

STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
BRANCH 1

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STATE OF WISCONSIN,

PLAINTIFF,

vs.

JURY TRIAL - DAY 24

CLOSING ARGUMENTS, CONTD.

Case No. 05 CF 381

STEVEN A. AVERY,

DEFENDANT.

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**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 Tesheneck, RPR

Official Court Reporter

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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.

1                   ATTORNEY STRANG: That is also correct.

2                   THE COURT: Very well. Is there anything  
3 else the parties wish to take up outside the  
4 presence of the jury before we resume with closings.

5                   ATTORNEY KRATZ: No, Judge.

6                   ATTORNEY STRANG: No, sir.

7                   THE COURT: All right. We'll bring the  
8 jurors in at this time.

9                   (Jury present.)

10                  THE COURT: You may be seated. Good  
11 morning, again, members of the jury. At this time  
12 we're ready to resume closing arguments. Mr. Strang  
13 will be speaking first on behalf of the defendant.

14                  ATTORNEY STRANG: Thank you. Good morning.

15                  JURORS: Good morning.

16                  ATTORNEY STRANG: You know, I -- what's it  
17 been, five weeks, or six weeks, or whatever it's  
18 been, and the rules within which we operate  
19 fundamentally allow me only to speak at you. At  
20 this point, I would be ready to speak with you. I  
21 can't exactly. But I do want to do my best to talk  
22 with you this morning. Can't hear?

23                  JUROR: It's kind of soft.

24                  ATTORNEY STRANG: Kind of soft.

25                  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,

1           as a matter of closure for Steven Avery.

2                       He's never really, in the broader  
3 public, been presumed innocent. He's never  
4 really had the presumption to which he was  
5 entitled as an American, as a citizen accused.  
6 You folks may be the only people in the world,  
7 other than those of us at my table, who do  
8 presume him innocent.

9                       You can't do anything about it. We  
10 can't do anything about that, for the rest of the  
11 world. And as I say, courtrooms are pitiful,  
12 pathetic places to try and provide closure for  
13 Delores, closure for the Halbach family. Not  
14 that it's not important that the system not work,  
15 it is important that the system work. Because  
16 when it works, we can provide justice, or some  
17 semblance of justice. But justice and closure  
18 are -- are two different things.

19                      Nobody is always happy with justice, or  
20 at peace necessarily with justice. And in that  
21 sense, closure would be something more.  
22 Something more personal for that family, and for  
23 this family, and for Steven. You'd provide it if  
24 you could, I know you would. You won't be able  
25 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.

1           Serious, serious business.

2                   And as a representative of the State, as  
3           the prosecutor in this case, I'm here to tell you  
4           folks, that if you are going to allege that some  
5           Manitowoc cop is crooked, that some Manitowoc cop  
6           committed a crime, you better have something to  
7           back it up. And when you don't, and when there  
8           is a witness from the FBI who says that didn't  
9           happen, and when common sense said, that didn't  
10          happen, these men are owed an apology. Their  
11          good name, their reputations, need to be restored  
12          to them.

13                   And Mr. Strang talked about what a  
14          guilty verdict, or a not guilty verdict, may do  
15          in this case. A guilty verdict is most  
16          importantly attributed to whether or not  
17          Mr. Avery committed these horrific acts in these  
18          cases. But also the issue of official or police  
19          misconduct should be something that angers you,  
20          just as it angers me.

21                   Mr. Buting said that he might have been  
22          a little rough on Ms Culhane, that he owed her an  
23          apology. I'm hoping that the comments that have  
24          been directed towards Jim Lenk and towards Andy  
25          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

1           problem with that.

2                   THE COURT: All right. 229, then, is also  
3           withdrawn.

4                   ATTORNEY STRANG: Very well.

5                   ATTORNEY KRATZ: Thank you.

6                   THE COURT: Very well, we're in recess.

7                   ATTORNEY BUTING: Judge, one other matter.

8                   THE COURT: Yes.

9                   ATTORNEY BUTING: I don't know what other  
10          exhibits you intend to send back to the jury, other  
11          than the photographs, but certainly we would object  
12          to the expert's reports going back.

13                   THE COURT: Let me clarify my understanding  
14          further. If I understand what the parties are  
15          telling me, and I want to make sure I'm not reading  
16          too much in, I'm glad, Mr. Buting, that you brought  
17          this up. If the jury requests permission to see any  
18          of the other photos, are the parties saying I can  
19          send them back, or the parties wish to be heard  
20          before they are sent back?

21                   ATTORNEY STRANG: Photos can be sent  
22          without jury request.

23                   ATTORNEY KRATZ: Right now.

24                   ATTORNEY STRANG: That's what we agreed.

25                   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 STATE OF WISCONSIN )  
 )ss  
2 COUNTY OF MANITOWOC )  
3

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

15 Dated this 22nd day of January, 2008.  
16  
17  
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19 \_\_\_\_\_  
Diane Tesheneck, RPR  
20 Official Court Reporter  
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