of any admissible evidence, and to the extent it is not proportional to the needs of the case. The Producer Defendants object to the extent that Plaintiff is requesting discovery regarding *Making a Murderer 2*, as the operative Second Amended Complaint does not put *Making a Murderer 2* at issue, and thus discovery regarding it is not relevant or reasonably calculated to lead to the discovery of any admissible evidence, is not proportional to the needs of the case, and is overbroad and unduly burdensome.

Subject to and without waiving their objections, and subject to their understanding of this Request, the Producer Defendants respond as follows: To the extent not already produced, the Producer Defendants will produce non-privileged documents that reasonably can be determined to be responsive to this Request that the Producer Defendants can locate through a reasonable search and diligent inquiry.

REQUEST FOR PRODUCTION NO. 4:

Please produce all “rough cuts” and “sketches” of Making a Murderer episodes that were prepared by Chrome Media, Laura Ricciardi, and/or Moira Demos prior to commencing work with Netflix, Inc., as described in the words of Laura Ricciardi at approximately 26 minutes into the following video interview and thereafter:

[The Making of Making a Murderer With Filmmakers Moira Demos and Laura Ricciardi](#)

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

The Producer Defendants incorporate by reference each objection set forth in the General Response and General Objections above as if fully stated here. The Producer Defendants further

object to this Request as vague, ambiguous, overbroad, and unduly burdensome. The Producer Defendants also object to this Request to the extent that it calls for material that is protected from discovery by the attorney-client privilege, work product doctrine, the common interest and/or joint defense privilege, or any other applicable privilege, doctrine or immunity, including without limitation the applicable reporter's privilege and/or reporter's shield under Wisconsin, California, any other applicable state or jurisdiction, federal and/or common law. The Producer Defendants further object to this Request to the extent it calls for material disclosing a trade secret or other confidential research, source, development, or commercial information, and/or material protected from disclosure by the Producer Defendants' and/or third parties' rights of privacy. The Producer Defendants also object to this Request on the grounds that it seeks material that is not relevant or reasonably calculated to lead to the discovery of any admissible evidence, and to the extent it is not proportional to the needs of the case.

Subject to and without waiving their objections, and subject to their understanding of this Request, the Producer Defendants respond as follows: the Producer Defendants do not have any documents responsive to this Request. A diligent search and reasonable inquiry have been made to comply with this Request, however, the Producer Defendants did not archive or otherwise retain, and do not possess, any "rough cuts," "sketches" or prior versions of episodes of *Making a Murderer*, and only have final versions of episodes.

REQUEST FOR PRODUCTION NO. 5:

To the extent not produced in response to the preceding Requests, please produce any and all written, electronic, and/or audio and/or video material provided by other Defendants named in these proceedings to Netflix, Inc., for purposes of work on the production and/or editing of the

Making a Murderer episodes.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

The Producer Defendants incorporate by reference each objection set forth in the General Response and General Objections above as if fully stated here. The Producer Defendants further object to this Request as vague (including but not limited to the use of the phrase “other Defendants named in these proceedings”), ambiguous, overbroad, unintelligible and unduly burdensome. The Producer Defendants also object to this Request to the extent that it calls for material that is protected from discovery by the attorney-client privilege, work product doctrine, the common interest and/or joint defense privilege, or any other applicable privilege, doctrine or immunity, including without limitation the applicable reporter’s privilege and/or reporter’s shield under Wisconsin, California, any other applicable state or jurisdiction, federal and/or common law. The Producer Defendants further object to this Request to the extent it calls for material disclosing a trade secret or other confidential research, source, development, or commercial information, and/or material protected from disclosure by the Producer Defendants’ and/or third parties’ rights of privacy. The Producer Defendants also object to this Request on the grounds that it seeks material that is not relevant or reasonably calculated to lead to the discovery of any admissible evidence, and to the extent it is not proportional to the needs of the case. The Producer Defendants object to the extent that Plaintiff is requesting discovery regarding *Making a Murderer 2*, as the operative Second Amended Complaint does not put *Making a Murderer 2* at issue, and thus discovery regarding it is not relevant or reasonably calculated to lead to the discovery of any admissible evidence, is not proportional to the needs of the case, and is overbroad and unduly burdensome.

Subject to and without waiving their objections, and subject to their understanding of this Request, the Producer Defendants respond as follows: To the extent not already produced, the Producer Defendants will produce non-privileged documents within their possession, custody or control that reasonably can be determined to be responsive to this Request and that relate to portions of *Making a Murderer* that are of and concerning Plaintiff and that are put at issue by the Second Amended Complaint.

REQUEST FOR PRODUCTION NO. 6:

To the extent not produced in response to the preceding Requests, please produce any and all written, electronic, and/or audio and/or video material provided by any representatives of Netflix, Inc to any of the other Defendants named in these proceedings for purposes of work on the production and/or editing of the *Making a Murderer* episodes.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

The Producer Defendants incorporate by reference each objection set forth in the General Response and General Objections above as if fully stated here. The Producer Defendants further object to this Request as vague (including but not limited to the use of the phrase “any of the other Defendants named in these proceedings”), ambiguous, overbroad, and unduly burdensome. The Producer Defendants also object to this Request to the extent that it calls for material that is protected from discovery by the attorney-client privilege, work product doctrine, the common interest and/or joint defense privilege, or any other applicable privilege, doctrine or immunity, including without limitation the applicable reporter’s privilege and/or reporter’s shield under Wisconsin, California, any other applicable state or jurisdiction, federal and/or common law. The Producer Defendants further object to this Request to the extent it calls for material

disclosing a trade secret or other confidential research, source, development, or commercial information, and/or material protected from disclosure by the Producer Defendants' and/or third parties' rights of privacy. The Producer Defendants also object to this Request on the grounds that it seeks material that is not relevant or reasonably calculated to lead to the discovery of any admissible evidence, and to the extent it is not proportional to the needs of the case. The Producer Defendants object to the extent that Plaintiff is requesting discovery regarding *Making a Murderer 2*, as the operative Second Amended Complaint does not put *Making a Murderer 2* at issue, and thus discovery regarding it is not relevant or reasonably calculated to lead to the discovery of any admissible evidence, is not proportional to the needs of the case, and is overbroad and unduly burdensome.

Subject to and without waiving their objections, and subject to their understanding of this Request, the Producer Defendants respond as follows: To the extent not already produced, the Producer Defendants will produce non-privileged documents within their possession, custody or control that reasonably can be determined to be responsive to this Request and that relate to portions of *Making a Murderer* that are of and concerning Plaintiff and that are put at issue by the Second Amended Complaint.

REQUEST FOR PRODUCTION NO. 7:

The document referenced in Request for Admission No. 1 from Chrome Media, LLC to the Plaintiff.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

The Producer Defendants incorporate by reference each objection set forth in the General Response and General Objections above as if fully stated here.

Subject to and without waiving its objections, and subject to their understanding of this Request, and subject to the entry of an appropriate protective order, the Producer Defendants respond as follows: the Producer Defendants will produce a copy of the requested document.

REQUEST FOR PRODUCTION NO. 8:

All video material of any kind that relates to Making A Murderer and Making A Murderer 2, other than the final versions.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

The Producer Defendants incorporate by reference each objection set forth in the General Response and General Objections above as if fully stated here. The Producer Defendants also object to this Request to the extent that it calls for material that is protected from discovery by the attorney-client privilege, work product doctrine, the common interest and/or joint defense privilege, or any other applicable privilege, doctrine or immunity, including without limitation the applicable reporter's privilege and/or reporter's shield under Wisconsin, California, any other applicable state or jurisdiction, federal and/or common law. The Producer Defendants further object to this Request to the extent it calls for material disclosing a trade secret or other confidential research, source, development, or commercial information, and/or material protected from disclosure by the Producer Defendants' and/or third parties' rights of privacy. The Producer Defendants further object to this Request as vague, ambiguous, overbroad, and unduly burdensome, including without limitation with respect to the use of the phrase "All video material of any kind that relates to Making A Murderer and Making A Murderer 2." The Producer Defendants also object to this Request on the grounds that it seeks material that is not relevant or reasonably calculated to lead to the discovery of any admissible evidence, is not

proportional to the needs of the case, and is designed to harass the Producer Defendants and to misuse the discovery process to try to impose an extraordinarily undue burden and expense on the Producer Defendants, as compliance with this Request would require the Producer Defendants to spend thousands of hours locating, duplicating, quality controlling and otherwise performing the logistics necessary to make copies of the requested materials. By way of comparison, the Producer Defendants spent approximately 60 hours and incurred out-of-pocket expenses duplicating and quality checking footage of Plaintiff's testimony at Steven Avery's criminal trial, even though Plaintiff only testified for three to four hours at the trial. Request No. 8 seeks a volume of materials exponentially wider in scope than that, and the resulting burden on the Producer Defendants also would be exponentially greater. The Producer Defendants also object to Plaintiff's requesting discovery regarding *Making a Murderer 2*, as the operative Second Amended Complaint does not put *Making a Murderer 2* at issue, and thus discovery regarding it is not relevant or reasonably calculated to lead to the discovery of any admissible evidence, is not proportional to the needs of the case, and is overbroad and unduly burdensome. The Producer Defendants further object that this Request violates Colborn's and the Producer Defendants' prior agreement whereby the Producer Defendants agreed to spend significant amounts of time and to incur the expenses necessary to produce copies of all footage of Colborn from Steven Avery's murder trial (which required the Producer Defendants to collectively spend more than 60 hours locating, duplicating and quality checking the requested footage) in exchange for Colborn's agreement not to seek additional footage.

Dated: March 14, 2022

Respectfully submitted,

s/ Kevin L. Vick

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 355 South Grand Avenue, Suite 2450, Los Angeles, CA 90071.

On March 14, 2022, I served true copies of the following document(s) described as

**DEFENDANTS LAURA RICCIARDI, MOIRA DEMOS, AND CHROME
MEDIA LLC'S RESPONSES AND OBJECTIONS TO PLAINTIFF'S
SIXTH REQUEST FOR PRODUCTION OF DOCUMENTS**

on the interested parties in this action as follows:

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BY ELECTRONIC SERVICE: I caused the said document(s) to be transmitted by e-mail to the person(s) at the email address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

BY FIRST-CLASS MAIL: I deposited said document(s) in a sealed envelope(s) with the United States Postal Service at Los Angeles, California, for delivery, with the postage fully prepaid. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party(ies) served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 14, 2022, at Los Angeles, California.



Marlene Rios